

**VOLUME II**  
**CODE OF IOWA**  
**2014**

CONTAINING  
ALL STATUTES OF A GENERAL  
AND PERMANENT NATURE

Including the Acts of a permanent nature  
of the Eighty-fifth General Assembly, 2013



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by the  
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GENERAL ASSEMBLY OF IOWA  
Des Moines

—  
2013



## PREFACE TO 2014 IOWA CODE

2014 IOWA CODE — PRINT CODE SUPPLEMENT DISCONTINUED — ANNUAL CD-ROM. This 2014 Iowa Code is published pursuant to Iowa Code chapters 2A and 2B by the Legislative Services Agency only on CD-ROM and on the Iowa General Assembly's Internet site. The printed softbound Code Supplement has been discontinued. The CD-ROM contains a copy of the official text of the 2014 Iowa Code in PDF format, divided into six parts to correspond to the six-volume format of the biennial printed version of the Iowa Code. Printed hardbound volumes of the Iowa Code will continue to be published following the second regular session of a General Assembly. A CD-ROM containing the Iowa Code will be published annually.

**CODE CONTENTS AND EFFECTIVE DATES.** This 2014 Iowa Code contains the permanent enactments of the 2013 session of the Eighty-fifth General Assembly and of earlier sessions if the effective dates of the enactments were delayed. Except as otherwise indicated in the text or in a footnote, new sections, amendments, and repeals were effective on or before July 1, 2013. Refer to the specific enactments to determine effective dates not shown. The Table of Contents enumerates the titles and subtitles in this Iowa Code, and each volume contains an analysis by title, subtitle, and chapter. Codified and original versions of the Constitution of the State of Iowa are included at the beginning of Volume I.

**EDITORIAL DECISIONS.** All duplicative or nonconflicting amendments to a Code section or part of a Code section were harmonized as required under Iowa Code sections 2B.13 and 4.11. A strike or repeal prevailed over an amendment to the same material. If amendments were irreconcilable, the last amendment in the Act, or latest in date of enactment, was codified as provided in Iowa Code sections 2B.13 and 4.8. Code Editor's Notes at the end of Volume VI explain editorial decisions. Iowa Code section 2B.13 governs editorial changes and their effective dates.

**HISTORIES AND NOTES.** Bracketed material at the end of Code sections traces the sections' history up through 1982. Beginning with the 1983 Legislative Session, history is traced by citing all Iowa Acts amending or enacting the Code sections. The history of a transferred section will include the publication year and the Code section from which the transfer took place. An explanatory note describing the most recent changes in each new or amended Code section follows the history. Internal reference citations follow Code titles, subtitles, chapters, chapter subdivisions, or sections.

**INDEX AND TABLES.** A Skeleton Index appears at the end of each volume. Conversion tables of Senate and House files to Iowa Acts chapters, tables of disposition of Iowa Acts, and a table of corresponding sections can be accessed on the General Assembly's Internet site.

**COMMENTS.** The editorial staff of the Iowa Code welcomes comments and suggestions for improvements.

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# DESIGNATION OF GENERAL ASSEMBLY — OFFICIAL LEGAL PUBLICATIONS — CITATIONS

## 2.2 Designation of general assembly.

Each regular session of the general assembly shall be designated by the year in which it convenes and by a number with a new consecutive number assigned with the session beginning in each odd-numbered year.

A special session of the general assembly shall be designated as an extraordinary session in the particular year of a numbered general assembly.

## 2B.17 Official legal publications — citations.

1. An official legal publication designated as such by the legislative services agency as provided in sections 2.42 and 2A.1, is the official and authoritative version of the statutes, administrative rules, or court rules of the state of Iowa.

2. *a.* The codified version of the state's constitution shall be known as the Constitution of the State of Iowa.

*b.* For statutes, the official versions of publications shall be known as the Iowa Acts, the Iowa Code, and the Code Supplement.

*c.* For administrative rules, the official versions of the publications shall be known as the Iowa Administrative Bulletin and the Iowa Administrative Code.

*d.* For court rules, the official version of the publication shall be known as the Iowa Court Rules.

3. The legislative services agency may adopt a style manual providing a uniform system of citing the codified Constitution of the State of Iowa and the official versions of publications listed in subsection 2, including by reference to commonly accepted legal sources. The legislative services agency style manual may provide for a different form of citation for electronic and printed versions of the same publication. Nothing in this section affects rules for style and format adopted pursuant to section 2.42.

4. The codified Constitution of the State of Iowa, and statutes enacted and joint resolutions enacted or passed by the general assembly shall be cited as follows:

*a.* The codified Constitution of the State of Iowa shall be cited as the Constitution of the State of Iowa, with a reference identifying the preamble or boundaries, or article, section, and subunit of a section. Subject to the legislative services agency style manual, the Constitution of the State of Iowa may be cited as the Iowa Constitution.

*b.* The Iowa Acts shall be cited as the Iowa Acts with a reference identifying the year of the publication in conformance with section 2.2, and the chapter of a bill enacted or joint resolution enacted or passed during a regular session, or in the alternative the bill or joint resolution chamber designation, and the section of the chapter or bill or subunit of a section. A bill or joint resolution enacted or passed during a special session shall be cited by the extraordinary session designation in conformance with section 2.2. If the Iowa Acts have not been published, a bill or joint resolution may be cited by its bill or joint resolution chamber designation.

*c.* The Iowa Code shall be cited as the Iowa Code. The Code Supplement shall be cited as the Code Supplement. Subject to the legislative services agency style manual, the Iowa Code may be cited as the Code of Iowa or Code and the Code Supplement may be cited as the Iowa Code Supplement, with references identifying parts of the publication, including but not limited to title or chapter, section, or subunit of a section. If the citation refers to a past edition of the Iowa Code or Code Supplement, the citation shall identify the year of publication.

5. Administrative rules shall be cited as follows:

*a.* The Iowa Administrative Bulletin shall be cited as the IAB, with references identifying the volume number which may be based on a fiscal year cycle, the issue number, and the ARC number assigned to the rulemaking document by the administrative rules coordinator pursuant to section 17A.4. Subject to the legislative services agency style manual, the citation may also include the publication's page number.

*b.* The Iowa Administrative Code shall be cited as the IAC, with references to an agency's identification number placed at the beginning of the citation and with references to parts of the publication, including but not limited to chapter, rule, or subunit of a rule.

6. The Iowa Court Rules shall be cited as the Iowa Court Rules, with references to the rule number and to subunits of the publication, which may include but are not limited to the Iowa Rules of Civil Procedure, the Iowa Rules of Criminal Procedure, the Iowa Rules of Evidence, the Iowa Rules of Appellate Procedure, the Iowa Rules of Professional Conduct, and the Iowa Code of Judicial Conduct. Subject to the legislative services agency style manual, the names of the rules may be abbreviated.

Chapters of the Code are cited as whole numerals; as chapter 124 or chapter 124A.

Sections are cited as decimal numerals; as section 124.401 or section 124A.3. Sections are often divided into subunits. The following is an example of the hierarchical structure of a Code section:

Section: 35D.15

Subsection: 2

Paragraph: *a*

Subparagraph: (1)

Subparagraph division: (a)

Subparagraph subdivision: (ii)

Subparagraph part: (B)

Subparagraph subpart: (I) *This subunit does not exist in present Code*

The above Code section example may be abbreviated as 35D.15(2)(a)(1)(a)(ii)(B)(I) or 35D.15 [2a(1)(a)(ii)(B)(I)].

## ABBREVIATIONS

C51 .....	Code of 1851	C97 .....	Code of 1997
R60 .....	Revision of 1860	CS97 .....	Code Supplement of 1997
C73 .....	Code of 1873	C99 .....	Code of 1999
C97 .....	Code of 1897	CS99 .....	Code Supplement of 1999
S'02 .....	Supplement of 1902	C2001 .....	Code of 2001
S'07 .....	Supplement of 1907	CS2001 .....	Code Supplement of 2001
S13 .....	Supplement of 1913	C2003 .....	Code of 2003
SS15 .....	Supplemental Supplement 1915	CS2003 .....	Code Supplement of 2003
C24 .....	Code of 1924	C2005 .....	Code of 2005
C27 .....	Code of 1927	CS2005 .....	Code Supplement of 2005
C31 .....	Code of 1931	C2007 .....	Code of 2007
C35 .....	Code of 1935	CS2007 .....	Code Supplement of 2007
C39 .....	Code of 1939	C2009 .....	Code of 2009
C46 .....	Code of 1946	CS2009 .....	Code Supplement of 2009
C50 .....	Code of 1950	C2011 .....	Code of 2011
C54 .....	Code of 1954	CS2011 .....	Code Supplement of 2011
C58 .....	Code of 1958	C2013 .....	Code of 2013
C62 .....	Code of 1962	C2014 .....	Code of 2014
C66 .....	Code of 1966	GA .....	General Assembly
C71 .....	Code of 1971	§ or Sec. ....	Section
C73 .....	Code of 1973	Art. ....	Article
C75 .....	Code of 1975	Ch .....	Chapter
C77 .....	Code of 1977	1st Ex .....	First Extra Session
C79 .....	Code of 1979	2nd Ex .....	Second Extra Session
S79 .....	Supplement of 1979	R (in tables) .....	Repealed
C81 .....	Code of 1981	Vol .....	Volume
S81 .....	Supplement of 1981	Ct.R. ....	Court Rule
C83 .....	Code of 1983	R.C.P. ....	Rules of Civil Procedure
CS83 .....	Supplement of 1983	R.Cr.P. ....	Rules of Criminal Procedure
C85 .....	Code of 1985	R.App.P. ....	Rules of Appellate Procedure
CS85 .....	Code Supplement of 1985	R.Prob.P. ....	Rules of Probate Procedure
C87 .....	Code of 1987	Stat. ....	Statutes at Large (U. S.)
CS87 .....	Code Supplement of 1987	U.S.C. ....	United States Code
C89 .....	Code of 1989	U.S.C. App. ....	United States Code Appendix
CS89 .....	Code Supplement of 1989	Pub. L. No. ....	Public Law Number (U. S.)
C91 .....	Code of 1991	C.F.R. ....	Code of Federal Regulations (U. S.)
CS91 .....	Code Supplement of 1991	Tit. ....	Title in federal Acts
C93 .....	Code of 1993	Subtit. ....	Subtitle in federal Acts
CS93 .....	Code Supplement of 1993	Pt. ....	Part in federal Acts
C95 .....	Code of 1995	Subpt. ....	Subpart in federal Acts
CS95 .....	Code Supplement of 1995		

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**PUBLIC HEALTH**

Referred to in §153.34

**SUBTITLE 1**

**ALCOHOLIC BEVERAGES AND CONTROLLED SUBSTANCES**

**CHAPTER 123**

**ALCOHOLIC BEVERAGE CONTROL**

Referred to in §99B.2, 99B.6, 99B.10, 99B.10B, 99B.14, 125.2, 137E.1, 232C.4, 523H.1, 537A.10, 546.9, 714.16

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## DIVISION I

### GENERAL PROVISIONS RELATING TO ALCOHOLIC BEVERAGES

Referred to in §123.122, 123.171

#### 123.1 Public policy declared.

This chapter shall be cited as the “*Iowa Alcoholic Beverage Control Act*”, and shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. It is declared to be public policy that the traffic in alcoholic liquors is so affected with a public interest that it should be regulated to the extent of prohibiting all traffic in them, except as provided in this chapter.

[C35, §1921-f1; C39, §1921.001; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.1] 85 Acts, ch 32, §3; 86 Acts, ch 1122, §1

#### 123.2 General prohibition.

It is unlawful to manufacture for sale, sell, offer or keep for sale, possess, or transport alcoholic liquor, wine, or beer except upon the terms, conditions, limitations, and restrictions enumerated in this chapter.

[C35, §1921-f3; C39, §1921.003; C46, 50, 54, 58, 62, 66, 71, §123.3; C73, 75, 77, 79, 81, §123.2]

85 Acts, ch 32, §4

#### 123.3 Definitions.

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

1. “*Administrator*” means the administrator of the division, appointed pursuant to the provisions of this chapter, or the administrator’s designee.

2. “*Air common carrier*” means a person engaged in transporting passengers for hire in interstate or foreign commerce by aircraft and operating regularly scheduled flights under a certificate of public convenience issued by the civil aeronautics board.

3. “*Alcohol*” means the product of distillation of any fermented liquor rectified one or more times, whatever may be the origin thereof, and includes synthetic ethyl alcohol.

4. “*Alcoholic beverage*” means any beverage containing more than one-half of one percent of alcohol by volume including alcoholic liquor, wine, and beer.

5. “*Alcoholic liquor*” or “*intoxicating liquor*” means the varieties of liquor defined in subsections 3 and 43 which contain more than five percent of alcohol by weight, beverages made as described in subsection 7 which beverages contain more than five percent of alcohol by weight but which are not wine as defined in subsection 47 or high alcoholic content beer as defined in subsection 19, and every other liquid or solid, patented or not, containing spirits and every beverage obtained by the process described in subsection 47 containing more than seventeen percent alcohol by weight or twenty-one and twenty-five hundredths percent of alcohol by volume, and susceptible of being consumed by a human being, for beverage purposes. Alcohol manufactured in this state for use as fuel pursuant to an experimental distilled spirits plant permit or its equivalent issued by the federal bureau of alcohol, tobacco and firearms is not an “*alcoholic liquor*”.

6. “*Application*” means a written request for the issuance of a permit or license that is supported by a verified statement of facts and submitted electronically, or in a manner prescribed by the administrator.

7. “*Beer*” means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt, and hops, with or without unmalted grains or decorticated and degerminated grains or made by the fermentation of or by distillation of the fermented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than five percent of alcohol by weight or six and twenty-five hundredths percent of alcohol by volume but not including mixed drinks or cocktails mixed on the premises.

8. “*Brewer*” means any person who manufactures beer for the purpose of sale, barter, exchange, or transportation.

9. “*Broker*” means a person who represents or promotes alcoholic liquor within the state on behalf of the holder of a distiller’s certificate of compliance through an agreement with the distiller, and whose name is disclosed on a distiller’s current certificate of compliance as its representative in the state. An employee of the holder of a distiller’s certificate of compliance is not a broker.

10. “*City*” means a municipal corporation but not including a county, township, school district, or any special purpose district or authority.

11. “*Club*” means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part thereof, membership in which entails the prepayment of regular dues and is not operated for a profit other than such profits as would accrue to the entire membership.

12. “*Commercial establishment*” means a place of business which is at all times equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and the licensed premises of which conform to the standards and specifications of the division.

13. “*Commission*” means the alcoholic beverages commission established by this chapter.

14. “*Designated security employee*” means an agent, contract employee, independent contractor, servant, or employee of a licensee or permittee who works in a security position in any capacity at a commercial establishment licensed or permitted under this chapter.

15. “*Distillery*”, “*winery*”, and “*brewery*” mean not only the premises where alcohol or spirits are distilled, wine is fermented, or beer is brewed, but in addition mean a person owning, representing, or in charge of such premises and the operations conducted there, including the blending and bottling or other handling and preparation of alcoholic liquor, wine, or beer in any form.

16. “*Division*” means the alcoholic beverages division of the department of commerce established by this chapter.

17. “*Grape brandy*” means brandy produced by the distillation of fermented grapes or grape juice.

18. “*Grocery store*” means any retail establishment, the business of which consists of the sale of food, food products, or beverages for consumption off the premises.

19. “*High alcoholic content beer*” means beer which contains more than five percent of alcohol by weight or six and twenty-five hundredths percent of alcohol by volume, but not more than twelve percent of alcohol by weight or fifteen percent of alcohol by volume, that is made by the fermentation of an infusion in potable water of barley, malt, and hops, with or without unmalted grains or decorticated and degerminated grains. Not more than one and five-tenths percent of the volume of a “*high alcoholic content beer*” may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol. The added flavors and other nonbeverage ingredients may not include added caffeine or other added stimulants including but not limited to guarana, ginseng, and taurine.

20. “*Hotel*” or “*motel*” means premises licensed by the department of inspections and appeals and regularly or seasonally kept open in a bona fide manner for the lodging of transient guests, and with twenty or more sleeping rooms.

21. “*Import*” means the transporting or ordering or arranging the transportation of alcoholic liquor, wine, or beer into this state whether by a resident of this state or not.

22. “*Importer*” means the person who transports or orders, authorizes, or arranges the transportation of alcoholic liquor, wine, or beer into this state whether the person is a resident of this state or not.

23. The terms “*in accordance with the provisions of this chapter*”, “*pursuant to the provisions of this title*”, or similar terms shall include all rules and regulations of the division adopted to aid in the administration or enforcement of those provisions.

24. “*Legal age*” means twenty-one years of age or more.

25. “*Licensed premises*” or “*premises*” means all rooms, enclosures, contiguous areas, or places susceptible of precise description satisfactory to the administrator where alcoholic beverages, wine, or beer is sold or consumed under authority of a liquor control license, wine permit, or beer permit. A single licensed premises may consist of multiple rooms, enclosures, areas or places if they are wholly within the confines of a single building or contiguous grounds.

26. “*Local authority*” means the city council of any incorporated city in this state, or the county board of supervisors of any county in this state, which is empowered by this chapter to approve or deny applications for retail beer or wine permits and liquor control licenses; empowered to recommend that such permits or licenses be granted and issued by the division; and empowered to take other actions reserved to them by this chapter.

27. “*Manufacture*” means to distill, rectify, ferment, brew, make, mix, concoct, or process any substance capable of producing a beverage containing more than one-half of one percent of alcohol by volume and includes blending, bottling, or the preparation for sale.

28. “*Micro-distilled spirits*” means distilled spirits fermented, distilled, or, for a period of two years, barrel matured on the licensed premises of the micro-distillery where fermented, distilled, or matured. “*Micro-distilled spirits*” also includes blended or mixed spirits comprised solely of spirits fermented, distilled, or, for a period of two years, barrel matured at a micro-distillery.

29. “*Micro-distillery*” means a business with an operational still which, combining all production facilities of the business, produces and manufactures less than fifty thousand proof gallons of distilled spirits on an annual basis.

30. “*Native wine*” means wine manufactured pursuant to section 123.56 by a manufacturer of native wine.

31. “*Package*” means any container or receptacle used for holding alcoholic liquor.

32. “*Permit*” or “*license*” means an express written authorization issued by the division for the manufacture or sale, or both, of alcoholic liquor, wine, or beer.

33. “*Person*” means any individual, association, partnership, corporation, club, hotel or motel, or municipal corporation owning or operating a bona fide airport, marina, park, coliseum, auditorium, or recreational facility in or at which the sale of alcoholic liquor, wine, or beer is only an incidental part of the ownership or operation.

34. “*Person of good moral character*” means any person who meets all of the following requirements:

a. The person has such financial standing and good reputation as will satisfy the administrator that the person will comply with this chapter and all laws, ordinances,

and regulations applicable to the person's operations under this chapter. However, the administrator shall not require the person to post a bond to meet the requirements of this paragraph.

b. The person is not prohibited by section 123.40 from obtaining a liquor control license or a wine or beer permit.

c. Notwithstanding paragraph "e", the applicant is a citizen of the United States and a resident of this state, or licensed to do business in this state in the case of a corporation. Notwithstanding paragraph "e", in the case of a partnership, only one general partner need be a resident of this state.

d. The person has not been convicted of a felony. However, if the person's conviction of a felony occurred more than five years before the date of the application for a license or permit, and if the person's rights of citizenship have been restored by the governor, the administrator may determine that the person is of good moral character notwithstanding such conviction.

e. The requirements of this subsection apply to the following:

(1) Each of the officers, directors, and partners of such person.

(2) A person who directly or indirectly owns or controls ten percent or more of any class of stock of such person.

(3) A person who directly or indirectly has an interest of ten percent or more in the ownership or profits of such person.

35. "Pharmacy" means a drug store in which drugs and medicines are exposed for sale and sold at retail, or in which prescriptions of licensed physicians and surgeons, dentists, or veterinarians are compounded and sold by a registered pharmacist.

36. "Public place" means any place, building, or conveyance to which the public has or is permitted access.

37. "Residence" means the place where a person resides, permanently or temporarily.

38. "Retail beer permit" means a class "B" or class "C" beer permit issued under the provisions of this chapter.

39. "Retail wine permit" means a class "B" wine permit, class "B" native wine permit, or class "C" native wine permit issued under this chapter.

40. "Retailer" means any person who shall sell, barter, exchange, offer for sale, or have in possession with intent to sell any alcoholic liquor, wine, or beer for consumption either on or off the premises where sold.

41. The prohibited "sale" of alcoholic liquor, wine, or beer under this chapter includes soliciting for sales, taking orders for sales, keeping or exposing for sale, delivery or other trafficking for a valuable consideration promised or obtained, and procuring or allowing procurement for any other person.

42. "School" means a public or private school or that portion of a public or private school which provides facilities for teaching any grade from kindergarten through grade twelve.

43. "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, but not limited to, brandy, rum, whisky, and gin.

44. "Unincorporated town" means a compactly populated area recognized as a distinct place with a distinct place-name which is not itself incorporated or within the corporate limits of a city.

45. "Warehouse" means any premises or place primarily constructed or used or provided with facilities for the storage in transit or other temporary storage of perishable goods or for the conduct of normal warehousing business.

46. "Wholesaler" means any person, other than a vintner, brewer or bottler of beer or wine, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in alcoholic liquor, wine, or beer. A wholesaler shall not sell for consumption upon the premises.

47. "Wine" means any beverage containing more than five percent of alcohol by weight but not more than seventeen percent of alcohol by weight or twenty-one and twenty-five hundredths percent of alcohol by volume obtained by the fermentation of the natural sugar

contents of fruits or other agricultural products but excluding any product containing alcohol derived from malt or by the distillation process from grain, cereal, molasses, or cactus.

[C35, §1921-f5, 1921-f97; C39, §1921.005, 1921.096; C46, 50, 54, 58, 62, 66, 71, §123.5, 124.2; C73, 75, 77, 79, 81, §123.3; 81 Acts, ch 55, §1]

85 Acts, ch 32, §5 – 8; 86 Acts, ch 1122, §2 – 4; 86 Acts, ch 1246, §724, 725; 88 Acts, ch 1088, §1; 88 Acts, ch 1241, §1; 89 Acts, ch 161, §1; 93 Acts, ch 91, §1; 94 Acts, ch 1017, §1; 97 Acts, ch 126, §1; 2000 Acts, ch 1201, §1; 2003 Acts, ch 143, §1, 2, 17; 2005 Acts, ch 13, §1; 2006 Acts, ch 1032, §1; 2006 Acts, ch 1185, §118; 2010 Acts, ch 1031, §87, 88, 96; 2011 Acts, ch 17, §1 – 3, 17; 2011 Acts, ch 30, §2; 2013 Acts, ch 35, §1, 24

Referred to in §7D.16, 99B.6, 99F.4, 123.32, 123.130, 123.140, 123.173, 123.175, 142D.2, 455B.301, 455C.1, 455C.5, 455C.16  
Subsections 6, 7, and 19 amended

#### **123.4 Alcoholic beverages division created.**

An alcoholic beverages division is created within the department of commerce to administer and enforce the laws of this state concerning beer, wine, and alcoholic liquor.

[C35, §1921-f15; C39, §1921.015; C46, 50, 54, 58, 62, 66, 71, §123.15; C73, 75, 77, 79, 81, §123.4]

85 Acts, ch 32, §9; 86 Acts, ch 1245, §731

#### **123.5 Alcoholic beverages commission created.**

An alcoholic beverages commission is created within the division. The commission is composed of five members, not more than three of whom shall belong to the same political party.

[C35, §1921-f6; C39, §1921.006; C46, 50, 54, 58, 62, 66, 71, §123.6; C73, 75, 77, 79, 81, §123.5]

86 Acts, ch 1245, §732

#### **123.6 Appointment — term — expenses — compensation.**

Appointments shall be for five-year staggered terms beginning and ending as provided by section 69.19 and shall be made by the governor, subject to confirmation by the senate. Members of the commission shall be chosen on the basis of managerial ability and experience as business executives. Not more than two members of the commission may be the holder of or have an interest in a permit or license to manufacture alcoholic liquor, wine, or beer or to sell alcoholic liquor, wine, or beer at wholesale or retail. A member may be reappointed for one additional term. Each member appointed is entitled to receive reimbursement of actual expenses incurred while attending meetings. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

[C35, §1921-f7, 1921-f10; C39, §1921.007, 1921.010; C46, 50, 54, 58, 62, 66, 71, §123.7, 123.10; C73, 75, 77, 79, 81, §123.6; 82 Acts, ch 1024, §1]

85 Acts, ch 32, §10; 86 Acts, ch 1245, §733; 2011 Acts, ch 17, §4

Referred to in §123.45  
Confirmation, see §2.32

#### **123.7 Vacancies.**

Any vacancy occurring shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

[C35, §1921-f8; C39, §1921.008; C46, 50, 54, 58, 62, 66, 71, §123.8; C73, 75, 77, 79, 81, §123.7]

**123.8 Surety bonds.** Repealed by 2013 Acts, ch 35, § 23.

#### **123.9 Commission meetings.**

The commission shall meet on or before July 1 of each year for the purpose of selecting one of its members as chairperson for the succeeding year. The commission shall otherwise meet quarterly or at the call of the chairperson or administrator or when three members file a written request for a meeting. Written notice of the time and place of each meeting shall

be given to each member of the commission. A majority of the commission members shall constitute a quorum.

[C35, §1921-f10; C39, §1921.010; C46, 50, 54, 58, 62, 66, 71, §123.10; C73, 75, 77, 79, 81, §123.9]

2011 Acts, ch 17, §5

**123.10 Administrator appointed — duties.**

1. The governor shall appoint the administrator of the alcoholic beverages division, subject to confirmation by the senate, to a four-year term. A vacancy in an unexpired term shall be filled in the same manner as a full-term appointment is made. The administrator shall not be a member of the commission. The administrator's salary shall be fixed by the general assembly. The administrator shall be qualified to perform the administrator's duties by managerial ability and experience as a business executive.

2. The administrator shall devote full time to the discharge of the administrator's duties. The administrator shall not hold any other elective or appointive office under the laws of this state, the United States, or any other state or territory. The administrator shall not accept or solicit, directly or indirectly, contributions or anything of value in behalf of the administrator, any political party, or any person seeking an elective or appointive office nor use the administrator's official position to advance the candidacy of anyone seeking an elective or appointive office. The administrator, the administrator's spouse, and immediate family shall not have any interest in any distillery, winery, brewery, importer, permittee or licensee or any business which is subject to license or regulation pursuant to this chapter.

[C73, 75, 77, 79, 81, §123.10]

86 Acts, ch 1245, §735; 2013 Acts, ch 35, §20

Referred to in §546.9

Confirmation, see §2.32

Unnumbered paragraph 1 amended and editorially designated as subsection 1

Unnumbered paragraph 2 editorially designated as subsection 2

**123.11 Expenses.**

Members of the commission, the administrator, and other employees of the division shall be allowed their actual and necessary expenses while traveling on business of the division outside of their place of residence, however, an itemized account of such expenses shall be verified by the claimant and approved by the administrator. If such account is paid, the same shall be filed with the division and be and remain a part of its permanent records. All expenses and salaries of commission members, the administrator, and other employees shall be paid from appropriations for such purposes and the division shall be subject to the budget requirements of chapter 8.

[C35, §1921-f11; C39, §1921.011; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.11]

**123.12 Removal.**

Any commission member shall be removed for any of the causes and in the manner provided by chapter 66 relating to removal from office; such removal shall not be in lieu of any other punishment that may be prescribed by the laws of this state.

[C35, §1921-f12; C39, §1921.012; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.12]

**123.13 Exemption from suit.**

No commission member or officer or employee of the division shall be personally liable for damages sustained by any person due to the act of such member, officer, or employee performed in the reasonable discharge of the member's, officer's, or employee's duties as enumerated in this chapter.

[C35, §1921-f13; C39, §1921.013; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.13]

**123.14 Beer, wine, and liquor law enforcement.**

1. The department of public safety is the primary beer, wine, and liquor law enforcement authority for this state.

2. The county attorney, the county sheriff and the sheriff's deputies, and the police

department of every city, and the alcoholic beverages division of the department of commerce, shall be supplementary aids to the department of public safety. Any neglect, misfeasance, or malfeasance shown by any peace officer included in this section shall be sufficient cause for the peace officer's removal as provided by law. This section shall not be construed to affect the duties and responsibilities of any county attorney or peace officer with respect to law enforcement.

3. The department of public safety shall have full access to all records, reports, audits, tax reports and all other documents and papers in the alcoholic beverages division pertaining to liquor licensees and wine and beer permittees and their business.

[C35, §1921-f94; C39, §1921.093; C46, 50, 54, 58, 62, 66, 71, §123.93; C73, 75, 77, 79, 81, §123.14]

85 Acts, ch 32, §11; 88 Acts, ch 1241, §2; 2002 Acts, ch 1119, §11; 2005 Acts, ch 35, §28  
Referred to in §331.653, 331.756(25)

**123.15** Repealed by 93 Acts, ch 91, § 22.

**123.16 Duties of commission and administrator.**

1. The commission, in addition to the duties specifically enumerated in this chapter, shall act as a division policy-making body and serve in an advisory capacity to the administrator. The administrator shall supervise the daily operations of the division and shall execute the policies of the division as determined by the commission.

2. The commission may review and affirm, reverse, or amend all actions of the administrator, including but not limited to the following instances:

- a. Purchases of alcoholic liquor for resale by the division.
- b. The establishment of wholesale prices of alcoholic liquor.

[C73, 75, 77, 79, 81, §123.16]

85 Acts, ch 32, §13; 86 Acts, ch 1122, §5; 86 Acts, ch 1245, §737; 86 Acts, ch 1246, §726, 727; 93 Acts, ch 91, §2

**123.17 Prohibition on commission members and employees.**

Commission members, officers, and employees of the division shall not, while holding such office or position, hold any other office or position under the laws of this state, or any other state or territory or of the United States; nor engage in any occupation, business, endeavor, or activity which would or does conflict with their duties under this chapter; nor, directly or indirectly, use their office or employment to influence, persuade, or induce any other officer, employee, or person to adopt their political views or to favor any particular candidate for an elective or appointive public office; nor, directly or indirectly, solicit or accept, in any manner or way, any money or other thing of value for any person seeking an elective or appointive public office, or to any political party or any group of persons seeking to become a political party. Any officer or employee violating this section or any other provisions of this chapter shall, in addition to any other penalties provided by law, be subject to suspension or discharge from employment. Any commission member shall, in addition to any other penalties provided by law, be subject to removal from office as provided by law.

[C35, §1921-f14; C39, §1921.014; C46, 50, 54, 58, 62, 66, 71, §123.14; C73, 75, 77, 79, 81, §123.17]

**123.18 Favors from licensee or permittee.**

A person responsible for the administration or enforcement of this chapter shall not accept or solicit donations, gratuities, political advertising, gifts, or other favors, directly or indirectly, from any liquor control licensee, wine permittee, or beer permittee.

[C35, §1921-f27; C39, §1921.027; C46, 50, 54, 58, 62, 66, 71, §123.27; C73, 75, 77, 79, 81, §123.18]

85 Acts, ch 32, §14

**123.19 Distiller's certificate of compliance — injunction — penalty.**

1. Any manufacturer, distiller, or importer of alcoholic beverages shipping, selling, or

having alcoholic beverages brought into this state for resale by the state shall, as a condition precedent to the privilege of so trafficking in alcoholic liquors in this state, annually make application for and hold a distiller's certificate of compliance which shall be issued by the administrator for that purpose. No brand of alcoholic liquor shall be sold by the division in this state unless the manufacturer, distiller, importer, and all other persons participating in the distribution of that brand in this state have obtained a certificate. The certificate of compliance shall expire at the end of one year from the date of issuance and shall be renewed for a like period upon application to the administrator unless otherwise suspended or revoked for cause. Each application for a certificate of compliance or renewal shall be submitted electronically, or in a manner prescribed by the administrator, and shall be accompanied by a fee of fifty dollars payable to the division. However, this subsection need not apply to a manufacturer, distiller, or importer who ships or sells in this state no more than eleven gallons or its case equivalent during any fiscal year as a result of "special orders" which might be placed, as defined and allowed by divisional rules adopted under this chapter.

2. At the time of applying for a certificate of compliance, each applicant shall submit to the division electronically, or in a manner prescribed by the administrator, the name and address of its authorized agent for service of process which shall remain effective until changed for another, and a list of names and addresses of all representatives, employees, or attorneys whom the applicant has appointed in the state of Iowa to represent it for any purpose. The listing shall be amended from time to time by the certificate holder as necessary to keep the listing current with the division.

3. The administrator and the attorney general are authorized to require any certificate holder or person listed as the certificate holder's representative, employee, or attorney to disclose such financial and other records and transactions as may be considered relevant in discovering violations of this chapter or of rules and regulations of the division or of any other provision of law by any person.

4. Any violation of the requirements of this section, except subsection 3, shall subject the violator to the general penalties provided in this chapter and in addition to the general penalties, is grounds for suspension or revocation of the certificate of compliance, after notice and hearing before the administrator. Willful failure to comply with requirements which may be imposed under subsection 3 is grounds for suspension or revocation of the certificate of compliance only.

5. This section shall not require the listing of those persons who are employed on premises where alcoholic beverages are manufactured, processed, bottled or packaged in Iowa or persons who are thereafter engaged in the transporting of such alcoholic beverages to the division.

6. The attorney general may also proceed pursuant to the provisions of section 714.16 in order to gain compliance with subsection 3 of this section and may obtain an injunction prohibiting any further violations of this chapter or other provisions of law. Any violation of that injunction shall be punished as contempt of court pursuant to chapter 665 except that the maximum fine that may be imposed shall not exceed fifty thousand dollars.

[C73, 75, 77, 79, 81, §123.19]

85 Acts, ch 32, §15; 86 Acts, ch 1237, §6; 93 Acts, ch 91, §3; 2013 Acts, ch 35, §2

Subsections 1 and 2 amended

### **123.20 Powers.**

The administrator, in executing divisional functions, shall have the following duties and powers:

1. To receive alcoholic liquors on a bailment system for resale by the division in the manner set forth in this chapter.

2. To rent, lease, or equip any building or any land necessary to carry out the provisions of this chapter.

3. To lease all plants and lease or buy equipment necessary to carry out the provisions of this chapter.

4. To appoint clerks, agents, or other employees required for carrying out the provisions of this chapter; to dismiss employees for cause; to assign employees to bureaus as created

by the administrator within the division; and to designate their title, duties, and powers. All employees of the division are subject to chapter 8A, subchapter IV, unless exempt under section 8A.412.

5. To grant and issue beer permits, special permits, liquor control licenses, and other licenses; and to suspend or revoke all such permits and licenses for cause under this chapter.

6. To license, inspect, and control the manufacture of beer, wine, and alcoholic liquors and regulate the entire beer, wine, and liquor industry in the state.

7. To accept intoxicating liquors ordered delivered to the alcoholic beverages division pursuant to chapter 809A, and offer for sale and deliver the intoxicating liquors to class "E" liquor control licensees, unless the administrator determines that the intoxicating liquors may be adulterated or contaminated. If the administrator determines that the intoxicating liquors may be adulterated or contaminated, the administrator shall order their destruction.

[C35, §1921-f16; C39, §1921.016; C46, 50, 54, 58, 62, 66, 71, §123.16; C73, 75, 77, 79, 81, §123.20]

83 Acts, ch 157, §1; 85 Acts, ch 90, §2; 86 Acts, ch 1122, §6; 86 Acts, ch 1245, §738; 86 Acts, ch 1246, §728 – 730; 87 Acts, ch 115, §20; 88 Acts, ch 1241, §3; 96 Acts, ch 1133, §40; 2003 Acts, ch 145, §185

### **123.21 Rules.**

The administrator, with the approval of the commission and subject to chapter 17A, may adopt rules as necessary to carry out this chapter. The administrator's authority extends to, but is not limited to, the following:

1. Prescribing the duties of officers, clerks, agents, or other employees of the division and regulating their conduct while in the discharge of their duties.

2. Regulating the management, equipment, and merchandise of state warehouses in and from which alcoholic liquors are transported, kept, or sold and prescribing the books and records to be kept therein.

3. Regulating the purchase of alcoholic liquor generally and the furnishing of the liquor to class "E" liquor control licensees under this chapter, and determining the classes, varieties, and brands of alcoholic liquors to be kept in state warehouses.

4. Prescribing forms or information blanks to be used for the purposes of this chapter. The division shall prepare, print, and furnish all forms and information blanks required under this chapter.

5. Prescribing the nature and character of evidence which shall be required to establish legal age.

6. Providing for the issuance and distribution of price lists which show the price to be paid by class "E" liquor control licensees for each brand, class, or variety of liquor kept for sale by the division, providing for the filing or posting of prices charged in sales between class "A" beer and class "A" wine permit holders and retailers, as provided in this chapter, and establishing or controlling the prices based on minimum standards of fill, quantity, or alcoholic content for each individual sale of intoxicating liquor or beer as deemed necessary for retail or consumer protection. However, the division shall not regulate markups, prices, discounts, allowances, or other terms of sale at which alcoholic liquor may be purchased by the retail public or liquor control licensees from class "E" liquor control licensees or at which wine may be purchased and sold by class "A" and retail wine permittees, or change, nullify, or vary the terms of an agreement between a holder of a vintner certificate of compliance and a class "A" wine permittee.

7. Prescribing the official seals, labels, or other markings which shall be attached to or stamped on packages of alcoholic liquor sold under this chapter.

8. Prescribing, subject to this chapter, the days and hours during which state warehouses shall be kept open for the purpose of the sale and delivery of alcoholic liquors.

9. Prescribing the place and the manner in which alcoholic liquor may be lawfully kept or stored by the licensed manufacturer under this chapter.

10. Prescribing the time, manner, means, and method by which distillers, vendors, or others authorized under this chapter may deliver or transport alcoholic liquors and

prescribing the time, manner, means, and methods by which alcoholic liquor may be lawfully conveyed, carried, or transported.

11. Prescribing, subject to the provisions of this chapter, the conditions and qualifications necessary for the obtaining of licenses and permits and the books and records to be kept and the remittances to be made by those holding licenses and permits and providing for the inspection of the records of all such licensees and permittees.

12. Providing for the issuance of combination licenses and permits with fees consistent with individual license and permit fees as may be necessary for the efficient administration of this chapter.

[C35, §1921-f17; C39, §1921.017; C46, 50, 54, 58, 62, 66, 71, §123.17; C73, 75, 77, 79, 81, §123.21]

85 Acts, ch 32, §16, 17; 86 Acts, ch 1122, §7; 86 Acts, ch 1245, §739; 86 Acts, ch 1246, §731, 732

### 123.22 State monopoly.

The division has the exclusive right of importation into the state of all forms of alcoholic liquor, except as otherwise provided in this chapter, and a person shall not import alcoholic liquor, except that an individual of legal age may import and have in the individual's possession an amount of alcoholic liquor not exceeding one liter or, in the case of alcoholic liquor personally obtained outside the United States, four liters for personal consumption only in a private home or other private accommodation. A distillery shall not sell alcoholic liquor within the state to any person but only to the division, except as otherwise provided in this chapter. This section vests in the division exclusive control within the state as purchaser of all alcoholic liquor sold by distilleries within the state or imported, except beer and wine, and except as otherwise provided in this chapter. The division shall receive alcoholic liquor on a bailment system for resale by the division in the manner set forth in this chapter. The division shall act as the sole wholesaler of alcoholic liquor to class "E" liquor control licensees.

No person, acting individually or through another acting for the person shall directly or indirectly, or upon any pretense, or by any device, manufacture, sell, exchange, barter, dispense, give in consideration of the purchase of any property or of any services or in evasion of this chapter, or keep for sale, or have possession of any intoxicating liquor, except as provided in this chapter; or own, keep, or be in any way concerned, engaged, or employed in owning or keeping, any intoxicating liquor with intent to violate any provision of this chapter, or authorize or permit the same to be done; or manufacture, own, sell, or have possession of any manufactured or compounded article, mixture or substance, not in a liquid form, and containing alcohol which may be converted into a beverage by a process of pressing or straining the alcohol therefrom, or any instrument intended for use and capable of being used in the manufacture of intoxicating liquor; or own or have possession of any material used exclusively in the manufacture of intoxicating liquors; or use or have possession of any material with intent to use it in the manufacture of intoxicating liquors; however, alcohol may be manufactured for industrial and nonbeverage purposes by persons who have qualified for that purpose as provided by the laws of the United States and the laws of this state. Such alcohol, so manufactured, may be denatured, transported, used, possessed, sold, and bartered and dispensed, subject to the limitations, prohibitions and restrictions imposed by the laws of the United States and this state. Any person may manufacture, sell, or transport ingredients and devices other than alcohol for the making of homemade wine.

[C51, §924 – 928; R60, §1559, 1563, 1583, 1587; C73, §1523, 1540 – 1542, 1555; C97, §2382; SS15, §2382; C24, 27, 31, §1924; C35, §1921-f54, 1924; C39, §1921.054, 1924; C46, 50, 54, 58, 62, 66, 71, §123.54, 125.3; C73, 75, 77, 79, 81, §123.22]

85 Acts, ch 32, §18; 86 Acts, ch 1246, §733; 88 Acts, ch 1241, §4; 89 Acts, ch 161, §2  
Referred to in §123.26, 123.28

**123.23** Repealed by 86 Acts, ch 1246, § 754.

**123.24 Alcoholic liquor sales by the division — dishonored payments — liquor prices.**

1. The division shall sell alcoholic liquor at wholesale only. The division shall sell alcoholic liquor to class “E” liquor control licensees only. The division shall offer the same price on alcoholic liquor to all class “E” liquor control licensees without regard for the quantity of purchase or the distance for delivery. However, the division may assess a split-case charge when liquor is sold in quantities which require a case to be split.

2. *a.* The division may accept from a class “E” liquor control licensee electronic funds transferred by automated clearing house, wire transfer, or another method deemed acceptable by the administrator, in payment of alcoholic liquor. If a payment is subsequently dishonored, the division shall cause a notice of nonpayment and penalty to be served upon the class “E” liquor control licensee or upon any person in charge of the licensed premises. The notice shall state that if payment or satisfaction for the dishonored payment is not made within ten days of the service of notice, the licensee’s liquor control license may be suspended under section 123.39. The notice of nonpayment and penalty shall be in a form prescribed by the administrator, and shall be sent by certified mail.

*b.* If upon notice and hearing under section 123.39 and pursuant to the provisions of chapter 17A concerning a contested case hearing, the administrator determines that the class “E” liquor control licensee failed to satisfy the obligation for which the payment was issued within ten days after the notice of nonpayment and penalty was served on the licensee as provided in paragraph “*a*” of this subsection, the administrator may suspend the licensee’s class “E” liquor control license for a period not to exceed ten days.

3. The administrator may refuse to sell alcoholic liquor to a class “E” liquor control licensee who tenders a payment which is subsequently dishonored until the outstanding obligation is satisfied.

4. The price of alcoholic liquor sold by the division shall include a markup of up to fifty percent of the wholesale price paid by the division for the alcoholic liquor. The markup shall apply to all alcoholic liquor sold by the division; however, the division may increase the markup on selected kinds of alcoholic liquor sold by the division if the average return to the division on all sales of alcoholic liquor does not exceed the wholesale price paid by the division and the fifty percent markup.

5. Notwithstanding subsection 4, the division shall assess a bottle surcharge to be included in the price of alcoholic liquor in an amount sufficient, when added to the amount not refunded to class “E” liquor control licensees pursuant to section 455C.2, to pay the costs incurred by the division for collecting and properly disposing of the liquor containers. The amount collected pursuant to this subsection, in addition to any amounts not refunded to class “E” liquor control licensees pursuant to section 455C.2, shall be deposited in the beer and liquor control fund established under section 123.53.

[C35, §1921-f20, 1921-f41; C39, §1921.020, 1921.041; C46, 50, 54, 58, 62, 66, 71, §123.20, 123.41; C73, 75, 77, 79, 81, §123.24; 81 Acts, ch 56, §1]

86 Acts, ch 1246, §734; 87 Acts, ch 22, §1, 2; 88 Acts, ch 1158, §29; 88 Acts, ch 1241, §5; 92 Acts, ch 1242, §24; 93 Acts, ch 91, §4, 5; 2013 Acts, ch 35, §21

Subsections 2 and 3 amended

**123.25 Consumption on premises.**

An officer, clerk, agent, or employee of the division employed in a state-owned warehouse shall not allow any alcoholic liquor to be consumed on the premises, nor shall a person consume any liquor on the premises except for testing or sampling purposes only.

[C35, §1921-f23; C39, §1921.023; C46, 50, 54, 58, 62, 66, 71, §123.23; C73, 75, 77, 79, 81, §123.25]

86 Acts, ch 1122, §8; 86 Acts, ch 1246, §735

**123.26 Restrictions on sales — seals — labeling.**

Alcoholic liquor shall not be sold by a class “E” liquor control licensee except in a sealed container with identifying markers as prescribed by the administrator and affixed in the manner prescribed by the administrator, and no such container shall be opened upon the premises of a state warehouse. The division shall cooperate with the department of natural

resources so that only one identifying marker or mark is needed to satisfy the requirements of this section and section 455C.5, subsection 1. Possession of alcoholic liquors which do not carry the prescribed identifying markers is a violation of this chapter except as provided in section 123.22.

[C35, §1921-f24; C39, §1921.024; C46, 50, 54, 58, 62, 66, 71, §123.24; C73, 75, 77, 79, 81, §123.26]

86 Acts, ch 1246, §736; 87 Acts, ch 22, §3

Referred to in §123.28

### **123.27 Sales and deliveries prohibited.**

It is unlawful to transact the sale or delivery of alcoholic liquor in, on, or from the premises of a state warehouse:

1. After the closing hour as established by the administrator.
2. On any legal holiday except those designated by the administrator.
3. On any Sunday.
4. During other periods or days as designated by the administrator.

[C35, §1921-f25; C39, §1921.025; C46, 50, 54, 58, 62, 66, 71, §123.25; C73, 75, 77, 79, 81, §123.27; 81 Acts, ch 6, §11]

85 Acts, ch 32, §20; 86 Acts, ch 1122, §9; 86 Acts, ch 1246, §737; 89 Acts, ch 161, §3

Required closure of the main state warehouse every Friday during the fiscal period beginning July 1, 2010, and ending June 30, 2015, and optionally for the next fiscal year; exceptions as determined by the administrator; 2010 Acts, ch 1031, §97

### **123.28 Restrictions on transportation.**

It is lawful to transport, carry, or convey alcoholic liquors from the place of purchase by the division to a state warehouse or depot established by the division or from one such place to another and, when so permitted by this chapter, it is lawful for the division, a common carrier, or other person to transport, carry, or convey alcoholic liquor sold from a state warehouse, depot, or point of purchase by the state to any place to which the liquor may be lawfully delivered under this chapter. The division shall deliver alcoholic liquor purchased by class "E" liquor control licensees. Class "E" liquor control licensees may deliver alcoholic liquor purchased by class "A", "B", or "C" liquor control licensees, and class "A", "B", or "C" liquor control licensees may transport alcoholic liquor purchased from class "E" liquor control licensees. A common carrier or other person shall not break or open or allow to be broken or opened a container or package containing alcoholic liquor or use or drink or allow to be used or drunk any alcoholic liquor while it is being transported or conveyed, but this section does not prohibit a private person from transporting individual bottles or containers of alcoholic liquor exempted pursuant to section 123.22 and individual bottles or containers bearing the identifying mark prescribed in section 123.26 which have been opened previous to the commencement of the transportation. This section does not affect the right of a special permit or liquor control license holder to purchase, possess, or transport alcoholic liquors subject to this chapter.

[C35, §1921-f26; C39, §1921.026; C46, 50, 54, 58, 62, 66, 71, §123.26; C73, 75, 77, 79, 81, §123.28; 81 Acts, ch 6, §12]

84 Acts, ch 1275, §1; 85 Acts, ch 196, §1; 86 Acts, ch 1020, §1; 86 Acts, ch 1246, §738; 87 Acts, ch 170, §1; 95 Acts, ch 48, §1

See also §321.284

### **123.29 Patent and proprietary products and sacramental wine.**

1. This chapter does not prohibit the sale of patent and proprietary medicines, tinctures, food products, extracts, toiletries, perfumes, and similar products, which are not susceptible of use as a beverage, but which contain alcoholic liquor, wine, or beer as one of their ingredients. These products may be sold through ordinary wholesale and retail businesses without a license or permit issued by the division.

2. This chapter does not prohibit a member of the clergy of any religious denomination

which uses vinous liquor in its sacramental ceremonies from purchasing, receiving, possessing, and using vinous liquor for sacramental purposes.

[C24, 27, 31, §2171; C35, §1921-f27, 2171; C39, §1921.027, 2171; C46, 50, 54, 58, 62, 66, 71, §123.27, 134.1; C73, 75, 77, 79, 81, §123.29]

85 Acts, ch 32, §21; 86 Acts, ch 1246, §739, 740; 89 Acts, ch 161, §4 – 6; 93 Acts, ch 91, §6

### **123.30 Liquor control licenses — classes.**

1. a. A liquor control license may be issued to any person who is of good moral character as defined by this chapter.

b. As a condition for issuance of a liquor control license or wine or beer permit, the applicant must give consent to members of the fire, police, and health departments and the building inspector of cities; the county sheriff, deputy sheriff, members of the department of public safety, representatives of the division and of the department of inspections and appeals, certified police officers, and any official county health officer to enter upon areas of the premises where alcoholic beverages are stored, served, or sold, without a warrant during business hours of the licensee or permittee to inspect for violations of this chapter or ordinances and regulations that cities and boards of supervisors may adopt. However, a subpoena issued under section 421.17 or a warrant is required for inspection of private records, a private business office, or attached living quarters. Persons who are not certified peace officers shall limit the scope of their inspections of licensed premises to the regulatory authority under which the inspection is conducted. All persons who enter upon a licensed premises to conduct an inspection shall present appropriate identification to the owner of the establishment or the person who appears to be in charge of the establishment prior to commencing an inspection; however, this provision does not apply to undercover criminal investigations conducted by peace officers.

c. As a further condition for the issuance of a class “E” liquor control license, the applicant shall post a bond in a sum of not less than five thousand nor more than fifteen thousand dollars as determined on a sliding scale established by the division; however, a bond shall not be required if all purchases of alcoholic liquor from the division by the licensee are made by cash payment or by means that ensure that the division will receive full payment in advance of delivery of the alcoholic liquor.

d. A class “E” liquor control license may be issued to a city council for premises located within the limits of the city if there are no class “E” liquor control licensees operating within the limits of the city and no other applications for a class “E” license for premises located within the limits of the city at the time the city council’s application is filed. If a class “E” liquor control license is subsequently issued to a private person for premises located within the limits of the city, the city council shall surrender its license to the division within one year of the date that the class “E” liquor control licensee begins operating, liquidate any remaining assets connected with the liquor store, and cease operating the liquor store.

2. A liquor control license shall not be issued for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations. A licensee shall not have or maintain any interior access to residential or sleeping quarters unless permission is granted by the administrator in the form of a living quarters permit.

3. Liquor control licenses issued under this chapter shall be of the following classes:

a. *Class “A”.* A class “A” liquor control license may be issued to a club and shall authorize the holder to purchase alcoholic liquors from class “E” liquor control licensees only, wine from class “A” wine permittees or class “B” wine permittees who also hold class “E” liquor control licenses only, and native wines from native wine manufacturers, and to sell liquors, wine, and beer to bona fide members and their guests by the individual drink for consumption on the premises only.

b. *Class “B”.* A class “B” liquor control license may be issued to a hotel or motel and shall authorize the holder to purchase alcoholic liquors from class “E” liquor control licensees only, wine from class “A” wine permittees or class “B” wine permittees who also hold class “E” liquor control licenses only, and native wines from native wine manufacturers, and to sell liquors, wine, and beer to patrons by the individual drink for consumption on the premises

only. However, beer may also be sold for consumption off the premises. Each license shall be effective throughout the premises described in the application.

*c. Class "C".*

(1) A class "C" liquor control license may be issued to a commercial establishment but must be issued in the name of the individuals who actually own the entire business and shall authorize the holder to purchase alcoholic liquors from class "E" liquor control licensees only, wine from class "A" wine permittees or class "B" wine permittees who also hold class "E" liquor control licenses only, and native wines from native wine manufacturers, and to sell liquors, wine, and beer to patrons by the individual drink for consumption on the premises only. However, beer may also be sold for consumption off the premises.

(2) A special class "C" liquor control license may be issued and shall authorize the holder to purchase wine from class "A" wine permittees or class "B" wine permittees who also hold class "E" liquor control licenses only, and to sell wine and beer to patrons by the individual drink for consumption on the premises only. However, beer may also be sold for consumption off the premises. The license issued to holders of a special class "C" license shall clearly state on its face that the license is limited.

*d. Class "D".*

(1) A class "D" liquor control license may be issued to a railway corporation, to an air common carrier, and to passenger-carrying boats or ships for hire with a capacity of twenty-five persons or more operating in inland or boundary waters, and shall authorize the holder to sell or furnish alcoholic beverages, wine, and beer to passengers for consumption only on trains, watercraft as described in this section, or aircraft, respectively. Each license is valid throughout the state. Only one license is required for all trains, watercraft, or aircraft operated in the state by the licensee. However, if a watercraft is an excursion gambling boat licensed under chapter 99F, the owner shall obtain a separate class "D" liquor control license for each excursion gambling boat operating in the waters of this state.

(2) A class "D" liquor control licensee who operates a train or a watercraft intrastate only, or an excursion gambling boat licensed under chapter 99F, shall purchase alcoholic liquor from a class "E" liquor control licensee only, wine from a class "A" wine permittee or a class "B" wine permittee who also holds a class "E" liquor control license only, and beer from a class "A" beer permittee only.

*e. Class "E".*

(1) A class "E" liquor control license may be issued and shall authorize the holder to purchase alcoholic liquor from the division only and high alcoholic content beer from a class "AA" beer permittee only and to sell the alcoholic liquor and high alcoholic content beer to patrons for consumption off the licensed premises and to other liquor control licensees. A holder of a class "E" liquor control license may hold other retail liquor control licenses or retail wine or beer permits, but the premises licensed under a class "E" liquor control license shall be separate from other licensed premises, though the separate premises may have a common entrance. However, the holder of a class "E" liquor control license may also hold a class "B" wine or class "C" beer permit or both for the premises licensed under a class "E" liquor control license.

(2) The division may issue a class "E" liquor control license for premises covered by a liquor control license or wine or beer permit for on-premises consumption, if the premises are in a county having a population under nine thousand five hundred in which no other class "E" liquor control license has been issued by the division, and no other application for a class "E" license has been made within the previous twelve consecutive months.

4. Notwithstanding any provision of this chapter to the contrary, a person holding a license to sell alcoholic liquors for consumption on the licensed premises may permit a customer to remove one unsealed bottle of wine for consumption off the premises if the customer has purchased and consumed a portion of the bottle of wine on the licensed premises. The licensee or the licensee's agent shall securely reseal such bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been tampered with and provide a dated receipt for the resealed bottle of wine to the customer. A wine bottle resealed pursuant

to the requirements of this subsection is subject to the requirements of sections 321.284 and 321.284A.

[C35, §1921-f27; C39, §1921.027; C46, 50, 54, 58, 62, 66, 71, §123.27; C73, 75, 77, 79, 81, §123.30]

85 Acts, ch 32, §22; 86 Acts, ch 1246, §741, 742; 87 Acts, ch 22, §4 – 6; 88 Acts, ch 1088, §2, 3; 88 Acts, ch 1241, §6, 7; 90 Acts, ch 1175, §6; 91 Acts, ch 203, §1; 93 Acts, ch 91, §7, 8; 2009 Acts, ch 41, §263; 2009 Acts, ch 74, §1; 2010 Acts, ch 1193, §111, 140; 2011 Acts, ch 17, §6; 2013 Acts, ch 30, §22

Referred to in §12.43, 123.33, 123.36, 123.95, 123.127, 123.128, 123.129, 123.138, 123.175, 123.185  
Subsection 2 amended

### **123.31 Application contents.**

Verified applications for the original issuance or the renewal of liquor control licenses shall be submitted electronically, or in a manner prescribed by the administrator, and shall set forth under oath the following information:

1. The name and address of the applicant.
2. The precise location of the premises for which a license is sought.
3. The names and addresses of all persons, in the case of a corporation, the officers, directors, and persons owning or controlling ten percent or more of the capital stock thereof, having a financial interest, by way of loan, ownership, or otherwise, in the business.
4. When required by the administrator, a sketch or drawing of the premises proposed to be licensed, in such form and containing such information as the administrator may require.
5. A statement whether any person specified in subsection 3 has ever been convicted of any offense against the laws of the United States, or any state or territory thereof, or any political subdivision of any such state or territory.
6. A statement whether the applicant or any person specified in subsection 3 possesses a federal gambling stamp.
7. A statement, if required by the local authority indicating whether all designated security employees have received training and certification as provided in section 123.32.
8. Such other information as the administrator shall require.

[C35, §1921-f27; C39, §1921.027; C46, 50, 54, 58, 62, 66, 71, §123.27; C73, 75, 77, 79, 81, §123.31]

93 Acts, ch 91, §9; 2000 Acts, ch 1201, §2; 2011 Acts, ch 17, §7; 2013 Acts, ch 35, §3  
Unnumbered paragraph 1 amended

### **123.32 Action by local authorities and division on applications for liquor control licenses and micro-distilled spirits, wine, and beer permits.**

1. *Filing of application.* An application for a class “A”, class “B”, class “C”, or class “E” liquor control license, for a class “A” micro-distilled spirits permit, for a retail beer permit as provided in sections 123.128 and 123.129, or for a class “B”, class “B” native, or class “C” native retail wine permit as provided in section 123.178, 123.178A, or 123.178B, accompanied by the necessary fee and bond, if required, shall be filed with the appropriate city council if the premises for which the license or permit is sought are located within the corporate limits of a city, or with the board of supervisors if the premises for which the license or permit is sought are located outside the corporate limits of a city. An application for a class “D” liquor control license and for a class “A” beer or class “A” wine permit, accompanied by the necessary fee and bond, if required, shall be submitted to the division electronically, or in a manner prescribed by the administrator, which shall proceed in the same manner as in the case of an application approved by local authorities.

2. *Action by local authorities.* The local authority shall either approve or disapprove the issuance of a liquor control license, retail wine permit, or retail beer permit, shall endorse its approval or disapproval on the application and shall forward the application with the necessary fee and bond, if required, to the division. There is no limit upon the number of liquor control licenses, retail wine permits, or retail beer permits which may be approved for issuance by local authorities.

3. *Licensed premises for local events.* A local authority may define, by motion of the local authority, licensed premises which shall be used by holders of liquor control licenses,

beer permits, and wine permits at festivals, fairs, or celebrations which are sponsored or authorized by the local authority. The licensed premises defined by motion of the local authority shall be used by the holders of five-day or fourteen-day liquor control licenses, or five-day or fourteen-day beer permits only.

4. *Security employee training.* A local authority, as a condition of obtaining and holding a license or permit for on-premises consumption, may require a designated security employee as defined in section 123.3 to be trained and certified in security methods. The training shall include but is not limited to de-escalation techniques, anger management techniques, civil rights or unfair practices awareness as provided in section 216.7, recognition of fake or altered identification, information on laws applicable to the serving of alcohol at a licensed premises, use of force and techniques for safely removing patrons, and instruction on the proper physical restraint methods used against a person who has become combative.

5. *Occupancy rates.* A local authority located in a county with a population that exceeds three hundred thousand persons, as a condition of obtaining and holding a license or permit for on-premises consumption, shall require the applicant, licensee, or permittee to provide, and update if necessary, the occupancy rate of the licensed premises.

6. *Action by administrator.*

a. Upon receipt of an application having been disapproved by the local authority, the administrator shall notify the applicant that the applicant may appeal the disapproval of the application to the administrator. The applicant shall be notified by certified mail, and the application, the fee, and any bond shall be returned to the applicant.

b. Upon receipt of an application having been approved by the local authority, the division shall make an investigation as the administrator deems necessary to determine that the applicant complies with all requirements for holding a license or permit, and may require the applicant to appear to be examined under oath to demonstrate that the applicant complies with all of the requirements to hold a license or permit. If the administrator requires the applicant to appear and to testify under oath, a record shall be made of all testimony or evidence and the record shall become a part of the application. The administrator may appoint a member of the division or may request an administrative law judge of the department of inspections and appeals to receive the testimony under oath and evidence, and to issue a proposed decision to approve or disapprove the application for a license or permit. The administrator may affirm, reverse, or modify the proposed decision to approve or disapprove the application for the license or permit. If the application is approved by the administrator, the license or permit shall be issued. If the application is disapproved by the administrator, the applicant and the appropriate local authority shall be so notified by certified mail.

7. *Appeal to administrator.* An applicant for a liquor control license, wine permit, or beer permit may appeal from the local authority's disapproval of an application for a license or permit to the administrator. In the appeal the applicant shall be allowed the opportunity to demonstrate in an evidentiary hearing conducted pursuant to chapter 17A that the applicant complies with all of the requirements for holding the license or permit. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to conduct the evidentiary hearing and to render a proposed decision to approve or disapprove the issuance of the license or permit. The administrator may affirm, reverse, or modify the proposed decision. If the administrator determines that the applicant complies with all of the requirements for holding a license or permit, the administrator shall order the issuance of the license or permit. If the administrator determines that the applicant does not comply with the requirements for holding a license or permit, the administrator shall disapprove the issuance of the license or permit.

8. *Judicial review.* The applicant or the local authority may seek judicial review of the action of the administrator in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A, petitions for judicial review may be filed in the district court of the county where the premises covered by the application are situated.

9. *Suspension by local authority.* A liquor control licensee or a wine or beer permittee

whose license or permit has been suspended or revoked or a civil penalty imposed by a local authority for a violation of this chapter or suspended by a local authority for violation of a local ordinance may appeal the suspension, revocation, or civil penalty to the administrator. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to hear the appeal which shall be conducted in accordance with chapter 17A and to issue a proposed decision. The administrator may review the proposed decision upon the motion of a party to the appeal or upon the administrator's own motion in accordance with chapter 17A. Upon review of the proposed decision, the administrator may affirm, reverse, or modify the proposed decision. A liquor control licensee, wine or beer permittee, or a local authority aggrieved by a decision of the administrator may seek judicial review of the decision pursuant to chapter 17A.

[C35, §1921-f27; C39, §1921.027; C46, 50, 54, 58, 62, 66, 71, §123.27; C73, 75, 77, 79, 81, §123.32]

85 Acts, ch 32, §23; 86 Acts, ch 1246, §743; 88 Acts, ch 1088, §4; 89 Acts, ch 161, §7; 90 Acts, ch 1177, §1; 91 Acts, ch 97, §22; 93 Acts, ch 91, §10 – 12; 2000 Acts, ch 1201, §3; 2003 Acts, ch 44, §114; 2003 Acts, ch 143, §3, 17; 2005 Acts, ch 13, §2; 2008 Acts, ch 1166, §1; 2009 Acts, ch 137, §1; 2010 Acts, ch 1031, §83; 2013 Acts, ch 35, §4

Referred to in §123.31, 123.39, 331.303  
Subsection 1 amended

### **123.33 Records.**

Every holder of a liquor control license shall keep a daily record, in printed or electronic format, of the gross receipts of the holder's business. The records required and the premises of the licensee shall be accessible and open to inspection pursuant to section 123.30, subsection 1, during normal business hours of the licensee.

[C35, §1921-f22; C39, §1921.022; C46, 50, 54, 58, 62, 66, 71, §123.22; C73, 75, 77, 79, 81, §123.33]

85 Acts, ch 196, §2; 88 Acts, ch 1241, §8; 2013 Acts, ch 35, §5

Section amended

### **123.34 Expiration — seasonal, five-day, or fourteen-day license or permit.**

1. Liquor control licenses, wine permits, and beer permits, unless sooner suspended or revoked, expire one year from date of issuance. The administrator shall give sixty days' written notice of the expiration to each licensee or permittee. However, the administrator may issue six-month or eight-month seasonal licenses, class "B" wine permits, or class "B" beer permits for a proportionate part of the license or permit fee or may issue fourteen-day liquor licenses or beer permits as provided in subsection 2. No refund shall be made for seasonal licenses or permits or for fourteen-day liquor licenses or beer permits. No seasonal license or permit shall be renewed except after a period of two months.

2. The administrator may issue fourteen-day class "A", class "B", class "C", and class "D" liquor control licenses and fourteen-day class "B" beer permits. A fourteen-day license or permit, if granted, is valid for fourteen consecutive days, but the holder shall not sell on the two Sundays in the fourteen-day period unless the holder qualifies for and obtains the privilege to sell on Sundays contained in section 123.36, subsection 5, and section 123.134, subsection 5.

3. The fee for a fourteen-day liquor license or beer permit is one quarter of the annual fee for that class of liquor license or beer permit. The fee for the privilege to sell on the two Sundays in the fourteen-day period is twenty percent of the price of the fourteen-day liquor license or beer permit.

4. The administrator may issue five-day class "A", class "B", class "C", and class "D" liquor control licenses and five-day class "B" beer permits. A five-day license or permit is valid for five consecutive days, but the holder shall not sell alcoholic beverages on Sunday in the five-day period unless the holder qualifies for and obtains the privilege to sell on Sunday pursuant to sections 123.36 and 123.134.

5. The fee for the five-day liquor control license or beer permit is one-eighth of the annual

fee for that class of license or permit. The fee for the privilege to sell on a Sunday in the five-day period is ten percent of the price of the five-day liquor control license or beer permit.

[C35, §1921-f27, 1921-f100; C39, §1921.027, 1921.100; C46, 50, 54, 58, 62, 66, 71, §123.27, 124.6; C73, 75, 77, 79, 81, §123.34; 81 Acts, ch 55, §2]

85 Acts, ch 32, §24; 86 Acts, ch 1237, §7; 90 Acts, ch 1177, §2, 3; 91 Acts, ch 97, §23

**123.35 Simplified renewal procedure — class “E” procedure.** Repealed by 2011 Acts, ch 17, § 16.

**123.36 Liquor fees — Sunday sales.**

The following fees shall be paid to the division annually for liquor control licenses issued under section 123.30:

1. Class “A” liquor control licenses, the sum of six hundred dollars, except that for class “A” licenses in cities of less than two thousand population, and for clubs of less than two hundred fifty members, the license fee shall be four hundred dollars; however, the fee shall be two hundred dollars for any club which is a post, branch, or chapter of a veterans organization chartered by the Congress of the United States, if the club does not sell or permit the consumption of alcoholic beverages, wine, or beer on the premises more than one day in any week or more than a total of fifty-two days in a year, and if the application for a license states that the club does not and will not sell or permit the consumption of alcoholic beverages, wine, or beer on the premises more than one day in any week or more than a total of fifty-two days in a year.

2. Class “B” liquor control licenses, the sum as follows:

a. Hotels or motels located within the corporate limits of cities of ten thousand population and over, one thousand three hundred dollars.

b. Hotels and motels located within the corporate limits of cities of over three thousand and less than ten thousand population, one thousand fifty dollars.

c. Hotels and motels located within the corporate limits of cities of three thousand population and less, eight hundred dollars.

d. Hotels and motels located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail. However, if a hotel or motel is located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

3. Class “C” liquor control licenses, the sum as follows:

a. Commercial establishments located within the corporate limits of cities of ten thousand population and over, one thousand three hundred dollars.

b. Commercial establishments located within the corporate limits of cities of over fifteen hundred and less than ten thousand population, nine hundred fifty dollars.

c. Commercial establishments located within the corporate limits of cities of fifteen hundred population or less, six hundred dollars.

d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail. However, if a commercial establishment is located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

4. Class “D” liquor control licenses, the following sums:

a. For watercraft, one hundred fifty dollars.

b. For trains, five hundred dollars.

c. For air common carriers, each company shall pay a base annual fee of five hundred dollars and, in addition, shall quarterly remit to the division an amount equal to seven dollars for each gallon of alcoholic liquor sold, given away, or dispensed in or over this state during the preceding calendar quarter. The class “D” license fee and tax for air common carriers is in lieu of any other fee or tax collected from the carriers in this state for the possession and sale of alcoholic liquor, wine, and beer.

5. Any club, hotel, motel, or commercial establishment holding a liquor control license, subject to section 123.49, subsection 2, paragraph “b”, may apply for and receive permission to sell and dispense alcoholic liquor and wine to patrons on Sunday for consumption on the premises only, and beer for consumption on or off the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday. A class “D” liquor control licensee may apply for and receive permission to sell and dispense alcoholic beverages to patrons for consumption on the premises only between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday. For the privilege of selling beer, wine, and alcoholic liquor on the premises on Sunday the liquor control license fee of the applicant shall be increased by twenty percent of the regular fee prescribed for the license pursuant to this section, and the privilege shall be noted on the liquor control license.

6. Special class “C” liquor control licenses, a sum as follows:

a. Commercial establishments located within the corporate limits of cities of ten thousand population and over, four hundred fifty dollars.

b. Commercial establishments located within the corporate limits of cities of over fifteen hundred and less than ten thousand population, three hundred dollars.

c. Commercial establishments located within the corporate limits of cities of fifteen hundred population or less, one hundred fifty dollars.

d. Commercial establishments located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail. However, if a commercial establishment is located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

7. The division shall credit all fees to the beer and liquor control fund. The division shall remit to the appropriate local authority, a sum equal to sixty-five percent of the fees collected for each class “A”, class “B”, or class “C” license except special class “C” licenses or class “E” licenses, covering premises located within the local authority’s jurisdiction. The division shall remit to the appropriate local authority a sum equal to seventy-five percent of the fees collected for each special class “C” license covering premises located within the local authority’s jurisdiction. Those fees collected for the privilege authorized under subsection 5 and those fees collected for each class “E” liquor control license shall be credited to the beer and liquor control fund.

8. a. Class “E” liquor control license, a sum determined as follows:

(1) For licensed premises at which gasoline is not sold, a sum of not less than seven hundred fifty dollars, and not more than seven thousand five hundred dollars as determined on a sliding scale as established by the division taking into account the factors of square footage of the licensed premises, the location of the licensed premises, and the population of the area of the location of the licensed premises.

(2) For licensed premises at which gasoline is sold, a sum equal to the following:

(a) For premises located within the corporate limits of a city with a population of less than one thousand five hundred, three thousand five hundred dollars.

(b) For premises located within the corporate limits of a city with a population of at least one thousand five hundred but less than ten thousand, five thousand dollars.

(c) For premises located within the corporate limits of a city with a population of ten thousand population or more, the greater of five thousand dollars or the amount that would be established pursuant to subparagraph (1) if gasoline were not sold at the premises.

(d) For premises located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be licensed. If there is doubt as to which of two or more differing corporate limits is the nearest, the license fee which is the largest shall prevail. However, if the premises is located in an unincorporated town, for purposes of this subparagraph, the unincorporated town shall be treated as if it is a city.

b. Notwithstanding subsection 5, the holder of a class “E” liquor control license may sell alcoholic liquor for consumption off the licensed premises on Sunday subject to section 123.49, subsection 2, paragraph “b”.

9. There is imposed a surcharge on the fee for each class “A”, “B”, or “C” liquor control

license equal to thirty percent of the scheduled license fee. The surcharges collected under this subsection shall be deposited in the beer and liquor control fund, and notwithstanding subsection 7, no portion of the surcharges collected under this subsection shall be remitted to the local authority.

[C35, §1921-f28; C39, §1921.028; C46, 50, 54, 58, 62, 66, 71, §123.38; C73, 75, 77, 79, 81, §123.36]

83 Acts, ch 123, §59, 209; 84 Acts, ch 1275, §2; 84 Acts, ch 1312, §6; 85 Acts, ch 32, §26 – 29; 86 Acts, ch 1246, §744; 87 Acts, ch 22, §7, 8; 88 Acts, ch 1241, §9 – 11; 90 Acts, ch 1089, §1; 90 Acts, ch 1175, §7; 91 Acts, ch 245, §1; 93 Acts, ch 91, §14; 94 Acts, ch 1023, §85; 2011 Acts, ch 17, §8

Referred to in §123.34, 123.49, 123.150, 125.59, 331.427

### **123.37 Exclusive power to license and levy taxes — disputed taxes.**

1. The power to establish licenses and permits and levy taxes as imposed in this chapter is vested exclusively with the state. Unless specifically provided, a local authority shall not require the obtaining of a special license or permit for the sale of alcoholic beverages, wine, or beer at any establishment, or require the obtaining of a license by any person as a condition precedent to the person's employment in the sale, serving, or handling of alcoholic beverages, wine, or beer, within an establishment operating under a license or permit.

2. The administrator may compromise and settle doubtful and disputed claims for taxes imposed under this chapter or for taxes of doubtful collectibility, notwithstanding section 7D.9. The administrator may enter into informal settlements pursuant to section 17A.10 to compromise and settle doubtful and disputed claims for taxes imposed under this chapter. The administrator may make a claim under a licensee's or permittee's penal bond for taxes of doubtful collectibility. Whenever a compromise or settlement is made, the administrator shall make a complete record of the case showing the tax assessed, reports and audits, if any, the licensee's or permittee's grounds for dispute or contest, together with all evidence of the dispute or contest, and the amounts, conditions, and settlement or compromise of the dispute or contest.

3. A licensee or permittee who disputes the amount of tax imposed must pay all tax and penalty pertaining to the disputed tax liability prior to appealing the disputed tax liability to the administrator.

4. The administrator shall adopt rules establishing procedures for payment of disputed taxes imposed under this chapter. If it is determined that the tax is not due in whole or in part, the division shall promptly refund the part of the tax payment which is determined not to be due.

[C73, 75, 77, 79, 81, §123.37]

85 Acts, ch 32, §30; 88 Acts, ch 1153, §2; 89 Acts, ch 252, §1; 93 Acts, ch 91, §15; 94 Acts, ch 1023, §9; 2007 Acts, ch 22, §35

### **123.38 Nature of permit or license — surrender — transfer.**

1. A special liquor permit, liquor control license, wine permit, or beer permit is a personal privilege and is revocable for cause. It is not property nor is it subject to attachment and execution nor alienable nor assignable, and it shall cease upon the death of the permittee or licensee. However, the administrator of the division may in the administrator's discretion allow the executor or administrator of a permittee or licensee to operate the business of the decedent for a reasonable time not to exceed the expiration date of the permit or license. Every permit or license shall be issued in the name of the applicant and no person holding a permit or license shall allow any other person to use it.

2. Any licensee or permittee, or the licensee's or permittee's executor or administrator, or any person duly appointed by the court to take charge of and administer the property or assets of the licensee or permittee for the benefit of the licensee's or permittee's creditors, may voluntarily surrender a license or permit to the division. When a license or permit is surrendered the division shall notify the local authority, and the division or the local authority shall refund to the person surrendering the license or permit, a proportionate amount of the fee received by the division or the local authority for the license or permit as follows: if a

license or permit is surrendered during the first three months of the period for which it was issued, the refund shall be three-fourths of the amount of the fee; if surrendered more than three months but not more than six months after issuance, the refund shall be one-half of the amount of the fee; if surrendered more than six months but not more than nine months after issuance, the refund shall be one-fourth of the amount of the fee. No refund shall be made, however, for any special liquor permit, nor for a liquor control license, wine permit, or beer permit surrendered more than nine months after issuance. For purposes of this subsection, any portion of license or permit fees used for the purposes authorized in section 331.424, subsection 1, paragraph “a”, subparagraphs (1) and (2), and in section 331.424A, shall not be deemed received either by the division or by a local authority. No refund shall be made to any licensee or permittee, upon the surrender of the license or permit, if there is at the time of surrender, a complaint filed with the division or local authority, charging the licensee or permittee with a violation of this chapter. If upon a hearing on a complaint the license or permit is not revoked or suspended, then the licensee or permittee is eligible, upon surrender of the license or permit, to receive a refund as provided in this section; but if the license or permit is revoked or suspended upon hearing the licensee or permittee is not eligible for the refund of any portion of the license or permit fee.

3. The local authority may in its discretion authorize a licensee or permittee to transfer the license or permit from one location to another within the same incorporated city, or within a county outside the corporate limits of a city, provided that the premises to which the transfer is to be made would have been eligible for a license or permit in the first instance and such transfer will not result in the violation of any law. All transfers authorized, and the particulars of same, shall be reported to the administrator by the local authority. The administrator may by rule establish a uniform transfer fee to be assessed by all local authorities upon licensees or permittees to cover the administrative costs of such transfers, such fee to be retained by the local authority involved.

[C35, §1921-f29, -f100; C39, §1921.029, 1921.100; C46, 50, 54, 58, 62, 66, 71, §123.29, 124.6; C73, 75, 77, 79, 81, §123.38]

85 Acts, ch 32, §31; 95 Acts, ch 206, §5, 12; 2010 Acts, ch 1061, §162

### **123.39 Suspension or revocation of license or permit — civil penalty.**

1. *a.* The administrator or the local authority may suspend a license or permit issued pursuant to this chapter for a period not to exceed one year, revoke the license or permit, or impose a civil penalty not to exceed one thousand dollars per violation. Before suspension, revocation, or imposition of a civil penalty, the license or permit holder shall be given written notice and an opportunity for a hearing. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to conduct the hearing and issue a proposed decision. Upon the motion of a party to the hearing or upon the administrator’s own motion, the administrator may review the proposed decision in accordance with chapter 17A. Upon review of the proposed decision, the administrator may affirm, reverse, or modify the proposed decision. A licensee or permittee aggrieved by a decision of the administrator may seek judicial review of the administrator’s decision in accordance with chapter 17A.

*b.* A license or permit issued under this chapter may be suspended or revoked, or a civil penalty may be imposed on the license or permit holder by the local authority or the administrator for any of the following causes:

- (1) Misrepresentation of any material fact in the application for the license or permit.
- (2) Violation of any of the provisions of this chapter.
- (3) Any change in the ownership or interest in the business operated under a class “A”, class “B”, or class “C” liquor control license, or any wine or beer permit, which change was not previously reported to and approved by the local authority and the division.
- (4) An event which would have resulted in disqualification from receiving the license or permit when originally issued.
- (5) Any sale, hypothecation, or transfer of the license or permit.
- (6) The failure or refusal on the part of any licensee or permittee to render any report or remit any taxes to the division under this chapter when due.

c. A criminal conviction is not a prerequisite to suspension, revocation, or imposition of a civil penalty pursuant to this section. A local authority which acts pursuant to this section or section 123.32 shall notify the division in writing of the action taken, and shall notify the licensee or permit holder of the right to appeal a suspension, revocation, or imposition of a civil penalty to the division. Civil penalties imposed and collected by the local authority under this section shall be retained by the local authority. Civil penalties imposed and collected by the division under this section shall be retained by the division.

2. Local authorities may suspend any retail wine or beer permit or liquor control license for a violation of any ordinance or regulation adopted by the local authority. Local authorities may adopt ordinances or regulations for the location of the premises of retail wine or beer and liquor control licensed establishments and local authorities may adopt ordinances, not in conflict with this chapter and that do not diminish the hours during which beer, wine, or alcoholic beverages may be sold or consumed at retail, governing any other activities or matters which may affect the retail sale and consumption of beer, wine, and alcoholic liquor and the health, welfare and morals of the community involved.

3. When a liquor license or wine or beer permit is suspended after a hearing as a result of violations of this chapter by the licensee, permittee or the licensee's or permittee's agents or employees, the premises which were licensed by the license or permit shall not be relicensed for a new applicant until the suspension has terminated or time of suspension has elapsed, or ninety days have elapsed since the commencement of the suspension, whichever occurs first. However, this section does not prohibit the premises from being relicensed to a new applicant before the suspension has terminated or before the time of suspension has elapsed or before ninety days have elapsed from the commencement of the suspension, if the premises prior to the time of the suspension had been purchased under contract, and the vendor under that contract had exercised the person's rights under chapter 656 and sold the property to a different person who is not related to the previous licensee or permittee by marriage or within the third degree of consanguinity or affinity and if the previous licensee or permittee does not have a financial interest in the business of the new applicant.

4. If the cause for suspension is a first offense violation of section 123.49, subsection 2, paragraph "h", the administrator or local authority shall impose a civil penalty in the amount of five hundred dollars in lieu of suspension of the license or permit. Local authorities shall retain civil penalties collected under this paragraph if the proceeding to impose the penalty is conducted by the local authority. The division shall retain civil penalties collected under this paragraph if the proceeding to impose the penalty is conducted by the administrator of the division.

[C35, §1921-f32, 1921-f126; C39, §1921.032, 1921.129; C46, 50, 54, 58, 62, §123.32, 124.34; C66, 71, §123.32, 123.102, 124.34; C73, 75, 77, 79, 81, §123.39]

85 Acts, ch 32, §32; 88 Acts, ch 1241, §12; 93 Acts, ch 91, §16, 17; 94 Acts, ch 1017, §2; 2000 Acts, ch 1154, §12; 2002 Acts, ch 1119, §128

Referred to in §123.24, 123.41, 123.46A, 123.50, 123.187

#### **123.40 Effect of revocation.**

Any liquor control licensee, wine permittee, or beer permittee whose license or permit is revoked under this chapter shall not thereafter be permitted to hold a liquor control license, wine permit, or beer permit in the state of Iowa for a period of two years from the date of revocation. A spouse or business associate holding ten percent or more of the capital stock or ownership interest in the business of a person whose license or permit has been revoked shall not be issued a liquor control license, wine permit, or beer permit, and no liquor control license, wine permit, or beer permit shall be issued which covers any business in which such person has a financial interest for a period of two years from the date of revocation. If a license or permit is revoked, the premises which had been covered by the license or permit shall not be relicensed for one year.

[C35, §1921-f32, 1921-f123; C39, §1921.032, 1921.125; C46, 50, 54, 58, 62, 66, 71, §123.32, 124.30; C73, 75, 77, 79, 81, §123.40]

85 Acts, ch 32, §33

Referred to in §123.3, 123.50

**123.41 Manufacturer's license.**

1. Each application to obtain or renew a manufacturer's license shall be submitted to the division electronically, or in a manner prescribed by the administrator, and shall be accompanied by a fee of three hundred fifty dollars payable to the division. The administrator may in accordance with this chapter grant and issue a manufacturer's license, valid for a one-year period after date of issuance, to a manufacturer which shall allow the manufacture, storage, and wholesale disposition and sale of alcoholic liquors to the division and to customers outside of the state.

2. As a condition precedent to the approval and granting of a manufacturer's license, an applicant shall file a statement under oath with the division that the applicant is a bona fide manufacturer of alcoholic liquors, and that the applicant will faithfully observe and comply with all laws, rules, and regulations governing the manufacture and sale of alcoholic liquor.

3. A person who holds an experimental distilled spirits plant permit or its equivalent issued by the alcohol and tobacco tax and trade bureau of the United States department of the treasury may produce alcohol for use as fuel without obtaining a manufacturer's license from the division.

4. A violation of the requirements of this section shall subject the licensee to the general penalties provided in this chapter and shall constitute grounds for imposition of a civil penalty or suspension or revocation of the license after notice and opportunity for a hearing pursuant to section 123.39 and chapter 17A.

[C35, §1921-f36; C39, §1921.036; C46, 50, 54, 58, 62, 66, 71, §123.36; C73, 75, 77, 79, 81, §123.41]

2011 Acts, ch 30, §3; 2013 Acts, ch 35, §6

Subsection 1 amended

**123.42 Broker's permit.**

1. Prior to representing or promoting a distiller's alcoholic liquor products in the state, the broker shall submit an application to the division electronically, or in a manner prescribed by the administrator, for a broker's permit. The administrator may in accordance with this chapter issue a broker's permit which shall be valid for one year from the date of issuance unless it is sooner suspended or revoked for a violation of this chapter. A broker's permit is valid throughout the state, and a broker who represents more than one distiller is required to obtain only one broker's permit.

2. The annual fee for a broker's permit is twenty-five dollars.

3. An employee of a broker is not required to apply for or hold a broker's permit.

4. The holder of a distiller's certificate of compliance is not required to appoint a broker to represent its alcoholic liquor products in the state. If the holder of a distiller's certificate of compliance appoints a broker to represent its alcoholic liquor products in the state, the name and address of the broker shall be disclosed on the distiller's application for a certificate of compliance, and the requirements in this section shall apply to the appointed broker.

[C35, §1921-f37; C39, §1921.037; C46, 50, 54, 58, 62, 66, 71, §123.37; C73, 75, 77, 79, 81, §123.42]

94 Acts, ch 1017, §3; 2013 Acts, ch 35, §7

Subsection 1 amended

**123.43 License conditions — bond.** Repealed by 2011 Acts, ch 30, § 10.**123.43A Micro-distilled spirits — permit.**

1. Subject to rules of the division, a micro-distillery holding a class "A" micro-distilled spirits permit pursuant to this section may sell or offer for sale micro-distilled spirits. As provided in this section, sales may be made at retail for off-premises consumption when sold on the premises of the micro-distillery that manufactures micro-distilled spirits. All sales shall be made through the state's wholesale distribution system.

2. A micro-distillery shall not sell more than one and one-half liters per person per day, of micro-distilled spirits on the premises of the micro-distillery. In addition, a micro-distillery shall not directly ship micro-distilled spirits for sale at retail. The micro-distillery shall

maintain records of individual purchases of micro-distilled spirits at the micro-distillery for three years.

3. A micro-distillery shall not sell micro-distilled spirits other than as permitted in this chapter and shall not allow micro-distilled spirits sold to be consumed upon the premises of the micro-distillery. However, as a part of a micro-distillery tour, micro-distilled spirits of no more than two ounces per person per day may be sampled on the premises where fermented, distilled, or matured, when no charge is made for the sampling.

4. A class "A" micro-distilled spirits permit for a micro-distillery shall be issued and renewed annually upon payment of a fee of five hundred dollars.

5. The sale of micro-distilled spirits to the division for wholesale disposition and sale by the division shall be subject to the requirements of this chapter regarding such disposition and sale.

6. The division shall issue no more than three permits under this section to a person. In addition, a micro-distillery issued a permit under this section shall file with the division all documents filed by the micro-distillery with the alcohol and tobacco tax and trade bureau of the United States department of the treasury, including all production, storage, and processing reports.

7. Micro-distilled spirits purchased at a micro-distillery shall not be consumed on any property owned, operated, or controlled by a micro-distillery.

2010 Acts, ch 1031, §84; 2010 Acts, ch 1193, §40; 2011 Acts, ch 17, §9; 2011 Acts, ch 30, §4

#### **123.44 Gift of liquors prohibited.**

A manufacturer or broker shall not give away alcoholic liquor at any time in connection with the manufacturer's or broker's business except for testing or sampling purposes only. A manufacturer, vintner, broker, wholesaler, or importer, organized as a corporation pursuant to the laws of this state or any other state, who deals in alcoholic liquor, wine, or beer subject to regulation under this chapter shall not offer or give anything of value to a commission member, official or employee of the division, or directly or indirectly contribute in any manner any money or thing of value to a person seeking a public or appointive office or a recognized political party or a group of persons seeking to become a recognized political party.

[C35, §1921-f39; C39, §1921.039; C46, 50, 54, 58, 62, 66, 71, §123.39; C73, 75, 77, 79, 81, §123.44]

85 Acts, ch 32, §34; 94 Acts, ch 1017, §5

#### **123.45 Limitations on business interests.**

Except as provided in section 123.6, a commission member or division employee shall not, directly or indirectly, individually, or as a member of a partnership or shareholder in a corporation, have any interest in dealing in or in the manufacture of alcoholic liquor, wine, or beer, and shall not receive any kind of profit nor have any interest in the purchase or sale of alcoholic liquor, wine, or beer by persons so authorized under this chapter. However, this provision does not prohibit any member or employee from lawfully purchasing and keeping alcoholic liquor, wine, or beer in the member's or employee's possession for personal use.

A person engaged in the business of manufacturing, bottling, or wholesaling alcoholic beverages, wine, or beer, or any jobber, representative, broker, employee, or agent of such a person, shall not directly or indirectly supply, furnish, give, or pay for any furnishings, fixtures, or equipment used in the storage, handling, serving, or dispensing of alcoholic beverages, wine, beer, or food within the place of business of a licensee or permittee authorized under this chapter to sell at retail; nor shall the person directly or indirectly extend any credit for alcoholic beverages or beer or pay for any such license or permit, nor directly or indirectly be interested in the ownership, conduct, or operation of the business of another licensee or permittee authorized under this chapter to sell at retail, nor hold a retail liquor control license or retail wine or beer permit. However, a person engaged in the wholesaling of beer or wine may sell only disposable glassware, which is constructed of paper, paper laminated, or plastic materials and designed primarily for personal consumption on a one-time usage basis, to retailers for use within the premises of licensed establishments, for an amount which is greater than or equal to an amount which

represents the greater of either the amount paid for the disposable glassware by the supplier or the amount paid for the disposable glassware by the wholesaler. Also, a person engaged in the business of manufacturing beer may sell beer at retail for consumption on or off the premises of the manufacturing facility and, notwithstanding any other provision of this chapter or the fact that a person is the holder of a class “A” beer permit, may be granted not more than one class “B” beer permit as defined in section 123.124 for that purpose. A licensee or permittee who permits or assents to or is a party in any way to a violation or infringement of this section is guilty of a violation of this section.

[C35, §1921-f40, 1921-f115; C39, §1921.040, 1921.117; C46, 50, 54, 58, 62, 66, 71, §123.40, 124.22; C73, 75, 77, 79, 81, §123.45; 81 Acts, ch 57, §1; 82 Acts, ch 1024, §2]

85 Acts, ch 32, §35; 88 Acts, ch 1241, §13; 91 Acts, ch 24, §1

**123.46 Consumption or intoxication in public places — notifications — chemical tests — exoneration.**

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

a. “*Arrest*” means the same as defined in section 804.5 and includes taking into custody pursuant to section 232.19.

b. “*Chemical test*” means a test of a person’s blood, breath, or urine to determine the percentage of alcohol present by a qualified person using devices and methods approved by the commissioner of public safety.

c. “*Peace officer*” means the same as defined in section 801.4.

2. A person shall not use or consume alcoholic liquor, wine, or beer upon the public streets or highways. A person shall not use or consume alcoholic liquor in any public place except premises covered by a liquor control license. A person shall not possess or consume alcoholic liquors, wine, or beer on public school property or while attending a public or private school-related function. A person shall not be intoxicated in a public place. A person violating this subsection is guilty of a simple misdemeanor.

3. A person shall not simulate intoxication in a public place. A person violating this subsection is guilty of a simple misdemeanor.

4. When a peace officer arrests a person on a charge of public intoxication under this section, the peace officer shall inform the person that the person may have a chemical test administered at the person’s own expense. If a device approved by the commissioner of public safety for testing a sample of a person’s breath to determine the person’s blood alcohol concentration is available, that is the only test that need be offered the person arrested. In a prosecution for public intoxication, evidence of the results of a chemical test performed under this subsection is admissible upon proof of a proper foundation. The percentage of alcohol present in a person’s blood, breath, or urine established by the results of a chemical test performed within two hours after the person’s arrest on a charge of public intoxication is presumed to be the percentage of alcohol present at the time of arrest.

5. a. A peace officer shall make a reasonable effort to identify a person under the age of eighteen who violates this section and refer the person to juvenile court.

b. A juvenile court officer shall notify the person’s custodial parent, legal guardian, or custodian of the violation. In addition, the juvenile court officer shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district or the superintendent’s designee, or the authorities in charge of the nonpublic school, of the violation. A reasonable attempt to notify the person includes, but is not limited to, a telephone call or notice by first-class mail.

6. Upon the expiration of two years following conviction for a violation of this section, a person may petition the court to expunge the conviction, and if the person has had no other criminal convictions, other than simple misdemeanor violations of chapter 321 during the two-year period, the conviction shall be expunged as a matter of law. The court shall enter an order that the record of the conviction be expunged by the clerk of the district court. Notwithstanding section 692.2, after receipt of notice from the clerk of the district court that

a record of conviction has been expunged, the record of conviction shall be removed from the criminal history data files maintained by the department of public safety.

[C35, §1921-f42, 1921-f127; C39, §1921.042, 1921.132; C46, 50, 54, 58, 62, 66, 71, §123.42, 124.37; C73, 75, 77, 79, 81, §123.46]

85 Acts, ch 32, §36; 86 Acts, ch 1067, §1; 89 Acts, ch 225, §10; 92 Acts, ch 1231, §7; 2000 Acts, ch 1138, §1; 2010 Acts, ch 1044, §1, 2; 2010 Acts, ch 1071, §1; 2010 Acts, ch 1128, §1; 2011 Acts, ch 17, §10

Referred to in §125.34, 232.22, 232.52

#### **123.46A Delivery of alcoholic beverages by retailers.**

1. Licensees and permittees authorized to sell alcoholic liquor, wine, or beer in original unopened containers for consumption off the licensed premises may deliver alcoholic liquor, wine, or beer to a home or other designated location in this state. Deliveries shall be limited to alcoholic beverages authorized by the licensee's or permittee's license or permit.

2. All deliveries of alcoholic liquor, wine, or beer shall be subject to the following requirements and restrictions:

a. Payment for the alcoholic liquor, wine, or beer shall be received on the licensed premises at the time of order.

b. Alcoholic liquor, wine, or beer delivered to a person shall be for personal use and not for resale.

c. Deliveries shall only be made to persons in this state who are twenty-one years of age or older.

d. Deliveries shall not be made to a person who is intoxicated or is simulating intoxication.

e. Deliveries shall occur between 6:00 a.m. and 10:00 p.m. Monday through Saturday, and between 8:00 a.m. and 10:00 p.m. Sunday.

f. Delivery of alcoholic liquor, wine, or beer shall be made by the licensee or permittee, or the licensee's or permittee's employee, and not by a third party.

g. Delivery personnel shall be twenty-one years of age or older.

h. Deliveries shall be made in a vehicle owned, leased, or under the control of the licensee or permittee.

i. Valid proof of the recipient's identity and age shall be obtained at the time of delivery, and the signature of a person twenty-one years of age or older shall be obtained as a condition of delivery.

j. Licensees and permittees shall maintain records of deliveries which include the quantity delivered, the recipient's name and address, and the signature of the recipient of the alcoholic liquor, wine, or beer. The records shall be maintained on the licensed premises for a period of three years.

3. A violation of this section or any other provision of this chapter shall subject the licensee or permittee to the penalty provisions of section 123.39.

4. Nothing in this section shall impact the direct shipment of wine as regulated by section 123.187.

2011 Acts, ch 30, §5

#### **123.47 Persons under eighteen years of age, persons eighteen, nineteen, or twenty years of age, and persons twenty-one years of age and older.**

1. A person shall not sell, give, or otherwise supply alcoholic liquor, wine, or beer to any person knowing or having reasonable cause to believe that person to be under legal age.

2. A person or persons under legal age shall not purchase or attempt to purchase, or individually or jointly have alcoholic liquor, wine, or beer in their possession or control; except in the case of liquor, wine, or beer given or dispensed to a person under legal age within a private home and with the knowledge, presence, and consent of the parent or guardian, for beverage or medicinal purposes or as administered to the person by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages, wine, and beer during the regular course of the person's employment by a liquor control licensee, or wine or beer permittee under this chapter.

3. a. A person who is eighteen, nineteen, or twenty years of age, other than a licensee

or permittee, who violates this section regarding the purchase of or attempt to purchase alcoholic liquor, wine, or beer, or possessing or having control of alcoholic liquor, wine, or beer, commits the following:

(1) A simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 7.

(2) A second offense shall be a simple misdemeanor punishable by a fine of five hundred dollars. In addition to any other applicable penalty, the person in violation of this section shall choose between either completing a substance abuse evaluation or the suspension of the person's motor vehicle operating privileges for a period not to exceed one year.

(3) A third or subsequent offense shall be a simple misdemeanor punishable by a fine of five hundred dollars and the suspension of the person's motor vehicle operating privileges for a period not to exceed one year.

b. The court may, in its discretion, order the person who is under legal age to perform community service work under section 909.3A, of an equivalent value to the fine imposed under this section.

c. If the person who commits a violation of this section is under the age of eighteen, the matter shall be disposed of in the manner provided in chapter 232.

4. Except as otherwise provided in subsections 5 and 6, a person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section commits a serious misdemeanor punishable by a minimum fine of five hundred dollars.

5. A person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section which results in serious injury to any person commits an aggravated misdemeanor.

6. A person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section which results in the death of any person commits a class "D" felony.

7. Upon the expiration of two years following conviction for a violation of subsection 2 or of a similar local ordinance, a person may petition the court to expunge the conviction, and if the person has had no other criminal convictions, other than local traffic violations or simple misdemeanor violations of chapter 321 during the two-year period, the conviction shall be expunged as a matter of law. The court shall enter an order that the record of the conviction be expunged by the clerk of the district court. Notwithstanding section 692.2, after receipt of notice from the clerk of the district court that a record of conviction has been expunged for a violation of subsection 2, the record of conviction shall be removed from the criminal history data files maintained by the department of public safety. An expunged conviction shall not be considered a prior offense for purposes of enhancement under subsection 3 or under a local ordinance unless the new violation occurred prior to entry of the order of expungement.

[C35, §1921-f43; C39, §1921.043; C46, 50, 54, 58, 62, §123.43; C66, 71, §123.43, 125.33; C73, 75, 77, 79, 81, §123.47]

85 Acts, ch 32, §37; 92 Acts, ch 1231, §8; 94 Acts, ch 1105, §1; 94 Acts, ch 1172, §2; 95 Acts, ch 191, §3; 97 Acts, ch 126, §2; 99 Acts, ch 153, §1; 2005 Acts, ch 105, §1; 2010 Acts, ch 1071, §2; 2010 Acts, ch 1128, §2

Referred to in §123.47B, 135B.34, 135C.33, 137C.25C, 232.2, 232.19, 232.22, 232.52, 321.216B, 321.284, 321.284A, 805.8C(7)

**123.47A** Repealed by 97 Acts, ch 126, § 54.

**123.47B Parental and school notification — persons under eighteen years of age.**

1. A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of alcoholic liquor, wine, or beer in violation of section 123.47 and refer the person to juvenile court.

2. The juvenile court officer shall notify the person's custodial parent, legal guardian, or custodian of the violation. In addition, the juvenile court shall also make a reasonable effort to identify the elementary or secondary school which the person attends if the person is enrolled in elementary or secondary school and to notify the superintendent or the superintendent's

designee of the school which the person attends, or the authorities in charge of the nonpublic school which the person attends, of the possession. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first-class mail.

90 Acts, ch 1251, §4; 95 Acts, ch 191, §4; 97 Acts, ch 126, §3; 2010 Acts, ch 1128, §3

#### **123.48 Seizure of false or altered driver's license or nonoperator identification card.**

1. If a liquor control licensee or wine or beer permittee or an employee of the licensee or permittee has a reasonable belief based on factual evidence that a driver's license as defined in section 321.1, subsection 20A, or nonoperator identification card issued pursuant to section 321.190 offered by a person who wishes to purchase an alcoholic beverage at the licensed premises is altered or falsified or belongs to another person, the licensee, permittee, or employee may retain the driver's license or nonoperator identification card. Within twenty-four hours, the card shall be delivered to the appropriate city or county law enforcement agency of the jurisdiction in which the licensed premises is located. When the card is delivered to the appropriate law enforcement agency, the licensee shall file a written report of the circumstances under which the card was retained. The local law enforcement agency may investigate whether a violation of section 321.216, 321.216A, or 321.216B has occurred. If an investigation is not initiated or a probable cause is not established by the local law enforcement agency, the driver's license or nonoperator identification card shall be delivered to the person to whom it was issued. The local law enforcement agency may forward the card with the report to the department of transportation for investigation, in which case, the department may investigate whether a violation of section 321.216, 321.216A, or 321.216B has occurred. The department of transportation shall return the card to the person to whom it was issued if an investigation is not initiated or a probable cause is not established.

2. Upon taking possession of an identification card as provided in subsection 1, a receipt for the card with the date and hour of seizure noted shall be provided to the person from whom the card was seized.

3. A liquor control licensee or wine or beer permittee or an employee of the licensee or permittee is not subject to criminal prosecution for, or to civil liability for damages alleged to have resulted from, the retention and delivery of a driver's license or a nonoperator identification card which is taken pursuant to subsections 1 and 2. This section shall not be construed to relieve a licensee, permittee, or employee of the licensee or permittee from civil liability for damages resulting from the use of unreasonable force in obtaining the altered or falsified driver's license or identification card or the driver's license or identification card believed to belong to another person.

94 Acts, ch 1105, §3; 96 Acts, ch 1090, §1; 98 Acts, ch 1073, §9, 12

#### **123.49 Miscellaneous prohibitions.**

1. A person shall not sell, dispense, or give to an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.

a. A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer in violation of this subsection is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage, wine, or beer.

b. The general assembly declares that this subsection shall be interpreted so that the holding of *Clark v. Mincks*, 364 N.W.2d. 226 (Iowa 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages, wine, or beer rather than the serving of alcoholic beverages, wine, or beer as the proximate cause of injury inflicted upon another by an intoxicated person.

2. A person or club holding a liquor control license or retail wine or beer permit under this chapter, and the person's or club's agents or employees, shall not do any of the following:

a. Knowingly permit any gambling, except in accordance with chapter 99B, 99D, 99F, or 99G, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license

or permit, or permit its consumption thereon between the hours of 2:00 a.m. and 6:00 a.m. on a weekday, and between the hours of 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense alcoholic liquor or beer between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday.

c. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members, to sales by a hotel or motel to bona fide registered guests, nor to retail sales by the managing entity of a convention center, civic center, or events center.

d. (1) Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the division, and except mixed drinks or cocktails mixed on the premises for immediate consumption on the licensed premises or as otherwise provided by this paragraph "d". This prohibition does not apply to common carriers holding a class "D" liquor control license.

(2) Mixed drinks or cocktails mixed on the premises that are not for immediate consumption may be consumed on the licensed premises subject to the requirements of this subparagraph pursuant to rules adopted by the division. The rules shall provide that the mixed drinks or cocktails be stored, for no longer than seventy-two hours, in a labeled container in a quantity that does not exceed three gallons. The rules shall also provide that added flavors and other nonbeverage ingredients included in the mixed drinks or cocktails shall not include hallucinogenic substances or added caffeine or other added stimulants including but not limited to guarana, ginseng, and taurine. In addition, the rules shall require that the licensee keep records as to when the contents in a particular container were mixed and the recipe used for that mixture.

e. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been so reused or adulterated.

f. Employ a person under eighteen years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.

g. Allow any person other than the licensee, permittee, or employees of the licensee or permittee, to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as permitted in section 123.95. This paragraph does not apply to the lodging quarters of a class "B" liquor control licensee or wine or beer permittee, or to common carriers holding a class "D" liquor control license.

h. Sell, give, or otherwise supply any alcoholic beverage, wine, or beer to any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, or permit any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, to consume any alcoholic beverage, wine, or beer.

i. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, or any other beverage in or about the permittee's place of business.

j. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit. However, the absence of security personnel on the licensed premises is insufficient, without additional evidence, to prove that criminal activity occurring on the licensed premises was knowingly permitted in violation of this paragraph "j". For purposes of this paragraph "j", "premises" includes parking lots and areas adjacent to the premises of a liquor licensee or permittee authorized to sell alcoholic beverages for consumption on the licensed premises and used by patrons of the liquor licensee or permittee.

k. Sell or dispense any wine on the premises covered by the permit or permit the consumption on the premises between the hours of 2:00 a.m. and 6:00 a.m. on a weekday, and between the hours of 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday, however, a holder of a wine permit authorized to sell wine on Sunday may sell or dispense wine between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday.

l. Sell, give, possess, or otherwise supply a machine which is used to vaporize an alcoholic beverage for the purpose of being consumed in a vaporized form.

3. A person under legal age shall not misrepresent the person's age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee. If any person under legal age misrepresents the person's age, and the licensee or permittee establishes that the licensee or permittee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee or permittee is not guilty of selling alcoholic liquor, wine, or beer to a person under legal age.

4. No privilege of selling alcoholic liquor, wine, or beer on Sunday as provided in section 123.36, subsection 5, and section 123.134, subsection 5, shall be granted to a club or other organization which places restrictions on admission or membership in the club or organization on the basis of sex, race, religion, or national origin. However, the privilege may be granted to a club or organization which places restrictions on membership on the basis of sex, if the club or organization has an auxiliary organization open to persons of the other sex.

[C35, §1921-f46, 1921-f114, 1921-g3; C39, §1921.046, 1921.115, 1921.116; C46, 50, 54, 58, 62, 66, 71, §123.46, 124.20, 124.21; C73, 75, 77, 79, 81, §123.49]

84 Acts, ch 1275, §3; 85 Acts, ch 32, §38 – 42; 86 Acts, ch 1002, §5; 86 Acts, ch 1211, §11; 89 Acts, ch 67, §26; 90 Acts, ch 1175, §8; 91 Acts, ch 245, §2, 3; 94 Acts, ch 1172, §4; 97 Acts, ch 126, §4; 2003 Acts, ch 178, §108, 121; 2003 Acts, ch 179, §142; 2004 Acts, ch 1155, §1; 2006 Acts, ch 1033, §1; 2010 Acts, ch 1128, §4; 2012 Acts, ch 1138, §22

Referred to in §123.36, 123.39, 123.50, 123.50A, 123.92, 123.134, 123.150, 602.6405, 805.8C(2)

Civil liability for dispensing or sale and service to intoxicated persons; see §123.92

For scheduled fines applicable to violations of subsection 2, paragraph h, see §805.8C(2)

### 123.50 Criminal and civil penalties.

1. Any person who violates any of the provisions of section 123.49, except section 123.49, subsection 2, paragraph "h", or who fails to affix upon sale, defaces, or fails to record a keg identification sticker or produce a record of keg identification stickers pursuant to section 123.138, shall be guilty of a simple misdemeanor. A person who violates section 123.49, subsection 2, paragraph "h", commits a simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 2.

2. The conviction of any liquor control licensee, wine permittee, or beer permittee for a violation of any of the provisions of section 123.49, subject to subsection 3 of this section, is grounds for the suspension or revocation of the license or permit by the division or the local authority. However, if any liquor control licensee is convicted of any violation of subsection 2, paragraph "a", "d", or "e", of that section, or any wine or beer permittee is convicted of a violation of paragraph "a" or "e" of that section, the liquor control license, wine permit, or beer permit shall be revoked and shall immediately be surrendered by the holder, and the bond, if any, of the license or permit holder shall be forfeited to the division.

3. If any licensee, wine permittee, beer permittee, or employee of a licensee or permittee is convicted or found in violation of section 123.49, subsection 2, paragraph "h", the administrator or local authority shall, in addition to criminal penalties fixed for violations by this section, assess a civil penalty as follows:

a. A first violation shall subject the licensee or permittee to a civil penalty in the amount of five hundred dollars. Failure to pay the civil penalty as ordered under section 123.39 shall result in automatic suspension of the license or permit for a period of fourteen days.

b. A second violation within two years shall subject the licensee or permittee to a thirty-day suspension and a civil penalty in the amount of one thousand five hundred dollars.

c. A third violation within three years shall subject the licensee or permittee to a sixty-day suspension and a civil penalty in the amount of one thousand five hundred dollars.

d. A fourth violation within three years shall result in revocation of the license or permit.

e. For purposes of this subsection:

(1) The date of any violation shall be used in determining the period between violations.

(2) Suspension shall be limited to the specific license or permit for the premises found in violation.

(3) Notwithstanding section 123.40, revocation shall be limited to the specific license or

permit found in violation and shall not disqualify a licensee or permittee from holding a license or permit at a separate location.

4. In addition to any other penalties imposed under this chapter, the division shall assess a civil penalty up to the amount of five thousand dollars upon a class “E” liquor control licensee when the class “E” liquor license is revoked for a violation of section 123.59. Failure to pay the civil penalty as required under this subsection shall result in forfeiture of the bond to the division.

5. If an employee of a licensee or permittee violates section 123.49, subsection 2, paragraph “h”, the licensee or permittee shall not be assessed a penalty under subsection 3, and the violation shall be deemed not to be a violation of section 123.49, subsection 2, paragraph “h”, for the purpose of determining the number of violations for which a penalty may be assessed pursuant to subsection 3, if the employee holds a valid certificate of completion of the alcohol compliance employee training program pursuant to section 123.50A at the time of the violation, and if the violation involves selling, giving, or otherwise supplying any alcoholic beverage, wine, or beer to a person between the ages of eighteen and twenty years of age. A violation involving a person under the age of eighteen years of age shall not qualify for the bar against assessment of a penalty pursuant to subsection 3, for a violation of section 123.49, subsection 2, paragraph “h”. A licensee or permittee may assert only once in a four-year period the bar under this subsection against assessment of a penalty pursuant to subsection 3, for a violation of section 123.49, subsection 2, paragraph “h”, that takes place at the same place of business location.

[C35, §1921-f46, 1921-f127; C39, §1921.046, 1921.132; C46, 50, 54, 58, 62, 66, 71, §123.46, 124.37; C73, 75, 77, 79, 81, §123.50]

84 Acts, ch 1275, §4; 84 Acts, ch 1292, §1; 85 Acts, ch 32, §43; 86 Acts, ch 1246, §745; 88 Acts, ch 1088, §6; 88 Acts, ch 1241, §14; 89 Acts, ch 252, §2; 93 Acts, ch 91, §18; 94 Acts, ch 1172, §5; 97 Acts, ch 126, §5, 6; 98 Acts, ch 1204, §1, 2; 2001 Acts, ch 137, §5; 2004 Acts, ch 1008, §1; 2007 Acts, ch 46, §1; 2011 Acts, ch 30, §6; 2013 Acts, ch 30, §23

Referred to in §99B.10B, 99B.14, 123.141

License or permit suspension upon revocation of amusement device permit; §99B.10B

Subsection 1 amended

### **123.50A Alcohol compliance employee training program.**

1. If sufficient funding is appropriated, the division shall develop an alcohol compliance employee training program, not to exceed two hours in length for employees and prospective employees of licensees and permittees, to inform the employees about state and federal liquor laws and regulations regarding the sale of alcoholic liquor, wine, or beer to persons under legal age, and compliance with and the importance of laws regarding the sale of alcoholic liquor, wine, or beer to persons under legal age. In developing the alcohol compliance employee training program, the division may consult with stakeholders who have expertise in the laws and regulations regarding the sale of alcoholic liquor, wine, or beer to persons under legal age.

2. The alcohol compliance employee training program shall be made available to employees and prospective employees of licensees and permittees at no cost to the employee, the prospective employee, or the licensee or permittee, and in a manner which is as convenient and accessible to the extent practicable throughout the state so as to encourage attendance. Contingent upon the availability of specified funds for provision of the program, the division shall schedule the program on at least a monthly basis and the program shall be available at a location in at least a majority of counties.

3. Upon completion of the alcohol compliance employee training program, an employee or prospective employee shall receive a certificate of completion, which shall be valid for a period of two years, unless the employee or prospective employee is convicted of a violation of section 123.49, subsection 2, paragraph “h”, in which case the certificate shall be void.

4. The division shall also offer periodic continuing employee training and recertification for employees who have completed initial training and received an initial certificate of completion as part of the alcohol compliance employee training program.

2011 Acts, ch 30, §7

**123.51 Advertisements for alcoholic liquor, wine, or beer.**

1. No signs or other matter advertising any brand of alcoholic liquor, beer, or wine shall be erected or placed upon the outside of any premises occupied by a licensee or permittee authorized to sell alcoholic liquor, beer, or wine at retail. This subsection does not prohibit the use of signs or other matter inside a fence or similar enclosure which wholly or partially surrounds the licensed premises.

2. Violation of this section is a simple misdemeanor.

[C35, §1921-f47; C39, §1921.047; C46, 50, 54, 58, 62, 66, 71, §123.47; C73, 75, 77, 79, 81, §123.51]

85 Acts, ch 32, §44; 86 Acts, ch 1246, §746; 87 Acts, ch 22, §9

**123.52 Prohibited sale.**

No person not expressly authorized by this chapter to deal in alcoholic liquors shall within the state keep for sale or offer for sale anything which is capable of being mistaken for a package containing alcoholic liquor and is either labeled or branded with the name of any kind of alcoholic liquor, whether the same contains any alcoholic liquor or not.

[C35, §1921-f48; C39, §1921.048; C46, 50, 54, 58, 62, 66, 71, §123.48; C73, 75, 77, 79, 81, §123.52]

**123.53 Beer and liquor control fund — allocations to substance abuse — use of civil penalties.**

1. There shall be established within the office of the treasurer of state a fund to be known as the beer and liquor control fund. The fund shall consist of any moneys appropriated by the general assembly for deposit in the fund and moneys received from the sale of alcoholic liquors by the division, from the issuance of permits and licenses, and of moneys and receipts received by the division from any other source.

2. *a.* The director of the department of administrative services shall periodically transfer from the beer and liquor control fund to the general fund of the state those revenues of the division which are not necessary for the purchase of liquor for resale by the division, or for remittances to local authorities or other sources as required by this chapter, or for other obligations and expenses of the division which are paid from such fund.

*b.* All moneys received by the division from the issuance of vintner's certificates of compliance and wine permits shall be transferred by the director of the department of administrative services to the general fund of the state.

3. Notwithstanding subsection 2, if gaming revenues under sections 99D.17 and 99F.11 are insufficient in a fiscal year to meet the total amount of such revenues directed to be deposited in the revenue bonds debt service fund and the revenue bonds federal subsidy holdback fund during the fiscal year pursuant to section 8.57, subsection 5, paragraph "e", the difference shall be paid from moneys deposited in the beer and liquor control fund prior to transfer of such moneys to the general fund pursuant to subsection 2 and prior to the transfer of such moneys pursuant to subsections 5 and 6. If moneys deposited in the beer and liquor control fund are insufficient during the fiscal year to pay the difference, the remaining difference shall be paid from moneys deposited in the beer and liquor control fund in subsequent fiscal years as such moneys become available.

4. The treasurer of state shall, each quarter, prepare an estimate of the gaming revenues and of the moneys to be deposited in the beer and liquor control fund that will become available during the remainder of the appropriate fiscal year for the purposes described in subsection 3. The department of management, the department of inspections and appeals, and the department of commerce shall take appropriate actions to provide that the sum of the amount of gaming revenues available to be deposited into the revenue bonds debt service fund and the revenue bonds federal subsidy holdback fund during a fiscal year and the amount of moneys to be deposited in the beer and liquor control fund available to be deposited into the revenue bonds debt service fund and the revenue bonds federal subsidy holdback fund during such fiscal year will be sufficient to cover any anticipated deficiencies.

5. After any transfer provided for in subsection 3 is made, the department of commerce shall transfer into a special revenue account in the general fund of the state, a sum of money at

least equal to seven percent of the gross amount of sales made by the division from the beer and liquor control fund on a monthly basis but not less than nine million dollars annually. Of the amounts transferred, two million dollars, plus an additional amount determined by the general assembly, shall be appropriated to the Iowa department of public health for use by the staff who administer the comprehensive substance abuse program under chapter 125 for substance abuse treatment and prevention programs. Any amounts received in excess of the amounts appropriated to the Iowa department of public health for use by the staff who administer the comprehensive substance abuse program under chapter 125 shall be considered part of the general fund balance.

6. After any transfers provided for in subsections 3 and 5, the department of commerce shall transfer to the division from the beer and liquor control fund and before any other transfer to the general fund, an amount sufficient to pay the costs incurred by the division for collecting and properly disposing of the liquor containers.

7. Civil penalties imposed and collected by the division shall be credited to the general fund of the state. The moneys from the civil penalties shall be used by the division, subject to appropriation by the general assembly, for the purposes of providing educational programs, information and publications for alcoholic beverage licensees and permittees, local authorities, and law enforcement agencies regarding the laws and rules which govern the alcoholic beverages industry, and for promoting compliance with alcoholic beverage laws and rules.

[C35, §1921-f50; C39, §1921.050; C46, 50, 54, 58, 62, 66, 71, §123.50; C73, 75, 77, 79, 81, §123.53]

85 Acts, ch 32, §45 – 47; 86 Acts, ch 1246, §603, 747; 88 Acts, ch 1151, §1; 88 Acts, ch 1250, §10; 92 Acts, ch 1242, §25; 93 Acts, ch 91, §19; 99 Acts, ch 199, §32; 2003 Acts, ch 145, §286; 2005 Acts, ch 179, §144, 146; 2006 Acts, ch 1010, §51; 2007 Acts, ch 126, §23; 2009 Acts, ch 41, §263; 2009 Acts, ch 173, §31, 32, 36; 2010 Acts, ch 1184, §92; 2011 Acts, ch 34, §35; 2012 Acts, ch 1021, §136

Referred to in §8.57, 24.14, 123.24, 123.183

#### **123.54 Appropriations.**

Division appropriations shall be paid by the treasurer of state upon the orders of the administrator, in such amounts and at such times as the administrator deems necessary to carry on operations in accordance with the terms of this chapter.

[C35, §1921-f52; C39, §1921.052; C46, 50, 54, 58, 62, 66, 71, §123.52; C73, 75, 77, 79, 81, §123.54]

#### **123.55 Annual report.**

The commission shall cause to be prepared an annual report to the governor of the state, ending with June 30 of each fiscal year, on the operation and financial position of the division for the preceding fiscal year. The report shall include but is not limited to the following information:

1. Amount of profit or loss from division operations.
2. The current balance of the beer and liquor control fund, and the amount transferred from the fund to the treasurer of state during the period covered by the report.
3. All other funds on hand and the source from which derived.
4. The total quantity and particular kind of alcoholic liquor sold.
5. The increase or decrease of liquor sales from the previous reporting period.
6. The number of liquor control licenses, wine permits, and beer permits issued, by class, the number in effect on the last day included in the report, and the number which have been suspended or revoked during the period covered by the report.
7. Amount of fees paid to the division from liquor control licenses, wine permits, and beer

permits, in gross, and the amount of liquor control license fees returned to local subdivisions of government as provided under this chapter.

[C35, §1921-f53; C39, §1921.053; C46, 50, 54, 58, 62, 66, 71, §123.53; C73, 75, 77, 79, 81, §123.55]

85 Acts, ch 32, §48; 86 Acts, ch 1246, §748; 2013 Acts, ch 35, §22

Unnumbered paragraph 1 amended

### 123.56 Native wines.

1. Subject to rules of the division, manufacturers of native wines from grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, holding a class “A” wine permit as required by this chapter, may sell, keep, or offer for sale and deliver the wine. Notwithstanding any other provision of this chapter, manufacturers of native wine may purchase and possess grape brandy from the division for the sole purpose of manufacturing wine.

2. Native wine may be sold at retail for off-premises consumption when sold on the premises of the manufacturer, or in a retail establishment operated by the manufacturer. Sales may also be made to class “A” or retail wine permittees or liquor control licensees as authorized by the class “A” wine permit. A manufacturer of native wines shall not sell the wines other than as permitted in this chapter and shall not allow wine sold to be consumed upon the premises of the manufacturer. However, prior to sale native wines may be sampled on the premises where made, when no charge is made for the sampling. A person may manufacture native wine for consumption on the manufacturer’s premises, when the wine or any part of it is not manufactured for sale.

3. A manufacturer of native wines may ship wine in closed containers to individual purchasers inside this state by obtaining a wine direct shipper license pursuant to section 123.187.

4. Notwithstanding section 123.179, subsection 1, a class “A” wine permit for a native wine manufacturer shall be issued and renewed annually upon payment of a fee of twenty-five dollars which shall be in lieu of any other license fee required by this chapter. The class “A” permit shall only allow the native wine manufacturer to sell, keep, or offer for sale and deliver the manufacturer’s native wines as provided under this section.

5. Notwithstanding any other provision of this chapter, a person engaged in the business of manufacturing native wine may sell native wine at retail for consumption on the premises of the manufacturing facility by applying for a class “C” native wine permit as provided in section 123.178B. A manufacturer of native wine may be granted not more than one class “C” native wine permit.

6. Notwithstanding any other provision of this chapter, a person employed by a class “A” native wine permittee may be employed by a brewery with a class “A” native beer permit provided the person has no ownership interest in either licensed premises.

7. A manufacturer may use the space and equipment of another manufacturer for the purpose of manufacturing native wine, provided that such an alternating proprietorship arrangement is approved by the alcohol and tobacco tax and trade bureau of the United States department of the treasury. A separate class “A” wine permit shall be issued to each manufacturer, and each manufacturer shall be subject to the provisions of this chapter and the rules of the division. Notwithstanding subsection 5, not more than one class “C” native wine permit shall be issued to a premises with alternating proprietorships.

8. For the purposes of this section, “*manufacturer*” includes only those persons who process in Iowa the fruit, vegetables, dandelions, clover, honey, or any combination of these ingredients, by fermentation into wines.

[C35, §1921-f56; C39, §1921.056; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.56]

85 Acts, ch 32, §49; 85 Acts, ch 198, §1; 2003 Acts, ch 143, §4, 5, 17; 2009 Acts, ch 73, §1; 2011 Acts, ch 17, §11; 2011 Acts, ch 30, §8

Referred to in §123.3

**123.57 Examination of accounts.**

The financial condition and transactions of all offices, departments, warehouses, and depots of the division shall be examined at least once each year by the state auditor and at shorter periods if requested by the administrator, governor, commission, or the general assembly's standing committees on government oversight.

[C35, §1921-f57; C39, §1921.057; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.57]  
86 Acts, ch 1246, §749; 2011 Acts, ch 30, §9

**123.58 Auditing.**

All provisions of sections 11.6, 11.11, 11.14, 11.21, 11.31, and 11.41, relating to auditing of financial records of governmental subdivisions which are not inconsistent with this chapter are applicable to the division and its offices, warehouses, and depots.

[C35, §1921-f58; C39, §1921.058; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §123.58]  
86 Acts, ch 1246, §750; 89 Acts, ch 264, §4; 2011 Acts, ch 75, §34

**123.59 Bootlegging.**

Any person who, acting individually, or through another acting for the person, keeps or carries on the person, or in a vehicle, or leaves in a place for another to secure, any alcoholic liquor, wine, or beer, with intent to sell or dispense the liquor, wine, or beer, by gift or otherwise in violation of law, or who, within this state, in any manner, directly or indirectly, solicits, takes, or accepts an order for the purchase, sale, shipment, or delivery of alcoholic liquor, wine, or beer in violation of law, or aids in the delivery and distribution of alcoholic liquor, wine, or beer so ordered or shipped, or who in any manner procures for, sells, or gives alcoholic liquor, wine, or beer to a person under legal age, for any purpose except as authorized and permitted in this chapter, is a bootlegger and subject to the general penalties provided by this chapter.

[C51, §924 – 928; R60, §1559, 1562, 1563, 1583, 1587; C73, §1523, 1540 – 1542, 1555; C97, §2382; SS15, §2382, 2461-a; C24, 27, 31, §1927; C35, §1921-f59, 1927; C39, §1921.059, 1927; C46, 50, 54, 58, 62, 66, 71, §123.59, 125.7; C73, 75, 77, 79, 81, §123.59]  
85 Acts, ch 32, §50; 85 Acts, ch 67, §16  
Referred to in §123.50

**123.60 Nuisances.**

The premises where the unlawful manufacture or sale, or keeping with intent to sell, use or give away, of alcoholic liquors, wine, or beer is carried on, and any vehicle or other means of conveyance used in transporting liquor, wine, or beer in violation of law, and the furniture, fixtures, vessels and contents, kept or used in connection with such activities are nuisances and shall be abated as provided in this chapter.

[C51, §935; R60, §1564; C73, §1543; C97, §2384; C24, 27, 31, §1929; C35, §1921-f60, 1929; C39, §1921.060, 1929; C46, 50, 54, 58, 62, 66, 71, §123.60, 125.9; C73, 75, 77, 79, 81, §123.60]  
85 Acts, ch 32, §51  
Referred to in §123.61  
Nuisances in general, chapter 657

**123.61 Penalty.**

Any person who erects, establishes, or uses any premises for any of the purposes prohibited in section 123.60, is guilty of nuisance and shall be subject to the general penalties provided by this chapter.

[C51, §935; R60, §1564; C73, §1543; C97, §2384; C24, 27, 31, §1930; C35, §1921-f61, 1930; C39, §1921.061, 1930; C46, 50, 54, 58, 62, 66, 71, §123.61, 125.10; C73, 75, 77, 79, 81, §123.61]

**123.62 Injunction.**

Actions to enjoin nuisances shall be brought in equity in the name of the state by the county attorney who shall prosecute the same to judgment.

[R60, §1564; C73, §1543; C97, §2405, 2406; S13, §2406; SS15, §2405; C24, 27, 31, §2017; C35, §1921-f62, 2017; C39, §1921.062, 2017; C46, 50, 54, 58, 62, 66, 71, §123.62, 128.1; C73, 75, 77, 79, 81, §123.62]

Referred to in §331.756(25)

**123.63 Temporary writ.**

In such action, the court shall, upon the presentation of a petition therefor, allow a temporary writ of injunction without bond, if it shall be made to appear to the satisfaction of the court by evidence in the form of affidavits, depositions, oral testimony or otherwise, that the nuisance complained of exists.

[R60, §1564; C73, §1543; C97, §2405; SS15, §2405; C24, 27, 31, §2018; C35, §1921-f63, 2018; C39, §1921.063, 2018; C46, 50, 54, 58, 62, 66, 71, §123.63, 128.2; C73, 75, 77, 79, 81, §123.63]

**123.64 Notice.**

Three days' notice in writing shall be given the defendant of the hearing of the application, and if then continued at the defendant's instance the writ as petitioned for shall be granted as a matter of course.

[C97, §2405; SS15, §2405; C24, 27, 31, §2019; C35, §1921-f64, 2019; C39, §1921.064, 2019; C46, 50, 54, 58, 62, 66, 71, §123.64, 128.3; C73, 75, 77, 79, 81, §123.64]

90 Acts, ch 1168, §26

**123.65 Scope of injunction.**

When an injunction has been granted, it shall be binding upon the defendant throughout the state and any violation of the provisions of this chapter anywhere within the state shall be punished as a contempt as herein provided.

[C97, §2405; SS15, §2405; C24, 27, 31, §2020; C35, §1921-f65, 2020; C39, §1921.065, 2020; C46, 50, 54, 58, 62, 66, 71, §123.65, 128.4; C73, 75, 77, 79, 81, §123.65]

**123.66 Trial of action.**

Any action brought hereunder shall be accorded priority over other business pending before the district court.

[C97, §2406; S13, §2406; C24, 27, 31, §2021; C35, §1921-f66, 2021; C39, §1921.066, 2021; C46, 50, 54, 58, 62, 66, 71, §123.66, 128.5; C73, 75, 77, 79, 81, §123.66]

**123.67 General reputation.**

In all actions to enjoin a nuisance or to establish a violation of the injunction, evidence of the general reputation of the premises described in the petition or information shall be admissible for the purpose of proving the existence of the nuisance or the violation of the injunction.

[C97, §2406; S13, §2406; C24, 27, 31, §2022; C35, §1921-f67, 2022; C39, §1921.067, 2022; C46, 50, 54, 58, 62, 66, 71, §123.67, 128.6; C73, 75, 77, 79, 81, §123.67]

**123.68 Contempt.**

In the case of a violation of any injunction granted under the provisions of this chapter, the court may summarily try and punish the defendant pursuant to the general penalties provided by this chapter. The proceedings shall be commenced by filing with the clerk of the court an information under oath setting out the alleged facts constituting such violation, upon which the court shall cause a warrant to issue under which the defendant shall be arrested.

[C97, §2407; SS15, §2407; C24, 27, 31, §2027; C35, §1921-f68, 2027; C39, §1921.068, 2027; C46, 50, 54, 58, 62, 66, 71, §123.68, 128.13; C73, 75, 77, 79, 81, §123.68]

**123.69 Trial of contempt action.**

The trial shall be as in equity and may be had upon depositions, or either party may demand the production and oral examination of the witnesses.

[C97, SS15, §2407; C24, 27, 31, §2028; C35, §1921-f69, 2028; C39, §1921.069, 2028; C46, 50, 54, 58, 62, 66, 71, §123.69, 128.14; C73, 75, 77, 79, 81, §123.69]

**123.70 Injunction against bootlegger.**

A bootlegger as defined in this chapter may be restrained by injunction from doing or continuing to do any of the acts prohibited herein, and all the proceedings for injunctions, temporary and permanent, and for punishments for violation of the same as prescribed herein, shall be applicable to such person, and the fact that an offender has no known or permanent place of business, or base of supplies, or quits the business after the commencement of an action, shall not prevent a temporary or permanent injunction, as the case may be, from issuing.

[S13, §2461-b; C24, 27, 31, §2031; C35, §1921-f71, 2031; C39, §1921.071, 2031; C46, 50, 54, 58, 62, 66, 71, §123.71, 128.17; C73, 75, 77, 79, 81, §123.70]

**123.71 Conditions on injunction proceeding.**

A bootlegger injunction proceeding, as provided in this chapter, shall not be maintained unless it is shown to the court that efforts in good faith have been made to discover the base of supplies or place where the defendant charged as a bootlegger conducts an unlawful business or receives or manufactures the alcoholic liquor, wine, or beer, which the defendant is charged with bootlegging.

[C27, 31, §2031-a1; C35, §1921-f72, 2031-a1; C39, §1921.072, 2031.1; C46, 50, 54, 58, 62, 66, 71, §123.72, 128.18; C73, 75, 77, 79, 81, §123.71]

85 Acts, ch 32, §52

**123.72 Order of abatement of nuisance.**

If the existence of a nuisance is established in a civil or criminal action, an order of abatement shall be entered as a part of the judgment in the case. The order shall direct the confiscation of all alcoholic liquor, wine, or beer by the state; the removal from the premises involved of all fixtures, furniture, vessels, or movable property used in any way in conducting the unlawful business; the sale of all removed property as well as any vehicle or other means of conveyance which has been abated, the sale to be conducted in the manner provided for the sale of chattels under execution; and the effective closing of the premises against use for the purpose of manufacture, sale, or consumption of alcoholic liquor, wine, or beer for a period of one year, unless sooner released by the court.

[C51, §935; R60, §1559; C73, §1523, 1543; C97, §2408; C24, 27, 31, §2032; C35, §1921-f73, 2032; C39, §1921.073, 2032; C46, 50, 54, 58, 62, 66, 71, §123.73, 128.19; C73, 75, 77, 79, 81, §123.72]

85 Acts, ch 32, §53

**123.73 Use of abated premises.**

If any person uses a premises closed pursuant to an abatement order in violation of such order the person shall be punished for contempt as provided in this chapter.

[C97, §2408; C24, 27, 31, §2033; C35, §1921-f74, 2033; C39, §1921.074, 2033; C46, 50, 54, 58, 62, 66, 71, §123.74, 128.20; C73, 75, 77, 79, 81, §123.73]

**123.74 Fees.**

For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as the officer would for levying upon and selling like property on execution; and for closing the premises and keeping them closed a reasonable sum shall be allowed by the court.

[C97, §2408; C24, 27, 31, §2034; C35, §1921-f75, 2034; C39, §1921.075, 2034; C46, 50, 54, 58, 62, 66, 71, §123.75, 128.21; C73, 75, 77, 79, 81, §123.74]

**123.75 Proceeds of sale.**

The proceeds of the sale of personal property in abatement proceedings shall be applied first in payment of the costs of the action and abatement, and second to the satisfaction of any fine and costs adjudged against the proprietor of the premises and keeper of said nuisance, and the balance, if any, shall be paid to the defendant.

[C97, §2409; C24, 27, 31, §2035; C35, §1921-f76, 2035; C39, §1921.076, 2035; C46, 50, 54, 58, 62, 66, 71, §123.76, 128.22; C73, 75, 77, 79, 81, §123.75]

**123.76 Abatement of nuisance.**

If the owner of the abated premises appears and pays all costs of the proceeding and files a bond with sureties to be approved by the clerk in the full value of the property, to be ascertained by the court, conditioned that the owner will immediately abate the nuisance and prevent the same from being established or kept on such premises within a period of one year thereafter, the court may order such premises to be delivered to the owner and cancel the order of abatement so far as it may relate to the property.

[C97, §2410; S13, §2410; C24, 27, 31, §2036; C35, §1921-f77, 2036; C39, §1921.077, 2036; C46, 50, 54, 58, 62, 66, 71, §123.77, 128.23; C73, 75, 77, 79, 81, §123.76]

Referred to in §123.78, 602.8102(30)

**123.77 Abatement before judgment.**

If the action is in equity and the owner of the premises pays the costs of the action and files the bond prior to the entry of judgment and the abatement order, such action shall be abated as to the premises only.

[C97, §2410; S13, §2410; C24, 27, 31, §2037; C35, §1921-f78, 2037; C39, §1921.078, 2037; C46, 50, 54, 58, 62, 66, 71, §123.78, 128.24; C73, 75, 77, 79, 81, §123.77]

Referred to in §123.78

**123.78 Existing liens.**

The release of the property under the provisions of either section 123.76 or 123.77 shall not release it from any judgment lien, penalty, or liability, to which it may be subject by law.

[C97, §2410; S13, §2410; C24, 27, 31, §2038; C35, §1921-f79, 2038; C39, §1921.079, 2038; C46, 50, 54, 58, 62, 66, 71, §123.79, 128.25; C73, 75, 77, 79, 81, §123.78]

**123.79 Abatement bond a lien.**

Undertakings of bonds for abatement shall immediately after filing by the clerk of the district court be docketed and entered upon the lien index as required for judgments in civil cases, and from the time of such entries shall be liens upon real estate of the persons executing the same, with like effect as judgments in civil actions.

[C24, 27, 31, §2039; C35, §1921-f80, 2039; C39, §1921.080, 2039; C46, 50, 54, 58, 62, 66, 71, §123.80, 128.26; C73, 75, 77, 79, 81, §123.79]

Referred to in §123.84, 602.8102(30)

**123.80 Attested copies filed.**

Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated in the same manner and with like effect as attested copies of judgments, and shall be immediately docketed and indexed in the same manner.

[C24, 27, 31, §2040; C35, §1921-f81, 2040; C39, §1921.081, 2040; C46, 50, 54, 58, 62, 66, 71, §123.81, 128.27; C73, 75, 77, 79, 81, §123.80]

Referred to in §602.8102(30)

**123.81 Forfeiture of bond.**

If the owner of a property who has filed an abatement bond as provided in this chapter fails to abate the liquor, wine, or beer nuisance on the premises covered by the bond, or fails to prevent the maintenance of any liquor, wine, or beer nuisance on the premises at any time within a period of one year after entry of the abatement order, the court shall, after a hearing

in which such fact is established, direct an entry of the violation of the terms of the owner's bond to be made on the record and the undertaking of the owner's bond shall be forfeited.

[C24, 27, 31, §2041; C35, §1921-f82, 2041; C39, §1921.082, 2041; C46, 50, 54, 58, 62, 66, 71, §123.82, 128.28; C73, 75, 77, 79, 81, §123.81]

85 Acts, ch 32, §54

#### **123.82 Procedure.**

A proceeding to forfeit an abatement bond shall be commenced by filing with the clerk of the court, by the county attorney of the county where the bond is filed, an application under oath to forfeit such bond, setting out the alleged facts constituting the violation of the terms of the bond, upon which the court shall direct by order attached to such application that a notice be issued by the clerk of the district court directed to the principal and sureties on the bond to appear at a certain date fixed to show cause why such bond should not be forfeited and judgment entered for the penalty fixed therein.

[C24, 27, 31, §2042; C35, §1921-f83, 2042; C39, §1921.083, 2042; C46, 50, 54, 58, 62, 66, 71, §123.83, 128.29; C73, 75, 77, 79, 81, §123.82]

#### **123.83 Method of trial.**

The trial shall be to the court and as in equity, and be governed by the same rules of evidence as contempt proceedings.

[C24, 27, 31, §2043; C35, §1921-f84, 2043; C39, §1921.084, 2043; C46, 50, 54, 58, 62, 66, 71, §123.84, 128.30; C73, 75, 77, 79, 81, §123.83]

#### **123.84 Judgment.**

If the court after a hearing finds a liquor, wine, or beer nuisance has been maintained on the premises covered by the abatement bond and that liquor, wine, or beer has been sold or kept for sale on the premises contrary to law within one year from the date of the giving of the bond, then the court shall order the forfeiture of the bond and enter judgment for the full amount of the bond against the principal and sureties on the bond, and the lien on the real estate created pursuant to section 123.79 shall be decreed foreclosed and the court shall provide for a special and general execution for the enforcement of the decree and judgment.

[C24, 27, 31, §2044; C35, §1921-f85, 2044; C39, §1921.085, 2044; C46, 50, 54, 58, 62, 66, 71, §123.85, 128.31; C73, 75, 77, 79, 81, §123.84]

85 Acts, ch 32, §55

#### **123.85 Appeal.**

Appeal may be taken as in equity cases and the cause be triable de novo except that if the state appeals it need not file an appeal or supersedeas bond.

[C24, 27, 31, §2045; C35, §1921-f86, 2045; C39, §1921.086, 2045; C46, 50, 54, 58, 62, 66, 71, §123.86, 128.32; C73, 75, 77, 79, 81, §123.85]

#### **123.86 County attorney to prosecute.**

It shall be the duty of the county attorney to prosecute in the name of the state all forfeitures of abatement bonds and the foreclosures of same.

[C24, 27, 31, §2047; C35, §1921-f87, 2047; C39, §1921.087, 2047; C46, 50, 54, 58, 62, 66, 71, §123.87, 128.34; C73, 75, 77, 79, 81, §123.86]

Referred to in §331.756(25)

#### **123.87 Prompt service.**

It shall be a simple misdemeanor for any peace officer to delay service of original notices, writs of injunction, writs of abatement, or warrants for contempt in any equity case filed for injunction or abatement by the state.

[C24, 27, 31, §2049; C35, §1921-f88, 2049; C39, §1921.088, 2049; C46, 50, 54, 58, 62, 66, 71, §123.88, 128.36; C73, 75, 77, 79, 81, §123.87]

**123.88 Evidence.**

On the issue whether a party knew or ought to have known of such nuisance, evidence of the general reputation of the place shall be admissible.

[C24, 27, 31, §2053; C35, §1921-f89, 2053; C39, §1921.089, 2053; C46, 50, 54, 58, 62, 66, 71, §123.89, 128.40; C73, 75, 77, 79, 81, §123.88]

**123.89 Counts.**

Informations or indictments under this chapter may allege any number of violations of its provisions by the same party, but the several charges must be set out in separate counts, and the accused may be convicted and punished upon each one as on separate informations or indictments, and a separate judgment shall be rendered on each count under which there is a finding of guilty.

[C51, §931; R60, §1562; C73, §1540; C97, §2425; C24, 27, 31, §1953; C35, §1921-f90, 1953; C39, §1921.090, 1953; C46, 50, 54, 58, 62, 66, 71, §123.90, 126.8; C73, 75, 77, 79, 81, §123.89]

**123.90 Penalties generally.**

Unless other penalties are herein provided, any person, except a person under legal age, who violates any of the provisions of this chapter, or who makes a false statement concerning any material fact in submitting an application for a permit or license, shall be guilty of a serious misdemeanor. Any person under legal age who violates any of the provisions of this chapter shall upon conviction be guilty of a simple misdemeanor.

[C35, §1921-f91, 1921-f127; C39, §1921.091, 1921.132; C46, 50, 54, 58, 62, 66, 71, §123.91, 124.37; C73, 75, 77, 79, 81, §123.90]

**123.91 Second and subsequent conviction.**

Any person who has been convicted, in a criminal action, in any court of record, of a violation of a provision of this chapter, a provision of the prior laws of this state relating to intoxicating liquors, wine, or beer which was in force prior to the enactment of this chapter, or a provision of the laws of the United States or of any other state relating to intoxicating liquors, wine, or beer, and who is thereafter convicted of a subsequent criminal offense against any provision of this chapter is guilty of the following offenses:

1. For the second conviction, a serious misdemeanor.
2. For the third and each subsequent conviction, an aggravated misdemeanor.

[R60, §1561, 1563, 1577; C73, §1525, 1538, 1540, 1542, 1559; SS15, §2461-m; C24, 27, 31, 35, 39, §1964; C46, 50, 54, 58, 62, 66, 71, §126.19; C73, 75, 77, 79, 81, §123.91]

85 Acts, ch 32, §56

**123.92 Civil liability for dispensing or sale and service of beer, wine, or intoxicating liquor (Dramshop Act) — liability insurance — underage persons.**

1. a. Any person who is injured in person or property or means of support by an intoxicated person or resulting from the intoxication of a person, has a right of action for all damages actually sustained, severally or jointly, against any licensee or permittee, whether or not the license or permit was issued by the division or by the licensing authority of any other state, who sold and served any beer, wine, or intoxicating liquor to the intoxicated person when the licensee or permittee knew or should have known the person was intoxicated, or who sold to and served the person to a point where the licensee or permittee knew or should have known the person would become intoxicated.

b. If the injury was caused by an intoxicated person, a permittee or licensee may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the person.

2. a. Every liquor control licensee and class “B” beer permittee, except a class “E” liquor control licensee, shall furnish proof of financial responsibility by the existence of a liability insurance policy in an amount determined by the division. If an insurer provides dramshop liability insurance at a new location to a licensee or permittee who has a positive loss experience at other locations for which such insurance is provided by the insurer, and the insurer bases premium rates at the new location on the negative loss history of the previous

licensee or permittee at that location, the insurer shall examine and consider adjusting the premium for the new location not less than thirty months after the insurance is issued, based on the loss experience of the licensee or permittee at that location during that thirty-month period of time.

b. A dramshop liability insurance policy may be written on an aggregate limit basis.

c. The purpose of dramshop liability insurance is to provide protection for members of the public who experience damages as a result of licensees or permittees serving patrons beer, wine, or intoxicating liquor to a point that reaches or exceeds the standard set forth in law for liability. Minimum coverage requirements for such insurance are not for the purpose of making the insurance affordable for all licensees or permittees regardless of claims experience. A dramshop liability insurance policy obtained by a licensee or permittee shall meet the minimum insurance coverage requirements as determined by the division and is a mandatory condition for holding a license or permit.

3. a. Notwithstanding section 123.49, subsection 1, any person who is injured in person or property or means of support by an intoxicated person who is under legal age or resulting from the intoxication of a person who is under legal age, has a right of action for all damages actually sustained, severally or jointly, against a person who is not a licensee or permittee and who dispensed or gave any beer, wine, or intoxicating liquor to the intoxicated underage person when the nonlicensee or nonpermittee who dispensed or gave the beer, wine, or intoxicating liquor to the underage person knew or should have known the underage person was intoxicated, or who dispensed or gave beer, wine, or intoxicating liquor to the underage person to a point where the nonlicensee or nonpermittee knew or should have known that the underage person would become intoxicated.

b. If the injury was caused by an intoxicated person who is under legal age, a person who is not a licensee or permittee and who dispensed or gave beer, wine, or intoxicating liquor to the underage person may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the underage person.

c. For purposes of this subsection, “dispensed” or “gave” means the act of physically presenting a receptacle containing beer, wine, or intoxicating liquor to the underage person whose actions or intoxication results in the sustaining of damages by another person. However, a person who dispenses or gives beer, wine, or intoxicating liquor to an underage person shall only be liable for any damages if the person knew or should have known that the underage person was under legal age.

[C73, §1557; C97, §2418; C24, 27, 31, 35, 39, §2055; C46, 50, 54, 58, 62, §129.2; C66, 71, §123.95, 129.2; C73, 75, 77, 79, 81, §123.92]

85 Acts, ch 32, §57; 86 Acts, ch 1211, §12; 88 Acts, ch 1158, §30; 92 Acts, ch 1136, §1; 97 Acts, ch 126, §7; 2009 Acts, ch 128, §1; 2013 Acts, ch 124, §1

Referred to in §123.95  
Subsection 2 amended

### **123.93 Limitation of action.**

Within six months of the occurrence of an injury, the injured person shall give written notice to the licensee or permittee or such licensee’s or permittee’s insurance carrier of the person’s intention to bring an action under this section, indicating the time, place and circumstances causing the injury. Such six months’ period shall be extended if the injured party is incapacitated at the expiration thereof or unable, through reasonable diligence, to discover the name of the licensee, permittee, or person causing the injury or until such time as such incapacity is removed or such person has had a reasonable time to discover the name of the licensee, permittee or person causing the injury.

[C73, 75, 77, 79, 81, §123.93]

### **123.94 Inurement of action prohibited.**

No right of action for contribution or indemnity shall accrue to any insurer, guarantor or indemnitor of any intoxicated person for any act of such intoxicated person against any licensee or permittee as defined in this chapter.

[C73, 75, 77, 79, 81, §123.94]

**123.95 Premises must be licensed — exception as to conventions and social gatherings.**

1. A person shall not allow the dispensing or consumption of alcoholic liquor, except wines and beer, in any establishment unless the establishment is licensed under this chapter or except as otherwise provided in this section. The holder of an annual class “B” liquor control license or an annual class “C” liquor control license may act as the agent of a private social host for the purpose of providing and serving alcoholic liquor, wine, and beer as part of a food catering service for a private social gathering in a private place. The holder of an annual special class “C” liquor control license shall not act as the agent of a private social host for the purpose of providing and serving wine and beer as part of a food catering service for a private social gathering in a private place. The private social host or the licensee shall not solicit donations in payment for the food or alcoholic beverages from the guests, and the alcoholic beverages and food shall be served without cost to the guests. Section 123.92 does not apply to a liquor control licensee who acts in accordance with this section when the liquor control licensee is providing and serving food and alcoholic beverages as an agent of a private social host at a private social gathering in a private place which is not on the licensed premises.

2. An applicant for a class “B” liquor control license or class “C” liquor control license shall state on the application for the license that the licensee intends to engage in catering food and alcoholic beverages for private social gatherings and the catering privilege shall be noted on the license or permit. A licensee who engages in catering food and alcoholic beverages for private social gatherings shall maintain a record on the licensed premises which includes the name and address of the host of the private social gathering, and the date for which catering was provided. The record maintained pursuant to this section shall be open to inspection pursuant to section 123.30, subsection 1, during normal business hours of the licensee.

3. However, bona fide conventions or meetings may bring their own legal liquor onto the licensed premises if the liquor is served to delegates or guests without cost. All other provisions of this chapter shall be applicable to such premises. The provisions of this section shall have no application to private social gatherings of friends or relatives in a private home or private place which is not of a commercial nature nor where goods or services may be purchased or sold nor any charge or rent or other thing of value is exchanged for the use of such premises for any purpose other than for sleeping quarters.

[C66, 71, §123.96; C73, 75, 77, 79, 81, §123.95]

85 Acts, ch 32, §58; 93 Acts, ch 91, §20

Referred to in §7D.16, 123.49

**123.96** Repealed by 86 Acts, ch 1246, § 754.

**123.97 Covered into general fund.**

All revenues, except the portion of license fees remitted to the local authorities, arising under the operation of the provisions of this chapter shall become part of the state general fund.

[C66, 71, §123.101; C73, 75, 77, 79, 81, §123.97]

**123.98 Labeling shipments.**

It shall be unlawful for any common carrier or for any person to transport or convey by any means, whether for compensation or not, within this state, any intoxicating liquors, unless the vessel or other package containing such liquors shall be plainly and correctly identified, showing the quantity and kind of liquors contained therein, the name of the party to whom they are to be delivered, and the name of the shipper, or unless such information is shown on a bill of lading or other document accompanying the shipment. No person shall be authorized to receive or keep such liquors unless the same be marked or labeled as required by this section. The violation of any provision of this section by any common carrier, or any agent or employee of any carrier, or by any person, shall be punished under the provisions of this chapter.

Liquors conveyed, carried, transported, or delivered in violation of this section, whether in

the hands of the carrier or someone to whom they shall have been delivered, shall be subject to seizure and condemnation, as liquors kept for illegal sale.

[C97, §2421; C24, 27, 31, 35, 39, §1936, 1938; C46, 50, 54, 58, 62, 66, 71, §125.16, 125.18; C73, 75, 77, 79, 81, §123.98]

#### **123.99 False statements.**

If any person, for the purpose of procuring the shipment, transportation, or conveyance of any intoxicating liquor, wine, or beer within this state, shall make to any person, company, corporation, or common carrier, or to any agent thereof, any false statements as to the character or contents of any box, barrel, or other vessel or package containing such liquor, wine, or beer; or shall refuse to give correct and truthful information as to the contents of any such box, barrel, or other vessel or package so sought to be transported or conveyed; or shall falsely mark, brand, or label such box, barrel, or other vessel or package in order to conceal the fact that the same contains intoxicating liquor, wine, or beer; or shall by any device or concealment procure or attempt to procure the conveyance or transportation of such liquor, wine, or beer as herein prohibited, the person shall be guilty of a simple misdemeanor.

[C97, §2420; C24, 27, 31, 35, 39, §1934; C46, 50, 54, 58, 62, 66, 71, §125.14; C73, 75, 77, 79, 81, §123.99]

2013 Acts, ch 35, §25

Section amended

#### **123.100 Packages in transit.**

Any peace officer of the county under process or warrant to the peace officer directed shall have the right to open any box, barrel, or other vessel or package for examination, if the peace officer has reasonable ground for believing that it contains intoxicating liquor, wine, or beer, either before or while the same is being so transported or conveyed.

[C97, §2420; C24, 27, 31, 35, 39, §1935; C46, 50, 54, 58, 62, 66, 71, §125.15; C73, 75, 77, 79, 81, §123.100]

2013 Acts, ch 35, §26

Section amended

#### **123.101 Record of shipments.**

It shall be the duty of all common carriers, or corporations, or persons who shall for hire carry any intoxicating liquor, wine, or beer into the state, or from one point to another within the state, for the purpose of delivery, and who shall deliver such intoxicating liquor, wine, or beer to any person, company, or corporation, to maintain a proper record of the name of the consignor of each shipment of intoxicating liquor, wine, or beer from where shipped, the date of arrival, the quantity and kind of intoxicating liquor, wine, or beer, so far as disclosed by lettering on the package or by the carrier's records, and to whom and where consigned, and the date delivered.

[SS15, §2421-b; C24, 27, 31, 35, 39, §1940; C46, 50, 54, 58, 62, 66, 71, §125.20; C73, 75, 77, 79, 81, §123.101]

2013 Acts, ch 35, §27

Referred to in §123.102

Section amended

#### **123.102 Inspection of shipping records.**

The records required by section 123.101 shall, during business hours, be open to inspection by any peace or law enforcing officer. It is a simple misdemeanor to refuse such inspection.

[SS15, §2421-c, -d; C24, 27, 31, 35, 39, §1941; C46, 50, 54, 58, 62, 66, 71, §125.21; C73, 75, 77, 79, 81, §123.102]

2013 Acts, ch 35, §28

Section amended

#### **123.103 Record and certification upon delivery.**

The full name and residence or place of business of the consignee of a shipment billed in whole or in part as intoxicating liquor, wine, or beer, shall be properly recorded at the time

of delivery and the consignee shall certify that the intoxicating liquor, wine, or beer is for the consignee's own lawful purposes.

[SS15, §2421-b; C24, 27, 31, 35, 39, §1942; C46, 50, 54, 58, 62, 66, 71, §125.22; C73, 75, 77, 79, 81, §123.103]

2013 Acts, ch 35, §29

Referred to in §123.104

Section amended

#### **123.104 Unlawful delivery.**

It is a simple misdemeanor for any corporation, common carrier, person, or any agent or employee thereof:

1. To deliver any intoxicating liquor, wine, or beer to any person other than to the consignee.

2. To deliver any intoxicating liquor, wine, or beer without having the same properly recorded as provided in section 123.103.

3. To deliver any intoxicating liquor, wine, or beer where there is reasonable ground to believe that such intoxicating liquor, wine, or beer is intended for unlawful use.

[SS15, §2421-c1; C24, 27, 31, 35, 39, §1943; C46, 50, 54, 58, 62, 66, 71, §125.23; C73, 75, 77, 79, 81, §123.104]

2013 Acts, ch 35, §30

Section amended

#### **123.105 Immunity from damage.**

In no case shall any corporation, common carrier, person, or the agent thereof, be liable in damages for complying with any requirements of this chapter.

[SS15, §2421-c; C24, 27, 31, 35, 39, §1944; C46, 50, 54, 58, 62, 66, 71, §125.24; C73, 75, 77, 79, 81, §123.105]

#### **123.106 Federal statutes.**

The requirements of this chapter relative to the shipment and delivery of intoxicating liquor, wine, or beer and the records to be kept thereof shall be construed in harmony with federal statutes relating to interstate commerce in such liquor, wine, or beer.

[SS15, §2421-e; C24, 27, 31, 35, 39, §1945; C46, 50, 54, 58, 62, 66, 71, §125.25; C73, 75, 77, 79, 81, §123.106]

2013 Acts, ch 35, §31

Section amended

#### **123.107 Unnecessary allegations.**

1. In any indictment or information under this chapter, it shall not be necessary:

a. To set out exactly the kind or quantity of intoxicating liquor, wine, or beer manufactured, sold, given in evasion of the statute, or kept for sale.

b. To set out the exact time of manufacture, sale, gift, or keeping for sale.

c. To negative any exceptions contained in the statute creating or defining the offense, which may be proper ground of defense.

2. But proof of the violation by the accused of any provision of this chapter, the substance of which violation is briefly set forth, within the time mentioned in said indictment or information, shall be sufficient to convict such person.

[R60, §1569; C73, §1549; C97, §2424; C24, 27, 31, 35, 39, §1952; C46, 50, 54, 58, 62, 66, 71, §126.7; C73, 75, 77, 79, 81, §123.107]

2009 Acts, ch 41, §263; 2013 Acts, ch 35, §32

Subsection 1, paragraph a amended

#### **123.108 Second conviction defined.**

The second or subsequent convictions provided for in this chapter shall be convictions on separate informations or indictments, and, unless shown in the information or indictment, the charge shall be held to be for a first offense.

[R60, §1562; C73, §1540; C97, §2425; C24, 27, 31, 35, 39, §1955; C46, 50, 54, 58, 62, 66, 71, §126.10; C73, 75, 77, 79, 81, §123.108]

**123.109 Record of conviction.**

On the trial of any cause in which the accused is charged with a second or subsequent offense, a duly authenticated copy of the former judgment in any court in which such conviction was had shall be competent evidence of such former conviction.

[SS15, §2461-n; C24, 27, 31, 35, 39, §1956; C46, 50, 54, 58, 62, 66, 71, §126.11; C73, 75, 77, 79, 81, §123.109]

**123.110 Proof of sale.**

It shall not be necessary in every case to prove payment in order to prove a sale within the meaning and intent of this chapter.

[R60, §1569; C73, §1549; C97, §2424; C24, 27, 31, 35, 39, §1957; C46, 50, 54, 58, 62, 66, 71, §126.12; C73, 75, 77, 79, 81, §123.110]

**123.111 Purchaser as witness.**

The person purchasing any intoxicating liquor, wine, or beer sold in violation of this chapter shall in all cases be a competent witness to prove such sale.

[R60, §1569; C73, §1549; C97, §2424; C24, 27, 31, 35, 39, §1958; C46, 50, 54, 58, 62, 66, 71, §126.13; C73, 75, 77, 79, 81, §123.111]

2013 Acts, ch 35, §33

Section amended

**123.112 Peace officer as witness.**

Every peace officer shall give evidence, when called upon, of any facts within the peace officer's knowledge tending to prove a violation of the provisions of this chapter.

[R60, §1578; C73, §1551; C97, §2428; S13, §2428; C24, 27, 31, 35, 39, §1959; C46, 50, 54, 58, 62, 66, 71, §126.14; C73, 75, 77, 79, 81, §123.112]

**123.113 Judgment lien.**

For all fines and costs assessed or judgments rendered of any kind against any person for a violation of any provision of this chapter, or costs paid by the county on account of such violation, the personal and real property of the violator, whether exempt or not, except the homestead, as well as the premises and property, personal and real, occupied and used for the unlawful purpose, with the knowledge of the owner or the owner's agent, by the violator, shall be liable, and the same shall be a lien on such real estate until paid.

[R60, §1579; C73, §1552, 1558; C97, §2422; C24, 27, 31, 35, 39, §1960; C46, 50, 54, 58, 62, 66, 71, §126.15; C73, 75, 77, 79, 81, §123.113]

**123.114 Enforcement of lien.**

Costs paid by the county for the prosecution of actions or proceedings, civil or criminal, under this chapter, as well as the fines inflicted or judgments rendered, may be enforced against the property upon which the lien attaches by execution, or by action against the owner of the property to subject it to the payment thereof.

[C73, §1558; C97, §2422; C24, 27, 31, 35, 39, §1961; C46, 50, 54, 58, 62, 66, 71, §126.16; C73, 75, 77, 79, 81, §123.114]

**123.115 Defense.**

In any prosecution under this chapter for the unlawful transportation of intoxicating liquor, wine, or beer it shall be a defense that the character and contents of the shipment or thing transported were not known to the accused or to the accused's agent or employee.

[C97, §2419; C24, §2059; C27, 31, 35, §1945-a2; C39, §1945.3; C46, 50, 54, 58, 62, 66, 71, §125.28; C73, 75, 77, 79, 81, §123.115]

2013 Acts, ch 35, §34

Section amended

**123.116 Right to receive liquor, wine, or beer.**

The consignee of intoxicating liquor, wine, or beer shall, on demand of the carrier transporting such liquor, wine, or beer, furnish the carrier, at the place of delivery, with

legal proof of the consignee's legal right to receive such liquor, wine, or beer at the time of delivery, and until such proof is furnished the carrier shall be under no legal obligation to make delivery nor be liable for failure to deliver.

[C24, §2061; C27, 31, 35, §1945-a4; C39, §1945.5; C46, 50, 54, 58, 62, 66, 71, §125.30; C73, 75, 77, 79, 81, §123.116]

2013 Acts, ch 35, §35  
Section amended

#### **123.117 Delivery to sheriff.**

If such proof is not furnished the carrier within ten days after demand, the carrier may deliver such liquor, wine, or beer to the sheriff of the county embracing the place of delivery, and such delivery shall absolve the carrier from all liability pertaining to such liquor, wine, or beer.

[C24, §2062; C27, 31, 35, §1945-a5; C39, §1945.6; C46, 50, 54, 58, 62, 66, 71, §125.31; C73, 75, 77, 79, 81, §123.117]

2013 Acts, ch 35, §36  
Referred to in §331.653  
Section amended

#### **123.118 Destruction.**

The sheriff shall, on receipt of such liquor, wine, or beer from the carrier, report the receipt to the district court of the sheriff's county, and the court shall proceed to summarily enter an order for the destruction or forfeiture to the state of such liquor, wine, or beer.

[C24, §2063; C27, 31, 35, §1945-a6; C39, §1945.7; C46, 50, 54, 58, 62, 66, 71, §125.32; C73, 75, 77, 79, 81, §123.118]

2013 Acts, ch 35, §37  
Referred to in §331.653  
Section amended

#### **123.119 Evidence.**

In all actions, civil or criminal, under the provisions of this chapter, the finding of intoxicating liquors or of instruments or utensils used in the manufacture of intoxicating liquors, or materials which are being used, or are intended to be used in the manufacture of intoxicating liquors, in the possession of or under the control of any person, under and by authority of a search warrant or other process of law, and which shall have been finally adjudicated and declared forfeited by the court, shall be competent evidence of maintaining a nuisance or bootlegging, or of illegal transportation of intoxicating liquors, as the case may be, by such person.

[C27, 31, 35, §1966-a1; C39, §1966.1; C46, 50, 54, 58, 62, 66, 71, §126.23; C73, 75, 77, 79, 81, §123.119]

#### **123.120 Attempt to destroy.**

The destruction of or attempt to destroy any liquid by any person while in the presence of peace officers or while a property is being searched by a peace officer, shall be competent evidence that such liquid is intoxicating liquor, wine, or beer and intended for unlawful purposes.

[C27, 31, 35, §1966-a3; C39, §1966.3; C46, 50, 54, 58, 62, 66, 71, §126.25; C73, 75, 77, 79, 81, §123.120]

2013 Acts, ch 35, §38  
Section amended

#### **123.121 Venue.**

1. In any prosecution under this chapter for the unlawful sale of alcoholic liquor, wine, or beer, a sale of alcoholic liquor, wine, or beer which requires a shipment or delivery of the liquor, wine, or beer, shall be deemed to be made in the county in which the delivery is made by the carrier to the consignee, or the consignee's agent or employee.

2. In any prosecution under this chapter for the unlawful transportation of intoxicating liquor, wine, or beer, the offense shall be held to have been committed in any county in which

such liquor, wine, or beer is received for transportation, through which it is transported, or in which it is delivered.

[C97, §2419; C24, §1928, 2060; C27, 31, 35, §1928, 1945-a3; C39, §1928, 1945.4; C46, 50, 54, 58, 62, 66, 71, §125.8, 125.29; C73, 75, 77, 79, 81, §123.121]

85 Acts, ch 32, §60; 2013 Acts, ch 35, §39

Unnumbered paragraph 1 editorially designated as subsection 1

Unnumbered paragraph 2 amended and editorially designated as subsection 2

## DIVISION II

### BEER PROVISIONS

#### **123.122 Permit or license required.**

A person shall not manufacture for sale or sell beer at wholesale or retail unless a permit is first obtained as provided in this division or, a liquor control license authorizing the retail sale of beer is first obtained as provided in division I of this chapter. A liquor control license holder is not required to hold a separate class “B” beer permit.

[C35, §1921-f96; C39, §1921.095; C46, 50, 54, 58, 62, 66, 71, §124.1; C73, 75, 77, 79, 81, §123.122]

88 Acts, ch 1088, §7

Charity beer, spirits, and wine auction permits, see §123.173A

Section not amended; footnote revised

#### **123.123 Effect on liquor control licensees.**

All applicable provisions of this division relating to class “B” beer permits shall apply to liquor control licensees in the purchasing, storage, handling, serving, and sale of beer.

[C73, 75, 77, 79, 81, §123.123]

#### **123.124 Permits — classes.**

Permits for the manufacture and sale, or sale of beer shall be divided into six classes, known as class “A”, special class “A”, class “AA”, special class “AA”, class “B”, or class “C” permits. A class “A” permit allows the holder to manufacture and sell beer at wholesale. A holder of a special class “A” permit may only manufacture beer to be consumed on the licensed premises for which the person also holds a class “C” liquor control license or class “B” beer permit and to be sold to a class “A” permittee for resale purposes. A class “AA” permit allows the holder to manufacture and sell high alcoholic content beer at wholesale. A holder of a special class “AA” permit may only manufacture high alcoholic content beer to be consumed on the licensed premises for which the person also holds a class “C” liquor control license or class “B” beer permit and to be sold to a class “AA” permittee for resale purposes. A class “B” permit allows the holder to sell beer to consumers at retail for consumption on or off the premises. A class “C” permit allows the holder to sell beer to consumers at retail for consumption off the premises.

[C35, §1921-f98; C39, §1921.097; C46, 50, 54, 58, 62, 66, 71, §124.3; C73, 75, 77, 79, 81, §123.124]

88 Acts, ch 1241, §15; 89 Acts, ch 221, §1; 92 Acts, ch 1003, §1; 94 Acts, ch 1017, §6; 2010 Acts, ch 1031, §89, 96

Referred to in §123.45

#### **123.125 Issuance of permits.**

The administrator shall issue class “A”, special class “A”, class “AA”, special class “AA”, class “B”, and class “C” beer permits and may suspend or revoke permits for cause as provided in this chapter.

[C35, §1921-f98; C39, §1921.097; C46, 50, 54, 58, 62, 66, 71, §124.3; C73, 75, 77, 79, 81, §123.125]

89 Acts, ch 221, §2; 2010 Acts, ch 1031, §90, 96

**123.126 High alcoholic content beer — applicability.**

Unless otherwise provided by this chapter, the provisions of this chapter applicable to beer shall also apply to high alcoholic content beer.

2010 Acts, ch 1189, §42, 43

Section takes effect April 29, 2010, and applies retroactively to March 10, 2010; 2010 Acts, ch 1189, §43

**123.127 Class “A” or “AA” and special class “A” or “AA” applications.**

1. A class “A” or class “AA” permit shall be issued by the administrator to any person who:

- a. Submits an application electronically, or in a manner prescribed by the administrator, which shall state under oath:

- (1) The name and place of residence of the applicant and the length of time the applicant has lived at such place of residence.

- (2) That the applicant is a citizen of the state of Iowa.

- (3) That the applicant is a person of good moral character as defined by this chapter.

- (4) The location of the premises where the applicant intends to operate.

- (5) The name of the owner of the premises and if such owner is not the applicant, that such applicant is the actual lessee of the premises.

- b. Establishes:

- (1) That the applicant is a person of good moral character as defined by this chapter.

- (2) That the premises where the applicant intends to operate conform to all laws and health and fire regulations applicable thereto.

- c. Furnishes a bond in a manner prescribed by the administrator, with good and sufficient sureties to be approved by the administrator conditioned upon the faithful observance of this chapter, in the sum of five thousand dollars, payable to the state.

- d. Gives consent to a person, pursuant to section 123.30, subsection 1, to enter upon the premises without a warrant during the business hours of the permittee to inspect for violations of the provisions of this chapter or ordinances and regulations that local authorities may adopt.

2. An applicant for a special class “A” or special class “AA” permit shall comply with the requirements for a class “A” or class “AA” permit, as applicable, and shall also state on the application that the applicant holds or has applied for a class “C” liquor control license or class “B” beer permit.

[C35, §1921-f102; C39, §1921.103; C46, 50, 54, 58, 62, 66, §124.8; C71, §124.8, 124.41; C73, 75, 77, 79, 81, §123.127]

88 Acts, ch 1241, §16; 89 Acts, ch 221, §3; 2003 Acts, ch 143, §6, 17; 2009 Acts, ch 41, §177; 2010 Acts, ch 1031, §91, 92, 96; 2013 Acts, ch 35, §8, 9

Referred to in §123.128, 123.129

Subsection 1, paragraph a, unnumbered paragraph 1 amended

Subsection 1, paragraph c amended

**123.128 Class “B” application.**

A class “B” permit shall be issued by the administrator to any person who:

1. Submits an application electronically, or in a manner prescribed by the administrator, which shall state under oath:

- a. All the information required of a class “A” applicant by section 123.127, subsection 1, paragraph “a”.

- b. That the premises for which the permit is sought is and will continue to be equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and in areas where such business is permitted by any valid zoning ordinance or will be so permitted on the effective date of the permit.

2. Fulfills the requirements of section 123.127, subsection 1, paragraph “b”, relating to class “A” applicants.

3. Consents to inspection as required in section 123.30, subsection 1.

[C35, §1921-f103; C39, §1921.104; C46, 50, 54, 58, 62, 66, 71, §124.9; C73, 75, 77, 79, 81, §123.128]

88 Acts, ch 1088, §8; 88 Acts, ch 1241, §17; 2009 Acts, ch 41, §178, 179; 2013 Acts, ch 35, §10

Referred to in §123.32

Subsection 1, unnumbered paragraph 1 amended

#### **123.129 Class “C” application.**

1. A class “C” permit shall not be issued to any person except the owner or proprietor of a grocery store or pharmacy.

2. A class “C” permit shall be issued by the administrator to any person who is the owner or proprietor of a grocery store or pharmacy, who:

a. Submits an application electronically, or in a manner prescribed by the administrator, which shall state under oath all the information required of a class “A” applicant by section 123.127, subsection 1, paragraph “a”.

b. Establishes that the person is of good moral character as defined by this chapter.

c. Consents to inspection as required in section 123.30, subsection 1.

d. States the number of square feet of interior floor space which comprises the retail sales area of the premises for which the permit is sought.

[C35, §1921-f104; C39, §1921.105; C46, 50, 54, 58, 62, 66, 71, §124.10; C73, 75, 77, 79, 81, §123.129]

88 Acts, ch 1088, §9; 88 Acts, ch 1241, §18; 2009 Acts, ch 41, §180; 2009 Acts, ch 133, §193; 2011 Acts, ch 17, §12; 2013 Acts, ch 35, §11

Referred to in §123.32

Subsection 2, paragraph a amended

#### **123.130 Authority under class “A”, class “AA”, special class “A”, and special class “AA” permits.**

1. Any person holding a class “A” permit issued by the division shall be authorized to manufacture and sell, or sell at wholesale, beer for consumption off the premises, such sales within the state to be made only to persons holding subsisting class “A”, “B”, or “C” permits, or liquor control licenses issued in accordance with the provisions of this chapter. A class “A”, class “AA”, or special class “AA” permit does not grant authority to manufacture wine as defined in section 123.3, subsection 47.

2. All class “A” premises shall be located within the state. All beer received by the holder of a class “A” permit from the holder of a certificate of compliance before being resold must first come to rest on the premises licensed by the class “A” permit holder, must be inventoried, and is subject to the barrel tax when resold as provided in section 123.136. A class “A” permittee shall not store beer overnight except on premises licensed under a class “A” permit.

3. A person who holds a special class “A” permit for the same location at which the person holds a class “C” liquor control license or class “B” beer permit may manufacture and sell beer to be consumed on the premises and may sell beer to a class “A” permittee for resale purposes.

[C35, §1921-f105; C39, §1921.106; C46, 50, 54, 58, 62, 66, 71, §124.11; C73, 75, 77, 79, 81, §123.130]

88 Acts, ch 1241, §19; 89 Acts, ch 221, §4; 92 Acts, ch 1003, §2; 2010 Acts, ch 1031, §93, 96

#### **123.131 Authority under class “B” permit.**

Subject to the provisions of this chapter, any person holding a class “B” permit shall be authorized to sell beer for consumption on or off the premises. However, unless otherwise provided in this chapter, no sale of beer shall be made for consumption on the premises unless the place where such service is made is equipped with tables and seats sufficient to accommodate not less than twenty-five persons at one time.

[C35, §1921-f106; C39, §1921.107; C46, 50, 54, 58, 62, 66, 71, §124.12; C73, 75, 77, 79, 81, §123.131]

**123.132 Authority under class “C” permit.**

The holder of a class “C” permit shall be allowed to sell beer to consumers at retail for consumption off the premises. The sales made pursuant to this section shall be made in original containers only. The holder of a class “C” permit or the permittee’s agents or employees shall not sell beer to other retail license or permit holders knowing or having reasonable cause to believe that the beer will be resold in another licensed establishment.

[C35, §1921-f107; C39, §1921.108; C46, 50, 54, 58, 62, 66, 71, §124.13; C73, 75, 77, 79, 81, §123.132]

94 Acts, ch 1017, §7

**123.133 Sale on trains — bond.** Repealed by 2011 Acts, ch 17, § 16.**123.134 Beer fees — Sunday sales.**

1. The annual permit fee for a class “A” or special class “A” permit is two hundred fifty dollars.

2. The annual permit fee for a class “AA” or special class “AA” permit is five hundred dollars.

3. The annual permit fee for a class “B” permit shall be graduated according to population as follows:

a. For premises located within the corporate limits of cities with a population of ten thousand and over, three hundred dollars.

b. For premises located within the corporate limits of cities with a population of at least fifteen hundred but less than ten thousand, two hundred dollars.

c. For premises located within the corporate limits of cities with a population of under fifteen hundred, one hundred dollars.

d. For premises located outside the corporate limits of any city, a sum equal to that charged in the incorporated city located nearest the premises to be operated under the permit, and in case there is doubt as to which of two or more differing corporate limits is the nearest, the permit fee which is the largest shall prevail. However, if the premises are located in an unincorporated town, for purposes of this subsection the unincorporated town shall be treated as if it is a city.

4. The annual permit fee for a class “C” permit shall be graduated on the basis of the amount of interior floor space which comprises the retail sales area of the premises covered by the permit, as follows:

a. Up to one thousand five hundred square feet, the sum of seventy-five dollars.

b. Over one thousand five hundred square feet and up to two thousand square feet, the sum of one hundred dollars.

c. Over two thousand and up to five thousand square feet, the sum of two hundred dollars.

d. Over five thousand square feet, the sum of three hundred dollars.

5. Any club, hotel, motel, or commercial establishment holding a class “B” beer permit, subject to the provisions of section 123.49, subsection 2, paragraph “b”, may apply for and receive permission to sell and dispense beer to patrons on Sunday for consumption on or off the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday. Any class “C” beer permittee may sell beer for consumption off the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday. For the privilege of selling beer on Sunday the beer permit fees of the applicant shall be increased by twenty percent of the regular fees prescribed for the permit pursuant to this section and the privilege shall be noted on the beer permit.

[C35, §1921-f117; C39, §1921.119; C46, 50, 54, 58, 62, 66, 71, §124.24; C73, 75, 77, 79, 81, §123.134]

84 Acts, ch 1275, §5; 87 Acts, ch 22, §10; 88 Acts, ch 1241, §20; 89 Acts, ch 221, §5; 91 Acts, ch 245, §4; 2010 Acts, ch 1031, §94, 96; 2011 Acts, ch 17, §13

Referred to in §123.34, 123.49, 123.143, 123.150

**123.135 Certificate of compliance — civil penalty.**

1. A manufacturer, brewer, bottler, importer, or vendor of beer or any agent thereof

desiring to ship or sell beer, or have beer brought into this state for resale by a class “A” permittee shall first make application for and be issued a brewer’s certificate of compliance by the administrator for that purpose. The certificate of compliance expires at the end of one year from the date of issuance and shall be renewed for a like period upon application to the administrator unless otherwise revoked for cause. Each application for a certificate of compliance or renewal of a certificate shall be submitted electronically, or in a manner prescribed by the administrator, and shall be accompanied by a fee of five hundred dollars payable to the division. Each holder of a certificate of compliance shall furnish the information in a manner the administrator requires.

2. At the time of applying for a certificate of compliance, each applicant shall file with the division a list of all class “A” permittees with whom it intends to do business and shall designate the geographic area in which its products are to be distributed by such permittee. The listing of class “A” permittees and geographic area as filed with the division may be amended from time to time by the holder of a certificate of compliance.

3. All class “A” permit holders shall sell only those brands of beer which are manufactured, brewed, bottled, shipped, or imported by a person holding a current certificate of compliance. Any employee or agent working for or representing the holder of a certificate of compliance within this state shall submit electronically, or in a manner prescribed by the administrator, the employee’s or agent’s name and address with the division.

4. It shall be unlawful for any holder of a certificate of compliance or the holder’s agent, or any class “A” permit holder or the permit holder’s agent, to grant to any retail beer permit holder, directly or indirectly, any rebates, free goods, or quantity discounts on beer which are not uniformly offered to all retail permittees.

5. Notwithstanding any other penalties provided by this chapter, any holder of a certificate of compliance or any class “A” permit holder who violates this chapter or the rules adopted pursuant to this chapter is subject to a civil penalty not to exceed one thousand dollars or suspension of the holder’s certificate or permit for a period not to exceed one year, or both such civil penalty and suspension. Civil penalties imposed under this section shall be collected and retained by the division.

[C73, 75, 77, 79, 81, §123.135]

89 Acts, ch 221, §6; 89 Acts, ch 252, §3; 2010 Acts, ch 1031, §95, 96; 2012 Acts, ch 1021, §38; 2013 Acts, ch 35, §12

Subsections 1 and 3 amended

### **123.136 Barrel tax.**

In addition to the annual permit fee to be paid by all class “A” permittees under this chapter there shall be levied and collected from the permittees on all beer manufactured for sale or sold in this state at wholesale and on all beer imported into this state for sale at wholesale and sold in this state at wholesale, and from special class “A” permittees on all beer manufactured for consumption on the premises, a tax of five and eighty-nine hundredths dollars for every barrel containing thirty-one gallons, and at a like rate for any other quantity or for the fractional part of a barrel. However, no tax shall be levied or collected on beer shipped outside this state by a class “A” permittee or sold by one class “A” permittee to another class “A” permittee.

All revenue derived from the barrel tax shall accrue to the state general fund.

All of the provisions of this chapter relating to the administration of the barrel tax on beer shall apply to this section.

[C35, §1921-f118; C39, §1921.120; C46, 50, 54, 58, 62, 66, 71, §124.25; C73, 75, 77, 79, 81, §123.136]

86 Acts, ch 1246, §751; 89 Acts, ch 221, §7

Referred to in §123.130, 123.137, 123.142

### **123.137 Report of barrel sales — penalty.**

1. A person holding a class “A” or special class “A” permit shall on or before the tenth day of each calendar month commencing on the tenth day of the calendar month following the month in which the person is issued a permit, make a report under oath to the division

electronically, or in a manner prescribed by the administrator, showing the exact number of barrels of beer, or fractional parts of barrels, sold by the permit holder during the preceding calendar month. The report shall also state information the administrator requires, and permit holders shall at the time of filing a report pay to the division the amount of tax due at the rate fixed in section 123.136.

2. A penalty of ten percent of the amount of the tax shall be added thereto if the report is not filed and the tax paid within the time required by this section.

[C35, §1921-f119; C39, §1921.121; C46, 50, 54, 58, 62, 66, 71, §124.26; C73, 75, 77, 79, 81, §123.137]

89 Acts, ch 221, §8; 2013 Acts, ch 35, §13

Unnumbered paragraph 1 amended and editorially designated as subsection 1

Unnumbered paragraph 2 editorially designated as subsection 2

### **123.138 Records required — keg identification sticker.**

1. Each class “A” or special class “A” permittee shall keep proper records showing the amount of beer sold by the permittee, and these records shall be at all times open to inspection by the administrator and to other persons pursuant to section 123.30, subsection 1. Each class “B” permittee, class “C” permittee, and retail liquor control licensee shall keep proper records showing each purchase of beer made by the permittee and licensee, and the date and the amount of each purchase and the name of the person from whom each purchase was made, which records shall be open to inspection pursuant to section 123.30, subsection 1, during normal business hours of the permittee or licensee.

2. a. Each class “B”, “C”, or special class “C” liquor control licensee and class “B” or “C” beer permittee who sells beer for off-premises consumption shall affix to each keg of beer an identification sticker provided by the administrator. The sticker provided shall allow for its full removal when common external keg cleaning procedures are performed. For the purposes of this subsection, “keg” means all durable and disposable containers with a liquid capacity of five gallons or more. Each class “B”, “C”, or special class “C” liquor control licensee and class “B” or “C” beer permittee shall also keep a record of the identification sticker number of each keg of beer sold by the licensee or permittee with the name and address of the purchaser and the number of the purchaser’s driver’s license, nonoperator’s identification card, or military identification card, if the military identification card contains a picture and signature. This information shall be retained by the licensee or permittee for a minimum of ninety days. The records kept pursuant to this subsection shall be available for inspection by any law enforcement officer during normal business hours.

b. (1) The division shall provide the keg identification stickers described in paragraph “a” and shall, prior to utilizing a sticker, notify licensed brewers and licensed beer importers of the type of sticker to be utilized. Each sticker shall contain a number and the following statement:

It is unlawful to sell, give, or otherwise supply any alcoholic beverage, wine, or beer to any person under legal age. Any person who defaces this sticker shall be guilty of criminal mischief punishable pursuant to section 716.6 and shall cause the forfeiture of any deposit, if applicable.

(2) The identification sticker shall be placed on the keg at the time of retail sale. The licensee or permittee shall purchase the stickers referred to in this subsection from the division and shall remit to the division deposits forfeited pursuant to this lettered paragraph due to defacement. The cost of the stickers to licensees and permittees shall not exceed the division’s cost of producing and distributing the stickers. The moneys collected by the division relating to the sale of stickers and forfeited deposits shall be credited to the beer and liquor control fund.

c. The provisions of this subsection shall be implemented uniformly throughout the state. The provisions of this subsection shall preempt any local county or municipal ordinance regarding keg registration or the sale of beer in kegs. In addition, a county or municipality

shall not adopt or continue in effect an ordinance regarding keg registration or the sale of beer in kegs.

d. The division shall establish by rule procedures relating to the forfeiture and remittance of deposits pursuant to paragraph “b”.

[C35, §1921-f120; C39, §1921.122; C46, 50, 54, 58, 62, 66, 71, §124.27; C73, 75, 77, 79, 81, §123.138]

88 Acts, ch 1241, §21; 89 Acts, ch 221, §9; 2007 Acts, ch 46, §2; 2013 Acts, ch 35, §40

Referred to in §123.50

Subsection 1 amended

**123.139 Separate locations — class “A”, special class “A”.**

A class “A” or special class “A” permittee having more than one place of business is required to have a separate permit for each separate place of business maintained by the permittee where beer is stored, warehoused, or sold.

[C35, §1921-f121; C39, §1921.123; C46, 50, 54, 58, 62, 66, 71, §124.28; C73, 75, 77, 79, 81, §123.139]

89 Acts, ch 221, §10

**123.140 Separate locations — class “B” or “C”.**

Every person holding a class “B” or class “C” permit having more than one place of business where such beer is sold which places do not constitute a single premises within the meaning of section 123.3, subsection 25 shall be required to have a separate license for each separate place of business, except as otherwise provided by this chapter.

[C35, §1921-f122; C39, §1921.124; C46, 50, 54, 58, 62, 66, 71, §124.29; C73, 75, 77, 79, 81, §123.140]

**123.141 Keeping liquor where beer is sold.**

No alcoholic liquor for beverage purposes shall be used, or kept for any purpose in the place of business of class “B” permittees, or on the premises of such class “B” permittees, at any time. A violation of any provision of this section shall be grounds for suspension or revocation of the permit pursuant to section 123.50, subsection 3. This section shall not apply in any manner or in any way to the premises of any hotel or motel for which a class “B” permit has been issued, other than that part of such premises regularly used by the hotel or motel for the principal purpose of selling beer or food to the general public; or to drug stores regularly and continuously employing a registered pharmacist, from having alcohol in stock for medicinal and compounding purposes.

[C35, §1921-g4; C39, §1921.126; C46, 50, 54, 58, 62, 66, 71, §124.31; C73, 75, 77, 79, 81, §123.141]

2011 Acts, ch 17, §14

**123.142 Unlawful sale and importation.**

It is unlawful for the holder of a class “B” or class “C” permit issued under this chapter to sell beer, except beer brewed on the premises covered by a special class “A” permit or beer purchased from a person holding a class “A” permit issued in accordance with this chapter, and on which the tax provided in section 123.136 has been paid. However, this section does not apply to class “D” liquor control licensees as provided in this chapter.

It shall be unlawful for any person not holding a class “A” permit to import beer into this state for the purpose of sale or resale.

[C35, §1921-f124; C39, §1921.127; C46, 50, 54, 58, 62, 66, 71, §124.32; C73, 75, 77, 79, 81, §123.142]

89 Acts, ch 221, §11; 2011 Acts, ch 17, §15

**123.143 Distribution of funds.**

The revenues obtained from permit fees and the barrel tax collected under the provisions of this chapter shall be distributed as follows:

1. All retail beer permit fees collected by any local authority at the time application for the permit is made shall be retained by the local authority. A certified copy of the receipt for

the permit fee shall be submitted to the division with the application and the local authority shall be notified at the time the permit is issued. Those amounts collected for the privilege authorized under section 123.134, subsection 5, shall be deposited in the beer and liquor control fund.

2. All permit fees and taxes collected by the division under this division shall accrue to the state general fund, except as otherwise provided.

3. Barrel tax revenues collected on beer manufactured in this state from a class “A” permittee which owns and operates a brewery located in Iowa shall be credited to the barrel tax fund hereby created in the office of the treasurer of state. Moneys deposited in the barrel tax fund shall not revert to the general fund of the state without a specific appropriation by the general assembly. Moneys in the barrel tax fund are appropriated to the economic development authority for purposes of section 15E.117.

[C35, §1921-f125; C39, §1921.128; C46, 50, 54, 58, 62, 66, 71, §124.33; C73, 75, 77, 79, 81, §123.143]

83 Acts, ch 123, §60, 209; 84 Acts, ch 1312, §7; 85 Acts, ch 198, §2; 87 Acts, ch 95, §1; 2010 Acts, ch 1188, §29; 2011 Acts, ch 118, §85, 89

Referred to in §15E.117, 125.59, 331.427

#### **123.144 Bottling beer.**

1. No person shall bottle beer within the state of Iowa, except class “A”, special class “A”, class “AA”, and special class “AA” permittees who have complete equipment for bottling beer and who have received the approval of the local board of health as to sanitation. It shall be the duty of local boards of health to inspect the premises and equipment of class “A”, special class “A”, class “AA”, and special class “AA” permittees who desire to bottle beer.

2. However, any person of legal age may bottle beer for personal use and if it is not sold or offered in exchange for any type of consideration. In addition, such beer may be removed from the premises where it was bottled for personal use if the beer is not sold or offered in exchange for any type of consideration.

[C35, §1921-g6; C39, §1921.131; C46, 50, 54, 58, 62, 66, 71, §124.36; C73, 75, 77, 79, 81, §123.144]

2013 Acts, ch 35, §41

Section amended

#### **123.145 Labels on bottles, barrels, etc. — conclusive evidence.**

The label on any bottle, keg, barrel, or other container in which beer is offered for sale in this state, representing the alcoholic content of such beer as being in excess of five percent by weight shall be conclusive evidence as to the alcoholic content of the beer contained therein.

[C35, §1921-f128; C39, §1921.133; C46, 50, 54, 58, 62, 66, 71, §124.38; C73, 75, 77, 79, 81, §123.145]

2013 Acts, ch 30, §24

Section amended

**123.146** Repealed by 85 Acts, ch 198, § 3.

**123.147 through 123.149** Reserved.

## DIVISION III SPECIAL PROVISIONS

#### **123.150 Sunday sales before New Year’s Day.**

Notwithstanding section 123.36, subsection 5, section 123.49, subsection 2, paragraph “b”, and section 123.134, subsection 5, a holder of any class of liquor control license or the holder of a class “B” beer permit may sell or dispense alcoholic liquor, wine, or beer to patrons for consumption on the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on Monday when that Monday is New Year’s Day and beer for consumption off the premises

between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday when that Sunday is the day before New Year's Day. The liquor control license fee or beer permit fee of licensees and permittees permitted to sell or dispense liquor, wine, or beer on a Sunday when that Sunday is the day before New Year's Day shall not be increased because of this privilege.

The special privileges granted in this section are in force only during the specified times provided in this section.

[C79, 81, §123.150]

85 Acts, ch 195, §15; 86 Acts, ch 1122, §10; 91 Acts, ch 245, §5

**123.151** Repealed by 93 Acts, ch 91, § 22.

**123.152** Reserved.

#### DIVISION IV

##### WAREHOUSE PROJECT

**123.153 through 123.162** Repealed by 2011 Acts, ch 17, § 16.

**123.163 through 123.170** Reserved.

#### DIVISION V

##### WINE PROVISIONS — CHARITY BEER AND WINE AUCTIONS

**123.171 Wine certificate, permit, or license required.**

A person shall not cause the manufacture, importation, or sale of wine in this state unless a certificate or permit as provided in this division, or a liquor control license as provided in division I of this chapter, is first obtained which authorizes that manufacture, importation, or sale.

85 Acts, ch 32, §62

**123.172 Effect on liquor control licensees.**

All applicable provisions of this division relating to class "B" wine permits apply to liquor control licensees in the purchasing, storage, handling, serving and sale of wine.

85 Acts, ch 32, §63

**123.173 Wine permits — classes — authority.**

1. Except as provided in section 123.187, permits exclusively for the sale or manufacture and sale of wine shall be divided into four classes, and shall be known as class "A", "B", "B" native, or "C" native wine permits.

2. A class "A" wine permit allows the holder to manufacture and sell, or sell at wholesale, in this state, wine as defined in section 123.3, subsection 47. The holder of a class "A" wine permit may manufacture in this state wine having an alcoholic content greater than seventeen percent by weight or twenty-one and twenty-five hundredths percent of alcohol by volume for shipment outside this state. All class "A" premises shall be located within the state. A class "B" or class "B" native wine permit allows the holder to sell wine at retail for consumption off the premises. A class "B" or class "B" native wine permittee who also holds a class "E" liquor control license may sell wine to class "A", class "B", and class "C" liquor control licensees for resale for consumption on the premises. Such wine sales shall be in quantities of less than one case of any wine brand but not more than one such sale shall be made to the same liquor control licensee in a twenty-four-hour period. A class "B" or class "B" native wine permittee shall not sell wine to other class "B" or class "B" native wine permittees. A class "C" native wine permit allows the holder to sell wine for consumption on or off the premises.

3. A class “A” wine permittee shall be required to deliver wine to a retail wine permittee, and a retail wine permittee shall be required to accept delivery of wine from a class “A” wine permittee, only at the licensed premises of the retail wine permittee. Except as specifically permitted by the division upon good cause shown, delivery or transfer of wine from an unlicensed premises to a licensed retail wine permittee’s premises, or from one licensed retail wine permittee’s premises to another licensed retail wine permittee’s premises, even if there is common ownership of all of the premises by one retail permittee, is prohibited. A class “B” or class “B” native wine permittee who also holds a class “E” liquor control license shall keep and maintain records for each sale of wine to liquor control licensees showing the name of the establishment to which wine was sold, the date of sale, and the brands and number of bottles sold to the liquor control licensee.

4. When a class “B” or class “B” native wine permittee who also holds a class “E” liquor control license sells wine to a class “A”, class “B”, or class “C” liquor control licensee, the liquor control licensee shall sign a report attesting to the purchase. The class “B” or class “B” native wine permittee who also holds a class “E” liquor control license shall submit a report to the division electronically, or in a manner prescribed by the administrator, not later than the tenth of each month stating each sale of wine to class “A”, class “B”, and class “C” liquor control licensees during the preceding month, the date of each sale, and the brands and numbers of bottles with each sale. A class “B” permittee who holds a class “E” liquor control license may sell to class “A”, class “B”, or class “C” liquor control licensees only if the licensed premises of the liquor control licensee is located within the geographic territory of the class “A” wine permittee from which the wine was originally purchased by the class “B” wine permittee.

85 Acts, ch 32, §64; 88 Acts, ch 1241, §22; 91 Acts, ch 203, §2, 3; 2003 Acts, ch 143, §7, 17; 2006 Acts, ch 1032, §2; 2010 Acts, ch 1031, §99; 2013 Acts, ch 35, §14

Subsection 4 amended

### **123.173A Charity beer, spirits, and wine auction permit.**

1. For purposes of this section, “*authorized nonprofit entity*” includes a nonprofit entity which has a principal office in the state, a nonprofit corporation organized under chapter 504, or a foreign corporation as defined in section 504.141, whose income is exempt from federal taxation under section 501(c) of the Internal Revenue Code.

2. An authorized nonprofit entity may, upon application to the division and receipt of a charity beer, spirits, and wine auction permit from the division, conduct a charity auction which includes beer, spirits, and wine. The application shall specify the date and time when the charity beer, spirits, and wine auction is to be conducted and the premises in this state where the charity beer, spirits, and wine auction is to be physically conducted. The applicant shall certify that the objective of the charity beer, spirits, and wine auction is to raise funds solely to be used for educational, religious, or charitable purposes and that the entire proceeds from the charity beer, spirits, and wine auction are to be expended for any of the purposes described in section 423.3, subsection 78.

3. An authorized nonprofit entity shall be eligible to receive only two charity beer, spirits, and wine auction permits during a calendar year and each charity beer, spirits, and wine auction permit shall be valid for a period not to exceed thirty-six consecutive hours.

4. The authorized nonprofit entity conducting the charity beer, spirits, and wine auction shall obtain the beer, spirits, and wine to be auctioned at the charity beer, spirits, and wine auction from an Iowa retail beer permittee, an Iowa retail liquor control licensee, or an Iowa retail wine permittee, or may receive donations of beer, spirits, or wine to be auctioned at the charity beer, spirits, and wine auction from persons who purchased the donated beer, spirits, or wine from an Iowa retail beer permittee, an Iowa retail liquor control licensee, an Iowa micro-distilled spirits permittee, or an Iowa retail wine permittee and who present a receipt documenting the purchase at the time the beer, spirits, or wine is donated. The authorized nonprofit entity conducting the charity beer, spirits, and wine auction shall retain a copy of the receipt for a period of one year from the date of the charity beer, spirits, and wine auction.

5. Persons shall be physically present at the charity beer, spirits, and wine auction to be eligible to bid on beer, spirits, and wine sold at the charity auction.

6. The beer, spirits, and wine sold at the charity beer, spirits, and wine auction shall be in original containers for consumption off of the premises where the charity beer, spirits, and wine auction is conducted. No other alcoholic beverage may be sold by the charity beer, spirits, and wine auction permittee at the charity beer, spirits, and wine auction. A purchaser of beer, spirits, or wine at a charity beer, spirits, and wine auction shall not take possession of the beer, spirits, or wine until the person is leaving the event. A purchaser of beer, spirits, or wine at a charity beer, spirits, and wine auction shall not open the container or consume or permit the consumption of the beer, spirits, or wine purchased on the premises where the charity beer, spirits, and wine auction is conducted. A purchaser of beer, spirits, or wine at a charity beer, spirits, and wine auction shall not resell the beer, spirits, or wine.

7. A liquor control licensee, beer permittee, micro-distilled spirits permittee, or wine permittee shall not purchase beer, spirits, or wine at a charity beer, spirits, and wine auction. The charity beer, spirits, and wine auction may be conducted on a premises for which a class “B” liquor control license or class “C” liquor control license has been issued, provided that the liquor control licensee does not participate in the charity beer, spirits, and wine auction, supply beer, spirits, or wine to be auctioned at the charity beer, spirits, and wine auction, or receive any of the proceeds of the charity beer, spirits, and wine auction.

2010 Acts, ch 1031, §85; 2013 Acts, ch 51, §1

Section amended

#### **123.174 Issuance of wine permits.**

The administrator shall issue wine permits as provided in this chapter, and may suspend or revoke a wine permit for cause as provided in this chapter.

85 Acts, ch 32, §65; 2003 Acts, ch 143, §8, 17

#### **123.175 Application contents.**

Except as otherwise provided in this chapter, a class “A” or retail wine permit shall be issued to a person who complies with all of the following:

1. Submits an application electronically, or in a manner prescribed by the administrator, for the permit which shall state under oath:

a. The name and place of residence of the applicant and the length of time the applicant has lived at the place of residence.

b. That the applicant is a citizen of the state of Iowa, or if a corporation, that the applicant is authorized to do business in Iowa.

c. That the applicant is a person of good moral character as defined by this chapter.

d. The location of the premises where the applicant intends to use the permit.

e. The name of the owner of the premises, and if that owner is not the applicant, that the applicant is the actual lessee of the premises.

2. Establishes all of the following:

a. That the applicant meets the test of good moral character as provided in section 123.3, subsection 34.

b. That the premises where the applicant intends to use the permit conform to all applicable laws, health regulations, and fire regulations, and constitute a safe and proper place or building.

3. Submits, in the case of a class “A” wine permit, a bond in the amount of five thousand dollars in a manner prescribed by the administrator with good and sufficient sureties to be approved by the division conditioned upon compliance with this chapter.

4. Consents to inspection as required in section 123.30, subsection 1.

85 Acts, ch 32, §66; 88 Acts, ch 1241, §23; 2003 Acts, ch 143, §9, 17; 2013 Acts, ch 35, §15, 16

Subsection 1, unnumbered paragraph 1 amended

Subsection 3 amended

**123.176** Repealed by 2003 Acts, ch 143, § 15, 17. See § 123.175.

#### **123.177 Authority under class “A” permit.**

1. A person holding a class “A” wine permit may manufacture and sell, or sell at wholesale,

wine for consumption off the premises. Sales within the state may be made only to persons holding a class “A” or “B” wine permit and to persons holding a retail liquor control license. However, if the person holding the class “A” permit is a manufacturer of native wine, the person may sell only native wine to a person holding a retail wine permit or a retail liquor control license. A class “A” wine permittee having more than one place of business shall obtain a separate permit for each place of business where wine is to be stored, warehoused, or sold.

2. A class “A” wine permit holder may purchase and resell only those brands of wine which are manufactured, fermented, bottled, shipped, or imported by a person holding a certificate of compliance issued pursuant to section 123.180.

85 Acts, ch 32, §68; 88 Acts, ch 1241, §25; 93 Acts, ch 91, §21; 2003 Acts, ch 143, §10, 17

**123.178 Authority under class “B” permit.**

1. A person holding a class “B” wine permit may sell wine at retail for consumption off the premises. Wine shall be sold for consumption off the premises in original containers only.

2. A class “B” wine permittee having more than one place of business where wine is sold shall obtain a separate permit for each place of business.

3. A person holding a class “B” wine permit may purchase wine for resale only from a person holding a class “A” wine permit.

85 Acts, ch 32, §69; 86 Acts, ch 1246, §752

Referred to in §123.32

**123.178A Authority under class “B” native permit.**

1. A person holding a class “B” native wine permit may sell native wine only at retail for consumption off the premises. Native wine shall be sold for consumption off the premises in original containers only.

2. A class “B” native wine permittee having more than one place of business where wine is sold shall obtain a separate permit for each place of business.

3. A person holding a class “B” native wine permit may purchase wine for resale only from a native winery holding a class “A” wine permit.

2003 Acts, ch 143, §11, 17

Referred to in §123.32

**123.178B Authority under class “C” native permit.**

1. A person holding a class “C” native wine permit may sell native wine only at retail for consumption on or off the premises.

2. A class “C” native wine permittee having more than one place of business where wine is sold and served shall obtain a separate permit for each place of business.

3. A person holding a class “C” native wine permit may purchase wine for resale only from a native winery holding a class “A” wine permit.

4. A person holding a class “C” native wine permit and a class “A” wine permit whose primary purpose is manufacturing native wine may purchase beer from a wholesaler holding a class “A” beer permit for sale at retail.

2003 Acts, ch 143, §12, 17; 2009 Acts, ch 104, §1

Referred to in §123.32, 123.56

**123.179 Permit fees.**

1. The annual permit fee for a class “A” wine permit is seven hundred fifty dollars.

2. The annual permit fee for a class “B” wine permit is five hundred dollars.

3. The annual permit fee for a class “B” native wine permit is twenty-five dollars.

4. The annual permit fee for a class “C” native wine permit is twenty-five dollars.

5. The fee for a charity beer, spirits, and wine auction permit is one hundred dollars.

85 Acts, ch 32, §70; 2003 Acts, ch 143, §13, 17; 2010 Acts, ch 1031, §86; 2013 Acts, ch 51, §2

Referred to in §123.56

Subsection 5 amended

**123.180 Vintner's certificate of compliance — wholesale and retail restrictions — penalty.**

1. A manufacturer, vintner, bottler, importer, or vendor of wine or an agent thereof desiring to ship, sell, or have wine brought into this state for resale by the division or for sale at wholesale by a class "A" permittee shall first make application for and shall be issued a vintner's certificate of compliance by the administrator for that purpose. The vintner's certificate of compliance shall expire at the end of one year from the date of issuance and shall be renewed for a like period upon application to the administrator unless otherwise revoked for cause. Each application for a vintner's certificate of compliance or renewal of a certificate shall be submitted electronically, or in a manner prescribed by the administrator, and shall be accompanied by a fee of one hundred dollars payable to the division. Each holder of a vintner's certificate of compliance shall furnish the information required by the administrator in the form the administrator requires. A vintner or wine bottler whose plant is located in Iowa and who otherwise holds a class "A" wine permit to sell wine at wholesale is exempt from the fee, but not the other terms and conditions. The holder of a vintner's certificate of compliance may also hold a class "A" wine permit.

2. At the time of applying for a vintner's certificate of compliance, each applicant shall file with the division a list of all class "A" wine permittees with whom it intends to do business. The listing of class "A" wine permittees as filed with the division may be amended from time to time by the holder of the certificate of compliance.

3. All class "A" wine permit holders shall sell only those brands of wine which are manufactured, bottled, fermented, shipped, or imported by a person holding a current vintner's certificate of compliance. An employee or agent working for or representing the holder of a vintner's certificate of compliance within this state shall register the employee's or agent's name and address with the division. These names and addresses shall be filed with the division's copy of the certificate of compliance issued except that this provision does not require the listing of those persons who are employed on the premises of a bottling plant, or winery where wine is manufactured, fermented, or bottled in Iowa or the listing of those persons who are thereafter engaged in the transporting of the wine.

4. It is unlawful for a holder of a vintner's certificate of compliance or the holder's agent, or any class "A" wine permittee or the permittee's agent, to discriminate between class "B" wine permittees authorized to sell wine at retail.

5. It is unlawful for a holder of a vintner's certificate of compliance or the vintner's agent who is engaged in the business of selling wine to class "A" wine permittees to discriminate between class "A" wine permittees authorized to sell wine at wholesale.

6. Regardless of any other penalties provided by this chapter, any holder of a certificate of compliance relating to wine or a class "A" permittee who violates this chapter or the rules adopted pursuant to this chapter is subject to a civil penalty not to exceed one thousand dollars or subject to suspension of the certificate of compliance or permit for a period not to exceed one year, or to both civil penalty and suspension. Civil penalties imposed under this section shall be collected and retained by the division.

85 Acts, ch 32, §71; 89 Acts, ch 161, §8; 89 Acts, ch 252, §4; 2012 Acts, ch 1021, §39; 2013 Acts, ch 35, §17

Referred to in §123.177  
Subsection 1 amended

**123.181 Prohibited acts.**

1. A holder of any class "B" wine permit shall not sell wine except wine which is purchased from a person holding a class "A" wine permit and on which the tax imposed by section 123.183 has been paid or wine purchased from a manufacturer of native wines.

2. A class "A" wine permittee shall not sell wine on credit to a retail liquor licensee or wine permittee for a period exceeding thirty days from date of delivery.

85 Acts, ch 32, §72; 89 Acts, ch 252, §5

**123.182 Labels — point of origin — conclusive evidence.**

All imported bulk wines to be bottled and distributed in the state shall have the point of origin stated on the label. The print size for the point of origin shall be at least half the print size of the brand name on the label.

The label on a bottle or other container in which wine is offered for sale in this state, which label represents the alcoholic content of the wine as being in excess of seventeen percent by weight or twenty-one and twenty-five hundredths percent of alcohol by volume, is conclusive evidence of the alcoholic content of that wine.

85 Acts, ch 32, §73; 2006 Acts, ch 1032, §3

**123.183 Wine gallonage tax and related funds.**

1. In addition to the annual permit fee to be paid by each class “A” wine permittee, a wine gallonage tax shall be levied and collected from each class “A” wine permittee on all wine manufactured for sale and sold in this state at wholesale and on all wine imported into this state for sale at wholesale and sold in this state at wholesale. A wine gallonage tax shall also be levied and collected on the direct shipment of wine pursuant to section 123.187. The rate of the wine gallonage tax is one dollar and seventy-five cents for each wine gallon. The same rate shall apply for the fractional parts of a wine gallon. The wine gallonage tax shall not be levied or collected on wine sold by one class “A” wine permittee to another class “A” wine permittee.

2. a. Revenue collected from the wine gallonage tax on wine manufactured for sale and sold in this state, and on wine subject to direct shipment as provided in section 123.187 by a wine manufacturer licensed or permitted pursuant to laws regulating alcoholic beverages in this state, shall be deposited in the wine gallonage tax fund as created in this section.

b. (1) A wine gallonage tax fund is created in the office of the treasurer of state.

(2) Moneys deposited in the fund are appropriated as follows:

(a) To the midwest grape and wine industry institute at Iowa state university of science and technology, two hundred fifty thousand dollars.

(b) To the economic development authority for purposes of section 15E.117, the balance of moneys in the fund after the appropriation in subparagraph division (a).

(3) Moneys in the fund and moneys appropriated from the fund pursuant to subparagraph (2) are not subject to reversion under section 8.33.

3. The revenue collected from the wine gallonage tax on wine imported into this state for sale at wholesale and sold in this state at wholesale, and on wine subject to direct shipment as provided in section 123.187 by a wine manufacturer licensed or permitted pursuant to laws regulating alcoholic beverages in another state, shall be deposited in the beer and liquor control fund created in section 123.53.

85 Acts, ch 32, §74; 85 Acts, ch 198, §4, 5; 86 Acts, ch 1246, §753; 87 Acts, ch 95, §2; 2001 Acts, ch 162, §1; 2002 Acts, ch 1050, §15; 2003 Acts, ch 143, §14, 17; 2005 Acts, ch 113, §1; 2007 Acts, ch 211, §41; 2010 Acts, ch 1193, §164; 2011 Acts, ch 118, §§85, 89; 2011 Acts, ch 130, §29, 71; 2012 Acts, ch 1136, §26

Referred to in §15E.117, 123.181, 123.184, 123.187

**123.184 Report of gallonage sales — penalty.**

Each class “A” wine permit holder on or before the tenth day of each calendar month commencing on the tenth day of the calendar month following the month in which the person is issued a permit, shall make a report under oath to the division electronically, or in a manner prescribed by the administrator, showing the exact number of gallons of wine and fractional parts of gallons, sold by that permit holder during the preceding calendar month. The report also shall state whatever reasonable additional information the administrator requires. The permit holder at the time of filing this report shall pay to the division the amount of tax due at the rate fixed in section 123.183. A penalty of ten percent of the amount of the tax shall be assessed and collected if the report is not filed and the tax paid within the time required by this section.

85 Acts, ch 32, §75; 2013 Acts, ch 35, §18

Referred to in §123.187

Section amended

**123.185 Records required.**

Each class “A” wine permittee shall keep records showing each sale of wine, which shall be at all times open to inspection by the administrator and pursuant to section 123.30, subsection 1. Each class “B” wine permittee shall keep proper records showing each purchase of wine and the date and the amount of each purchase and the name of the person from whom each purchase was made, which shall be open to inspection pursuant to section 123.30, subsection 1, during normal business hours of the permittee.

85 Acts, ch 32, §76; 88 Acts, ch 1241, §26; 2013 Acts, ch 35, §42

Section amended

**123.186 Federal regulations adopted as rules.**

1. The division shall adopt as rules the substance of the federal regulations 27 C.F.R. pt. 6, 27 C.F.R. pt. 8, 27 C.F.R. pt. 10, and 27 C.F.R. pt. 11 as they relate to transactions between wholesalers and retailers.

2. The division shall adopt as rules the substance of 27 C.F.R. § 6.88, to permit a manufacturer of alcoholic beverages, wine, or beer, or an agent of such manufacturer, to provide to a retailer without charge wine and beer coil cleaning services, including carbon dioxide filters and other necessary accessories to properly clean the coil and affix carbon dioxide filters. The rules shall provide that the manufacturer shall be responsible for paying the costs of any filters provided.

85 Acts, ch 32, §77; 2006 Acts, ch 1061, §1; 2007 Acts, ch 22, §36

**123.187 Direct shipment of wine — licenses and requirements.**

1. A wine manufacturer licensed or permitted pursuant to laws regulating alcoholic beverages in this state or another state may apply for a wine direct shipper license, as provided in this section. For the purposes of this section, a “*wine manufacturer*” means a person who processes the fruit, vegetables, dandelions, clover, honey, or any combination of these ingredients, by fermentation into wines.

2. *a.* The administrator shall issue a wine direct shipper license to a wine manufacturer who submits an application for the license electronically, or in a manner prescribed by the administrator, accompanied by a true copy of the manufacturer’s current alcoholic beverage license or permit and a copy of the manufacturer’s winery license issued by the federal alcohol and tobacco tax and trade bureau.

*b.* An application submitted pursuant to paragraph “*a*” shall be accompanied by a license fee in the amount of twenty-five dollars.

*c.* An application submitted pursuant to paragraph “*a*” shall also be accompanied by a bond in the amount of five thousand dollars in the form prescribed and furnished by the division with good and sufficient sureties to be approved by the division conditioned upon compliance with this chapter.

*d.* A license issued pursuant to this section may be renewed annually by resubmitting the information required in paragraph “*a*”, accompanied by the twenty-five dollar license fee.

3. The direct shipment of wine pursuant to this section shall be subject to the following requirements and restrictions:

*a.* Wine may only be shipped by a wine direct shipper licensee to a resident of this state who is at least twenty-one years of age, for the resident’s personal use and consumption and not for resale.

*b.* Wine subject to direct shipping shall be properly registered with the federal alcohol and tobacco tax and trade bureau, and fermented on the winery premises of the wine direct shipper licensee.

*c.* All containers of wine shipped directly to a resident of this state shall be conspicuously labeled with the words “CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY” or shall be conspicuously labeled with alternative wording preapproved by the administrator.

*d.* All containers of wine shipped directly to a resident of this state shall be shipped by an alcohol carrier licensed as provided in subsection 6.

4. *a.* In addition to the annual license fee, a wine direct shipper licensee shall remit to the

division an amount equivalent to the wine gallonage tax on wine subject to direct shipment at the rate specified in section 123.183 for deposit as provided in section 123.183, subsections 2 and 3. The amount shall be remitted at the same time and in the same manner as provided in section 123.184, and the ten percent penalty specified therein shall be applicable.

b. Shipment of wine pursuant to this subsection does not require a refund value for beverage container control purposes under chapter 455C.

5. A wine direct shipper licensee shall be deemed to have consented to the jurisdiction of the division or any other agency or court in this state concerning enforcement of this section and any related laws, rules, or regulations. A licensee shall permit the division to perform an audit of shipping records upon request.

6. a. Wine subject to direct shipment within this state pursuant to this section shall be delivered only by a carrier having obtained from the division an alcohol carrier license. An alcohol carrier license shall be issued upon payment of a one hundred dollar license fee, and shall be subject to requirements, and issued pursuant to application forms, to be determined by the administrator by rule.

b. An alcohol carrier licensee shall not deliver wine to any person under twenty-one years of age, or to any person who either is or appears to be in an intoxicated state or condition. A licensee shall obtain valid proof of identity and age prior to delivery, and shall obtain the signature of an adult as a condition of delivery.

c. An alcohol carrier licensee shall maintain records of wine shipped which include the license number and name of the wine manufacturer, quantity of wine shipped, recipient's name and address, and an electronic or paper form of signature from the recipient of the wine. Records shall be submitted to the division on a monthly basis in a form and manner to be determined by the division by rule.

7. A violation of this section shall subject a licensee to the penalty provisions of section 123.39.

96 Acts, ch 1101, §1; 2003 Acts, 1st Ex, ch 2, §158, 205; 2010 Acts, ch 1031, §100; 2010 Acts, ch 1193, §165; 2013 Acts, ch 35, §19

Referred to in §123.46A, 123.56, 123.173, 123.183  
 Subsection 2, paragraph a amended

## CHAPTER 123A

### BEER BREWERS AND WHOLESALERS

123A.1	Purposes and scope.	123A.7	Reasonable compensation.
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123A.3	Termination and notice of cancellation.	123A.9	Judicial remedies.
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123A.6	Transfer of business assets or stock.	123A.12	Application to existing agreements.

#### 123A.1 Purposes and scope.

This chapter is enacted pursuant to the authority of the state under the provisions of the twenty-first amendment to the Constitution of the United States to promote the public's interest in fair, efficient, and competitive distribution of beer products through regulation and encouragement of brewer and wholesaler vendors to conduct their business relations toward these ends by:

1. Assuring that the beer wholesaler is free to manage its business enterprise.
2. Assuring the brewer and the public of service from wholesalers who will devote reasonable efforts and resources to distribution and sales of all of the brewer's products which the wholesaler has been granted the right to sell and distribute and maintain satisfactory sales levels.

3. Promoting and maintaining a sound, stable, and viable three-tier system of distribution of beer to the public.

95 Acts, ch 101, §1

### 123A.2 Definitions.

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

1. “*Affected party*” means a wholesaler, brewer, master distributor, successor brewer, or any person that is a party to an agreement.

2. “*Agreement*” means a contract or arrangement whether expressed or implied, oral or written, for a definite or indefinite period between a brewer and a wholesaler pursuant to which a wholesaler has been granted the right to purchase, resell, and distribute one or more brands of beer offered by a brewer, or a contract or arrangement in which a brewer grants to a wholesaler a license to use a trade name, trademark, service mark, or related characteristic and in which there is a community of interest in the marketing of the products of the brewer. An agreement exists when one or more of the following occur:

a. A brewer has shipped beer to a wholesaler or accepted an order for beer from a wholesaler.

b. A brewer purchases the right to manufacture a beer product, the right to use the trade name for the product, or the right to distribute a product from another brewer with whom the wholesaler has an agreement.

3. “*Beer*” means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt, and hops with or without unmalted grains or decorticated and degerminated grains, or made by the fermentation of, or by distillation of the fermented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than five percent of alcohol by weight, but not including mixed drinks or cocktails mixed on the premises.

4. “*Brand*” means a word, name, group of letters, symbol, or a combination of words, names, letters, or symbols adopted and used by a brewer to identify a specific beer product, and to distinguish that beer product from other beer products brewed or marketed by that brewery or other breweries.

5. “*Brand extension*” means a brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same brewery and which relies to a significant extent on the goodwill associated with the preexisting brand. However, a general corporate logo or symbol or an advertising message, whether appearing on the product packaging or elsewhere, is not a brand, brand extension, or part of a brand or brand extension.

6. “*Brewer*” means a person who is engaged in the manufacture of beer for the purpose of sale, barter, exchange, or transportation, a master distributor, or a fermenter, processor, bottler, packager, or importer of beer, or a successor brewer.

7. “*Designated member*” means a deceased wholesaler’s spouse, child, grandchild, parent, brother, or sister, who is entitled to inherit the deceased wholesaler’s ownership interest under the terms of the deceased wholesaler’s will, other testamentary device, or the laws of intestate succession. With respect to an incapacitated individual having an ownership interest in a wholesaler, “*designated member*” also means a person appointed by the court as the conservator of the individual’s property. “*Designated member*” also includes the appointed and qualified personal representative and the testamentary trustee of a deceased wholesaler.

8. “*Good cause*” exists if the wholesaler or affected party has failed to comply with reasonable requirements which are imposed upon the wholesaler or affected party through an agreement, which do not discriminate either by their terms or in the methods of their enforcement as compared with requirements imposed on other similarly situated wholesalers by the brewer, and which are not in violation of any law or administrative rule.

9. “*Good faith*” means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade and defined and interpreted under section 554.1201.

10. “*Manager*” means an individual named or designated by agreement between the brewer and wholesaler, who is principally responsible for the daily management of the wholesaler.

11. “*Master distributor*” means a wholesaler who acts in the role of or in a similar capacity as a brewer or outside seller of one or more brands of beer to other wholesalers on a regular basis in the normal course of business.

12. “*Reasonable standards and qualifications*” means those criteria applied by the brewer to similarly situated wholesalers during a period of twenty-four months before a proposed change in a successor manager of the wholesaler’s business.

13. “*Similarly situated wholesalers*” means wholesalers of a brewer that are of a generally comparable size, and operate in markets with similar demographic characteristics, including population size, density, distribution, and vital statistics, and reasonably similar economic and geographic conditions.

14. “*Successor brewer*” means a person who succeeds to the role of a brewer or master distributor to manufacture or distribute one or more brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement.

15. “*Successor manager*” means an individual named or designated by agreement between a brewer and wholesaler who succeeds to the role of manager who will be principally responsible for the daily management of the wholesaler.

16. “*Territory*” means the geographic area of primary sales responsibility designated by an agreement between a wholesaler and brewer for one or more brands of beer of the brewer.

17. “*Wholesaler*” means a person, other than a vintner, brewer, or bottler of beer, who sells, barter, exchanges, offers for sale, possesses with intent to sell, deals, or traffics in beer.

95 Acts, ch 101, §2; 2008 Acts, ch 1032, §23

### **123A.3 Termination and notice of cancellation.**

1. Except as provided in subsection 5, a brewer or wholesaler shall not amend, modify, cancel, fail to renew, or otherwise terminate an agreement unless the brewer or wholesaler furnishes prior notification to the other party in accordance with subsection 2.

2. The notification required under subsection 1 shall be in writing and sent to the affected party by certified mail not less than ninety days before the date on which the agreement will be amended, modified, canceled, not renewed, or otherwise terminated. The notification shall contain all of the following:

a. A statement of intention to amend, modify, cancel, fail to renew, or otherwise terminate the agreement.

b. A statement enumerating the facts and reasons for the action, including documentation necessary to fully inform the wholesaler of the reasons for the action.

c. The date on which the action will take effect.

3. For each cancellation, nonrenewal, or termination, the brewer shall have the burden of showing that it has acted in good faith, that the notice requirements under this section have been complied with, and that there was good cause for the cancellation, nonrenewal, or termination.

4. Notwithstanding the terms or conditions of any agreement, good cause exists for the purpose of a cancellation, nonrenewal, or termination if all of the following occur:

a. The wholesaler fails to comply with a provision of the agreement which is both reasonable and of material significance to the business relationship between the wholesaler and the brewer.

b. The brewer first acquired knowledge of the failure described in paragraph “a” not more than twenty-four months before the date notification was given pursuant to subsection 2.

c. The wholesaler was given notice by the brewer of failure to comply with the agreement.

d. The wholesaler has been given thirty days in which to submit a plan of corrective action to comply with the agreement and an additional ninety days to cure the noncompliance in accordance with the plan, and has failed to correct the failure to comply with the provisions of the agreement.

5. A brewer may cancel, fail to renew, or otherwise terminate an agreement without furnishing any prior notification and without good cause as required in subsection 4 for any of the following reasons:

- a. The wholesaler's failure to pay any account when due and upon written demand by the brewer for the payment, in accordance with agreed upon payment terms.
- b. The wholesaler's assignment for the benefit of creditors, or similar disposition, of substantially all of the assets of the party's business.
- c. The insolvency of the wholesaler, or the institution of proceedings in bankruptcy by or against the wholesaler.
- d. The dissolution or liquidation of the wholesaler.
- e. The wholesaler's conviction of, or plea of guilty or no contest to, a charge of violating a law or rule in this state which materially and adversely affects the ability of either party to continue to sell beer in this state, or the revocation or suspension of a license or permit to sell beer in this state for a period greater than thirty-one days.
- f. Any attempted transfer of business assets of the wholesaler, ten percent or more of the voting stock of the wholesaler or the voting stock of any parent corporation of the wholesaler, or any change in the beneficial ownership or control of any wholesaler without obtaining the prior consent or approval as provided for under section 123A.6.
- g. The wholesaler's fraudulent conduct relating to a material matter on the part of the wholesaler in dealings with the brewer or its product. However, the brewer shall have the burden of proving fraudulent conduct relating to a material matter on the part of the wholesaler in any legal action challenging the termination.
- h. The wholesaler distributes, sells, or delivers beer to a retailer whose premises are situated outside the geographic territory agreed upon by the wholesaler and the brewer as the area in which the wholesaler will sell beer purchased from the brewer, without the consent of the brewer and the distributor who has been assigned the territory by the brewer.

95 Acts, ch 101, §3

Referred to in §123A.4

#### **123A.4 Cancellation.**

A brewer or a wholesaler shall not cancel, fail to renew, or otherwise terminate an agreement unless the party intending that action has good cause for the cancellation, failure to renew, or termination, has made good faith efforts to resolve disagreements, and, in any case in which prior notification is required under section 123A.3, the party intending to act has furnished the prior notification and the other party has not eliminated the reasons specified in the notification for cancellation, failure to renew, or termination, within the periods provided in section 123A.3, subsection 4, paragraph "d".

95 Acts, ch 101, §4

#### **123A.5 Prohibited conduct.**

1. A brewer shall not commit any of the following actions:
  - a. Induce or coerce, or attempt to induce or coerce, any wholesaler to engage in any illegal act or course of conduct.
  - b. Require a wholesaler to assent to any unreasonable requirement, condition, understanding, or term of an agreement prohibiting a wholesaler from selling the product of another brewer.
  - c. Fix, maintain, or establish the price at which a wholesaler may resell beer, or to change, by any means, the price charged to the wholesaler after beer has been ordered by the wholesaler from the brewer.
  - d. Require any wholesaler to accept delivery of any beer or any other item or commodity which shall not have been ordered by the wholesaler.
  - e. Require a wholesaler without the wholesaler's approval to participate in an arrangement for the payment or crediting by an electronic fund transfer transaction for any item or commodity other than beer, or to access a wholesaler's account for any item or commodity other than beer.
  - f. Require or prohibit any change in the manager or successor manager of any wholesaler who has been approved by the brewer as of or subsequent to July 1, 1995, unless the brewer acts in good faith. If a wholesaler changes an approved manager or successor manager, a brewer shall not require or prohibit the change unless the person selected by the wholesaler

fails to meet the nondiscriminatory, material, and reasonable standards and qualifications for managers or successor managers consistently applied to similarly situated wholesalers by the brewer. However, the brewer shall have the burden of proving that the person fails to meet the reasonable standards and qualifications.

*g.* Discriminate among the brewer's wholesalers in any business dealings including, but not limited to, the price of beer sold to the wholesaler or terms of sale offered to wholesalers, unless the difference among its wholesalers is based on reasonable grounds.

*h.* Fail to provide each wholesaler of the brewer's brand with a written agreement which contains in total the brewer's agreement with each wholesaler, and designates a specific exclusive sales territory. The terms of written agreements executed, amended, or renewed after July 1, 1995, shall be consistent with this chapter, and this chapter may be incorporated by reference in the agreement.

*i.* Enter into an additional agreement with any other wholesaler for, or to sell to any other wholesaler, the same brand of beer or brand extension in the same territory or any portion of the territory, or to sell directly to any retailer in this state.

*j.* Require a wholesaler to purchase one or more brands of beer in order for the wholesaler to purchase another brand of beer for any reason.

*k.* Require a wholesaler, by any means, directly to participate in or contribute to any local or national advertising fund controlled directly or indirectly by a brewer.

*l.* Require by a provision of an agreement or other instrument in connection with the agreement that any dispute arising out of or in connection with the agreement be determined through the application of any other state's laws, be determined in federal court sitting in a state other than Iowa, or be determined in a state court of a state other than this state. A provision contained in any agreement or other instrument in connection with the agreement which contravenes this section shall be null and void.

2. A wholesaler who, pursuant to an agreement, is granted a sales territory for which the wholesaler is primarily responsible or in which the wholesaler is required to concentrate the wholesaler's efforts, shall not make any sale or delivery of beer to any retail licensee whose place of business is not within the territory granted to the wholesaler unless agreed upon by all affected parties.

95 Acts, ch 101, §5

#### **123A.6 Transfer of business assets or stock.**

1. A brewer shall not unreasonably withhold or delay its approval of any assignment, sale, or transfer of the stock or other indicia of ownership of a wholesaler or all or any portion of a wholesaler's assets, wholesaler's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling the wholesaler, including the wholesaler's rights and obligations under the terms of an agreement when the person to be substituted meets reasonable standards. Upon the death of one of the partners of a partnership operating the business of a wholesaler, a brewer shall not deny the surviving partner of the partnership the right to become a successor-in-interest to the agreement between the brewer and the partnership, if the survivor has been active in the management of the partnership and is otherwise capable of carrying on the business of the partnership.

2. Notwithstanding subsection 1, upon the death of a wholesaler, a brewer shall not deny approval for any transfer of ownership or management to a designated member, including the rights under the agreement with the brewer. The transfer or assignment shall not be effective until written notice is given to the brewer, but the brewer's consent to the transfer or assignment shall not be required.

95 Acts, ch 101, §6

Referred to in §123A.3

#### **123A.7 Reasonable compensation.**

1. A brewer who cancels, fails to renew, or terminates any agreement, or unlawfully denies approval of, or unreasonably withholds consent to any assignment, transfer, or sale of a wholesaler's business assets or voting stock or other equity securities, except as provided

in this chapter, shall pay the wholesaler with which the brewer has an agreement pursuant to this chapter, reasonable compensation for the fair market value of the wholesaler's business with relation to the affected brand of beer. The fair market value of the wholesaler's business shall include, but not be limited to, its goodwill, if any.

2. If a brewer and a wholesaler are unable to mutually agree on the reasonable compensation to be paid for the value of the wholesaler's business, either party may maintain a civil action as provided in section 123A.9, or the matter may, by mutual agreement of the parties, be submitted to a three-member arbitration panel consisting of one representative selected by the brewer but unassociated with the brewer; one representative selected by the wholesaler but unassociated with the wholesaler; and an impartial arbitrator selected by the other two members from a list provided by the American arbitration association, and the claim settled in accordance with the rules provided by the American arbitration association. Arbitration costs shall be paid one-half by the wholesaler and one-half by the brewer. Arbitration shall be conducted in accordance with the commercial arbitration rules of the American arbitration association and the laws of this state, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The award of the arbitrator shall be final and binding on the parties.

95 Acts, ch 101, §7

#### **123A.8 Right of free association.**

A brewer or wholesaler shall not restrict or inhibit, directly or indirectly, the right of free association among brewers or wholesalers for any lawful purpose.

95 Acts, ch 101, §8

#### **123A.9 Judicial remedies.**

1. If a brewer or a wholesaler who is a party to an agreement pursuant to this chapter fails to comply with this chapter or otherwise engages in conduct prohibited under this chapter, the aggrieved party may maintain a civil action in district court if the cause of action directly relates to or stems from the relationship of the individual parties under the agreement.

2. A brewer or wholesaler may bring an action for declaratory judgment for determination of any controversy arising under this chapter or out of the brewer and wholesaler agreement.

3. Upon proper petition to the district court, a brewer or wholesaler may obtain injunctive relief against a violation of this chapter.

4. In an action under subsection 1, the district court may grant the relief as the court determines is necessary or appropriate considering the purposes of this chapter. The district court may, if it finds that a brewer has acted in bad faith in invoking the amendment, modification, cancellation, nonrenewal, or termination provision of the agreement between the brewer and wholesaler, or has unreasonably withheld its consent to any assignment, transfer, or sale of the wholesaler's business, award equitable relief, actual damages, court costs, and attorney's fees.

5. The prevailing party in an action under subsection 1 shall be entitled to actual damages, court costs, and attorney's fees at the court's discretion.

6. With respect to a dispute arising under this chapter or out of the agreement between a brewer and wholesaler, the wholesaler and brewer each has the absolute right, before the wholesaler or brewer has agreed to arbitrate a particular dispute, to refuse to arbitrate that particular dispute. A brewer shall not, as a condition of entering into or renewing an agreement, require the wholesaler to agree to arbitration in lieu of judicial remedies.

7. A brewer shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewer with the appropriate state or federal regulatory authority. Retaliatory action shall include, but shall not be limited to, refusal without good cause to continue the agreement, or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement, or impede the normal business operations of the wholesaler.

95 Acts, ch 101, §9

Referred to in §123A.7

**123A.10 Waiver — prohibited.**

A brewer shall not require a wholesaler to waive compliance with any provision of this chapter. This chapter shall not be construed to limit or prohibit a good faith settlement of a dispute voluntarily entered into between the parties.

95 Acts, ch 101, §10

**123A.11 Indemnification.**

A brewer shall fully indemnify and hold harmless the brewer’s wholesaler against any losses, including but not limited to court costs and reasonable attorney fees or damages arising out of complaints, claims, or lawsuits, including but not limited to strict liability, negligence, misrepresentation, or express or implied warranty where the complaint, claim, or lawsuit relates to the manufacture or packaging of beer or other functions by the brewer which are beyond the control of the wholesaler.

95 Acts, ch 101, §11

**123A.12 Application to existing agreements.**

1. The provisions of this chapter apply to a valid agreement in effect immediately before July 1, 1995, when the first of the following dates occurs:

a. On the effective date of the next amendment, modification, or renewal of the existing valid agreement.

b. On the next anniversary date of the execution of the original agreement between the wholesaler and the brewer.

2. If no written agreement exists, the provisions of the chapter apply to the implied or oral unwritten agreement of a brewer and a wholesaler of that brewery on July 1, 1995.

95 Acts, ch 101, §12

CHAPTERS 123B and 123C

RESERVED

CHAPTER 124

CONTROLLED SUBSTANCES

Referred to in §124B.2, 124C.1, 147.107, 155A.3, 155A.6, 155A.6A, 155A.6B, 155A.12, 155A.13A, 155A.17, 155A.23, 155A.26, 155A.27, 155A.42, 189.16, 205.3, 205.11, 205.12, 205.13, 232.45, 232.52, 237A.5, 321.19, 321.215, 422.72, 462A.2, 702.6, 809A.21, 811.1, 811.2, 901.5, 911.3, 914.7

See also chapter 124A, imitation controlled substances  
See §205.11 – 205.13 for additional provisions relating to administration and enforcement

This chapter not enacted as a part of this title; transferred from chapter 204 in Code 1993

	DIVISION I	124.203	Substances listed in schedule I — criteria.
	DEFINITIONS	124.204	Schedule I — substances included.
124.101	Definitions.		
124.101A	Administration of controlled substances — delegation.	124.205	Substances listed in schedule II — criteria.
		124.206	Schedule II — substances included.
	DIVISION II	124.207	Substances listed in schedule III — criteria.
	STANDARDS AND SCHEDULES	124.208	Schedule III — substances included.
124.201	Duty to recommend changes in schedules.	124.209	Substances listed in schedule IV — criteria.
124.202	Controlled substances — listed regardless of name.		



DIVISION I  
DEFINITIONS**124.101 Definitions.**

As used in this chapter:

1. “*Administer*” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

a. A practitioner, or in the practitioner’s presence, by the practitioner’s authorized agent; or

b. The patient or research subject at the direction and in the presence of the practitioner.

2. “*Agent*” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouse, or employee of the carrier or warehouse.

3. “*Board*” means the board of pharmacy.

4. “*Bureau*” means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

5. “*Controlled substance*” means a drug, substance, or immediate precursor in schedules I through V of division II of this chapter.

6. “*Counterfeit substance*” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

7. “*Deliver*” or “*delivery*” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

8. “*Department*” means the department of public safety of the state of Iowa.

9. “*Dispense*” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

10. “*Dispenser*” means a practitioner who dispenses.

11. “*Distribute*” means to deliver other than by administering or dispensing a controlled substance.

12. “*Distributor*” means a person who distributes.

13. “*Drug*” means:

a. Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

c. Substances, other than food, intended to affect the structure or any function of the human body or animals; and

d. Substances intended for use as a component of any article specified in paragraph “a”, “b”, or “c” of this subsection. It does not include devices or their components, parts, or accessories.

14. “*Electronic prescription*” means a prescription which is transmitted by a computer device in a secure manner, including computer-to-computer transmission and computer-to-facsimile transmission.

15. “*Facsimile prescription*” means a prescription which is transmitted by a device which sends an exact image to the receiver.

16. “*Immediate precursor*” means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the

manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

17. "*Isomer*" means the optical isomer, except as used in section 124.204, subsection 4, and section 124.206, subsection 2, paragraph "d". As used in section 124.204, subsection 4, "*isomer*" means the optical, positional, or geometric isomer. As used in section 124.206, subsection 2, paragraph "d", "*isomer*" means the optical or geometric isomer.

18. "*Manufacture*" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to administering or dispensing of a controlled substance in the course of the practitioner's professional practice, or

b. By a practitioner, or by an authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

19. "*Marijuana*" means all parts of the plants of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

20. "*Narcotic drug*" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

b. Poppy straw and concentrate of poppy straw.

c. Opium poppy.

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs "a" through "c".

21. "*Office*" means the governor's office of drug control policy, as referred to in section 80E.1.

22. "*Opiate*" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 124.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

23. "*Opium poppy*" means the plant of the species *Papaver somniferum* L., except its seeds.

24. "*Person*" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

25. "*Poppy straw*" means all parts, except the seeds, of the opium poppy, after mowing.

26. "*Practitioner*" means either:

a. A physician, dentist, podiatric physician, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to

distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

27. “*Production*” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

28. “*Simulated controlled substance*” means a substance which is not a controlled substance but which is expressly represented to be a controlled substance, or a substance which is not a controlled substance but which is impliedly represented to be a controlled substance and which because of its nature, packaging, or appearance would lead a reasonable person to believe it to be a controlled substance.

29. “*State*”, when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any area subject to the legal authority of the United States of America.

30. “*Ultimate user*” means a person who lawfully possesses a controlled substance for the person’s own use or for the use of a member of the person’s household or for administering to an animal owned by the person or by a member of the person’s household.

[C51, §2728; R60, §4374; C73, §4038; C97, §2593; S13, §2593, 2596-a; C24, 27, 31, 35, §3151; C39, §3169.01, 3169.07; C46, 50, 54, 58, 62, 66, §204.1, 204.7; C71, §204.1, 204.7, 204A.1; C73, 75, 77, 79, 81, §204.101; 82 Acts, ch 1147, §1]

84 Acts, ch 1013, §1 – 3; 91 Acts, ch 8, §1

C93, §124.101

94 Acts, ch 1009, §1; 95 Acts, ch 108, §1; 99 Acts, ch 89, §1, 2; 2001 Acts, ch 24, §28; 2004 Acts, ch 1036, §1; 2007 Acts, ch 8, §1; 2007 Acts, ch 10, §8; 2009 Acts, ch 25, §1; 2009 Acts, ch 133, §194

Referred to in §80.1A, 124.410, 124A.2, 124B.1, 125.2, 279.9, 321.208, 453B.1, 657.2, 717F.4, 808B.3, 808B.5

#### **124.101A Administration of controlled substances — delegation.**

Nothing contained in this chapter shall be construed to prevent a physician, dentist, podiatric physician, or veterinarian from delegating the administration of controlled substances under this chapter to a nurse, intern, or other qualified individual or, as to veterinarians, to an orderly or assistant, under the veterinarian’s direction and supervision; all pursuant to rules adopted by the board.

2009 Acts, ch 133, §195

## DIVISION II

### STANDARDS AND SCHEDULES

Referred to in §124.101, 155A.3

#### **124.201 Duty to recommend changes in schedules.**

1. The board shall administer the regulatory provisions of this chapter. Annually, within thirty days after the convening of each regular session of the general assembly, the board shall recommend to the general assembly any deletions from, or revisions in the schedules of substances, enumerated in section 124.204, 124.206, 124.208, 124.210, or 124.212, which it deems necessary or advisable. In making a recommendation to the general assembly regarding a substance, the board shall consider the following:

- a. The actual or relative potential for abuse;
- b. The scientific evidence of its pharmacological effect, if known;
- c. State of current scientific knowledge regarding the substance;
- d. The history and current pattern of abuse;
- e. The scope, duration, and significance of abuse;
- f. The risk to the public health;
- g. The potential of the substance to produce psychic or physiological dependence liability; and
- h. Whether the substance is an immediate precursor of a substance already controlled under this division.

2. After considering the above factors, the board shall make a recommendation to the

general assembly, specifying the change which should be made in existing schedules, if it finds that the potential for abuse or lack thereof of the substance is not properly reflected by the existing schedules.

3. If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor. Such designations shall be made pursuant to the procedures of chapter 17A.

4. If any new substance is designated as a controlled substance under federal law and notice of the designation is given to the board, the board shall similarly designate as controlled the new substance under this chapter after the expiration of thirty days from publication in the Federal Register of a final order designating a new substance as a controlled substance, unless within that thirty-day period the board objects to the new designation. In that case the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing the board shall announce its decision. Upon publication of objection to a new substance being designated as a controlled substance under this chapter by the board, control under this chapter is stayed until the board publishes its decision. If a substance is designated as controlled by the board under this subsection the control shall be temporary and if, within sixty days after the next regular session of the general assembly convenes, the general assembly has not made the corresponding changes in this chapter, the temporary designation of control of the substance by the board shall be nullified.

[C73, 75, 77, 79, 81, §204.201]

C93, §124.201

2012 Acts, ch 1122, §7, 11; 2013 Acts, ch 90, §24

Referred to in §124.101

Subsection 4 amended

#### **124.202 Controlled substances — listed regardless of name.**

The controlled substances listed in the schedules in sections 124.204, 124.206, 124.208, 124.210 and 124.212 are included by whatever official name, common or usual name, chemical name, or trade name is designated.

[C73, 75, 77, 79, 81, §204.202]

C93, §124.202

#### **124.203 Substances listed in schedule I — criteria.**

1. The board shall recommend to the general assembly that the general assembly place a substance in schedule I if the substance is not already included therein and the board finds that the substance:

a. Has high potential for abuse; and

b. Has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision.

2. If the board finds that any substance included in schedule I does not meet these criteria, the board shall recommend that the general assembly place the substance in a different schedule or remove the substance from the list of controlled substances, as appropriate.

[C73, 75, 77, 79, 81, §204.203]

C93, §124.203

2009 Acts, ch 41, §34, 263

#### **124.204 Schedule I — substances included.**

1. Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Opiates*. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

a. Acetylmethadol.

b. Allylprodine.

- c. Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
- d. Alphameprodine.
- e. Alphamethadol.
- f. Alpha-Methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine).
- g. Benzethidine.
- h. Betacetylmethadol.
- i. Betameprodine.
- j. Betamethadol.
- k. Betaprodine.
- l. Clonitazene.
- m. Dextromoramide.
- n. Difenoxin.
- o. Diampromide.
- p. Diethylthiambutene.
- q. Dimenoxadol.
- r. Dimepheptanol.
- s. Dimethylthiambutene.
- t. Dioxaphetyl butyrate.
- u. Dipipanone.
- v. Ethylmethylthiambutene.
- w. Etonitazene.
- x. Etoxidine.
- y. Furethidine.
- z. Hydroxypethidine.
- aa. Ketobemidone.
- ab. Levomoramide.
- ac. Levophenacylmorphan.
- ad. Morpheridine.
- ae. Noracymethadol.
- af. Norlevorphanol.
- ag. Normethadone.
- ah. Norpipanone.
- ai. Phenadoxone.
- aj. Phenampromide.
- ak. Phenomorphan.
- al. Phenoperidine.
- am. Piriramide.
- an. Proheptazine.
- ao. Properidine.
- ap. Propiram.
- aq. Racemoramide.
- ar. Tilidine.
- as. Trimeperidine.
- at. Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
- au. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
- av. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
- aw. Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
- ax. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide). For purposes of this opiate, "isomers" includes optical and geometric isomers.

ay. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

az. MPPP (1-methyl-4-phenyl-4-propionyloxy-piperidine).

ba. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide).

bb. PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine).

bc. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).

3. *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers and salts of isomers, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

a. Acetorphine.

b. Acetyldihydrocodeine.

c. Benzylmorphine.

d. Codeine methylbromide.

e. Codeine-N-Oxide.

f. Cyprenorphine.

g. Desomorphine.

h. Dihydromorphine.

i. Etorphine (except hydrochloride salt).

j. Heroin.

k. Hydromorphanol.

l. Methyl-desorphine.

m. Methyl-dihydromorphine.

n. Morphine methylbromide.

o. Morphine methylsulfonate.

p. Morphine-N-Oxide.

q. Myrophine.

r. Nicocodeine.

s. Nicomorphine.

t. Normorphine.

u. Pholcodine.

v. Thebacon.

w. Drotebanol.

4. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

a. 4-bromo-2,5-dimethoxy-amphetamine.

Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA.

b. 2,5-dimethoxyamphetamine. Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA.

c. 4-methoxyamphetamine. Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA.

d. 5-methoxy-3,4-methylenedioxy-amphetamine.

e. 4-methyl-2,5-dimethoxyl-amphetamine. Some trade or other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; and "STP".

f. 3,4-methylenedioxy amphetamine, also known as MDA.

g. 3,4,5-trimethoxy amphetamine.

h. Bufotenine. Some trade or other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.

i. Diethyltryptamine. Some trade and other names: N, N-Diethyltryptamine; DET.

- j. Dimethyltryptamine. Some trade or other names: DMT.
- k. Ibogaine. Some trade or other names: 7-Ethyl-6,6B,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; Tabernanthe iboga.
- l. Lysergic acid diethylamide.
- m. Marijuana, except as otherwise provided by rules of the board for medicinal purposes.
- n. Mescaline.
- o. Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d) pyran; synhexyl.
- p. Peyote, except as otherwise provided in subsection 8. Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or extracts.
- q. N-ethyl-3-piperidyl benzilate.
- r. N-methyl-3-piperidyl benzilate.
- s. Psilocybin.
- t. Psilocyn.
- u. Tetrahydrocannabinols, except as otherwise provided by rules of the board for medicinal purposes, meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (*Cannabis* plant) as well as synthetic equivalents of the substances contained in the *Cannabis* plant, or in the resinous extractives of such plant, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:
  - (1) 1 cis or trans tetrahydrocannabinol, and their optical isomers.
  - (2) 6 cis or trans tetrahydrocannabinol, and their optical isomers.
  - (3) 3,4 cis or trans tetrahydrocannabinol, and their optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- v. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
- w. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.
- x. Thiophene analog of phencyclidine. Some trade or other names: 1-(1-(2-thienyl)-cyclohexyl)-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.
- y. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. Some other names: TCPy.
- z. 3,4-methylenedioxyamphetamine (MDMA).
- aa. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA).
- ab. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA).
- ac. 2,5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.
- ad. Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; a-ethyl-1H-indole-3-ethanamine;3-(2-aminobutyl)indole; alpha-ET; and AET.
- ae. 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.
- af. 2,5-dimethoxy-4-(n)-propylthiophenethylamine. Other name: 2C-T-7.
- ag. Alpha-methyltryptamine. Other name: AMT.
- ah. 5-methoxy-N,N-diisopropyltryptamine. Other name: 5-MeO-DIPT.
- ai. (1) *Salvia divinorum*.
- (2) Salvinorin A.
- (3) HU-210. [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl) 6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol].
- (4) HU-211 (dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol).
- (5) Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents,

or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(a) The term “*cannabimimetic agents*” means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(i) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

(ii) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

(iii) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

(iv) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

(v) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

(b) Such terms include:

(i) CP 47,497 and homologues 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]phenol.

(ii) JWH-018 and AM678 1-Pentyl-3-(1-naphthoyl)indole.

(iii) JWH-073 1-Butyl-3-(1-naphthoyl)indole.

(iv) JWH-200[1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl]-1-naphthalenyl-methanone.

(v) JWH-19 1-hexyl-3-(1-naphthoyl)indole.

(vi) JWH-81 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole.

(vii) JWH-122 1-pentyl-3-(4-methyl-1-naphthoyl)indole.

(viii) JWH-250 1-pentyl-3-(2-methoxyphenylacetyl)indole.

(ix) RCS-4 and SR-19 1-pentyl-3-[(4methoxy)-benzoyl]indole.

(x) RCS-8 and SR 18 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole.

(xi) AM2201 1-(5-fluoropentyl)-3-(1-naphthoyl)indole.

(xii) JWH-203 1-pentyl-3-(2-chlorophenylacetyl)indole.

(xiii) JWH-398 1-pentyl-3-(4-chloro-1-naphthoyl)indole.

(xiv) AM694 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole.

(xv) Cannabicyclohexanol or CP-47,497 C8-homolog 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol.

5. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Mecloqualone.

b. Methaqualone.

c. Gamma-hydroxybutyric acid. Some trade or other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.

6. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

a. Fenethylamine.

b. N-ethylamphetamine.

c. (+-)-cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).

d. N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine).

e. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

f. Aminorex. Some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine.

g. Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432.

h. N-benzylpiperazine. Some other names: BZP, 1-benzylpiperazine.

i. Any substance, compound, mixture or preparation which contains any quantity of any synthetic cathinone that is not approved as a pharmaceutical, including but not limited to the following:

(1) Mephedrone, also known as 4-methylmethcathinone, (RS)-2-methylamino-1-(4-methylphenyl) propan-1-one.

(2) 3,4-methylenedioxypropylvalerone (MDPV) [(1-(1,3-Benzodioxol-5-yl)-2-(1-pyrrolidinyl)-1-pentanone)].

(3) Methylone, also known as 3,4-methylenedioxyethylmethcathinone.

(4) Naphthylpyrovalerone (naphyrone).

(5) 4-fluoromethcathinone (flephedrone) or a positional isomer of 4-fluoromethcathinone.

(6) 4-methoxymethcathinone (methedrone; Bk-PMMA).

(7) Ethcathinone.

(8) 3,4-methylenedioxyethylcathinone (ethylone).

(9) Beta-keto-N-methyl-3,4-benzodioxolybutanamine (butylone).

(10) N,N-dimethylcathinone (metamfepramone).

(11) Alpha-pyrrolidinopropiophenone (alpha-PPP).

(12) 4-methoxy-alpha-pyrrolidinopropiophenone (MOPPP).

(13) 3,4-methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP).

(14) Alpha-pyrrolidinovalerophenone (alpha-PVP).

(15) 6,7-dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (MDAI).

(16) 3-fluoromethcathinone.

(17) 4'-Methyl-alpha-pyrrolidinobutiophenone (MPBP).

(18) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E).

(19) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D).

(20) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C).

(21) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I).

(22) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2).

(23) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4).

(24) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H).

(25) 2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine (2C-N).

(26) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P).

7. *Exclusions.* This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the board.

8. *Peyote.* Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto.

[C73, 75, 77, 79, 81, §204.204; 82 Acts, ch 1044, §1, 2]

84 Acts, ch 1013, §4 – 8; 85 Acts, ch 86, §1, 2; 86 Acts, ch 1037, §1, 2; 87 Acts, ch 122, §1; 88 Acts, ch 1024, §1; 89 Acts, ch 109, §1, 2; 91 Acts, ch 8, §2

C93, §124.204

94 Acts, ch 1009, §2 – 8; 2000 Acts, ch 1140, §2 – 4; 2001 Acts, ch 58, §1; 2003 Acts, ch 53, §1 – 3; 2007 Acts, ch 8, §2 – 7; 2007 Acts, ch 10, §9 – 11; 2011 Acts, ch 131, §134 – 136; 2011

Acts, ch 134, §18, 27, 28; 2012 Acts, ch 1021, §122, 123, 141, 145, 146; 2012 Acts, ch 1122, §1, 8, 9, 11

Referred to in §124.101, 124.201, 124.202, 124.303, 124.401, 321J.1, 411.6

#### **124.205 Substances listed in schedule II — criteria.**

1. The board shall recommend to the general assembly that the general assembly place a substance in schedule II if the substance is not already included therein and the board finds that:

- a. The substance has high potential for abuse;
- b. The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- c. Abuse of the substance may lead to severe psychic or physical dependence.

2. If the board finds that any substance included in schedule II does not meet these criteria, the board shall recommend that the general assembly place the substance in a different schedule or remove the substance from the list of controlled substances, as appropriate.

[C73, 75, 77, 79, 81, §204.205]

C93, §124.205

2009 Acts, ch 41, §35

#### **124.206 Schedule II — substances included.**

1. Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Substances, vegetable origin or chemical synthesis.* Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmeferne, naloxone, and naltrexone, and their respective salts, but including the following:

- (1) Raw opium.
- (2) Opium extracts.
- (3) Opium fluid.
- (4) Powdered opium.
- (5) Granulated opium.
- (6) Tincture of opium.
- (7) Codeine.
- (8) Ethylmorphine.
- (9) Etorphine hydrochloride.
- (10) Hydrocodone, also known as dihydrocodeinone.
- (11) Hydromorphone, also known as dihydromorphinone.
- (12) Metopon.
- (13) Morphine.
- (14) Oxycodone.
- (15) Oxymorphone.
- (16) Thebaine.
- (17) Dihydroetorphine.
- (18) Oripavine.

b. Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph "a", subparagraph (1), except that these substances shall not include the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves. Decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine, are excluded from this paragraph. The following substances and their salts, optical and geometric isomers, derivatives, and salts of derivatives and optical

and geometric isomers, and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical to any of such substances, are included in this paragraph:

- (1) Cocaine.
- (2) Ecgonine.

e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

3. *Opiates*. Unless specifically excepted or unless listed in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

- a. Alphaprodine.
- b. Alfentanil.
- c. Anileridine.
- d. Bezitramide.
- e. Bulk dextropropoxyphene (nondosage forms).
- f. Carfentanil.
- g. Dihydrocodeine.
- h. Diphenoxylate.
- i. Fentanyl.
- j. Isomethadone.
- k. Levomethorphan.
- l. Levorphanol.
- m. Metazocine.
- n. Methadone.
- o. Methadone – intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.
- p. Moramide – intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.
- q. Pethidine (meperidine).
- r. Pethidine – intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- s. Pethidine – intermediate-B, ethyl-4-phenylpiperidine-carboxylate.
- t. Pethidine – intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- u. Phenazocine.
- v. Piminodine.
- w. Racemethorphan.
- x. Racemorphan.
- y. Sufentanil.
- z. Levo-alpha-acetylmethadol. Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM.
- aa. Remifentanil.
- ab. Tapentadol.

4. *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
- b. Methamphetamine, its salts, isomers, and salts of its isomers.
- c. Phenmetrazine and its salts.
- d. Methylphenidate and its salts.
- e. Lisdexamfetamine, its salts, isomers, and salts of its isomers.

5. *Depressants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Amobarbital.
- b. Glutethimide.
- c. Pentobarbital.

d. Phencyclidine.

e. Secobarbital.

6. *Immediate precursors.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. Phenylacetone, an immediate precursor to amphetamine and methamphetamine. Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

b. Immediate precursors to phencyclidine (PCP):

(1) 1-phenylcyclohexylamine.

(2) 1-piperidinocyclohexanecarbonitrile (PCC).

c. Immediate precursor to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

7. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. Marijuana when used for medicinal purposes pursuant to rules of the board.

b. Nabilone [another name for nabilone: (+) - trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one].

8. The board, by rule, may except any compound, mixture, or preparation containing any stimulant listed in subsection 4 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system, and if the admixtures are included in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

[C73, 75, 77, 79, 81, §204.206; 82 Acts, ch 1044, §3, 4]

84 Acts, ch 1013, §9; 85 Acts, ch 86, §3, 4; 86 Acts, ch 1037, §3 – 5; 87 Acts, ch 122, §2; 90 Acts, ch 1059, §1, 2; 91 Acts, ch 8, §3

C93, §124.206

94 Acts, ch 1009, §9, 10; 2000 Acts, ch 1140, §5 – 7; 2003 Acts, ch 53, §4, 5; 2007 Acts, ch 8, §8, 9; 2007 Acts, ch 10, §12, 13; 2008 Acts, ch 1010, §1, 2; 2010 Acts, ch 1046, §1; 2012 Acts, ch 1122, §2

Referred to in §124.101, 124.201, 124.202, 124.303, 321J.1, 411.6

#### **124.207 Substances listed in schedule III — criteria.**

1. The board shall recommend to the general assembly that the general assembly place a substance in schedule III if the substance is not already included therein and the board finds that:

a. The substance has a potential for abuse which is less than that of the substances listed in schedules I and II;

b. The substance has currently accepted medical use in treatment in the United States; and

c. Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

2. If the board finds that any substance included in schedule III does not meet these criteria, the board shall recommend that the general assembly place the substance in a different schedule or remove the substance from the list of controlled substances, as appropriate.

[C73, 75, 77, 79, 81, §204.207]

C93, §124.207

2009 Acts, ch 41, §36

#### **124.208 Schedule III — substances included.**

1. Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Benzphetamine.
- b. Chlorphentermine.
- c. Clortermine.
- d. Phendimetrazine.

3. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

a. Any compound, mixture or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedules.

b. Any suppository dosage form containing amobarbital, secobarbital, pentobarbital or any salt of any of these drugs and approved by the federal food and drug administration for marketing only as a suppository.

c. Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

- d. Chlorhexadol.
- e. Lysergic acid.
- f. Lysergic acid amide.
- g. Methyprylon.
- h. Sulfondiethylmethane.
- i. Sulfonethylmethane.
- j. Sulfonmethane.

k. Tiletamine and zolazepam or any salt thereof, including the following:

(1) Some trade or other names for a tiletamine-zolazepam combination product: Telazol.

(2) Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.

(3) Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyraxolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon.

l. Ketamine, its salts, isomers, and salts of isomers.

Some other names for ketamine: (+)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone.

m. Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal Food, Drug, and Cosmetic Act.

n. Embutramide.

4. *Nalorphine.*

5. *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule:

a. Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than three hundred milligrams of dihydrocodeinone (another name: hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than three hundred milligrams of dihydrocodeinone (another name:

hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than one point eight grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

b. Any material, compound, mixture, or preparation containing the narcotic drug buprenorphine, or its salts.

6. *Anabolic steroids.* Unless specifically excepted in subsection 7 or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, esters, and ethers:

- a. 3[beta],17-dihydroxy-5[alpha]-androstane.
- b. 3[alpha],17[beta]-dihydroxy-5[alpha]-androstane.
- c. 5[alpha]-androstan-3,17-dione.
- d. 1-androstenediol(3[beta],17[beta]-dihydroxy-5[alpha]-androst-1-ene).
- e. 1-androstenediol (3[alpha],17[beta]-dihydroxy-5[alpha]-androst-1-ene).
- f. 4-androstenediol (3[beta],17[beta]-dihydroxy-androst-4-ene).
- g. 5-androstenediol (3[beta],17[beta]-dihydroxy-androst-5-ene).
- h. 1-androstenedione ([5[alpha]]-androst-1-en-3,17-dione).
- i. 4-androstenedione (androst-4-en-3,17-dione).
- j. 5-androstenedione (androst-5-en-3,17-dione).
- k. Bolasterone (7[alpha],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one).
- l. Boldenone (17[beta]-hydroxyandrost-1,4-diene-3-one).
- m. Calusterone (7[beta],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one).
- n. Clostebol (4-chloro-17[beta]-hydroxyandrost-4-en-3-one).
- o. Dehydrochloromethyltestosterone (4-chloro-17[beta]-hydroxy-17[alpha]-methylandrost-1,4-dien-3-one).
- p. [Delta]1-dihydrotestosterone (also known as 1-testosterone)(17[beta]-hydroxy-5[alpha]-androst-1-en-3-one).
- q. 4-dihydrotestosterone (17[beta]-hydroxy-androstan-3-one).
- r. Drostanolone (17[beta]-hydroxy-2[alpha]-methyl-5[alpha]-androstan-3-one).
- s. Ethylestrenol (17[alpha]-ethyl-17[beta]-hydroxyestr-4-ene).
- t. Fluoxymesterone (9-fluoro-17[alpha]-methyl-11[beta],17[beta]-dihydroxyandrost-4-en-3-one).
- u. Formebolone (2-formyl-17[alpha]-methyl-11[alpha],17[beta]-dihydroxyandrost-1,4-dien-3-one).
- v. Furazabol (17[alpha]-methyl-17[beta]-hydroxyandrostan[2,3-c]-furan).
- w. 13[beta]-ethyl-17[beta]-hydroxygon-4-en-3-one.
- x. 4-hydroxytestosterone (4,17[beta]-dihydroxy-androst-4-en-3-one).
- y. 4-hydroxy-19-nortestosterone (4,17[beta]-dihydroxy-estr-4-en-3-one).
- z. Mestanolone (17[alpha]-methyl-17[beta]-hydroxy-5[alpha]-androstan-3-one).
- aa. Mesterolone (1[alpha]methyl-17[beta]-hydroxy-[5[alpha]]-androstan-3-one).
- ab. Methandienone (17[alpha]-methyl-17[beta]-hydroxyandrost-1,4-dien-3-one).
- ac. Methandriol (17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-5-ene).
- ad. Methenolone (1-methyl-17[beta]-hydroxy-5[alpha]-androst-1-en-3-one).
- ae. 17[alpha]-methyl-3[beta],17[beta]-dihydroxy-5[alpha]-androstane.
- af. 17[alpha]-methyl-3[alpha],17[beta]-dihydroxy-5[alpha]-androstane.
- ag. 17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-4-ene.

- ah. 17[alpha]-methyl-4-hydroxynandrolone (17[alpha]-methyl-4-hydroxy-17[beta]-hydroxyestr-4-en-3-one).
- ai. Methyldienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4,9(10)-dien-3-one).
- aj. Methyltrienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4,9-11-trien-3-one).
- ak. Methyltestosterone (17[alpha]-methyl-17[beta]-hydroxyandrost-4-en-3-one).
- al. Mibolerone (7[alpha],17[alpha]-dimethyl-17[beta]-hydroxyestr-4-en-3-one).
- am. 17[alpha]-methyl-[Delta]1-dihydrotestosterone (17b[beta]-hydroxy-17[alpha]-methyl-5[alpha]-androst-1-en-3-one) (also known as 17-[alpha]-methyl-1-testosterone).
- an. Nandrolone (17[beta]-hydroxyestr-4-en-3-one).
- ao. 19-nor-4-androstenediol (3[beta],17[beta]-dihydroxyestr-4-ene).
- ap. 19-nor-4-androstenediol (3[alpha],17[beta]-dihydroxyestr-4-ene).
- aq. 19-nor-5-androstenediol (3[beta],17[beta]-dihydroxyestr-5-ene).
- ar. 19-nor-5-androstenediol (3[alpha],17[beta]-dihydroxyestr-5-ene).
- as. 19-nor-4-androstenedione (estr-4-en-3,17-dione).
- at. 19-nor-5-androstenedione (estr-5-en-3,17-dione).
- au. Norbolethone (13[beta],17[alpha]-diethyl-17[beta]-hydroxygon-4-en-3-one).
- av. Norclostebol (4-chloro-17[beta]-hydroxyestr-4-en-3-one).
- aw. Norethandrolone (17[alpha]-ethyl-17[beta]-hydroxyestr-4-en-3-one).
- ax. Normethandrolone (17[alpha]-methyl-17[beta]-hydroxyestr-4-en-3-one).
- ay. Oxandrolone (17[alpha]-methyl-17[beta]-hydroxy-2-oxa-[5[alpha]]-androst-3-one).
- az. Oxymesterone (17[alpha]-methyl-4,17[beta]-dihydroxyandrost-4-en-3-one).
- ba. Oxymetholone (17[alpha]-methyl-2-hydroxymethylene-17[beta]-hydroxy-[5[alpha]]-androst-3-one).
- bb. Stanozolol (17[alpha]-methyl-17[beta]-hydroxy-[5[alpha]]-androst-2-eno[3,2-c]-pyrazole).
- bc. Stenbolone (17[beta]-hydroxy-2-methyl-[5[alpha]]-androst-1-en-3-one).
- bd. Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone).
- be. Testosterone (17[beta]-hydroxyandrost-4-en-3-one).
- bf. Tetrahydrogestrinone (13[beta],17[alpha]-diethyl-17[beta]-hydroxygon-4,9,11-trien-3-one).
- bg. Trenbolone (17[beta]-hydroxyestr-4,9,11-trien-3-one).
- bh. Boldione (androsta-1,4-diene-3,17-dione).
- bi. Desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[beta]-ol); also known as madol.
- bj. 19-nor-4,9(10)-androstadienedione (estra-4,9(10)diene-3,17-dione).

7. *Exclusions — anabolic steroids.* This section shall not apply to an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved for such administration. A person who prescribes, dispenses, or distributes such steroid for human use shall be considered to have prescribed, dispensed, or distributed an anabolic steroid subject to this section. This section shall not apply to estrogens, progestins, corticosteroids, or dehydroepiandrosterone.

8. The board by rule may except any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 2 and 3 of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

9. *Hallucinogenic substances.*

a. Dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved for marketing by the United States food and drug administration.

b. Any drug product in tablet or capsule form containing natural dronabinol (derived from the cannabis plant) or synthetic dronabinol (produced from synthetic materials) for which an abbreviated new drug application (ANDA) has been approved by the United States food and

drug administration under section 505(j) of the federal Food, Drug, and Cosmetic Act and which references as its listed drug the drug product identified in paragraph "a".

c. Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

[C73, 75, 77, 79, 81, §204.208; 82 Acts, ch 1044, §5]

84 Acts, ch 1013, §10; 88 Acts, ch 1024, §2; 91 Acts, ch 8, §4; 91 Acts, ch 37, §1

C93, §124.208

94 Acts, ch 1009, §11 – 13; 95 Acts, ch 6, §1; 2000 Acts, ch 1140, §8 – 10; 2001 Acts, ch 58, §2; 2003 Acts, ch 53, §6, 7; 2007 Acts, ch 8, §10 – 12; 2008 Acts, ch 1010, §3, 4; 2012 Acts, ch 1122, §3

Referred to in §124.201, 124.202, 124.303, 126.2

#### **124.209 Substances listed in schedule IV — criteria.**

1. The board shall recommend to the general assembly that the general assembly place a substance in schedule IV if the substance is not already included therein and the board finds that:

a. The substance has a low potential for abuse when compared with the substances listed in schedule III;

b. The substance has currently accepted medical use in treatment in the United States; and

c. Abuse of the substance may lead to limited physical dependence or psychological dependence when compared with the substances listed in schedule III.

2. If the board finds that any substance included in schedule IV does not meet these criteria, the board shall recommend that the general assembly place the substance in a different schedule or remove the substance from the list of controlled substances, as appropriate.

[C73, 75, 77, 79, 81, §204.209]

C93, §124.209

2009 Acts, ch 41, §37

#### **124.210 Schedule IV — substances included.**

1. Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

a. Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

b. Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

3. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Alprazolam.

b. Barbital.

c. Bromazepam.

d. Camazepam.

e. Carisoprodol.

f. Chloral betaine.

g. Chloral hydrate.

h. Chlordiazepoxide.

i. Clobazam.

j. Clonazepam.

k. Clorazepate.

- l.* Clotiazepam.
- m.* Cloxazolam.
- n.* Delorazepam.
- o.* Diazepam.
- p.* Dichloralphenazone.
- q.* Estazolam.
- r.* Ethchlorvynol.
- s.* Ethinamate.
- t.* Ethyl Loflazepate.
- u.* Fludiazepam.
- v.* Flunitrazepam.
- w.* Flurazepam.
- x.* Halazepam.
- y.* Haloxazolam.
- z.* Ketazolam.
- aa.* Loprazolam.
- ab.* Lorazepam.
- ac.* Lormetazepam.
- ad.* Mebutamate.
- ae.* Medazepam.
- af.* Meprobamate.
- ag.* Methohexital.
- ah.* Methylphenobarbital (mephobarbital).
- ai.* Midazolam.
- aj.* Nimetazepam.
- ak.* Nitrazepam.
- al.* Nordiazepam.
- am.* Oxazepam.
- an.* Oxazolam.
- ao.* Paraldehyde.
- ap.* Petrichloral.
- aq.* Phenobarbital.
- ar.* Pinazepam.
- as.* Prazepam.
- at.* Quazepam.
- au.* Temazepam.
- av.* Tetrazepam.
- aw.* Triazolam.
- ax.* Zaleplon.
- ay.* Zolpidem.
- az.* Zopiclone.
- ba.* Fospropofol.

4. *Fenfluramine.* Any material, compound, mixture, or preparation which contains any quantity of fenfluramine, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

5. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

- a.* Cathine [(+)-norpseudoephedrine].
- b.* Diethylpropion.
- c.* Fencamfamin.
- d.* Fenproporex.
- e.* Mazindol.
- f.* Mefenorex.

- g. Pemoline (including organometallic complexes and chelates thereof).
- h. Phentermine.
- i. Pipradrol.
- j. SPA ((-)-1-dimethylamino-1,2-diphenylethane).
- k. Modafinil.
- l. Sibutramine.

6. *Other substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

- a. Pentazocine.
- b. Butorphanol (including its optical isomers).

[C73, 75, §204.210; C77, 79, 81, §204.208(6c), 204.210; 82 Acts, ch 1044, §6 – 10]  
84 Acts, ch 1013, §11; 85 Acts, ch 86, §5; 87 Acts, ch 122, §3; 89 Acts, ch 109, §3  
C93, §124.210

94 Acts, ch 1009, §14, 15; 2000 Acts, ch 1140, §11 – 14; 2002 Acts, ch 1108, §1; 2007 Acts, ch 8, §13, 14; 2010 Acts, ch 1046, §2; 2012 Acts, ch 1122, §4

Referred to in §124.201, 124.202, 124.303

#### **124.211 Schedule V — criteria.**

1. The board shall recommend to the general assembly that the general assembly place a substance in schedule V if any substance is not already included therein and the board finds that:

- a. The substance has a low potential for abuse when compared with the substances listed in schedule IV;
- b. The substance has currently accepted medical use in treatment in the United States; and
- c. The substance has limited physical dependence or psychological dependence liability when compared with the controlled substances listed in schedule IV.

2. If the board finds that any substance included in schedule V does not meet these criteria, the board shall recommend that the general assembly place the substance in a different schedule or remove the substance from the list of controlled substances, as appropriate.

[C73, 75, 77, 79, 81, §204.211]

C93, §124.211

2009 Acts, ch 41, §38

#### **124.212 Schedule V — substances included.**

1. Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Narcotic drugs containing nonnarcotic active medicinal ingredients.* Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

- a. Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams.
- b. Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams.
- c. Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams.
- d. Not more than two point five milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.
- e. Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

f. Not more than point five milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

3. *Stimulants.* Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of pyrovalerone, including its salts, isomers, and salts of isomers.

4. *Precursors to amphetamine and methamphetamine.* Unless specifically excepted in paragraph “d” or “e” or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following precursors to amphetamine or methamphetamine, including their salts, optical isomers, and salts of their optical isomers:

a. Ephedrine.

b. Phenylpropanolamine.

c. Pseudoephedrine. A person shall present a government-issued photo identification card when purchasing a pseudoephedrine product from a pharmacy. A person shall not purchase a quantity of pseudoephedrine in violation of section 124.213 from a pharmacy, unless the person has a prescription for a pseudoephedrine product in excess of that quantity. A pseudoephedrine product not excepted from this schedule shall be sold by a pharmacy as provided in section 124.212A.

d. Any product that contains three hundred sixty milligrams or less of pseudoephedrine, its salts, optical isomers, and salts of its optical isomers, which is in liquid, liquid capsule, or liquid-filled gel capsule form, is excepted from this schedule and may be warehoused, distributed, and sold over the counter pursuant to section 126.23A.

e. A pseudoephedrine product warehoused by a distributor located in this state which is warehoused for export to a retailer outside this state is excepted from this schedule. A distributor warehousing and exporting a pseudoephedrine product shall register with the board and comply with any rules adopted by the board and relating to the diversion of pseudoephedrine products from legitimate commerce.

5. *Depressants.* Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of any of the following substances having a depressant effect on the central nervous system, including salts of such substances:

a. Ezogabine [N-[2-amino-4(4-fluorobenzylamino)-phenyl]carbamic acid ethyl ester].

b. Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide].

c. Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

[C73, 75, 77, 79, 81, §204.212]

84 Acts, ch 1013, §12; 85 Acts, ch 86, §6; 89 Acts, ch 109, §4

C93, §124.212

94 Acts, ch 1009, §16, 17; 97 Acts, ch 77, §1; 2000 Acts, ch 1140, §15, 16; 2003 Acts, ch 53, §8; 2005 Acts, ch 15, §1, 14; 2005 Acts, ch 179, §56; 2007 Acts, ch 8, §15, 16; 2009 Acts, ch 25, §2; 2010 Acts, ch 1046, §3; 2012 Acts, ch 1122, §5

Referred to in §124.201, 124.202, 124.303, 126.23A

#### **124.212A Pharmacy pseudoephedrine sale — restrictions — records — contingent applicability.**

A pharmacy, an employee of a pharmacy, or a licensed pharmacist shall do the following:

1. Provide for the sale of a pseudoephedrine product from a locked cabinet or behind the sales counter where the public is unable to reach the product and where the public is not permitted.

2. Require the purchaser to present a government-issued photo identification card identifying the purchaser prior to purchasing a pseudoephedrine product.

3. Provide an electronic logbook for purchasers of pseudoephedrine products to sign.

4. Require the purchaser to sign the electronic logbook. If the electronic logbook is not available, require a signature that is associated with a transaction number.

5. Enter the purchaser’s name, address, date of purchase, time of purchase, name of the pseudoephedrine product purchased, and the quantity sold in the electronic logbook. If the electronic logbook is unavailable, an alternative record shall be kept that complies with the rules adopted by both the office and the board.

6. Determine that the signature in the electronic logbook corresponds with the name on the government-issued photo identification card.

7. Provide notice that a purchaser entering a false statement or misrepresentation in the electronic logbook may subject the purchaser to criminal penalties under 18 U.S.C. § 1001.

8. Keep electronic logbook records and any other records obtained from pseudoephedrine purchases if the electronic logbook is unavailable for twenty-four months from the date of the last entry.

9. Disclose electronic logbook information and any other pseudoephedrine purchase records as provided by state and federal law.

10. Comply with training requirements pursuant to federal law.

2009 Acts, ch 25, §3, 9; 2010 Acts, ch 1061, §23

Referred to in §124.212

#### **124.212B Pseudoephedrine sales — tracking — penalty.**

1. The office shall establish a real-time electronic repository to monitor and control the sale of schedule V products containing any detectable amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine. A pharmacy dispensing such products shall report all such sales electronically to a central repository under the control of the office.

2. The information collected in the central repository is confidential unless otherwise ordered by a court, or released by the lawful custodian of the records pursuant to state or federal law.

3. A pharmacy, an employee of a pharmacy, or a licensed pharmacist shall not be provided access to the stored information in the electronic central repository. However, a pharmacy, an employee of a pharmacy, or a licensed pharmacist shall be provided access to the stored information for the limited purpose of determining what sales have been made by the pharmacy. A pharmacy, an employee of a pharmacy, or a licensed pharmacist shall not be given the obligation or duty to view the stored information.

4. A pharmacy, or an employee of a pharmacy, or a licensed pharmacist shall not be given the obligation or duty to seek information from the central repository if the real-time electronic logbook becomes unavailable for use.

5. If the electronic logbook is unavailable for use, a paper record for each sale shall be maintained including the purchaser's signature. Any paper record maintained by the pharmacy shall be provided to the office for inclusion in the electronic real-time central repository as soon as practicable.

6. A pharmacy, or an employee of a pharmacy, or a licensed pharmacist shall not be liable, if acting reasonably and in good faith, to any person for any claim which may arise when reporting sales of products enumerated in subsection 1 to the central repository.

7. A person who discloses information stored in the central repository in violation of this section commits a simple misdemeanor.

8. Both the office and the board shall adopt rules to administer this section.

9. The office shall report to the board on an annual basis, beginning January 1, 2010, regarding the repository, including the effectiveness of the repository in discovering unlawful sales of pseudoephedrine products.

2009 Acts, ch 25, §4, 9; 2010 Acts, ch 1069, §13

**124.212C Pseudoephedrine advisory council — electronic monitoring.** Repealed by 2013 Acts, ch 68, § 2.

#### **124.213 Pseudoephedrine purchase restrictions from pharmacy or retailer — penalty.**

1. A person shall not purchase more than three thousand six hundred milligrams of pseudoephedrine, either separately or collectively, within a twenty-four-hour period from a pharmacy, or more than one package of a product containing pseudoephedrine within a twenty-four-hour period from a retailer in violation of section 126.23A.

2. A person shall not purchase more than seven thousand five hundred milligrams of

pseudoephedrine, either separately or collectively, within a thirty-day period from a pharmacy or from a retailer in violation of section 126.23A.

3. A person who violates this section commits a serious misdemeanor.

2005 Acts, ch 15, §2, 14; 2009 Acts, ch 25, §6

Referred to in §124.212

### DIVISION III

#### REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

Referred to in §124.402

##### **124.301 Rules.**

The board may, subject to chapter 17A, promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

[C73, 75, 77, 79, 81, §204.301]

C93, §124.301

Referred to in §147.82, 155A.43

##### **124.302 Registration requirements.**

1. Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain and maintain a biennial registration issued by the board in accordance with its rules.

2. Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this division.

3. The following persons need not register and may lawfully possess controlled substances under this chapter:

a. An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent's or employee's business or employment.

b. A common or contract carrier or warehouse operator, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.

c. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in possession of a schedule V substance.

4. A separate registration is required for each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

5. The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's rules.

[C24, 27, 31, 35, §3155; C39, §3169.03, 3169.12; C46, 50, 54, 58, 62, 66, 71, §204.03, 204.12; C73, 75, 77, 79, 81, §204.302]

91 Acts, ch 233, §5

C93, §124.302

Referred to in §124A.5

##### **124.303 Registration.**

1. The board shall register an applicant to manufacture or distribute controlled substances included in sections 124.204, 124.206, 124.208, 124.210 and 124.212 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider all of the following factors:

a. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels.

- b. Compliance with applicable state and local law.
  - c. Any convictions of the applicant under any federal and state laws relating to any controlled substance.
  - d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion.
  - e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.
  - f. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.
  - g. Any other factors relevant to and consistent with the public health and safety.
2. Registration under subsection 1 of this section does not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.
3. Practitioners shall be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this division for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under this division in another capacity. Practitioners registered under federal law to conduct research with schedule I substances may conduct research in schedule I substances within this state upon furnishing the board evidence of the federal registration.
4. Compliance by manufacturers and distributors with the provisions of the federal law respecting registration, excluding fees, entitles them to be registered under this chapter.

[C73, 75, 77, 79, 81, §204.303]

C93, §124.303

Referred to in §124.304

#### **124.304 Revocation, suspension, or restriction of registration.**

1. The board may suspend, revoke, or restrict a registration under section 124.303 to manufacture, distribute, or dispense a controlled substance upon a finding that any of the following apply to the registrant:
- a. The registrant has furnished false or fraudulent material information in any application filed under this chapter.
  - b. The registrant has had the registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended, revoked, or restricted.
  - c. The registrant has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this section only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even though the entry of the judgment or sentence has been withheld and the individual placed on probation.
  - d. The registrant has committed such acts as would render the registrant's registration under section 124.303 inconsistent with the public interest as determined under that section.
  - e. If the registrant is a licensed health care professional, the registrant has had the registrant's professional license revoked or suspended or has been otherwise disciplined in a way that restricts the registrant's authority to handle or prescribe controlled substances.
2. The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.
3. If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be forfeited to the state.

4. The board shall promptly notify the bureau and the department of all orders suspending or revoking registration and all forfeitures of controlled substances.

[C39, §3169.04; C46, 50, 54, 58, 62, 66, 71, §204.4; C73, 75, 77, 79, 81, §204.304]

91 Acts, ch 233, §6

C93, §124.304

2003 Acts, ch 53, §9

Referred to in §124.305

#### **124.305 Order to show cause.**

1. Before denying, suspending or revoking a registration, or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the board at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

2. The board, without an order to show cause, may suspend any registration simultaneously with the institution of proceedings under section 124.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, under the provisions of the Iowa administrative procedure Act, chapter 17A, unless sooner withdrawn by the board or dissolved by the order of the district court or an appellate court.

[C73, 75, 77, 79, 81, §204.305]

C93, §124.305

2003 Acts, ch 44, §114

#### **124.306 Records of registrants.**

Persons registered to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of federal law and with such additional rules as may be issued by the board. A practitioner who engages in dispensing any controlled substance to the practitioner's patients shall keep records of receipt and disbursements of such drugs, including dispensing or other disposition, and information as to controlled substances stolen, lost, or destroyed. In every such case the records of controlled substance received shall show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received. The record of all controlled substances dispensed or otherwise disposed of, shall show the date of dispensing, the name and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were dispensed and the kind and quantity of drugs dispensed.

Every such record shall be kept for a period of two years from the date of the transaction recorded. Records of controlled substances lost, destroyed or stolen, shall contain a detailed list of the kind and quantity of such drugs and the date of the discovery of such loss, destruction, or theft.

No person shall distribute complimentary packages of controlled substances, to a practitioner unless that person prepares and leaves with the practitioner a specific written list of the items so distributed. This list shall be prepared on a form prescribed by rules promulgated by the board, and the person who distributes the items listed shall send a

copy of the list to the board as soon as practicable after distribution of the complimentary packages to the practitioner.

[C39, §3169.09; C46, 50, 54, 58, 62, 66, §204.9; C71, §204.9, 204A.4; C73, 75, 77, 79, 81, §204.306]

C93, §124.306

Referred to in §124.308

#### **124.307 Order forms.**

Controlled substances in schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

[C24, 27, 31, 35, §3154, 3155; C39, §3169.05; C46, 50, 54, 58, 62, 66, 71, §204.5; C73, 75, 77, 79, 81, §204.307]

C93, §124.307

Referred to in §124.403

#### **124.308 Prescriptions.**

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner or without the electronic or facsimile prescription of a practitioner in accordance with subsection 2.

2. A practitioner, other than a pharmacy, or a practitioner's authorized agent may transmit an electronic prescription or facsimile prescription to a pharmacy for a schedule II controlled substance, provided that the prescription complies with section 155A.27 and provided that the original signed prescription is presented to the pharmacist prior to the dispensing of the schedule II controlled substance. If permitted by federal law, and in accordance with federal requirements, the electronic or facsimile prescription shall serve as the original signed prescription and the practitioner shall not provide the patient or the patient's authorized representative with a signed, written prescription.

3. In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon electronic, facsimile, or oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 124.306. No prescription for a schedule II substance may be refilled.

4. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under chapter 155A, shall not be dispensed without a written or oral prescription of a practitioner or without an electronic or facsimile prescription in accordance with subsection 5. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

5. A practitioner, other than a pharmacy, or the practitioner's authorized agent may transmit an electronic prescription or a facsimile prescription to a pharmacy for a schedule III, IV, or V controlled substance, provided that the prescription complies with section 155A.27, and provided that the original signed prescription is presented to the pharmacist prior to the dispensing of the controlled substance, or if the prescription is electronic, an oral prescription or a facsimile prescription is provided. If permitted by federal law, and in accordance with federal requirements, the electronic or facsimile prescription shall serve as the original signed prescription and the practitioner shall not provide the patient or the patient's authorized representative with a signed, written prescription.

6. A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

[C39, §3169.06; C46, 50, 54, 58, 62, 66, §204.6; C71, §204.6, 204A.7; C73, 75, 77, 79, 81, §204.308]

87 Acts, ch 215, §44

C93, §124.308

2004 Acts, ch 1036, §2, 3; 2005 Acts, ch 3, §29; 2007 Acts, ch 8, §17

Referred to in §124.402

See §147.107, 205.3

DIVISION IV  
OFFENSES AND PENALTIES

Referred to in §155A.24, 911.2

**124.401 Prohibited acts — manufacturers — possessors — counterfeit substances — simulated controlled substances — penalties.**

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

a. Violation of this subsection, with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class “B” felony, and notwithstanding section 902.9, subsection 1, paragraph “b”, shall be punished by confinement for no more than fifty years and a fine of not more than one million dollars:

(1) More than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five hundred grams of a mixture or substance containing a detectable amount of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, or salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph divisions (a) through (c).

(3) More than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than one hundred grams of phencyclidine (PCP) or one kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one thousand kilograms of a mixture or substance containing a detectable amount of marijuana.

(7) More than five kilograms of a mixture or substance containing a detectable amount of any of the following:

(a) Methamphetamine, its salts, isomers, or salts of isomers.

(b) Amphetamine, its salts, isomers, and salts of isomers.

(c) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph divisions (a) and (b).

b. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class “B” felony, and in addition to the provisions of section 902.9, subsection 1, paragraph “b”, shall be punished by a fine of not less than five thousand dollars nor more than one hundred thousand dollars:

(1) More than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than one hundred grams but not more than five hundred grams of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, or salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph divisions (a) through (c).

(3) More than ten grams but not more than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than ten grams but not more than one hundred grams of phencyclidine (PCP) or more than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) Not more than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one hundred kilograms but not more than one thousand kilograms of marijuana.

(7) More than five grams but not more than five kilograms of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine.

(8) More than five grams but not more than five kilograms of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity or detectable amount of amphetamine, its salts, isomers, or salts of isomers.

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 1, paragraph "d", shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:

(1) One hundred grams or less of a mixture or substance containing a detectable amount of heroin.

(2) One hundred grams or less of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, or salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph divisions (a) through (c).

(3) Ten grams or less of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) Ten grams or less of phencyclidine (PCP) or one hundred grams or less of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than fifty kilograms but not more than one hundred kilograms of marijuana.

(6) Five grams or less of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine.

(7) Five grams or less of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity or detectable amount of amphetamine, its salts, isomers, or salts of isomers.

(8) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III, except as provided in paragraph "d".

d. Violation of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in section 124.204, subsection 4, paragraph "ai", or section 124.204, subsection 6, paragraph "i", or classified in schedule IV or V is an aggravated misdemeanor. However, violation of this subsection involving fifty kilograms or less of marijuana or involving flunitrazepam is a class "D" felony.

e. A person in the immediate possession or control of a firearm while participating in a violation of this subsection shall be sentenced to two times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

f. A person in the immediate possession or control of an offensive weapon, as defined in section 724.1, while participating in a violation of this subsection, shall be sentenced to three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

2. If the same person commits two or more acts which are in violation of subsection 1

and the acts occur in approximately the same location or time period so that the acts can be attributed to a single scheme, plan, or conspiracy, the acts may be considered a single violation and the weight of the controlled substances, counterfeit substances, or simulated controlled substances involved may be combined for purposes of charging the offender.

3. It is unlawful for any person to sell, distribute, or make available any product containing ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine, if the person knows, or should know, that the product may be used as a precursor to any illegal substance or an intermediary to any controlled substance. A person who violates this subsection commits a serious misdemeanor.

4. A person who possesses any product containing any of the following commits a class "D" felony, if the person possesses with the intent that the product be used to manufacture any controlled substance:

- a. Ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine.
- b. Pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine.
- c. Ethyl ether.
- d. Anhydrous ammonia.
- e. Red phosphorus.
- f. Lithium.
- g. Iodine.
- h. Thionyl chloride.
- i. Chloroform.
- j. Palladium.
- k. Perchloric acid.
- l. Tetrahydrofuran.
- m. Ammonium chloride.
- n. Magnesium sulfate.

5. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. A person who commits a violation of this subsection and who has previously been convicted of violating this chapter or chapter 124A, 124B, or 453B is guilty of an aggravated misdemeanor. A person who commits a violation of this subsection and has previously been convicted two or more times of violating this chapter or chapter 124A, 124B, or 453B is guilty of a class "D" felony.

If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense. If the controlled substance is marijuana and the person has been previously convicted of a violation of this subsection in which the controlled substance was marijuana, the punishment shall be as provided in section 903.1, subsection 1, paragraph "b". If the controlled substance is marijuana and the person has been previously convicted two or more times of a violation of this subsection in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor.

All or any part of a sentence imposed pursuant to this subsection may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court.

If a person commits a violation of this subsection, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. If the person is not sentenced to confinement under the custody of the director of the department of corrections, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may

transfer the person's placement to any appropriate placement permissible under the court order.

If the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. The court may place the person on intensive probation. However, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

[C51, §2728; R60, §4374; C73, §4038; C97, §2593, 5003; S13, §2593, 2596-a; C24, 27, 31, 35, §3152, 3168, 3169; C39, §3169.02, 3169.21; C46, 50, 54, 58, 62, §204.2, 204.22; C66, §204.2, 204.20; C71, §204.2, 204.20, 204A.3, 204A.10; C73, 75, 77, 79, 81, §204.401; 82 Acts, ch 1147, §2]

84 Acts, ch 1013, §13, 14; 84 Acts, ch 1105, §2, 3; 89 Acts, ch 225, §11; 90 Acts, ch 1233, §7 C93, §124.401

94 Acts, ch 1107, §7; 96 Acts, ch 1164, §1 – 4; 97 Acts, ch 122, §1 – 3; 98 Acts, ch 1138, §24, 25; 99 Acts, ch 12, §2, 3; 99 Acts, ch 65, §1; 2000 Acts, ch 1144, §1; 2000 Acts, ch 1201, §4; 2003 Acts, ch 16, §1; 2003 Acts, ch 156, §1 – 7; 2004 Acts, ch 1057, §1; 2004 Acts, ch 1086, §32; 2006 Acts, ch 1030, §12; 2007 Acts, ch 8, §18; 2007 Acts, ch 126, §24; 2009 Acts, ch 41, §263; 2011 Acts, ch 134, §19, 20, 47; 2012 Acts, ch 1023, §23; 2012 Acts, ch 1122, §10, 11; 2013 Acts, ch 30, §25, 236 – 238

Referred to in §124.401E, 124.409, 124.410, 124.411, 124.413, 124.416, 155A.24, 232.8, 232.22, 232.52, 321.279, 462A.34B, 712.1, 723A.1, 726.6, 809A.4, 811.1, 901.5, 901.10, 907.3

See §124B.9

Subsection 1, paragraph a, unnumbered paragraph 1 amended

Subsection 1, paragraph b, unnumbered paragraph 1 amended

Subsection 1, paragraph c, unnumbered paragraph 1 amended

Subsection 1, paragraph d amended

#### **124.401A Enhanced penalty for manufacture or distribution to persons on certain real property.**

In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older who unlawfully manufactures with intent to distribute, distributes, or possesses with intent to distribute a substance or counterfeit substance listed in schedule I, II, or III, or a simulated controlled substance represented to be a controlled substance classified in schedule I, II, or III, to another person who is eighteen years of age or older in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, may be sentenced up to an additional term of confinement of five years.

90 Acts, ch 1251, §5

C91, §204.401A

C93, §124.401A

94 Acts, ch 1172, §6; 96 Acts, ch 1164, §5; 2002 Acts, ch 1175, §25; 2002 Acts, 2nd Ex, ch 1003, §236, 262

Referred to in §901.5

#### **124.401B Possession of controlled substances on certain real property — additional penalty.**

In addition to any other penalties provided in this chapter or another chapter, a person who unlawfully possesses a substance listed in schedule I, II, or III, or a simulated controlled substance represented to be a controlled substance classified in schedule I, II, or III, in or on, or within one thousand feet of the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, may be sentenced to one hundred hours of community service work for a public agency or a nonprofit charitable organization. The court shall provide the offender with a written statement of the terms and monitoring provisions of the community service.

94 Acts, ch 1172, §7; 96 Acts, ch 1164, §6

**124.401C Manufacturing methamphetamine in presence of minors.**

1. In addition to any other penalties provided in this chapter, a person who is eighteen years of age or older and who either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufactures methamphetamine, its salts, isomers, or salts of its isomers in the presence of a minor shall be sentenced up to an additional term of confinement of five years. However, the additional term of confinement shall not be imposed on a person who has been convicted and sentenced for a child endangerment offense under section 726.6, subsection 1, paragraph “g”, arising from the same facts.

2. For purposes of this section, the term “*in the presence of a minor*” shall mean, but is not limited to, any of the following:

- a. When a minor is physically present during the activity.
- b. When the activity is conducted in the residence of a minor.
- c. When the activity is conducted in a building where minors can reasonably be expected to be present.
- d. When the activity is conducted in a room offered to the public for overnight accommodation.
- e. When the activity is conducted in any multiple-unit residential building.  
97 Acts, ch 125, §1; 2004 Acts, ch 1151, §1; 2006 Acts, ch 1030, §13

**124.401D Conspiracy to manufacture for delivery or delivery or intent or conspiracy to deliver amphetamine or methamphetamine to a minor.**

1. a. It is unlawful for a person eighteen years of age or older to act with, or enter into a common scheme or design with, or conspire with one or more persons to manufacture for delivery to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers.

b. A violation of this subsection is a felony punishable under section 902.9, subsection 1, paragraph “a”.

c. A second or subsequent violation of this subsection is a class “A” felony.

2. a. It is unlawful for a person eighteen years of age or older to deliver, or possess with the intent to deliver to a person under eighteen years of age, a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, or to act with, or enter into a common scheme or design with, or conspire with one or more persons to deliver or possess with the intent to deliver to a person under eighteen years of age a material, compound, mixture, preparation, or substance that contains any detectable amount of amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers.

b. A violation of this subsection is a felony punishable under section 902.9, subsection 1, paragraph “a”.

c. A second or subsequent violation of this subsection is a class “A” felony.

99 Acts, ch 12, §4; 2000 Acts, ch 1144, §2; 2009 Acts, ch 41, §181; 2013 Acts, ch 30, §239, 240

Referred to in §901.10, 902.8A, 902.9  
Subsection 1, paragraph b amended  
Subsection 2, paragraph b amended

**124.401E Certain penalties for manufacturing or delivery of amphetamine or methamphetamine.**

1. If a court sentences a person for the person’s first conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, paragraph “c”, and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person

to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

2. If a court sentences a person for a conviction of manufacturing of a controlled substance under section 124.401, subsection 1, paragraph “c”, and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced, or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

3. If a court sentences a person for the person’s second or subsequent conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, and the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court, in addition to any other authorized penalties, shall sentence the person to imprisonment in accordance with section 124.401, subsection 1, and the person shall serve the minimum period of confinement as required by section 124.413.

99 Acts, ch 12, §5; 2000 Acts, ch 1144, §3

**124.401F Prohibitions on tampering with, possessing, or transporting anhydrous ammonia or anhydrous ammonia equipment.**

1. A person shall not intentionally tamper with anhydrous ammonia equipment. Tampering occurs when a person who is not authorized by the owner of anhydrous ammonia equipment uses the equipment in violation of a provision of this section. A person shall not in any manner or for any purpose sell, fill, refill, deliver, permit to be delivered, or use an anhydrous ammonia container or receptacle, including for the storage of any gas or compound, unless the person owns the container or receptacle or is authorized to do so by the owner. A person shall not possess or transport anhydrous ammonia in a container or receptacle which is not authorized by the secretary of agriculture to hold anhydrous ammonia.

2. A person violating this section commits a serious misdemeanor. In addition to the imposition of the serious misdemeanor penalty, a person shall be subject to a civil penalty of not more than one thousand five hundred dollars, if the person does any of the following:

a. Intentionally tampers with anhydrous ammonia equipment.

b. Possesses or transports anhydrous ammonia in a container or receptacle which is not authorized to hold anhydrous ammonia according to rules adopted by the secretary of agriculture.

3. A person tampering with anhydrous ammonia equipment in violation of this section shall not have a cause of action against the owner of the equipment, any person responsible for the installation and maintenance of the equipment, or the person lawfully selling the anhydrous ammonia for damages arising out of the tampering.

99 Acts, ch 12, §6; 99 Acts, ch 208, §48; 2000 Acts, ch 1058, §13

Referred to in §200.18

**124.402 Prohibited acts — distributors — registrants — proprietors — penalties.**

1. It is unlawful for any person:

a. Who is subject to division III to distribute or dispense a controlled substance in violation of section 124.308;

b. Who is a registrant, to manufacture a controlled substance not authorized by the registration, or to distribute or dispense a controlled substance not authorized by the registration to another registrant or other authorized person;

c. To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter;

d. To refuse an entry into any premises during reasonable business hours for any inspection authorized by this chapter; or

e. Knowingly to keep or permit the keeping or to maintain any premises, store, shop,

warehouse, dwelling, temporary, or permanent building, vehicle, boat, aircraft, or other temporary or permanent structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping, possessing or selling them in violation of this chapter.

2. Any person who violates subsection 1 of this section, or who acts with, enters into a common scheme or design with, or conspires with one or more other persons to violate subsection 1 of this section, is guilty of a public offense and upon conviction:

- a. Of a violation of paragraphs “a”, “b”, “d”, or “e” shall be an aggravated misdemeanor.
- b. Of a violation of paragraph “c” shall be a serious misdemeanor.

[C73, 75, 77, 79, 81, §204.402]

C93, §124.402

Referred to in §901.5

**124.403 Prohibited acts — controlled substances, distribution, use, possession — records and information — penalties.**

1. It is unlawful for any person knowingly or intentionally:

a. To distribute as a registrant a controlled substance classified in schedules I or II, except pursuant to an order form as required by section 124.307;

b. To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

c. To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

d. To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

e. To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

2. Any person who violates this section, or who acts with, enters into a common scheme or design with, or conspires with one or more other persons to violate this section, is guilty of a serious misdemeanor.

[C39, §3169.17; C46, 50, 54, 58, 62, §204.18; C66, §204.17; C71, §204.17, 204A.3; C73, 75, 77, 79, 81, §204.403]

C93, §124.403

Referred to in §901.5

**124.404 Penalties under other laws.**

Any penalty imposed for violation of this division shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

[C73, 75, 77, 79, 81, §204.404]

C93, §124.404

**124.405 Bar to prosecution.**

If a violation of this chapter is a violation of a federal law or the law of another state, the conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

[C39, §3169.22; C46, 50, 54, 58, 62, §204.23; C66, 71, §204.21; C73, 75, 77, 79, 81, §204.405]

C93, §124.405

**124.406 Distribution to person under age eighteen.**

1. A person who is eighteen years of age or older who:

a. Unlawfully distributes or possesses with intent to distribute a substance listed in schedule I or II to a person under eighteen years of age commits a class “B” felony and shall serve a minimum term of confinement of five years. However, if the substance was distributed in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public

recreation center, or on a marked school bus, the person shall serve a minimum term of confinement of ten years.

b. Unlawfully distributes or possesses with the intent to distribute a controlled substance listed in schedule III to a person under eighteen years of age who is at least three years younger than the violator commits a class “C” felony.

c. Unlawfully distributes a controlled substance listed in schedule IV or V to a person under eighteen years of age who is at least three years younger than the violator commits an aggravated misdemeanor.

2. A person who is eighteen years of age or older who:

a. Unlawfully distributes or possesses with the intent to distribute a counterfeit substance listed in schedule I or II, or a simulated controlled substance represented to be a substance classified in schedule I or II, to a person under eighteen years of age commits a class “B” felony. However, if the substance was distributed in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school, public park, public swimming pool, public recreation center, or on a marked school bus, the person shall serve a minimum term of confinement of ten years.

b. Unlawfully distributes or possesses with intent to distribute a counterfeit substance listed in schedule III, or a simulated controlled substance represented to be any substance listed in schedule III, to a person under eighteen years of age who is at least three years younger than the violator commits a class “C” felony.

c. Unlawfully distributes a counterfeit substance listed in schedule IV or V, or a simulated controlled substance represented to be a substance listed in schedule IV or V, to a person under eighteen years of age who is at least three years younger than the violator commits an aggravated misdemeanor.

3. It is unlawful for a person to deliver a controlled substance to another person in order to act with, enter into a common scheme or design with, conspire with, or recruit the other person for the purpose of delivering a controlled substance to one or more persons under eighteen years of age. A person who violates this subsection with respect to a controlled substance classified in schedule I, II, III, IV, or V is guilty of a class “D” felony.

[C97, §5003; C24, 27, 31, 35, §3168, 3169; C39, §3169.21; C46, 50, 54, 58, 62, §204.22; C66, §204.20; C71, §204.20, 204A.11; C73, 75, 77, 79, 81, §204.406; 82 Acts, ch 1147, §3]

84 Acts, ch 1013, §15; 89 Acts, ch 225, §12; 90 Acts, ch 1251, §6, 7

C93, §124.406

94 Acts, ch 1172, §8, 9; 97 Acts, ch 33, §2, 3

Referred to in §124.416, 901.10, 903A.5

#### **124.406A Use of persons under age eighteen in the drug trade.**

It is unlawful for a person who is eighteen years of age or older to conspire with or recruit a person under the age of eighteen for the purpose of delivering or manufacturing a controlled substance classified in schedules I through IV. A person violating this section commits a class “C” felony.

94 Acts, ch 1172, §10

#### **124.407 Gatherings where controlled substances unlawfully used — penalties.**

It is unlawful for any person to sponsor, promote, or aid, or assist in the sponsoring or promoting of a meeting, gathering, or assemblage with the knowledge or intent that a controlled substance be there distributed, used or possessed, in violation of this chapter.

Any person who violates this section and where the controlled substance is any one other than marijuana is guilty of a class “D” felony.

Any person who violates this section, and where the controlled substance is marijuana only, is guilty of a serious misdemeanor.

The district court shall grant an injunction barring a meeting, gathering, or assemblage if upon hearing the court finds that the sponsors or promoters of the meeting, gathering, or assemblage have not taken reasonable means to prevent the unlawful distribution, use or possession of a controlled substance. Further injunctive relief may be granted against all persons furnishing goods or services to such meeting, gathering, or assemblage.

The district court may, upon application and a showing of one or more of the grounds provided in section 639.3, grant to the state or governmental subdivision thereof a writ of attachment, ex parte, without bond, in an amount necessary to secure the payment of any fine that may be imposed and the payment of costs. The reasonable expense to the state and governmental subdivisions thereof to provide the necessary law enforcement resulting from a meeting, gathering or assemblage held in violation of this section may be taxed as costs in the criminal action.

[C73, 75, 77, 79, 81, §204.407]

C93, §124.407

99 Acts, ch 135, §13

#### **124.408 Joint criminal trials.**

Information, indictments, trial, and sentencing for violations of this chapter may allege any number of violations of their provisions against one person and join one or more persons as defendants who it is alleged violated the same provisions in the same transaction or series of transactions and which involve common questions of law and fact. The several charges shall be set out in separate counts and each accused person shall be convicted or acquitted upon each count by separate verdict. Each accused person shall thereafter be sentenced upon each verdict of guilty. The court may consider such separate verdicts of guilty returned at the same time as one offense for the purpose of sentencing as provided in this chapter. The court may grant a severance and separate trial to any accused person jointly charged or indicted if it appears that substantial injustice would result to such accused person unless a separate trial was granted.

[C73, 75, 77, 79, 81, §204.408]

C93, §124.408

#### **124.409 Conditional discharge, commitment for treatment, and probation.**

Whenever the court finds that a person who is charged with a violation of section 124.401 and who consents thereto, or who has entered a plea of guilty to or been found guilty of a violation of that section, is addicted to, dependent upon, or a chronic abuser of any controlled substance and that such person will be aided by proper medical treatment and rehabilitative services, it may order that the person be committed as an in-patient or out-patient to a facility licensed by the Iowa department of public health for medical treatment and rehabilitative services. A person committed under this subsection who is not possessed of sufficient income or estate to enable the person to make payment of the costs of such treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44. The determination of ability to pay shall be made by the court. The court shall require the patient, or the patient's parent, guardian, or custodian to complete under oath a detailed financial statement. The court may enter appropriate orders requiring the patient or those legally liable for the patient's support to reimburse the state with the costs, or any part thereof. In order to obtain the most effective results from such medical treatment and rehabilitative services, the court may commit the person to the custody of a public or private agency or any other responsible person and impose other conditions upon the commitment as is necessary to insure compliance with the court's order and to insure that the person will not, during the period of treatment and rehabilitation, again violate a provision of this chapter. If it is established thereafter to the satisfaction of the court that the person has again violated a provision of this chapter, the person may be returned to custody or sentenced upon conviction as provided by law. The public or private agency or responsible person to whom the accused person was committed by the court shall immediately report to the court when the person has received maximum benefit from the program or has recovered from addiction, dependency, or tendency to chronically abuse any controlled substance. The person shall then be returned to the court for disposition of the case. If the person has been charged or indicted, but not convicted, such charge shall proceed to trial or final disposition. If the person has been convicted or is thereafter convicted, the court shall sentence the person as provided

by law but may remit all or any part of the sentence and place the person on probation upon terms and conditions as the court may prescribe.

[C73, 75, 77, 79, 81, §204.409]

84 Acts, ch 1013, §16

C93, §124.409

96 Acts, ch 1034, §4; 2002 Acts, ch 1175, §26; 2002 Acts, 2nd Ex, ch 1003, §237, 262

Referred to in §125.44, 125.89

#### **124.410 Accommodation offense.**

In a prosecution for unlawful delivery or possession with intent to deliver marijuana, if the prosecution proves that the defendant violated the provisions of section 124.401, subsection 1, by proving that the defendant delivered or possessed with intent to deliver one-half ounce or less of marijuana which was not offered for sale, the defendant is guilty of an accommodation offense and rather than being sentenced as if convicted for a violation of section 124.401, subsection 1, paragraph “d”, shall be sentenced as if convicted of a violation of section 124.401, subsection 5. An accommodation offense may be proved as an included offense under a charge of delivering or possessing with the intent to deliver marijuana in violation of section 124.401, subsection 1. This section does not apply to hashish, hashish oil, or other derivatives of marijuana as defined in section 124.101, subsection 19.

[C73, 75, 77, 79, 81, §204.410]

89 Acts, ch 225, §13

C93, §124.410

99 Acts, ch 67, §1

Referred to in §124.413

#### **124.411 Second or subsequent offenses.**

1. Any person convicted of a second or subsequent offense under this chapter, may be punished by imprisonment for a period not to exceed three times the term otherwise authorized, or fined not more than three times the amount otherwise authorized, or punished by both such imprisonment and fine.

2. For purposes of this section, an offense is considered a second or subsequent offense, if, prior to the person’s having been convicted of the offense, the offender has ever been convicted under this chapter or under any state or federal statute relating to narcotic drugs or cocaine, marijuana, depressant, stimulant, or hallucinogenic drugs.

3. This section does not apply to offenses under section 124.401, subsection 5.

[C97, §5003; C24, 27, 31, 35, §3168, 3169; C39, §3169.21; C46, 50, 54, 58, 62, §204.22; C66, 71, §204.20; C73, 75, 77, 79, 81, §204.411]

84 Acts, ch 1013, §17

C93, §124.411

#### **124.412 Notice of conviction.**

If a person enters a plea of guilty to, or forfeits bail or collateral deposited to secure the person’s appearance in court, and such forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney’s information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation and to any state board or officer by whom the convicted person has been licensed or registered to practice the person’s profession or carry on the person’s business. On the conviction of a person, the court may suspend or revoke the license or registration of the convicted defendant to practice the defendant’s profession or carry on the defendant’s business. On the application of a person whose license or registration has been suspended

or revoked, and upon proper showing and for good cause, the board or officer may reinstate the license or registration.

[C39, §3169.15; C46, 50, 54, 58, 62, §204.16; C66, 71, §204.15; C73, 75, 77, 79, 81, §204.412]  
C93, §124.412

93 Acts, ch 16, §1

Referred to in §602.8102(35), 901.5

**124.413 Mandatory minimum sentence.**

1. A person sentenced pursuant to section 124.401, subsection 1, paragraph “a”, “b”, “c”, “e”, or “f”, shall not be eligible for parole until the person has served a minimum period of confinement of one-third of the maximum indeterminate sentence prescribed by law.

2. This section shall not apply if:

a. The offense is found to be an accommodation pursuant to section 124.410; or

b. The controlled substance is marijuana.

[C79, 81, §204.413]

89 Acts, ch 225, §14

C93, §124.413

2009 Acts, ch 41, §182

Referred to in §124.401E, 232.45, 901.10, 903A.5

**124.414 Drug paraphernalia.**

1. a. As used in this section, “*drug paraphernalia*” means all equipment, products, or materials of any kind used or attempted to be used in combination with a controlled substance, except those items used in combination with the lawful use of a controlled substance, to knowingly or intentionally and primarily do any of the following:

(1) Manufacture a controlled substance.

(2) Inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(3) Test the strength, effectiveness, or purity of a controlled substance.

(4) Enhance the effect of a controlled substance.

b. “*Drug paraphernalia*” does not include hypodermic needles or syringes if manufactured, delivered, sold, or possessed for a lawful purpose.

2. It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia.

3. A person who violates this section commits a simple misdemeanor.

2000 Acts, ch 1144, §4

**124.415 Parental and school notification — persons under eighteen years of age.**

A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of a controlled substance, counterfeit substance, or simulated controlled substance in violation of this chapter, and if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person’s custodial parent or legal guardian of such possession, whether or not the person is arrested, unless the officer has reasonable grounds to believe that such notification is not in the best interests of the person or will endanger that person. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district, the superintendent’s designee, or the authorities in charge of the nonpublic school of the taking into custody. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first-class mail.

90 Acts, ch 1251, §8

C91, §204.415

C93, §124.415

94 Acts, ch 1172, §11; 95 Acts, ch 191, §5

**124.416 Exception to restrictions on bail.**

Notwithstanding section 811.1, the court, after making the finding required by section 811.1, subsection 3, may admit a person convicted of a violation of section 124.401, subsection 2, or of a violation of section 124.406, to bail if the prosecuting attorney in the action and the defendant's counsel jointly petition the court to admit the person to bail.

90 Acts, ch 1251, §9

C91, §204.416

C93, §124.416

95 Acts, ch 191, §6

DIVISION V  
ENFORCEMENT AND ADMINISTRATIVE  
PROVISIONS

**124.501 Responsibility for enforcement.**

The department is primarily responsible for the enforcement of this chapter, and all other laws and regulations of this state, relating to controlled or counterfeit substances, or simulated or imitation controlled substances, except that the board is primarily responsible for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, and health care facilities as defined in section 135C.1, subsection 7, as well as in the possession of any and all other individuals or institutions authorized to have possession of any controlled substances, and is also primarily responsible for any other duties in respect to controlled substances as specifically delegated to the board by law. An officer or employee of the board may, when so directed or authorized by the board:

1. Execute and serve search warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state.

2. Make seizures of property pursuant to the provisions of this chapter.

[C39, §3169.19; C46, 50, 54, 58, 62, §204.20, 204.26; C66, 71, §204.19; C73, 75, 77, 79, 81, §204.501; 82 Acts, ch 1147, §10]

C93, §124.501

Referred to in §124.502

Imitation controlled substances, chapter 124A

Section not amended; internal reference change applied

**124.502 Administrative inspections and warrants.**

1. Issuance and execution of administrative inspection warrants shall be as follows:

a. A district judge or district associate judge, within the court's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections under this chapter or a related rule or under chapter 124A. The warrant may also permit seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the statute or related rules, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

b. A warrant shall issue only upon sworn testimony of an officer or employee of the board duly designated and having knowledge of the facts alleged, before the judicial officer, establishing the grounds for issuing the warrant. If the judicial officer is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the officer shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any.

c. The warrant shall:

(1) State the grounds for its issuance and the name of each person whose testimony has been taken in support thereof.

- (2) Be directed to a person authorized by section 124.501 to execute it.
- (3) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified.
- (4) Identify the item or types of property to be seized, if any.
- (5) Direct that it be served during normal business hours, if appropriate, and designate the judge to whom it shall be returned.

d. A warrant issued pursuant to this section must be executed and returned within ten days after its date unless, upon a showing of a need for additional time, the court so instructs otherwise in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom the property is seized, or the person in charge of the premises from which the property is seized, a copy of the warrant and a receipt for the property seized or shall leave the copy and receipt at the place from which the property is seized. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property seized. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was seized, if they are present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was seized and to the applicant for the warrant.

e. The judicial officer who has issued a warrant under this section shall require that there be attached to the warrant a copy of the return, and of all papers filed in connection with the return, and shall file them with the clerk of the district court for the county in which the inspection was made.

2. The department may make administrative inspections of controlled premises in accordance with the following provisions:

a. For purposes of this section only, “*controlled premises*” means:

(1) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(2) Places including factories, warehouse establishments, and conveyances where persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

b. Whenever authorized by an administrative inspection warrant issued pursuant to subsection 1 of this section an officer or employee of the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, has the right to enter controlled premises for the purpose of conducting an administrative inspection.

c. Whenever authorized by an administrative inspection warrant, an officer or employee of the board has the right:

(1) To inspect and copy records required by this chapter to be kept;

(2) To inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in paragraph “e” of this subsection, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(3) To inventory any stock of any controlled substance therein and obtain samples of any such substance.

d. This section shall not be construed to prevent the inspection without a warrant of books and records pursuant to a subpoena issued in accordance with section 622.65, nor shall this section be construed to prevent entries and administrative inspections, including seizures of property, without a warrant:

(1) With the consent of the owner, operator, or agent in charge of the controlled premises;

(2) In situations presenting imminent danger to health or safety;

(3) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and

(5) In all other situations where a warrant is not constitutionally required.

e. Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to financial data; sales data, other than shipment data; or pricing data.

[C73, 75, 77, 79, 81, §204.502; 82 Acts, ch 1147, §11]

83 Acts, ch 186, §10051, 10052, 10201

C93, §124.502

99 Acts, ch 96, §10; 2009 Acts, ch 41, §183

#### **124.503 Injunctions.**

1. The district court may exercise jurisdiction to enjoin violations of this chapter.

2. In case of an alleged violation of an injunction or restraining order issued under this section, upon demand of the defendant, trial shall be by a jury.

[C73, 75, 77, 79, 81, §204.503]

C93, §124.503

#### **124.504 Cooperative arrangements and confidentiality.**

1. The department and board, subject to approval and direction of the governor, shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they may jointly:

a. Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances.

b. Coordinate and cooperate in training programs on controlled substance law enforcement at the local and state levels.

c. Cooperate with the bureau by establishing a centralized unit which will accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make such information available for federal, state and local law enforcement purposes; except that they shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection 3.

d. Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

2. Results, information, and evidence received from the bureau relating to the regulatory functions of this chapter, including results of inspections conducted by that agency may be relied upon and acted upon by the board or the department in the exercise of their regulatory functions under this chapter.

3. A practitioner engaged in medical practice or research or the Iowa drug abuse authority or any program which is licensed by the authority shall not be required to furnish the name or identity of a patient or research subject to the board or the department, nor shall the practitioner or the authority or any program which is licensed by the authority be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner or the authority or any of its licensed programs is obligated to keep confidential.

[C73, 75, 77, 79, 81, §204.504]

C93, §124.504

#### **124.505 Reserved.**

#### **124.506 Controlled substances — disposal.**

All controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, or excess or undesired controlled substances, which have come into the custody of the board, the department, or any peace officer, shall be disposed of as follows:

1. Except as otherwise provided in this section, the court having jurisdiction shall order such controlled substances forfeited and destroyed. A record of the place where the controlled substances were seized, of the kinds and quantities of controlled substances so destroyed, and of the time, place, and manner of destruction, shall be kept for not less than ten years after destruction, and a return under oath, reporting said destruction, shall be made to the court.

2. Upon written application by the board, the court by whom the forfeiture of controlled substances has been decreed may order the delivery of any of them, except controlled substances listed in schedule I, to the board for distribution or destruction, as provided by this section.

3. Upon a request of any law enforcement agency, the court may order that a portion of a controlled substance subject to forfeiture and destruction pursuant to this section becomes the possession of the requesting law enforcement agency for the sole purpose of canine controlled substance detection training. A law enforcement agency receiving a controlled substance pursuant to this subsection shall do the following:

a. Establish a policy that includes reasonable controls regarding the possession, storage, use, and destruction of the controlled substance.

b. Retain a record of the following for at least ten years from the date the controlled substance is destroyed:

(1) The court order granting the law enforcement agency possession of the controlled substance.

(2) The name of each peace officer who takes possession of the controlled substance.

(3) The time, place, and manner of the destruction of the controlled substance.

4. Upon application by any hospital within this state, not operated for private gain, the board may in its discretion deliver any controlled substances that have come into its custody by authority of this section to the applicant for medicinal use. The board may from time to time deliver excess stocks of controlled substances to the bureau for disposition, or may destroy the excess controlled substances.

5. The board shall keep a full and complete record of all controlled substances received and disposed of, showing the exact kinds, quantities, and forms of controlled substances, the persons from whom received and to whom delivered, by whose authority received, delivered, and destroyed and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state laws relating to any controlled substance.

[C39, §3169.14; C46, 50, 54, 58, 62, §204.15; C66, 71, §204.14; C73, 75, 77, 79, 81, §204.506] C93, §124.506

2009 Acts, ch 24, §2, 3

Referred to in §124.506A, 809A.17

#### **124.506A Large seizure of a controlled substance — evidence and disposal.**

1. Notwithstanding the provisions of section 124.506, if more than ten pounds of marijuana or more than one pound of any other controlled substance is seized as a result of a violation of this chapter, the law enforcement agency responsible for retaining the seized controlled substance may destroy the seized controlled substance if the law enforcement agency retains at least ten pounds of the marijuana seized or at least one pound of any other controlled substance seized for evidence purposes.

2. Prior to the destruction of any controlled substance under this section, the law enforcement agency shall photograph the controlled substance to be destroyed with identifying case numbers or any other case identifiers and prepare a written report detailing any relevant information about the destruction of the controlled substance. At least thirty days prior to any destruction of a controlled substance, the law enforcement agency destroying the controlled substance shall notify in writing any person arrested in connection with the seizure, the attorney of the person if represented, and any other attorney of record including the prosecuting attorney, and the law enforcement agency that made the arrest if the agency is different than the law enforcement agency responsible for retaining the seized controlled substance, that the law enforcement agency is planning to photograph and

destroy part of the controlled substance seized, and any person or agency notified may be present at the photographing of the controlled substance to be destroyed.

3. Any person or agency notified about the destruction of part of the controlled substance seized, or any other interested party, may file an application with the district court resisting the destruction of any of the controlled substance.

4. A rebuttable presumption is created that the portion of any controlled substance retained for representation purposes as evidence and all photographs and records made under this section and properly identified are admissible in any court proceeding for any purpose for which the destroyed controlled substance would have been admissible.

2006 Acts, ch 1027, §1; 2006 Acts, ch 1185, §119

#### **124.507 Burden of proof — liabilities.**

1. It is not necessary for the state to negate any exemption or exception set forth in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this chapter. The proof of entitlement to any exemption or exception by the person claiming its benefit shall be a valid defense.

2. The absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter creates a rebuttable presumption that the person is not the holder of such registration or form.

3. No liability shall be imposed by virtue of this chapter upon any authorized state, county or municipal officer, engaged in the lawful performance of the officer's duties.

[C24, 27, 31, 35, §3156; C39, §3169.18; C46, 50, 54, 58, 62, §204.19; C66, 71, §204.18; C73, 75, 77, 79, 81, §204.507]

C93, §124.507

#### **124.508 Judicial review.**

Judicial review of actions of board or department may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C73, 75, 77, 79, 81, §204.508]

C93, §124.508

2003 Acts, ch 44, §114

#### **124.509 Education and research.**

1. The board and the department, subject to approval and direction of the governor, shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. They shall consult with each other and coordinate their programs so as to avoid duplication of effort. In connection with these programs they may:

a. Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

b. Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

c. Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

d. Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

e. Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and,

f. Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

2. The board and the department, subject to approval and direction of the governor, shall encourage research on misuse and abuse of controlled substances. In connection with such research, and in furtherance of the enforcement of this chapter, they may in such manner as will best insure coordination and avoid duplication of effort:

a. Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

b. Make studies and undertake programs of research to:

(1) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(2) Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(3) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

c. Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

3. The board or department, subject to approval and direction of the governor, may enter into contracts for educational and research activities without performance bonds.

4. The board and department, subject to approval and direction of the governor, may jointly authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization shall not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

5. The board and department, subject to approval and direction of the governor, may jointly authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

[C73, 75, 77, 79, 81, §204.509]

C93, §124.509

#### **124.510 Reports of arrests and analyses to department.**

Any peace officer who arrests for any crime, any known unlawful user of the drugs described in Schedule I, II, III, or IV, or who arrests any person for a violation of this chapter, or charges any person with a violation of this chapter subsequent to the person's arrest, shall within five days after the arrest or the filing of the charge, whichever is later, report the arrest and the charge filed to the department. The peace officer or any other peace officer or law enforcement agency which makes or obtains any quantitative or qualitative analysis of any substance seized in connection with the arrest of the person charged, shall report to the department the results of the analysis at the time the arrest is reported or at such later time as the results of the analysis become available.

This information is for the exclusive use of the division of narcotics enforcement in the department of public safety, and shall not be a matter of public record.

[C73, 75, 77, 79, 81, §204.510]

C93, §124.510

2005 Acts, ch 35, §29

## DIVISION VI

### DRUG PRESCRIBING AND DISPENSING — INFORMATION PROGRAM

#### **124.551 Information program for drug prescribing and dispensing.**

Contingent upon the receipt of funds pursuant to section 124.557 sufficient to carry out the purposes of this division, the board, in conjunction with the advisory council created in section 124.555, shall establish and maintain an information program for drug prescribing and dispensing. The program shall collect from pharmacies dispensing information for controlled substances identified pursuant to section 124.554, subsection 1, paragraph "g". The information collected shall be used by prescribing practitioners and pharmacists on a need-to-know basis for purposes of improving patient health care by facilitating early identification of patients who may be at risk for addiction, or who may

be using, abusing, or diverting drugs for unlawful or otherwise unauthorized purposes at risk to themselves and others, or who may be appropriately using controlled substances lawfully prescribed for them but unknown to the practitioner. For purposes of this division, “*prescribing practitioner*” means a practitioner who has prescribed or is contemplating the authorization of a prescription for the patient about whom information is requested, and “*pharmacist*” means a practicing pharmacist who is actively engaged in and responsible for the pharmaceutical care of the patient about whom information is requested. The board shall collect, store, and disseminate program information consistent with security criteria established by rule, including use of appropriate encryption or other industry-recognized security technology. The board shall seek any federal waiver necessary to implement the provisions of the program.

2006 Acts, ch 1147, §2, 11

Referred to in §22.7

#### **124.552 Information reporting.**

1. Each licensed pharmacy that dispenses controlled substances identified pursuant to section 124.554, subsection 1, paragraph “g”, to patients in the state, and each licensed pharmacy located in the state that dispenses such controlled substances identified pursuant to section 124.554, subsection 1, paragraph “g”, to patients inside or outside the state, unless specifically excepted in this section or by rule, shall submit the following prescription information to the program:

- a. Pharmacy identification.
- b. Patient identification.
- c. Prescribing practitioner identification.
- d. The date the prescription was issued by the prescribing practitioner.
- e. The date the prescription was dispensed.
- f. An indication of whether the prescription dispensed is new or a refill.
- g. Identification of the drug dispensed.
- h. Quantity of the drug dispensed.
- i. The number of days’ supply of the drug dispensed.
- j. Serial or prescription number assigned by the pharmacy.
- k. Type of payment for the prescription.
- l. Other information identified by the board and advisory council by rule.

2. Information shall be submitted electronically in a secure format specified by the board unless the board has granted a waiver and approved an alternate secure format.

3. Information shall be timely transmitted as designated by the board and advisory council by rule, unless the board grants an extension. The board may grant an extension if either of the following occurs:

- a. The pharmacy suffers a mechanical or electronic failure, or cannot meet the deadline established by the board for other reasons beyond the pharmacy’s control.
- b. The board is unable to receive electronic submissions.

4. This section shall not apply to a prescribing practitioner furnishing, dispensing, supplying, or administering drugs to the prescribing practitioner’s patient, or to dispensing by a licensed pharmacy for the purposes of inpatient hospital care, inpatient hospice care, or long-term residential facility patient care.

2006 Acts, ch 1147, §3, 11; 2007 Acts, ch 126, §25, 26

#### **124.553 Information access.**

1. The board may provide information from the program to the following:

- a. (1) A pharmacist or prescribing practitioner who requests the information and certifies in a form specified by the board that it is for the purpose of providing medical or pharmaceutical care to a patient of the pharmacist or prescribing practitioner. A pharmacist or a prescribing practitioner may delegate program information access to another authorized individual or agent only if that individual or agent registers for program information access, pursuant to board rules, as an agent of the pharmacist or prescribing practitioner. Board rules shall identify the qualifications for a pharmacist’s or prescribing practitioner’s agent

and shall limit the number of agents to whom each pharmacist or prescribing practitioner may delegate program information access.

(2) Notwithstanding subparagraph (1), a prescribing practitioner may delegate program information access to another licensed health care professional in emergency situations where the patient would be placed in greater jeopardy if the prescribing practitioner was required to access the information personally.

b. An individual who requests the individual's own program information in accordance with the procedure established in rules of the board and advisory council adopted under section 124.554.

c. Pursuant to an order, subpoena, or other means of legal compulsion for access to or release of program information that is issued based upon a determination of probable cause in the course of a specific investigation of a specific individual.

2. The board shall maintain a record of each person that requests information from the program. Pursuant to rules adopted by the board and advisory council under section 124.554, the board may use the records to document and report statistical information.

3. Information contained in the program and any information obtained from it, and information contained in the records of requests for information from the program, is privileged and strictly confidential information. Such information is a confidential public record pursuant to section 22.7, and is not subject to discovery, subpoena, or other means of legal compulsion for release except as provided in this division. Information from the program shall not be released, shared with an agency or institution, or made public except as provided in this division.

4. Information collected for the program shall be retained in the program for four years from the date of dispensing. The information shall then be destroyed.

5. A pharmacist or other dispenser making a report to the program reasonably and in good faith pursuant to this division is immune from any liability, civil, criminal, or administrative, which might otherwise be incurred or imposed as a result of the report.

6. Nothing in this section shall require a pharmacist or prescribing practitioner to obtain information about a patient from the program. A pharmacist or prescribing practitioner does not have a duty and shall not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or prescribing practitioner did or did not seek or obtain or use information from the program. A pharmacist or prescribing practitioner acting reasonably and in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving or using information from the program.

7. The board shall not charge a fee to a pharmacy, pharmacist, or prescribing practitioner for the establishment, maintenance, or administration of the program, including costs for forms required to submit information to or access information from the program, except that the board may charge a fee to an individual who requests the individual's own program information. A fee charged pursuant to this subsection shall not exceed the actual cost of providing the requested information and shall be considered a repayment receipt as defined in section 8.2.

2006 Acts, ch 1147, §4, 11; 2007 Acts, ch 8, §19; 2007 Acts, ch 126, §27, 28; 2011 Acts, ch 58, §1

Referred to in §22.7, 124.554, 124.558

#### **124.554 Rules and reporting.**

1. The board and advisory council shall jointly adopt rules in accordance with chapter 17A to carry out the purposes of, and to enforce the provisions of, this division. The rules shall include but not be limited to the development of procedures relating to:

- a. Identifying each patient about whom information is entered into the program.
- b. An electronic format for the submission of information from pharmacies.
- c. A waiver to submit information in another format for a pharmacy unable to submit information electronically.
- d. An application by a pharmacy for an extension of time for transmitting information to the program.

e. The submission by an authorized requestor of a request for information and a procedure for the verification of the identity of the requestor.

f. Use by the board or advisory council of the program request records required by section 124.553, subsection 2, to document and report statistical information.

g. Including all schedule II controlled substances and those substances in schedules III and IV that the advisory council and board determine can be addictive or fatal if not taken under the proper care and direction of a prescribing practitioner.

h. Access by a pharmacist or prescribing practitioner to information in the program pursuant to a written agreement with the board and advisory council.

i. The correction or deletion of erroneous information in the program.

2. Beginning January 1, 2007, and annually by January 1 thereafter, the board and advisory council shall present to the general assembly and the governor a report prepared consistent with section 124.555, subsection 3, paragraph “d”, which shall include but not be limited to the following:

a. The cost to the state of implementing and maintaining the program.

b. Information from pharmacies, prescribing practitioners, the board, the advisory council, and others regarding the benefits or detriments of the program.

c. Information from pharmacies, prescribing practitioners, the board, the advisory council, and others regarding the board’s effectiveness in providing information from the program.

2006 Acts, ch 1147, §5, 11; 2007 Acts, ch 126, §29, 30

Referred to in §124.551, 124.552, 124.553, 124.555, 124.556

#### **124.555 Advisory council established.**

An advisory council shall be established to provide oversight to the board and the program and to comanage program activities. The board and advisory council shall jointly adopt rules specifying the duties and activities of the advisory council and related matters.

1. The council shall consist of eight members appointed by the governor. The members shall include three licensed pharmacists, four physicians licensed under chapter 148, and one licensed prescribing practitioner who is not a physician. The governor shall solicit recommendations for council members from Iowa health professional licensing boards, associations, and societies. The license of each member appointed to and serving on the advisory council shall be current and in good standing with the professional’s licensing board.

2. The council shall advance the goals of the program, which include identification of misuse and diversion of controlled substances identified pursuant to section 124.554, subsection 1, paragraph “g”, and enhancement of the quality of health care delivery in this state.

3. Duties of the council shall include but not be limited to the following:

a. Ensuring the confidentiality of the patient, prescribing practitioner, and dispensing pharmacist and pharmacy.

b. Respecting and preserving the integrity of the patient’s treatment relationship with the patient’s health care providers.

c. Encouraging and facilitating cooperative efforts among health care practitioners and other interested and knowledgeable persons in developing best practices for prescribing and dispensing controlled substances and in educating health care practitioners and patients regarding controlled substance use and abuse.

d. Making recommendations regarding the continued benefits of maintaining the program in relationship to cost and other burdens to the patient, prescribing practitioner, pharmacist, and the board. The council’s recommendations shall be included in reports required by section 124.554, subsection 2.

e. One physician and one pharmacist member of the council shall include in their duties the responsibility for monitoring and ensuring that patient confidentiality, best interests, and civil liberties are at all times protected and preserved during the existence of the program.

4. Members of the advisory council shall be eligible to request and receive actual expenses for their duties as members of the advisory council, subject to reimbursement limits imposed

by the department of administrative services, and shall also be eligible to receive a per diem compensation as provided in section 7E.6, subsection 1.

2006 Acts, ch 1147, §6, 11; 2007 Acts, ch 126, §31, 32; 2008 Acts, ch 1088, §82  
Referred to in §124.551, 124.554

#### **124.556 Education and treatment.**

The program for drug prescribing and dispensing shall include education initiatives and outreach to consumers, prescribing practitioners, and pharmacists, and shall also include assistance for identifying substance abuse treatment programs and providers. The board and advisory council shall adopt rules, as provided under section 124.554, to implement this section.

2006 Acts, ch 1147, §7, 11; 2007 Acts, ch 126, §33

#### **124.557 Drug information program fund.**

The drug information program fund is established to be used by the board to fund or assist in funding the program. The board may make deposits into the fund from any source, public or private, including grants or contributions of money or other items of value, which it determines necessary to carry out the purposes of this division. Moneys received by the board to establish and maintain the program must be used for the expenses of administering this division. Notwithstanding section 8.33, amounts contained in the fund that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated in future years.

2006 Acts, ch 1147, §8, 11  
Referred to in §124.551

#### **124.558 Prohibited acts — penalties.**

1. *Failure to comply with requirements.* A pharmacist, pharmacy, prescribing practitioner, or agent of a pharmacist or prescribing practitioner who knowingly fails to comply with the confidentiality requirements of this division or who delegates program information access to another individual except as provided in section 124.553, is subject to disciplinary action by the appropriate professional licensing board. A pharmacist or pharmacy that knowingly fails to comply with other requirements of this division is subject to disciplinary action by the board. Each licensing board may adopt rules in accordance with chapter 17A to implement the provisions of this section.

2. *Unlawful access, disclosure, or use of information.* A person who intentionally or knowingly accesses, uses, or discloses program information in violation of this division, unless otherwise authorized by law, is guilty of a class “D” felony. This section shall not preclude a pharmacist or prescribing practitioner who requests and receives information from the program consistent with the requirements of this chapter from otherwise lawfully providing that information to any other person for medical or pharmaceutical care purposes.

2006 Acts, ch 1147, §9, 11; 2007 Acts, ch 126, §34; 2011 Acts, ch 58, §2

## DIVISION VII MISCELLANEOUS

#### **124.601 Uniformity of interpretation.**

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[C24, 27, 31, 35, §3167; C39, §3169.23; C46, 50, 54, 58, 62, §204.24; C66, 71, §204.22; C73, 75, 77, 79, 81, §204.601]

C93, §124.601

**124.602 Short title.**

This chapter may be cited as the “*Uniform Controlled Substances Act*”.

[C39, §3169.24; C46, 50, 54, 58, 62, §204.25; C66, 71, §204.23; C73, 75, 77, 79, 81, §204.602] C93, §124.602

## CHAPTER 124A

### IMITATION CONTROLLED SUBSTANCES

Referred to in §124.401, 124.502, 155A.6, 155A.6A, 155A.6B, 155A.13A, 155A.17, 155A.42

This chapter not enacted as a part of this  
title; transferred from chapter 204A in Code 1993

124A.1	Title.	124A.4	Offenses and penalties.
124A.2	Definitions.	124A.5	Immunity.
124A.3	Factors indicating an imitation controlled substance.		

**124A.1 Title.**

This chapter may be cited as the “*Iowa Imitation Controlled Substances Act*”.

[82 Acts, ch 1147, §4]

C83, §204A.1

C93, §124A.1

**124A.2 Definitions.**

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

1. “*Controlled substance*” means a controlled substance as defined in section 124.101, subsection 5.

2. “*Deliver*” or “*delivery*” means the actual, constructive, or attempted transfer, distribution, or dispensing to another of an imitation controlled substance.

3. “*Manufacture*” means the production, preparation, compounding, processing, encapsulating, packaging, or labeling of an imitation controlled substance.

4. “*Imitation controlled substance*” means a substance which is not a controlled substance but which by color, shape, size, markings, and other aspects of dosage unit appearance, and packaging or other factors, appears to be or resembles a controlled substance. The board of pharmacy may designate a substance as an imitation controlled substance pursuant to the board’s rulemaking authority and in accordance with chapter 17A.

[82 Acts, ch 1147, §5]

C83, §204A.2

C93, §124A.2

2007 Acts, ch 10, §14

**124A.3 Factors indicating an imitation controlled substance.**

When a substance has not been designated as an imitation controlled substance by the board of pharmacy and when dosage unit appearance alone does not establish that a substance is an imitation controlled substance, the following factors may be considered in determining whether the substance is an imitation controlled substance:

1. The person in control of the substance expressly or impliedly represents that the substance has the effect of a controlled substance.

2. The person in control of the substance expressly or impliedly represents that the substance because of its nature or appearance can be sold or delivered as a controlled substance or as a substitute for a controlled substance.

3. The person in control of the substance either demands or receives money or other

property having a value substantially greater than the actual value of the substance as consideration for delivery of the substance.

[82 Acts, ch 1147, §6]  
 C83, §204A.3  
 C93, §124A.3  
 2007 Acts, ch 10, §15

**124A.4 Offenses and penalties.**

1. It is unlawful for a person to manufacture, deliver, or possess with intent to deliver, an imitation controlled substance. Except as provided in subsection 3, a person who violates this subsection is guilty of an aggravated misdemeanor.

2. It is unlawful for a person to publish or to post or distribute in a public place, an advertisement or solicitation, if the person knows or reasonably should know the advertisement or solicitation is to promote the distribution of imitation controlled substances. A person who violates this subsection is guilty of a serious misdemeanor.

3. A person who is eighteen years of age or older who violates this section by delivering an imitation controlled substance to a person under eighteen years of age who is at least three years younger than the violator is guilty of a class “D” felony.

[82 Acts, ch 1147, §7]  
 C83, §204A.4  
 C93, §124A.4

**124A.5 Immunity.**

It is not unlawful for a person registered under section 124.302, to manufacture, deliver, or possess an imitation controlled substance for use as a placebo by a registered practitioner in the course of professional practice or research.

[82 Acts, ch 1147, §8]  
 C83, §204A.5  
 C93, §124A.5

**CHAPTER 124B**

**PRECURSOR SUBSTANCES**

Referred to in §124.401, 155A.6, 155A.6A, 155A.6B, 155A.13A, 155A.17, 155A.42

This chapter not enacted as a part of this title; transferred from chapter 204B in Code 1993

124B.1	Definitions.	124B.8	Missing quantity — reporting.
124B.2	Reporting required.	124B.9	Sale, transfer, furnishing, or receipt for unlawful purpose — penalty.
124B.3	Identification required.	124B.10	False statement — penalty.
124B.4	Vendor reporting.	124B.11	Permit requirements — penalty.
124B.5	Receipt of substance from outside the state — penalty.	124B.12	Permit — refusal, suspension, or revocation.
124B.6	Exceptions.		
124B.7	Reporting form.		

**124B.1 Definitions.**

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

1. “Board” means the board of pharmacy.
2. “Controlled substance” means a controlled substance as defined in section 124.101.
3. “Practitioner” means a practitioner as defined in section 155A.3.
4. “Precursor substance” means a substance which may be used as a precursor in the illegal production of a controlled substance and is specified under section 124B.2.
5. “Recipient” means a person in this state who purchases, transfers, or otherwise receives a precursor substance.

6. "Vendor" means a person who manufactures, wholesales, retails, or otherwise sells, transfers, or furnishes in this state a precursor substance.

90 Acts, ch 1251, §10

C91, §204B.1

C93, §124B.1

2007 Acts, ch 10, §16

#### **124B.2 Reporting required.**

1. Effective July 1, 1990, a report to the board shall be submitted in accordance with this chapter by a manufacturer, retailer, or other person who sells, transfers, or otherwise furnishes to any person in this state any of the following substances:

- a. Anthranilic acid, its esters, and its salts.
- b. Benzyl cyanide.
- c. Ethylamine and its salts.
- d. Ergonovine and its salts.
- e. Ergotamine and its salts.
- f. 3,4 - methylenedioxyphenyl-2-propanone.
- g. N-acetylanthranilic acid, its esters, and its salts.
- h. Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- i. Phenylacetic acid, its esters, and its salts.
- j. Piperidine and its salts.
- k. Methylamine and its salts.
- l. Propionic anhydride.
- m. Isosafrole.
- n. Safrole.
- o. Piperonal.
- p. N-methylephedrine, its salts, optical isomers, and salts of optical isomers.
- q. N-methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- r. Hydriodic acid.
- s. Benzaldehyde.
- t. Nitroethane.
- u. Gamma-Butyrolactone (also known as GBL; Dihydro-2(3H)-furanone; 1,2-Butanolide; 1,4-Butanolide; 4-Hydroxybutanoic acid lactone; or gamma-hydroxy-butyric acid lactone).
- v. Red phosphorus.
- w. White phosphorus (another name: yellow phosphorus).
- x. Hypophosphorous acid and its salts (including ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, and sodium hypophosphite).
- y. Iodine.
- z. N-phenethyl-4-piperidone (NPP).
- aa. Ergocristine and its salts.

2. The board shall administer the regulatory provisions of this chapter and may, by rule adopted pursuant to chapter 17A, add a substance to or remove a substance from the list in subsection 1. In determining whether to add or remove a substance from the list, the board shall consider the following:

- a. The likelihood that the substance may be used as a precursor in the illegal production of a controlled substance.
- b. The availability of the substance.
- c. The appropriateness of including the substance under this chapter or under chapter 124.
- d. The extent and nature of legitimate uses for the substance.

3. On or before November 1 of each year, the board shall inform the general assembly of any substances added, deleted, or changed in the list contained in this section and shall provide an explanation of any addition, deletion, or change.

90 Acts, ch 1251, §11

C91, §204B.2

## C93, §124B.2

2000 Acts, ch 1140, §17, 18; 2002 Acts, ch 1108, §2, 3; 2003 Acts, ch 53, §10; 2008 Acts, ch 1010, §5; 2009 Acts, ch 36, §1; 2012 Acts, ch 1122, §6

Referred to in §124B.1, 124B.3, 124B.6

**124B.3 Identification required.**

1. Before selling, transferring, or otherwise furnishing any substance specified in section 124B.2 to a person in this state, a vendor shall require proper identification from the purchaser.

2. For the purposes of this section, in the case of a face-to-face purchase, “*proper identification*” means all of the following:

a. A driver’s license containing the purchaser’s photograph and residential or mailing address, other than a post office box number, or any other official state-issued identification containing this information.

b. The motor vehicle license number of the vehicle owned or operated by the purchaser.

c. A letter of authorization from the person who is making the purchase. The letter shall include the person’s business license number and business address, a description as to how the substance will be used, and the purchaser’s signature. The vendor shall affix the vendor’s signature as a witness to the signature and identification of the purchaser.

3. The board shall provide by rule for the form of proper identification required for purchases which are not face to face.

4. A person who violates this section or rules adopted pursuant to this section commits a simple misdemeanor.

90 Acts, ch 1251, §12

C91, §204B.3

92 Acts, ch 1175, §27

C93, §124B.3

98 Acts, ch 1073, §9

Referred to in §124B.4, 124B.6

**124B.4 Vendor reporting.**

1. At least twenty-one days prior to the delivery of a precursor substance to a recipient, the vendor shall submit a report of the transaction to the board. The report must contain the identification information specified under section 124B.3. However, if regular, repeated transactions of a particular precursor substance occur between the vendor and the recipient, the board may authorize the vendor to report the transactions monthly if either of the following conditions exists:

a. A pattern of regular supply of the precursor substance exists between the vendor and the recipient.

b. The recipient has established a record of lawfully using the precursor substance.

2. A vendor who does not submit a report pursuant to this section commits a serious misdemeanor.

90 Acts, ch 1251, §13

C91, §204B.4

C93, §124B.4

Referred to in §124B.6

**124B.5 Receipt of substance from outside the state — penalty.**

1. A vendor, recipient, or other person required to report pursuant to this chapter who receives a precursor substance from a source outside the state shall submit a report to the board pursuant to rules adopted by the board.

2. A person who does not submit a report required under this section commits a serious misdemeanor.

90 Acts, ch 1251, §14

C91, §204B.5

C93, §124B.5

Referred to in §124B.6

**124B.6 Exceptions.**

The requirements of sections 124B.2 through 124B.5 do not apply to any of the following:

1. A licensed pharmacist or other person authorized under chapter 155A to sell or furnish a precursor substance upon the prescription of a practitioner.
2. A practitioner who administers or furnishes a precursor substance to a patient.
3. A vendor who holds a permit issued by the board and who sells, transfers, or otherwise furnishes a precursor substance to a practitioner or a pharmacy as defined in section 155A.3.
4. A sale, transfer, furnishing, or receipt of a drug containing ephedrine, phenylpropanolamine, or pseudoephedrine or of a cosmetic containing a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription in accordance with chapter 126.

90 Acts, ch 1251, §15

C91, §204B.6

C93, §124B.6

Referred to in §124B.8

**124B.7 Reporting form.**

1. The board shall adopt rules prescribing a common form for the filing of reports required under this chapter. The rules shall provide that the information which must be submitted shall include but is not limited to all of the following:

- a. The name of the precursor substance.
- b. The quantity of the precursor substance sold, transferred, or furnished.
- c. The date the precursor substance was sold, transferred, or furnished.
- d. The name and address of the recipient.
- e. The name and address of the vendor.

2. Reports authorized under subsection 1 may be computer-generated and submitted monthly in accordance with rules adopted by the board.

90 Acts, ch 1251, §16

C91, §204B.7

C93, §124B.7

**124B.8 Missing quantity — reporting.**

A person who is required to report to the board pursuant to this chapter or a person listed as an exception under section 124B.6 shall report to the board either of the following occurrences within seven days of knowledge of the loss or occurrence:

1. Loss or theft of a precursor substance.
2. A difference between the amount of a precursor substance shipped and the amount of a precursor substance received. If applicable, the report shall include the name of the person who transported the precursor substance and the date of shipment.

90 Acts, ch 1251, §17

C91, §204B.8

C93, §124B.8

**124B.9 Sale, transfer, furnishing, or receipt for unlawful purpose — penalty.**

1. A person who sells, transfers, or otherwise furnishes a precursor substance with knowledge or the intent that the recipient will use the precursor substance to unlawfully manufacture a controlled substance commits a class “C” felony.

2. A person who receives a precursor substance with the intent that the substance be used unlawfully to manufacture a controlled substance commits a class “C” felony.

90 Acts, ch 1251, §18

C91, §204B.9

C93, §124B.9

2004 Acts, ch 1057, §2

See §124.401

**124B.10 False statement — penalty.**

A person who knowingly makes a false statement in connection with any report or record required to be made under this chapter commits an aggravated misdemeanor.

90 Acts, ch 1251, §19  
 C91, §204B.10  
 C93, §124B.10

**124B.11 Permit requirements — penalty.**

1. A vendor or a recipient who receives a precursor substance from a source outside the state shall obtain a permit for the transaction from the board. However, a permit is not required of a vendor of a drug containing ephedrine, phenylpropanolamine, or pseudoephedrine or of a cosmetic that contains a precursor substance if the drug or cosmetic is lawfully sold, transferred, or furnished either over the counter without a prescription in accordance with chapter 126 or with a prescription pursuant to chapter 155A.

2. An application for a permit shall be filed in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any precursor substance sold, transferred, or otherwise furnished or received.

3. The board may grant a permit on a form adopted by rule. A permit shall be effective for not more than one year from the date of issuance.

4. An applicant shall pay, at the time of filing an application, a permit fee determined by the board.

5. A permit granted under this chapter may be annually renewed on a date to be determined by the board pursuant to rule, upon the filing of a renewal application and the payment of a permit renewal fee.

6. Permit fees charged by the board shall not exceed the costs incurred by the board in administering this chapter.

7. Selling, transferring, or otherwise furnishing, or receiving a precursor substance without a permit obtained pursuant to this section is a serious misdemeanor.

90 Acts, ch 1251, §20  
 C91, §204B.11  
 C93, §124B.11

**124B.12 Permit — refusal, suspension, or revocation.**

The board shall refuse, suspend, or revoke a permit upon finding that any of the following conditions exist:

1. The permit was obtained through fraud, misrepresentation, or deceit.

2. The permittee has violated or has permitted any employee of the permittee to violate any of the laws of this state relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated this chapter, a rule adopted pursuant to this chapter, or any other rule of the board.

90 Acts, ch 1251, §21  
 C91, §204B.12  
 C93, §124B.12

**CHAPTER 124C**

**CLEANUP OF CLANDESTINE LABORATORY SITES**

124C.1	Definitions.	124C.5	Liability of state employees or persons providing cleanup assistance.
124C.2	Powers and duties of the commissioner.	124C.6	Legal remedies.
124C.3	Liability to the state.	124C.7	Rulemaking authority.
124C.4	Claim of state.		

**124C.1 Definitions.**

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

1. “*Clandestine laboratory site*” means a location or operation, including but not limited to buildings or vehicles equipped with glassware, heating devices, and precursors or related reagents and solvents needed to unlawfully prepare or manufacture controlled substances defined in chapter 124.

2. “*Cleanup*” means actions necessary to contain, collect, control, identify, analyze, disassemble, treat, remove, or otherwise disperse all substances and materials, including but not limited to those found to be hazardous waste as defined in section 455B.411 and controlled substances defined in chapter 124, including contamination caused by those chemicals or substances.

3. “*Commissioner*” means the commissioner of public safety.

4. “*Department*” means the department of public safety.

5. “*Hazardous substance*” means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, and other substances defined in rules adopted pursuant to section 455B.381 and controlled substances as defined in chapter 124.

6. “*Person having control over a clandestine laboratory site*” means a person who at any time possesses, produces, handles, stores, uses, transports, or disposes of a hazardous substance or controlled substance used or intended for use at a clandestine laboratory site. A person having control over a clandestine laboratory site does not include persons performing duties listed in section 124C.2 at the direction of the commissioner and does not include a person who is the owner of the property or a person holding a security interest in the property in or upon which the clandestine laboratory site is located unless the person knew that a clandestine laboratory existed in or upon the person’s property.

93 Acts, ch 141, §1; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §12, 200, 201; 2003 Acts, ch 44, §35

**124C.2 Powers and duties of the commissioner.**

1. The commissioner or the commissioner’s designee may use funds appropriated or otherwise available to the department for the following purposes:

a. Administrative services for the identification, assessment, and cleanup of clandestine laboratory sites.

b. Payments to other government agencies or private contractors for services consistent with the management and cleanup of a clandestine laboratory site.

c. Emergency response activities involving clandestine laboratory sites, including surveillance, entry, security, cleanup, and disposal.

2. The commissioner may request the assistance of other state, federal, and local agencies as necessary.

3. The commissioner shall proceed, pursuant to this section, to collect all costs incurred in cleanup of a clandestine laboratory site from the person having control over a clandestine laboratory site.

4. The commissioner shall make all reasonable efforts to recover the full amount of moneys expended, through litigation or otherwise. Moneys recovered shall be deposited with the treasurer of state and credited to the department of public safety.

93 Acts, ch 141, §2; 2009 Acts, ch 41, §184

Referred to in §124C.1

**124C.3 Liability to the state.**

A person having control over a clandestine laboratory site shall be strictly liable to the state for all of the following:

1. The reasonable costs incurred by the state as a result of cleanup of the site.

2. The reasonable costs incurred by the state to evacuate people from the area threatened by the clandestine laboratory site.

3. The reasonable damages to the state for the injury to, destruction of, or loss of natural

resources resulting from the clandestine laboratory site, including the costs of assessing the injury, destruction, or loss.

93 Acts, ch 141, §3

Referred to in §124C.4

#### **124C.4 Claim of state.**

1. An amount for which a person having control over a clandestine laboratory is liable to the state shall constitute a lien in favor of the state upon all property and rights to property, real and personal, belonging to that person. This lien shall attach at the time the charges set out in section 124C.3 become due and payable and shall continue for ten years from the time the lien attaches unless sooner released or otherwise discharged. The lien may be extended, within ten years from the date the lien attaches, by filing a notice with the appropriate county official of the appropriate county and from the time of filing the lien shall be extended as to the property in that county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions.

2. In order to preserve the lien against subsequent mortgagees, purchasers, or judgment creditors for value and without notice of the lien, the commissioner shall file with the recorder of the county in which the property is located a notice of the lien. A laboratory cleanup lien shall be recorded in the index of income tax liens in the county.

3. Each notice of lien shall be endorsed with the day, hour, and minute when the notice was filed for recording and the document reference number, and the notice shall be preserved, indexed, and recorded in the manner provided for recording real estate mortgages. The lien is effective from the time of its indexing. The department shall pay recording fees as provided by section 331.604 for the recording of the lien or for its satisfaction.

4. Upon payment of a charge for which the commissioner has filed a notice of lien with a county, the commissioner shall immediately file with the county a satisfaction of the charge and the satisfaction of the charge shall be indicated on the index.

5. The attorney general, upon the request of the commissioner, shall bring an action at law or in equity, without bond, to enforce payment of any charges or penalties, and in such action the attorney general shall have the assistance of the county attorney of the county in which the action is pending.

6. The remedies available to the state in this chapter shall be cumulative and no action taken by the commissioner or attorney general shall be construed to be an election on the part of the state to pursue any remedy to the exclusion of any other remedy provided by law.

93 Acts, ch 141, §4; 2002 Acts, ch 1113, §2; 2009 Acts, ch 27, §3; 2009 Acts, ch 41, §185

#### **124C.5 Liability of state employees or persons providing cleanup assistance.**

The state and its officers or employees are not liable for damages or injury caused by a condition at a clandestine laboratory site or resulting from action or inaction taken by any officers or employees when acting in their official capacity pursuant to this chapter, unless the damage or injury resulted from intentional wrongdoing or gross negligence.

93 Acts, ch 141, §5

#### **124C.6 Legal remedies.**

This chapter does not deny a person any legal or equitable rights, remedies, or defenses, or affect any legal relationship other than the legal relationship between the state and a person having control over a clandestine laboratory site.

93 Acts, ch 141, §6

#### **124C.7 Rulemaking authority.**

The department may adopt rules pursuant to chapter 17A necessary to administer this chapter.

93 Acts, ch 141, §7



125.89	Respondents charged with or convicted of crime.	125.92	Rights and privileges of committed persons.
125.90	Judicial hospitalization referee.	125.93	Commitment records — confidentiality.
125.91	Emergency detention.	125.94	Supreme court rules.

## DIVISION I

## INTRODUCTORY PROVISIONS

**125.1 Declaration of policy.**

It is the policy of this state:

1. That persons with substance-related disorders be afforded the opportunity to receive quality treatment and directed into rehabilitation services which will help them resume a socially acceptable and productive role in society.

2. To encourage substance abuse education and prevention efforts and to insure that such efforts are coordinated to provide a high quality of services without unnecessary duplication.

3. To insure that substance abuse programs are being operated by individuals who are qualified in their field whether through formal education or through employment or personal experience.

[C71, 73, §123B.2; C75, 77, 79, 81, §125.1]

[A portion of subsection 1 was inadvertently omitted in the 1993 Code]

2011 Acts, ch 121, §24, 62

Referred to in §125.3, 125.7

**125.2 Definitions.**

For purposes of this chapter, unless the context clearly indicates otherwise:

1. “*Board*” means the state board of health created pursuant to chapter 136.

2. “*Chemical substance*” means alcohol, wine, spirits, and beer as defined in chapter 123 and controlled substances as defined in section 124.101.

3. “*Chief medical officer*” means the medical director in charge of a public or private hospital, or the director’s physician-designee. This chapter does not negate the authority otherwise reposed by chapter 226 in the respective superintendents of the state mental health institutes to make decisions regarding the appropriateness of admissions or discharges of patients of those institutes, however, it is the intent of this chapter that a superintendent who is not a licensed physician shall be guided in these decisions by the chief medical officer of the institute.

4. “*Clerk*” means the clerk of the district court.

5. “*Department*” means the Iowa department of public health.

6. “*Director*” means the director of the Iowa department of public health.

7. “*Facility*” means an institution, a detoxification center, or an installation providing care, maintenance and treatment for persons with substance-related disorders licensed by the department under section 125.13, hospitals licensed under chapter 135B, or the state mental health institutes designated by chapter 226.

8. “*Incapacitated by a chemical substance*” means that a person, as a result of the use of a chemical substance, is unconscious or has the person’s judgment otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to the need for treatment.

9. “*Incompetent person*” means a person who has been adjudged incompetent by a court of law.

10. “*Interested person*” means a person who, in the discretion of the court, is legitimately concerned that a respondent receive substance abuse treatment services.

11. “*Psychiatric advanced registered nurse practitioner*” means an individual currently licensed as a registered nurse under chapter 152 or 152E who holds a national certification in psychiatric mental health care and who is registered with the board of nursing as an advanced registered nurse practitioner.

12. “*Residence*” means the place where a person resides. For the purpose of determining which Iowa county, if any, is liable pursuant to this chapter for payments of costs attributable to its residents, the following rules shall apply:

a. If a person claims an Iowa homestead, then the person’s residence shall be in the county where that homestead is claimed, irrespective of any other factors.

b. If paragraph “a” does not apply, and the person continuously has been provided or has maintained living quarters within any county of this state for a period of not less than one year, whether or not at the same location within that county, then the person’s residence shall be in that county, irrespective of other factors. However, this paragraph shall not apply to unemancipated persons under eighteen years of age who are wards of this state.

c. If paragraphs “a” and “b” do not apply, or, if the person is under eighteen years of age, is unemancipated, and is a ward of this state, then the person shall be unclassified with respect to county of residence, and payment of all costs shall be made by the department as provided in this chapter.

d. An unemancipated person under eighteen years of age who is not a ward of the state shall be deemed to reside where the parent having legal custody, or the legal guardian, or legal custodian of that person has residence as determined according to this subsection.

e. The provisions of this subsection shall not be used in any case to which section 125.43 is applicable.

13. “*Respondent*” means a person against whom an application is filed under section 125.75.

14. “*Substance-related disorder*” means a diagnosable substance abuse disorder of sufficient duration to meet diagnostic criteria specified within the most current diagnostic and statistical manual of mental disorders published by the American psychiatric association that results in a functional impairment.

[C62, 66, §123A.1; C71, 73, §123A.1, 123B.1; C75, 77, §125.2; C79, 81, §125.2, 229.50; 81 Acts, ch 58, §1; 82 Acts, ch 1212, §1]

86 Acts, ch 1245, §1122; 89 Acts, ch 197, §21; 90 Acts, ch 1085, §1, 2; 2005 Acts, ch 175, §59, 60; 2008 Acts, ch 1082, §1; 2011 Acts, ch 121, §25 – 28, 62; 2012 Acts, ch 1021, §40

Referred to in §125.3, 125.7, 125.44, 125.75, 226.9C, 229.6, 282.19, 321J.24, 321J.25, 600A.8, 709.16

## DIVISION II

### SUBSTANCE ABUSE PROGRAM

#### **125.3 Substance abuse program established.**

The Iowa department of public health shall develop, implement, and administer a comprehensive substance abuse program pursuant to sections 125.1 to 125.43.

[C62, 66, 71, 73, §123A.2; C75, 77, 79, 81, §125.3; 81 Acts, ch 58, §2]

86 Acts, ch 1245, §1123; 2005 Acts, ch 175, §61

Referred to in §125.7

**125.4 through 125.6** Repealed by 2005 Acts, ch 175, § 128.

#### **125.7 Duties of the board.**

The board shall:

1. Approve the comprehensive substance abuse program, developed by the department pursuant to sections 125.1 to 125.43.

2. Advise the department on policies governing the performance of the department in the discharge of any duties imposed on the department by law.

3. Advise or make recommendations to the governor and the general assembly relative to substance abuse treatment, intervention, education, and prevention programs in this state.

4. Adopt rules for subsections 1 and 6 and review other rules necessary to carry out the provisions of this chapter, subject to review in accordance with chapter 17A.

5. Investigate the work of the department relating to substance abuse, and for this purpose

the board shall have access at any time to all books, papers, documents, and records of the department.

6. Consider and approve or disapprove all applications for a license and all cases involving the renewal, denial, suspension, or revocation of a license.

7. Act as the appeal board regarding funding decisions made by the department.

[C71, 73, §123B.3; C75, 77, 79, 81, §125.7]

86 Acts, ch 1245, §1126; 89 Acts, ch 243, §1; 2005 Acts, ch 175, §62

Referred to in §125.3

**125.8** Repealed by 89 Acts, ch 243, § 6.

### **125.9 Powers of director.**

The director may:

1. Plan, establish and maintain treatment, intervention, education, and prevention programs as necessary or desirable in accordance with the comprehensive substance abuse program.

2. Make contracts necessary or incidental to the performance of the duties and the execution of the powers of the director, including contracts with public and private agencies, organizations and individuals to pay them for services rendered or furnished to persons with substance-related disorders.

3. Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies and the department in making an application for any grant.

4. Coordinate the activities of the department and cooperate with substance abuse programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local or private agencies in this and other states for the treatment of persons with substance-related disorders and for the common advancement of substance abuse programs.

5. Require that a written report, in reasonable detail, be submitted to the director at any time by any agency of this state or of any of its political subdivisions in respect to any substance abuse prevention function, or program for the benefit of persons who are or have been involved in substance abuse, which is being conducted by the agency.

6. Submit to the governor a written report of the pertinent facts at any time the director concludes that any agency of this state or of any of its political subdivisions is conducting any substance abuse prevention function, or program for the benefit of persons who are or have been involved in substance abuse in a manner not consistent with or which impairs achievement of the objectives of the state plan to combat substance abuse, and has failed to effect appropriate changes in the function or program.

7. Keep records and engage in research and the gathering of relevant statistics.

8. Employ a deputy director who shall be exempt from the merit system. The director may employ other staff necessary to carry out the duties assigned to the director.

9. Do other acts and things necessary or convenient to execute the authority expressly granted to the director.

[C62, 66, §123A.5, 123A.7, 123A.8; C71, 73, §123A.7, 123A.8, 123B.17; C75, 77, §125.9, 224B.4, 224B.6; C79, 81, §125.9]

86 Acts, ch 1245, §1128; 87 Acts, ch 8, §1; 90 Acts, ch 1085, §3; 2005 Acts, ch 175, §63; 2011 Acts, ch 121, §29, 62

Referred to in §125.3, 125.7

Merit system, see chapter 8A, subchapter IV

### **125.10 Duties of director.**

The director shall:

1. Prepare and submit a state plan subject to approval by the board and in accordance with the provisions of 42 U.S.C. § 4573. The state plan shall designate the department as the sole agency for supervising the administration of the plan.

2. Develop, encourage, and foster statewide, regional, and local plans and programs for the prevention of substance misuse and the treatment of persons with substance-related disorders in cooperation with public and private agencies, organizations and individuals, and provide technical assistance and consultation services for these purposes.

3. Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in the prevention of substance misuse and the treatment of persons with substance-related disorders. The director's actions to implement this subsection shall also address the treatment needs of persons who have a mental illness, an intellectual disability, brain injury, or other co-occurring condition in addition to a substance-related disorder.

4. Cooperate with the department of human services and the Iowa department of public health in establishing and conducting programs to provide treatment for persons with substance-related disorders.

5. Cooperate with the department of education, boards of education, schools, police departments, courts, and other public and private agencies, organizations, and individuals in establishing programs for the prevention of substance misuse and the treatment of persons with substance-related disorders, and in preparing relevant curriculum materials for use at all levels of school education.

6. Prepare, publish, evaluate and disseminate educational material dealing with the nature and effects of chemical substances.

7. Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of persons with substance-related disorders, which program shall include the dissemination of information concerning the nature and effects of substances.

8. Organize and implement, in cooperation with local treatment programs, training programs for all persons engaged in treatment of persons with substance-related disorders.

9. Sponsor and implement research in cooperation with local treatment programs into the causes and nature of substance misuse and treatment of persons with substance-related disorders, and serve as a clearing house for information relating to substance misuse.

10. Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment.

11. Develop and implement, with the counsel and approval of the board, the comprehensive plan for treatment of persons with substance-related disorders in accordance with this chapter.

12. Assist in the development of, and cooperate with, substance abuse education and treatment programs for employees of state and local governments and businesses and industries in the state.

13. Utilize the support and assistance of interested persons in the community, particularly persons who are recovering from substance-related disorders to encourage persons with substance-related disorders to voluntarily undergo treatment.

14. Cooperate with the commissioner of public safety in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated.

15. Encourage general hospitals and other appropriate health facilities to admit without discrimination persons with substance-related disorders and to provide them with adequate and appropriate treatment. The director may negotiate and implement contracts with hospitals and other appropriate health facilities with adequate detoxification facilities.

16. Encourage all health and disability insurance programs to include substance abuse as a covered illness.

17. Review all state health, welfare, education and treatment proposals to be submitted

for federal funding under federal legislation, and advise the governor on provisions to be included relating to substance misuse and persons with substance-related disorders.

[C62, 66, §123A.5; C71, 73, §123B.17; C75, 77, §125.10, 224B.5; C79, 81, §125.10; 81 Acts, ch 58, §3]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1085, §4; 2005 Acts, ch 175, §64; 2011 Acts, ch 121, §30, 62; 2012 Acts, ch 1021, §41; 2012 Acts, ch 1120, §62

Referred to in §125.3, 125.7

**125.11** Repealed by 81 Acts, ch 58, § 13.

### DIVISION III

#### TREATMENT PROGRAMS AND FACILITIES

##### **125.12 Comprehensive program for treatment — regional facilities.**

1. The board shall review the comprehensive substance abuse program implemented by the department for the treatment of persons with substance-related disorders and concerned family members. Subject to the review of the board, the director shall divide the state into appropriate regions for the conduct of the program and establish standards for the development of the program on the regional level. In establishing the regions, consideration shall be given to city and county lines, population concentrations, and existing substance abuse treatment services.

2. The program of the department shall include:

a. Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital.

b. Inpatient treatment.

c. Residential treatment.

d. Outpatient and follow-up treatment and rehabilitation.

e. Prevention and education.

f. Assessment.

g. Halfway house treatment.

3. The director shall provide for adequate and appropriate treatment for persons with substance-related disorders and concerned family members admitted under sections 125.33 and 125.34, or under section 125.75, 125.81, or 125.91. Treatment shall not be provided at a correctional institution except for inmates. A mental health professional, as defined in section 228.1, who is employed by a treatment provider under the program may provide treatment to a person with co-occurring substance-related and mental health disorders. Such treatment may also be provided by a person employed by such a treatment provider who is receiving the supervision required to meet the definition of mental health professional but has not completed the supervision component.

4. The director shall maintain, supervise and control all facilities operated by the director pursuant to this chapter.

5. All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

6. The director shall prepare, publish and distribute annually a list of all facilities.

7. The director may contract for the use of a facility if the director, pursuant to section 125.44, considers this to be an effective and economical course to follow.

[C75, 77, 79, 81, §125.12; 82 Acts, ch 1212, §23]

86 Acts, ch 1001, §3; 86 Acts, ch 1245, §1129; 90 Acts, ch 1085, §5; 2005 Acts, ch 175, §65; 2011 Acts, ch 121, §31, 62; 2012 Acts, ch 1120, §63

Referred to in §125.3, 125.7, 321J.25

##### **125.13 Programs licensed — exceptions.**

1. a. Except as provided in subsection 2, a person shall not maintain or conduct any chemical substitutes or antagonists program, residential program, or nonresidential outpatient program, the primary purpose of which is the treatment and rehabilitation of

persons with substance-related disorders without having first obtained a written license for the program from the department.

b. Four types of licenses may be issued by the department. A renewable license may be issued for one, two, or three years. A treatment program applying for its initial license may be issued a license for two hundred seventy days. A license issued for two hundred seventy days shall not be renewed or extended.

2. The licensing requirements of this chapter do not apply to any of the following:

a. A hospital providing care or treatment to persons with substance-related disorders licensed under chapter 135B which is accredited by the joint commission on the accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the board. All survey reports from the accrediting or licensing body must be sent to the department.

b. Any practitioner of medicine and surgery or osteopathic medicine and surgery, in the practitioner's private practice. However, a program shall not be exempted from licensing by the board by virtue of its utilization of the services of a medical practitioner in its operation.

c. Private institutions conducted by and for persons who adhere to the faith of any well recognized church or religious denomination for the purpose of providing care, treatment, counseling, or rehabilitation to persons with substance-related disorders and who rely solely on prayer or other spiritual means for healing in the practice of religion of such church or denomination.

d. A program that provides only education, prevention, referral or post treatment services.

e. Alcoholics anonymous.

f. Individuals in private practice who are providing substance abuse treatment services independent from a program that is required to be licensed under subsection 1.

g. Intervention and referral programs which are financed and managed by a county or counties, are staffed by county employees, and do not receive state payments pursuant to a contract under section 125.44.

h. Voluntary, nonprofit groups whose funding is provided solely from nontax sources.

i. A substance abuse treatment program not funded by the department which is accredited or licensed by the joint commission on the accreditation of health care organizations, the commission on the accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the board. All survey reports from the accrediting or licensing body must be sent to the department.

j. A hospital substance abuse treatment program that is accredited or licensed by the joint commission on the accreditation of health care organizations, the commission on the accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the board. All survey reports for the hospital substance abuse treatment program from the accrediting or licensing body shall be sent to the department.

[C75, 77, §125.14, 224B.12, 224B.13; C79, 81, §125.13; 81 Acts, ch 58, §4 – 7; 82 Acts, ch 1244, §1, 2]

86 Acts, ch 1001, §4; 89 Acts, ch 243, §2; 90 Acts, ch 1085, §6, 7; 94 Acts, ch 1068, §1; 2002 Acts, ch 1108, §4, 5; 2005 Acts, ch 175, §66; 2009 Acts, ch 41, §263; 2011 Acts, ch 121, §32, 33, 62

Referred to in §125.2, 125.3, 125.7, 125.20, 125.21, 125.58, 125.59, 135H.4

#### **125.14 Licenses — renewal — fees.**

The board shall consider all cases involving initial issuance, and renewal, denial, suspension, or revocation of a license. The department shall issue a license to an applicant whom the board determines meets the licensing requirements of this chapter. Licenses shall expire no later than three years from the date of issuance and shall be renewed upon timely application made in the same manner as for initial issuance of a license unless notice of nonrenewal is given to the licensee at least thirty days prior to the expiration of the license.

The department shall not charge a fee for licensing or renewal of programs contracting with the department for provision of treatment services. A fee may be charged to other licensees.

[C75, 77, §224B.14, 224B.15; C79, 81, §125.14; 81 Acts, ch 58, §8]

89 Acts, ch 243, §3; 2000 Acts, ch 1140, §19; 2002 Acts, ch 1108, §6; 2005 Acts, ch 175, §67  
Referred to in §125.3, 125.7

#### **125.14A Personnel of a licensed program admitting juveniles.**

1. If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a program admitting juveniles subject to licensure under this chapter, or if a person will reside in a facility utilized by such a program, and if the person has been convicted of a crime or has a record of founded child abuse, the department of human services and the program, for an employee of the program, shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department of human services shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department of human services.

2. If the department of human services determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a program licensed under this chapter, or resides in a licensed facility the department shall notify the program that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

3. In an evaluation, the department of human services and the program for an employee of the program shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department of human services may permit a person who is evaluated to be licensed, employed, or to reside, or to continue to be licensed, employed, or to reside in a program, if the person complies with the department's conditions relating to the person's licensure, employment, or residence, which may include completion of additional training. For an employee of a licensee, these conditional requirements shall be developed with the licensee. The department of human services has final authority in determining whether prohibition of the person's licensure, employment, or residence is warranted and in developing any conditional requirements under this subsection.

4. If the department of human services determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed under this chapter to operate a program admitting juveniles and shall not be employed by a program or reside in a facility admitting juveniles licensed under this chapter.

5. In addition to the record checks required under this section, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of this section, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random check conducted under this subsection.

6. Beginning July 1, 1994, a program or facility shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

7. On or after July 1, 1994, a program or facility shall include the following inquiry in an application for employment:

Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?

90 Acts, ch 1221, §1; 91 Acts, ch 138, §1; 92 Acts, ch 1163, §33; 94 Acts, ch 1130, §11  
Referred to in §125.3, 125.7

### **125.15 Inspections.**

The department may inspect the facilities and review the procedures utilized by any chemical substitutes or antagonists program, residential program, or nonresidential outpatient program that has as a primary purpose the treatment and rehabilitation of persons with substance-related disorders, for the purpose of ensuring compliance with this chapter and the rules adopted pursuant to this chapter. The examination and review may include case record audits and interviews with staff and patients, consistent with the confidentiality safeguards of state and federal law.

[C75, 77, §224B.16; C79, 81, §125.15]

86 Acts, ch 1245, §1130; 2000 Acts, ch 1140, §20; 2011 Acts, ch 121, §34, 62  
Referred to in §125.3, 125.7

### **125.15A Licensure — emergencies.**

1. The department may place an employee or agent to serve as a monitor in a licensed substance abuse treatment program or may petition the court for appointment of a receiver for a program when any of the following conditions exist:

a. The program is operating without a license.

b. The board has suspended, revoked, or refused to renew the existing license of the program.

c. The program is closing or has informed the department that it intends to close and adequate arrangements for the location of clients have not been made at least thirty days before the closing.

d. The department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, and because of the unwillingness or inability of the licensee to remedy the emergency, the department determines that a monitor or receiver is necessary. As used in this paragraph, “*emergency*” means a threat to the health, safety, or welfare of a client that the program is unwilling or unable to correct.

2. The monitor shall observe operation of the program, assist the program with advice regarding compliance with state regulations, and report periodically to the department on the operation of the program.

93 Acts, ch 139, §1; 2005 Acts, ch 175, §68  
Referred to in §125.3, 125.7

### **125.16 Transfer of license or change of location prohibited.**

A license issued under this chapter may not be transferred, and the location of the physical facilities occupied or utilized by any program licensed under this chapter shall not be changed without the prior written consent of the board.

[C75, 77, §224B.17; C79, 81, §125.16]

2005 Acts, ch 175, §69  
Referred to in §125.3, 125.7

### **125.17 License suspension or revocation.**

Violation of any of the requirements or restrictions of this chapter or of any of the rules adopted pursuant to this chapter is cause for suspension, revocation, or refusal to renew a license. The director shall at the earliest time feasible notify a licensee whose license the board is considering suspending or revoking and shall inform the licensee what changes must be made in the licensee’s operation to avoid such action. The licensee shall be given a reasonable time for compliance, as determined by the director, after receiving such notice or a notice that the board does not intend to renew the license. When the licensee believes compliance has been achieved, or if the licensee considers the proposed suspension, revocation, or refusal to renew unjustified, the licensee may submit pertinent information

to the board and the board shall expeditiously make a decision in the matter and notify the licensee of the decision.

[C75, 77, §224B.18; C79, 81, §125.17]

2005 Acts, ch 175, §70

Referred to in §125.3, 125.7

#### **125.18 Hearing before board.**

If a licensee under this chapter makes a written request for a hearing within thirty days of suspension, revocation, or refusal to renew a license, a hearing before the board shall be expeditiously arranged by the department of inspections and appeals whose decision is subject to review by the board. The board shall issue a written statement of the board's findings within thirty days after conclusion of the hearing upholding or reversing the proposed suspension, revocation, or refusal to renew a license. Action involving suspension, revocation, or refusal to renew a license shall not be taken by the board unless a quorum is present at the meeting. A copy of the board's decision shall be promptly transmitted to the affected licensee who may, if aggrieved by the decision, seek judicial review of the actions of the board in accordance with the terms of chapter 17A.

[C75, 77, §224B.19; C79, 81, §125.18]

86 Acts, ch 1245, §1131; 2005 Acts, ch 175, §71

Referred to in §125.3, 125.7

#### **125.19 Reissuance or reinstatement.**

After suspension, revocation, or refusal to renew a license pursuant to this chapter, the affected licensee shall not have the license reissued or reinstated within one year of the effective date of the suspension, revocation, or expiration upon refusal to renew, unless the board orders otherwise. After that time, proof of compliance with the requirements and restrictions of this chapter and the rules adopted pursuant to this chapter must be presented to the board prior to reinstatement or reissuance of a license.

[C75, 77, §224B.20; C79, 81, §125.19]

2005 Acts, ch 175, §72

Referred to in §125.3, 125.7

#### **125.20 Rules.**

The department shall establish rules pursuant to chapter 17A requiring facilities to use reasonable accounting and reimbursement systems which recognize relevant cost-related factors for substance abuse patients. A facility shall not be licensed nor shall any payment be made under this chapter to a facility which fails to comply with those rules or which does not permit inspection by the department or examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the department deems relevant to the establishment of such a system. However, rules issued pursuant to this paragraph shall not apply to any facility referred to in section 125.13, subsection 2 or section 125.43.

[C77, §125.13(8); C79, 81, §125.20]

86 Acts, ch 1245, §1132

Referred to in §125.3, 125.7

#### **125.21 Chemical substitutes and antagonists programs.**

1. The board has exclusive power in this state to approve and license chemical substitutes and antagonists programs, and to monitor chemical substitutes and antagonists programs to ensure that the programs are operating within the rules adopted pursuant to this chapter. The board shall grant approval and license if the requirements of the rules are met and state funding is not requested. The chemical substitutes and antagonists programs conducted by persons exempt from the licensing requirements of this chapter pursuant to section 125.13, subsection 2, are subject to approval and licensure under this section.

2. The department may do any of the following:

a. Provide advice, consultation, and technical assistance to chemical substitutes and antagonists programs.

b. Approve local agencies or bodies to assist the department in carrying out the provisions of this chapter.

[C75, 77, §224B.21; C79, 81, §125.21; 81 Acts, ch 58, §9]  
87 Acts, ch 32, §1; 97 Acts, ch 203, §12; 2005 Acts, ch 175, §73  
Referred to in §125.3, 125.7

**125.22 through 125.24** Reserved.

**125.25 Approval of facility budget.**

1. Before making any allocation of funds to a local substance abuse program, the department shall require a detailed line item budget clearly indicating the funds received from each revenue source for the fiscal year for which the funds are requested on forms provided by the department for each program.

2. The department shall adopt rules governing the approval of line item budgets for the operation of facilities. The rules shall include provisions for the approval of a facility's budget by the department.

[C79, 81, §125.25]  
86 Acts, ch 1001, §5; 86 Acts, ch 1245, §1133  
Referred to in §125.3, 125.7

**125.26 through 125.31** Reserved.

**125.32 Acceptance for treatment — rules.**

The department shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, subject to chapter 17A, considering available treatment resources and facilities, for the purpose of early and effective treatment of persons with substance-related disorders and concerned family members. In establishing the rules the department shall be guided by the following standards:

1. If possible a patient shall be treated on a voluntary rather than an involuntary basis.
2. A patient shall be initially assigned or transferred to outpatient treatment, unless the patient is found to require inpatient, residential, or halfway house treatment.
3. A person shall not be denied treatment solely because the person has withdrawn from treatment against medical advice on a prior occasion or because the person has relapsed after earlier treatment.
4. An individualized treatment plan shall be prepared and maintained on a current basis for each patient after the assessment process.
5. Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and may utilize other appropriate treatment.

[C75, 77, §125.15; C79, 81, §125.32]  
86 Acts, ch 1001, §6; 86 Acts, ch 1245, §1134; 90 Acts, ch 1085, §8; 2011 Acts, ch 121, §35,  
62

Referred to in §125.3, 125.7

**125.32A Discrimination prohibited.**

Any substance abuse treatment program receiving state funding under this chapter or any other chapter of the Code shall not discriminate against a person seeking treatment solely because the person is pregnant, unless the program in each instance identifies and refers the person to an alternative and acceptable treatment program for the person.

90 Acts, ch 1264, §33  
Referred to in §125.3, 125.7

**125.33 Voluntary treatment of persons with substance-related disorders.**

1. A person with a substance-related disorder may apply for voluntary treatment or rehabilitation services directly to a facility or to a licensed physician and surgeon or osteopathic physician and surgeon. If the proposed patient is a minor or an incompetent person, a parent, a legal guardian or other legal representative may make the application.

The licensed physician and surgeon or osteopathic physician and surgeon or any employee or person acting under the direction or supervision of the physician and surgeon or osteopathic physician and surgeon, or the facility shall not report or disclose the name of the person or the fact that treatment was requested or has been undertaken to any law enforcement officer or law enforcement agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. If the person seeking such treatment or rehabilitation is a minor who has personally made application for treatment, the fact that the minor sought treatment or rehabilitation or is receiving treatment or rehabilitation services shall not be reported or disclosed to the parents or legal guardian of such minor without the minor's consent, and the minor may give legal consent to receive such treatment and rehabilitation.

2. Subject to rules adopted by the department, the administrator or the administrator's designee in charge of a facility may determine who shall be admitted for treatment or rehabilitation. If a person is refused admission, the administrator or the administrator's designee, subject to rules adopted by the department, shall refer the person to another facility for treatment if possible and appropriate.

3. A person with a substance-related disorder seeking treatment or rehabilitation and who is either addicted or dependent on a chemical substance may first be examined and evaluated by a licensed physician and surgeon or osteopathic physician and surgeon who may prescribe a proper course of treatment and medication, if needed. The licensed physician and surgeon or osteopathic physician and surgeon may further prescribe a course of treatment or rehabilitation and authorize another licensed physician and surgeon or osteopathic physician and surgeon or facility to provide the prescribed treatment or rehabilitation services. Treatment or rehabilitation services may be provided to a person individually or in a group. A facility providing or engaging in treatment or rehabilitation shall not report or disclose to a law enforcement officer or law enforcement agency the name of any person receiving or engaged in the treatment or rehabilitation; nor shall a person receiving or participating in treatment or rehabilitation report or disclose the name of any other person engaged in or receiving treatment or rehabilitation or that the program is in existence, to a law enforcement officer or law enforcement agency. Such information shall not be admitted in evidence in any court, grand jury, or administrative proceeding. However, a person engaged in or receiving treatment or rehabilitation may authorize the disclosure of the person's name and individual participation.

4. If a patient receiving inpatient or residential care leaves a facility, the patient shall be encouraged to consent to appropriate outpatient or halfway house treatment. If it appears to the administrator in charge of the facility that the patient is a person with a substance-related disorder who requires help, the director may arrange for assistance in obtaining supportive services.

5. If a patient leaves a facility, with or against the advice of the administrator in charge of the facility, the director may make reasonable provisions for the patient's transportation to another facility or to the patient's home. If the patient has no home the patient shall be assisted in obtaining shelter. If the patient is a minor or an incompetent person the request for discharge from an inpatient facility shall be made by a parent, legal guardian or other legal representative or by the minor or incompetent if the patient was the original applicant.

6. Any person who reports or discloses the name of a person receiving treatment or rehabilitation services to a law enforcement officer or law enforcement agency or any person receiving treatment or rehabilitation services who discloses the name of any other person receiving treatment or rehabilitation services without the written consent of the person in violation of the provisions of this section shall upon conviction be guilty of a simple misdemeanor.

[C71, 73, §224A.2, 224A.3; C75, 77, §125.16, 224A.2, 224A.3; C79, 81, §125.33]

86 Acts, ch 1001, §7; 86 Acts, ch 1245, §1135; 90 Acts, ch 1085, §9; 2011 Acts, ch 121, §36, 62

Referred to in §125.3, 125.7, 125.12, 230.20, 321J.3

**125.34 Treatment and services for persons with substance-related disorders due to intoxication and substance-induced incapacitation.**

1. A person with a substance-related disorder due to intoxication or substance-induced incapacitation may come voluntarily to a facility for emergency treatment. A person who appears to be intoxicated or incapacitated by a substance in a public place and in need of help may be taken to a facility by a peace officer under section 125.91. If the person refuses the proffered help, the person may be arrested and charged with intoxication under section 123.46, if applicable.

2. If no facility is readily available the person may be taken to an emergency medical service customarily used for incapacitated persons. The peace officer in detaining the person and in taking the person to a facility shall make every reasonable effort to protect the person's health and safety. In detaining the person the detaining officer may take reasonable steps for self-protection. Detaining a person under section 125.91 is not an arrest and no entry or other record shall be made to indicate that the person who is detained has been arrested or charged with a crime.

3. A person who arrives at a facility and voluntarily submits to examination shall be examined by a licensed physician as soon as possible after the person arrives at the facility. The person may then be admitted as a patient or referred to another health facility. The referring facility shall arrange for transportation.

4. If a person is voluntarily admitted to a facility, the person's family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, the request shall be respected.

5. A peace officer who acts in compliance with this section is acting in the course of the officer's official duty and is not criminally or civilly liable therefor, unless such acts constitute willful malice or abuse.

6. If the physician in charge of the facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

7. A licensed physician and surgeon or osteopathic physician and surgeon, facility administrator, or an employee or a person acting as or on behalf of the facility administrator, is not criminally or civilly liable for acts in conformity with this chapter, unless the acts constitute willful malice or abuse.

[C75, 77, §125.17; C79, 81, §125.34; 82 Acts, ch 1212, §24]

86 Acts, ch 1001, §8; 2011 Acts, ch 121, §37, 62

Referred to in §125.3, 125.7, 125.12, 230.20

**125.35** Repealed by 82 Acts, ch 1212, § 28.

**125.36** Reserved.

**125.37 Records confidential.**

1. The registration and other records of facilities shall remain confidential and are privileged to the patient.

2. Notwithstanding subsection 1, the director may make available information from patients' records for purposes of research into the causes and treatment of substance abuse. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information.

3. Notwithstanding the provisions of subsection 1 of this section a patient's records may be disclosed to medical personnel in a medical emergency with or without the patient's consent.

[C75, 77, §125.20, 224B.23; C79, 81, §125.37]

Referred to in §125.3, 125.7, 125.93

**125.38 Rights and privileges of patients.**

1. Subject to reasonable rules regarding hours of visitation which the department may adopt, a patient in a facility shall be granted an opportunity for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

2. Neither mail nor other communication to or from a patient in a facility may be

intercepted, read or censored, except that the department may adopt reasonable rules regarding the use of telephones by patients in facilities and the delivery of chemical substances.

3. The patient shall be provided an opportunity to receive prompt evaluation, emergency services and care as indicated by sound medical practice and treatment which, in the judgment of the chief medical officer of a facility, is most likely to result in the individual's recovery or in the mitigation of the individual's condition to an extent sufficient to permit the individual's discharge from the facility.

[C75, 77, §125.21; C79, 81, §125.38]

86 Acts, ch 1245, §1136

Referred to in §125.3, 125.7

### **125.39 Eligible entities.**

A local governmental unit which is providing funds to a facility for treatment of substance abuse may request from the facility a treatment program plan prior to authorizing payment of any claims filed by the facility. The governing body of the local governmental unit may review the plan, but shall not impose on the facility any requirement conflicting with the comprehensive treatment program of the facility.

[C77, §125.22; C79, 81, §125.39]

86 Acts, ch 1001, §9; 88 Acts, ch 1158, §31; 99 Acts, ch 141, §1

Referred to in §125.3, 125.7

## DIVISION IV

### ADMINISTRATIVE PROVISIONS — FUNDING

### **125.40 Criminal laws limitations.**

1. No county or city may adopt or enforce a local law, ordinance, resolution or rule having the force of law in contravention of the provisions of this chapter.

2. No county or city may interpret or apply any law of general application to circumvent the provision of subsection 1.

3. Nothing in this chapter affects any law, ordinance, resolution or rule against drunken driving, driving under the influence of alcohol or other chemical substance, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery or other equipment, or regarding the sale, purchase, dispensing, possessing or use of alcoholic beverages or beer at stated times and places or by a particular class of persons or regarding the sale, purchase, possession or use of another chemical substance.

[C75, 77, §125.23; C79, 81, §125.40]

Referred to in §125.3, 125.7, 331.382

### **125.41 Judicial review.**

Judicial review of the orders or actions of the director may be sought in accordance with the provisions of the Iowa administrative procedure Act, chapter 17A.

[C75, 77, §125.24; C79, 81, §125.41]

2003 Acts, ch 44, §114

Referred to in §125.3, 125.7

### **125.42 Appeals.**

An aggrieved party may obtain a review of any final judgment of the court by appeal to the supreme court. The appeal shall be taken as in other civil cases.

[C75, 77, §125.25; C79, 81, §125.42]

Referred to in §125.3, 125.7

### **125.43 Funding at mental health institutes.**

Chapter 230 governs the determination of the costs and payment for treatment provided to persons with substance-related disorders in a mental health institute under the department of human services, except that the charges are not a lien on real estate owned by persons legally

liable for support of the person with a substance-related disorder and the daily per diem shall be billed at twenty-five percent. The superintendent of a state hospital shall total only those expenditures which can be attributed to the cost of providing inpatient treatment to persons with substance-related disorders for purposes of determining the daily per diem. Section 125.44 governs the determination of who is legally liable for the cost of care, maintenance, and treatment of a person with a substance-related disorder and of the amount for which the person is liable.

[C75, 77, §125.26; C79, 81, §125.43]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1067, §21; 86 Acts, ch 1001, §10; 90 Acts, ch 1085, §10; 2011 Acts, ch 121, §38, 62

Referred to in §125.2, 125.3, 125.7, 125.20

#### **125.43A Prescreening — exception.**

Except in cases of medical emergency or court-ordered admissions, a person shall be admitted to a state mental health institute for treatment of a substance-related disorder only after a preliminary intake and assessment by a department-licensed treatment facility or a hospital providing care or treatment for persons with substance-related disorders licensed under chapter 135B and accredited by the joint commission on the accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the American osteopathic association, or another recognized organization approved by the board, or by a designee of a department-licensed treatment facility or a hospital other than a state mental health institute, which confirms that the admission is appropriate to the person's substance-related disorder service needs. A county board of supervisors may seek an admission of a patient to a state mental health institute who has not been confirmed for appropriate admission and the county shall be responsible for one hundred percent of the cost of treatment and services of the patient.

86 Acts, ch 1001, §11; 92 Acts, ch 1097, §1; 2005 Acts, ch 175, §74; 2011 Acts, ch 121, §39, 62; 2012 Acts, ch 1021, §42

Referred to in §125.44

#### **125.44 Agreements with facilities — liability for costs.**

1. The director may, consistent with the comprehensive substance abuse program, enter into written agreements with a facility as defined in section 125.2 to pay for one hundred percent of the cost of the care, maintenance, and treatment of persons with substance-related disorders, except when section 125.43A applies. All payments for state patients shall be made in accordance with the limitations of this section. Such contracts shall be for a period of no more than one year.

2. The contract may be in the form and contain provisions as agreed upon by the parties. The contract shall provide that the facility shall admit and treat persons with substance-related disorders regardless of where they have residence. If one payment for care, maintenance, and treatment is not made by the patient or those legally liable for the patient, the payment shall be made by the department directly to the facility. Payments shall be made each month and shall be based upon the rate of payment for services negotiated between the department and the contracting facility. If a facility projects a temporary cash flow deficit, the department may make cash advances at the beginning of each fiscal year to the facility. The repayment schedule for advances shall be part of the contract between the department and the facility. This section does not pertain to patients treated at the mental health institutes.

3. If the appropriation to the department is insufficient to meet the requirements of this section, the department shall request a transfer of funds and section 8.39 shall apply.

4. The person with a substance-related disorder is legally liable to the facility for the total amount of the cost of providing care, maintenance, and treatment for the person with a substance-related disorder while a voluntary or committed patient in a facility. This section does not prohibit any individual from paying any portion of the cost of treatment.

5. The department is liable for the cost of care, treatment, and maintenance of persons with substance-related disorders admitted to the facility voluntarily or pursuant to section

125.75, 125.81, or 125.91 or section 321J.3 or 124.409 only to those facilities that have a contract with the department under this section, only for the amount computed according to and within the limits of liability prescribed by this section, and only when the person with a substance-related disorder is unable to pay the costs and there is no other person, firm, corporation, or insurance company bound to pay the costs.

6. The department's maximum liability for the costs of care, treatment, and maintenance of persons with substance-related disorders in a contracting facility is limited to the total amount agreed upon by the parties and specified in the contract under this section.

[C71, 73, §123B.4, 123B.8; C75, 77, §125.27, 125.31; C79, §125.44, 125.48; C81, §125.44; 82 Acts, ch 1212, §25]

86 Acts, ch 1001, §12, 13; 86 Acts, ch 1220, §25; 86 Acts, ch 1245, §1137; 89 Acts, ch 243, §4, 5; 90 Acts, ch 1085, §11; 2011 Acts, ch 121, §40, 62

Referred to in §124.409, 125.12, 125.13, 125.43, 321J.3, 462A.14

**125.45** Repealed by 86 Acts, ch 1001, § 22.

**125.46 County of residence determined.**

The facility shall, when a person with a substance-related disorder is admitted, or as soon thereafter as it receives the proper information, determine and enter upon its records the Iowa county of residence of the person with a substance-related disorder, or that the person resides in some other state or country, or that the person is unclassified with respect to residence.

[C71, 73, §123B.6; C75, 77, §125.29; C79, 81, §125.46]

90 Acts, ch 1085, §12; 2011 Acts, ch 121, §41, 62

**125.47** Repealed by 86 Acts, ch 1001, § 22.

**125.48 List of contracting facilities.**

The department shall provide a current list of facilities that have a contract with the department to the clerk of each district court in the state. The clerk shall provide the list to all district court judges and judicial magistrates in the district.

[C81, §125.48]

**125.49 through 125.53** Repealed by 86 Acts, ch 1001, § 22.

**125.54 Use of funds.**

The director is not required to distribute or guarantee funds, except as provided in section 125.59:

1. To any program which does not meet licensing standards,
2. To any program providing unnecessary, duplicative or overlapping services within the same geographical area, or
3. To any program which has adequate resources at its disposal.

[C79, 81, §125.54]

86 Acts, ch 1001, §14

**125.55 Audits.**

All licensed substance abuse programs are subject to annual audit either by the auditor of state or in lieu of an audit by the auditor of state the substance abuse program may contract with or employ certified public accountants to conduct the audit, in accordance with sections 11.6, 11.14, and 11.19. The audit format shall be as prescribed by the auditor of state. The certified public accountant shall submit a copy of the audit to the director. A licensed substance abuse program is also subject to special audits as the director requests. The licensed substance abuse program or the department shall pay all expenses incurred by the auditor of state in conducting an audit under this section.

[C79, 81, §125.55; 81 Acts, ch 58, §10; 82 Acts, ch 1166, §1]

89 Acts, ch 264, §5; 2011 Acts, ch 75, §35

**125.56** Repealed by 82 Acts, ch 1244, § 4.

**125.57** Repealed by 86 Acts, ch 1001, § 22.

**125.58 Inspection — penalties.**

1. If the department has probable cause to believe that an institution, place, building, or agency not licensed as a substance abuse treatment and rehabilitation facility is in fact a substance abuse treatment and rehabilitation facility as defined by this chapter, and is not exempt from licensing by section 125.13, subsection 2, the board may order an inspection of the institution, place, building, or agency. If the inspector upon presenting proper identification is denied entry for the purpose of making the inspection, the inspector may, with the assistance of the county attorney of the county in which the premises are located, apply to the district court for an order requiring the owner or occupant to permit entry and inspection of the premises to determine whether there have been violations of this chapter. The investigation may include review of records, reports, and documents maintained by the facility and interviews with staff members consistent with the confidentiality safeguards of state and federal law.

2. A person establishing, conducting, managing, or operating a substance abuse treatment and rehabilitation facility without a license is guilty of a serious misdemeanor. Each day of continued violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing or operating a substance abuse treatment and rehabilitation facility without a license may be temporarily or permanently restrained therefrom by a court of competent jurisdiction in an action brought by the state.

3. Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against a person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a substance abuse treatment and rehabilitation facility without a license.

[81 Acts, ch 58, §12; 82 Acts, ch 1244, §3]  
2005 Acts, ch 175, §75

**125.59 Transfer of certain revenue — county program funding.**

The treasurer of state, on each July 1 for that fiscal year, shall transfer the estimated amounts to be received from section 123.36, subsection 7 and section 123.143, subsection 1 to the department.

1. *a.* Of these funds, notwithstanding section 125.13, subsection 1, one-half of the transferred amount shall be used for grants to counties operating a substance abuse program involving only education, prevention, referral or posttreatment services, either with the counties' own employees or by contract with a nonprofit corporation. The grants shall not annually exceed ten thousand dollars to any one county, subject to the following conditions:

(1) The money shall be paid to the county after expenditure by the county and submission of the requirements in subparagraph (2) on the basis of one dollar for each three dollars spent by the county. The county may submit a quarterly claim for reimbursement.

(2) The county shall submit an accounting of the expenditures and shall submit an annual financial report, a description of the program, and the results obtained within sixty days after the end of the fiscal year in which the money is granted.

*b.* If the transferred amount for this subsection exceeds grant requests funded to the ten thousand dollar maximum, the Iowa department of public health may use the remainder to increase grants pursuant to subsection 2.

2. *a.* Of these funds, one-half of the transferred amount shall be used for prevention programs in addition to the amount budgeted for prevention programs by the department in the same fiscal year. The department shall use this additional prevention program money for grants to a county, person, or nonprofit agency operating a prevention program. A grant to a county, person, or nonprofit agency is subject to the following conditions:

(1) The money shall be paid to the county, person, or nonprofit agency after submission

of the requirements in subparagraph (2) on the basis of two dollars for each dollar designated for prevention by the county, person, or nonprofit agency.

(2) The county, person, or nonprofit agency shall submit a description of the program.

(3) The county, person, or nonprofit agency shall submit an annual financial report and the results obtained before June 10 of the same fiscal year in which the money is granted.

b. The department may consider in-kind contributions received by a county, person, or nonprofit agency for matching purposes required in paragraph “a”, subparagraph (1).

86 Acts, ch 1001, §15; 87 Acts, ch 110, §1; 94 Acts, ch 1068, §2; 2009 Acts, ch 41, §186

Referred to in §125.54

#### **125.60 Grant formula.**

The funding distributed by the department for program grants pursuant to the appropriation received by the department shall be distributed to each county or multicounty area by a formula based on population, need, and other criteria as determined by the department.

86 Acts, ch 1001, §16

**125.61 through 125.73** Reserved.

## DIVISION V

### INVOLUNTARY COMMITMENT OR TREATMENT FOR SUBSTANCE-RELATED DISORDERS

#### **125.74 Preapplication screening assessment — program.**

Prior to filing an application pursuant to section 125.75, the clerk of the district court or the clerk’s designee shall inform the interested person referred to in section 125.75 about the option of requesting a preapplication screening assessment through a preapplication screening assessment program, if available. The state court administrator shall prescribe practices and procedures for implementation of the preapplication screening assessment program.

2013 Acts, ch 130, §36

NEW section

#### **125.75 Application.**

1. Proceedings for the involuntary commitment or treatment of a person with a substance-related disorder to a facility pursuant to this chapter or for the involuntary hospitalization of a person pursuant to chapter 229 may be commenced by any interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located or which is the respondent’s place of residence. The clerk or the clerk’s designee shall assist the applicant in completing the application.

2. The application shall:

a. State the applicant’s belief that the respondent is a person who presents a danger to self or others and lacks judgmental capacity due to either of the following:

(1) A substance-related disorder as defined in section 125.2.

(2) A serious mental impairment as defined in section 229.1.

b. State facts in support of each belief described in paragraph “a”.

c. Be accompanied by one or more of the following:

(1) A written statement of a licensed physician in support of the application.

(2) One or more supporting affidavits corroborating the application.

(3) Corroborative information obtained and reduced to writing by the clerk or the clerk’s designee, but only when circumstances make it infeasible to obtain, or when the clerk considers it appropriate to supplement, the information under either subparagraph (1) or (2).

3. Prior to the filing of an application pursuant to this section, the clerk or the clerk’s designee shall inform the interested person referred to in subsection 1 about the option of requesting a preapplication screening assessment pursuant to section 125.74.

4. The supreme court shall prescribe rules and establish forms as necessary to carry out the provisions of this section.

[C75, 77, §125.19(1, 2); C79, 81, §229.51; 82 Acts, ch 1212, §3]

90 Acts, ch 1085, §13; 2011 Acts, ch 121, §42, 43, 62; 2013 Acts, ch 130, §37

Referred to in §125.2, 125.12, 125.44, 125.74, 125.75A, 125.77, 125.78, 125.79, 125.85, 125.91, 229.21

Summary of involuntary commitment procedures available from clerk; see §229.45

Section amended

#### **125.75A Involuntary proceedings — minors — jurisdiction.**

The juvenile court has exclusive original jurisdiction in proceedings concerning a minor for whom an application is filed under section 125.75. In proceedings under this division concerning a minor's involuntary commitment or treatment, the term "court", "judge", or "clerk" means the juvenile court, judge, or clerk.

89 Acts, ch 283, §1; 92 Acts, ch 1124, §1; 2013 Acts, ch 130, §38

Referred to in §229.21

Section amended

**125.75B Dual filings.** Repealed by 2013 Acts, ch 130, § 55.

#### **125.76 Appointment of counsel for applicant.**

The applicant, if not the county attorney, may apply for the appointment of counsel if financially unable to employ an attorney to assist the applicant in presenting evidence in support of the application for commitment. If the applicant applies for the appointment of counsel, the application shall include the submission of a financial statement as required under section 815.9.

[C75, 77, §125.19(10); C79, 81, §229.52(6); 82 Acts, ch 1212, §4]

83 Acts, ch 101, §15; 83 Acts, ch 186, §10044, 10201

Referred to in §229.21

#### **125.77 Service of notice.**

Upon the filing of an application pursuant to section 125.75, the clerk shall docket the case and immediately notify a district court judge, a district associate judge, or magistrate who is admitted to the practice of law in this state, who shall review the application and accompanying documentation. The clerk shall send copies of the application and supporting documentation, together with the notice informing the respondent of the procedures required by this division, to the sheriff, for immediate service upon the respondent. If the respondent is taken into custody under section 125.81, service of the application, documentation, and notice upon the respondent shall be made at the time the respondent is taken into custody.

[C75, 77, §125.19(2); C79, 81, §229.51(3); 82 Acts, ch 1212, §5]

91 Acts, ch 108, §1; 2013 Acts, ch 130, §39

Referred to in §125.84, 125.85, 229.21, 229.45

Section amended

#### **125.78 Procedure after application.**

As soon as practical after the filing of an application pursuant to section 125.75, the court shall:

1. Determine whether the respondent has an attorney who is able and willing to represent the respondent in the commitment proceeding, and if not, whether the respondent is financially able to employ an attorney and capable of meaningfully assisting in selecting an attorney. In accordance with those determinations, the court shall allow the respondent to select an attorney or shall assign an attorney to the respondent. If the respondent is financially unable to pay an attorney, the county shall compensate the attorney at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

2. If the application includes a request for a court-appointed attorney for the applicant and the court is satisfied that a court-appointed attorney is necessary to assist the applicant in a meaningful presentation of the evidence, and that the applicant is financially unable to employ an attorney, the court shall appoint an attorney to represent the applicant and the

county shall compensate the attorney at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

3. Issue a written order:

a. Scheduling a tentative time and place for a hearing, subject to the findings of the report required under section 125.80, subsections 3 and 4, but not less than forty-eight hours after notice to the respondent, unless the respondent waives the forty-eight-hour notice requirement.

b. Requiring an examination of the respondent, prior to the hearing, by one or more licensed physicians who shall submit a written report of the examination to the court as required by section 125.80.

[C75, 77, §125.19(1, 2); C79, 81, §229.51(2, 3), 229.52(6); 82 Acts, ch 1212, §6]

84 Acts, ch 1219, §5; 99 Acts, ch 135, §14; 2013 Acts, ch 130, §40

Referred to in §125.79, 125.85, 229.21

Unnumbered paragraph 1 amended

**125.79 Respondent's attorney informed.**

The court shall direct the clerk to furnish at once to the respondent's attorney, copies of the application pursuant to section 125.75 and the supporting documentation, and of the court's order issued pursuant to section 125.78, subsection 3. If the respondent is taken into custody under section 125.81, the attorney shall also be advised of that fact. The respondent's attorney shall represent the respondent at all stages of the proceedings and shall attend the commitment hearing.

[82 Acts, ch 1212, §7]

2013 Acts, ch 130, §41

Referred to in §125.85, 229.21

Section amended

**125.80 Physician's examination — report — scheduling of hearing.**

1. a. An examination of the respondent shall be conducted within a reasonable time and prior to the commitment hearing by one or more licensed physicians as required by the court's order. If the respondent is taken into custody under section 125.81, the examination shall be conducted within twenty-four hours after the respondent is taken into custody. If the respondent desires, the respondent may have a separate examination by a licensed physician of the respondent's own choice. The court shall notify the respondent of the right to choose a physician for a separate examination. The reasonable cost of the examinations shall be paid from county funds upon order of the court if the respondent lacks sufficient funds to pay the cost.

b. A licensed physician conducting an examination pursuant to this section may consult with or request the participation in the examination of facility personnel, and may include with or attach to the written report of the examination any findings or observations by facility personnel who have been consulted or have participated in the examination.

c. If the respondent is not taken into custody under section 125.81, but the court is subsequently informed that the respondent has declined to be examined by a licensed physician pursuant to the court order, the court may order limited detention of the respondent as necessary to facilitate the examination of the respondent by the licensed physician.

2. A written report of the examination by a court-designated physician shall be filed with the clerk prior to the hearing date. A written report of an examination by a physician chosen by the respondent may be similarly filed. The clerk shall immediately:

a. Cause a report to be shown to the judge who issued the order.

b. Cause the respondent's attorney to receive a copy of the report of a court-designated physician.

3. If the report of a court-designated physician is to the effect that the respondent is not a person with a substance-related disorder, the court, without taking further action, may terminate the proceeding and dismiss the application on its own motion and without notice.

4. If the report of a court-designated physician is to the effect that the respondent is a person with a substance-related disorder, the court shall schedule a commitment hearing as soon as possible. The hearing shall be held not more than forty-eight hours after the report

is filed, excluding Saturdays, Sundays, and holidays, unless an extension for good cause is requested by the respondent, or as soon thereafter as possible if the court considers that sufficient grounds exist for delaying the hearing.

[C75, 77, §125.19(1 – 4); C79, 81, §229.51, 229.52(1, 2); 82 Acts, ch 1212, §8]  
90 Acts, ch 1085, §14; 2009 Acts, ch 41, §263; 2011 Acts, ch 121, §44, 62  
Referred to in §125.78, 125.84, 125.85, 229.21

### **125.81 Immediate custody.**

1. If a person filing an application requests that a respondent be taken into immediate custody, and the court upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent is a person with a substance-related disorder who is likely to injure the person or other persons if allowed to remain at liberty, the court may enter a written order directing that the respondent be taken into immediate custody by the sheriff, and be detained until the commitment hearing, which shall be held no more than five days after the date of the order, except that if the fifth day after the date of the order is a Saturday, Sunday, or a holiday, the hearing may be held on the next business day. The court may order the respondent detained for the period of time until the hearing is held, and no longer except as provided in section 125.88, in accordance with subsection 2, paragraph “a”, if possible, and if not, then in accordance with subsection 2, paragraph “b”, or, only if neither of these alternatives is available in accordance with subsection 2, paragraph “c”.

2. Detention may be:

a. In the custody of a relative, friend, or other suitable person who is willing and able to accept responsibility for supervision of the respondent, with reasonable restrictions as the court may order including but not limited to restrictions on or a prohibition of any expenditure, encumbrance, or disposition of the respondent’s funds or property.

b. In a suitable hospital, the chief medical officer of which shall be informed of the reasons why immediate custody has been ordered. The hospital may provide treatment which is necessary to preserve the respondent’s life, or to appropriately control the respondent’s behavior which is likely to result in physical injury to the person or to others if allowed to continue, and other treatment as deemed appropriate by the chief medical officer.

c. In the nearest facility which is licensed to care for persons with mental illness or substance abuse, provided that detention in a jail or other facility intended for confinement of those accused or convicted of a crime shall not be ordered.

3. The respondent’s attorney may be allowed by the court to present evidence and arguments before the court’s determination under this section. If such an opportunity is not provided at that time, respondent’s attorney shall be allowed to present evidence and arguments after the issuance of the court’s order of confinement and while the respondent is confined.

[82 Acts, ch 1212, §9]

90 Acts, ch 1085, §15; 91 Acts, ch 108, §2; 92 Acts, ch 1072, §1; 92 Acts, ch 1165, §1; 2009 Acts, ch 41, §187; 2011 Acts, ch 121, §45, 62

Referred to in §125.12, 125.44, 125.77, 125.79, 125.80, 125.82, 125.84, 125.87, 125.88, 125.91, 125.92, 229.21

### **125.82 Commitment hearing.**

1. At a commitment hearing, evidence in support of the contentions made in the application may be presented by the applicant, or by an attorney for the applicant, or by the county attorney. During the hearing, the applicant and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of other interested persons. If the respondent is present at the hearing, as provided in subsection 3, and has been medicated within twelve hours, or a longer period of time as the court may designate, prior to the beginning of the hearing or a session of the hearing, the court shall be informed of that fact and of the probable effects of the medication upon convening of the hearing.

2. A person not necessary for the conduct of the hearing shall be excluded, except that the court may admit a person having a legitimate interest in the hearing. Upon motion of the

applicant, the court may exclude the respondent from the hearing during the testimony of a witness if the court determines that the witness' testimony is likely to cause the respondent severe emotional trauma.

3. The person who filed the application and a licensed physician, mental health professional as defined in section 228.1, or certified alcohol and drug counselor certified by the nongovernmental Iowa board of substance abuse certification who has examined the respondent in connection with the commitment hearing shall be present at the hearing, unless the court for good cause finds that their presence or testimony is not necessary. The applicant, respondent, and the respondent's attorney may waive the presence or telephonic appearance of the licensed physician, mental health professional, or certified alcohol and drug counselor who examined the respondent and agree to submit as evidence the written report of the licensed physician, mental health professional, or certified alcohol and drug counselor. The respondent's attorney shall inform the court if the respondent's attorney reasonably believes that the respondent, due to diminished capacity, cannot make an adequately considered waiver decision. "Good cause" for finding that the testimony of the licensed physician, mental health professional, or certified alcohol and drug counselor who examined the respondent is not necessary may include, but is not limited to, such a waiver. If the court determines that the testimony of the licensed physician, mental health professional, or certified alcohol and drug counselor is necessary, the court may allow the licensed physician, mental health professional, or certified alcohol and drug counselor to testify by telephone. The respondent shall be present at the hearing unless prior to the hearing the respondent's attorney stipulates in writing that the attorney has conversed with the respondent, and that in the attorney's judgment the respondent cannot make a meaningful contribution to the hearing, or that the respondent has waived the right to be present, and the basis for the attorney's conclusions. A stipulation to the respondent's absence shall be reviewed by the court before the hearing, and may be rejected if it appears that insufficient grounds are stated or that the respondent's interests would not be served by the respondent's absence.

4. The respondent's welfare is paramount, and the hearing shall be tried as a civil matter and conducted in as informal a manner as is consistent with orderly procedure. Discovery as permitted under the Iowa rules of civil procedure is available to the respondent. The court shall receive all relevant and material evidence, but the court is not bound by the rules of evidence. A presumption in favor of the respondent exists, and the burden of evidence and support of the contentions made in the application shall be upon the person who filed the application. If upon completion of the hearing the court finds that the contention that the respondent is a person with a substance-related disorder has not been sustained by clear and convincing evidence, the court shall deny the application and terminate the proceeding.

5. If the respondent is not taken into custody under section 125.81, but the court finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order limited detention of the respondent as authorized in section 125.81, as is necessary to ensure that the respondent will not depart from the jurisdiction of the court without the court's approval until the proceeding relative to the respondent has been concluded.

[C75, 77, §125.19(3-7, 10, 13); C79, 81, §229.52(1); 82 Acts, ch 1212, §10]

90 Acts, ch 1085, §16; 91 Acts, ch 108, §3; 2006 Acts, ch 1115, §1; 2006 Acts, ch 1116, §1; 2006 Acts, ch 1159, §30; 2011 Acts, ch 121, §46, 62

Referred to in §125.84, 229.21, 602.8103

### **125.83 Placement for evaluation.**

If upon completion of the commitment hearing, the court finds that the contention that the respondent is a person with a substance-related disorder has been sustained by clear and convincing evidence, the court shall order the respondent placed at a facility or under the care of a suitable facility on an outpatient basis as expeditiously as possible for a complete evaluation and appropriate treatment. The court shall furnish to the facility at the time of admission or outpatient placement, a written statement of facts setting forth the evidence on which the finding is based. The administrator of the facility shall report to the court no more

than fifteen days after the individual is admitted to or placed under the care of the facility, which shall include the chief medical officer's recommendation concerning treatment of a substance-related disorder. An extension of time may be granted for a period not to exceed seven days upon a showing of good cause. A copy of the report shall be sent to the respondent's attorney who may contest the need for an extension of time if one is requested. If the request is contested, the court shall make an inquiry as it deems appropriate and may either order the respondent released from the facility or grant extension of time for further evaluation. If the administrator fails to report to the court within fifteen days after the individual is admitted to the facility, and no extension of time has been requested, the administrator is guilty of contempt and shall be punished under chapter 665. The court shall order a rehearing on the application to determine whether the respondent should continue to be held at the facility.

[C75, 77, §125.19(4); C79, 81, §229.52(2); 82 Acts, ch 1212, §11]

90 Acts, ch 1020, §1; 90 Acts, ch 1085, §17; 2011 Acts, ch 121, §47, 62; 2012 Acts, ch 1021, §43

Referred to in §125.84, 125.85, 125.87, 125.88, 125.89, 229.21

### **125.83A Placement in certain federal facilities.**

1. If upon completion of the commitment hearing, the court finds that the contention that the respondent is a person with a substance-related disorder has been sustained by clear and convincing evidence, and the court is furnished evidence that the respondent is eligible for care and treatment in a facility operated by the United States department of veterans affairs or another agency of the United States government and that the facility is willing to receive the respondent, the court may so order. The respondent, when so placed in a facility operated by the United States department of veterans affairs or another agency of the United States government within or outside of this state, shall be subject to the rules of the United States department of veterans affairs or other agency, but shall not lose any procedural rights afforded the respondent by this chapter. The chief officer of the facility shall have, with respect to the respondent so placed, the same powers and duties as the chief medical officer of a hospital in this state would have in regard to submission of reports to the court, retention of custody, transfer, convalescent leave, or discharge. Jurisdiction is retained in the court to maintain surveillance of the respondent's treatment and care, and at any time to inquire into the respondent's condition and the need for continued care and custody.

2. Upon receipt of a certificate stating that a respondent placed under this chapter is eligible for care and treatment in a facility operated by the United States department of veterans affairs or another agency of the United States government which is willing to receive the respondent without charge to the state of Iowa or any county in the state, the chief medical officer may transfer the respondent to that facility. Upon so doing, the chief medical officer shall notify the court which ordered the respondent's placement in the same manner as would be required in the case of a transfer under section 125.86, subsection 2, and the respondent transferred shall be entitled to the same rights as the respondent would have under that subsection. No respondent shall be transferred under this section who is confined pursuant to conviction of a public offense or whose placement was ordered upon contention of incompetence to stand trial by reason of mental illness, without prior approval of the court which ordered that respondent's placement.

3. A judgment or order of commitment by a court of competent jurisdiction of another state or the District of Columbia, under which any person is hospitalized or placed in a facility operated by the United States department of veterans affairs or another agency of the United States government, shall have the same force and effect with respect to that person while the person is in this state as the judgment or order would have if the person were in the jurisdiction of the court which issued it. That court shall be deemed to have retained jurisdiction of the person so placed for the purpose of inquiring into that person's condition and the need for continued care and custody, as do courts in this state under this section. Consent is given to the application of the law of the state or district in which the court is situated which issued the judgment or order as regards authority of the chief officer of any facility, operated in this state by the United States department of veterans affairs or another

agency of the United States government, to retain custody, transfer, place on convalescent leave, or discharge the person so committed.

97 Acts, ch 159, §2; 2009 Acts, ch 26, §8; 2011 Acts, ch 121, §48, 62  
Referred to in §229.21

#### **125.84 Evaluation report.**

The facility administrator's report to the court of the chief medical officer's substance abuse evaluation of the respondent shall be made no later than the expiration of the time specified in section 125.83. At least two copies of the report shall be filed with the clerk, who shall distribute the copies in the manner described by section 125.80, subsection 2. The report shall state one of the four following alternative findings:

1. That the respondent does not, as of the date of the report, require further treatment for substance abuse. If the report so states, the court shall order the respondent's immediate release from involuntary commitment and terminate the proceedings.

2. That the respondent is a person with a substance-related disorder who is in need of full-time custody, care, and treatment in a facility, and is considered likely to benefit from treatment. If the report so states, the court shall enter an order which may require the respondent's continued placement and commitment to a facility for appropriate treatment.

3. That the respondent is a person with a substance-related disorder who is in need of treatment, but does not require full-time placement in a facility. If the report so states, the report shall include the chief medical officer's recommendation for treatment of the respondent on an outpatient or other appropriate basis, and the court shall enter an order which may direct the respondent to submit to the recommended treatment. The order shall provide that if the respondent fails or refuses to submit to treatment, as directed by the court's order, the court may order that the respondent be taken into immediate custody as provided by section 125.81 and, following notice and hearing held in accordance with the procedures of sections 125.77 and 125.82, may order the respondent treated as a patient requiring full-time custody, care, and treatment as provided in subsection 2, and may order the respondent involuntarily committed to a facility.

4. That the respondent is a person with a substance-related disorder who is in need of treatment, but in the opinion of the chief medical officer is not responding to the treatment provided. If the report so states, the report shall include the facility administrator's recommendation for alternative placement, and the court shall enter an order which may direct the respondent's transfer to the recommended placement or to another placement after consultation with respondent's attorney and the facility administrator who made the report under this subsection.

[82 Acts, ch 1212, §12]

90 Acts, ch 1020, §2; 90 Acts, ch 1085, §18; 2011 Acts, ch 121, §49, 62  
Referred to in §125.85, 125.86, 229.21, 321J.3

#### **125.85 Custody, discharge, and termination of proceeding.**

1. A respondent committed under section 125.84, subsection 2, shall remain in the custody of a facility for treatment for a period of thirty days, unless sooner discharged. The department is not required to pay the cost of any medication or procedure provided to the respondent during that period which is not necessary or appropriate to the specific objectives of detoxification and treatment of substance abuse. At the end of the thirty-day period, the respondent shall be discharged automatically unless the administrator of the facility, before expiration of the period, obtains a court order for the respondent's recommitment pursuant to an application under section 125.75, for a further period not to exceed ninety days.

2. A respondent recommitted under subsection 1 who has not been discharged by the facility before the end of the ninety-day period shall be discharged at the expiration of that period unless the administrator of the facility, before expiration of the period, obtains a court order for the respondent's recommitment pursuant to an application under section 125.75, for a further period not to exceed ninety days.

3. Upon the filing of an application for recommitment under subsection 1 or 2, the court shall schedule a recommitment hearing for no later than ten days after the date the application

is filed. A copy of the application, the notice of hearing, and any reports shall be served or provided in the manner and to the persons as required by sections 125.77 to 125.80, 125.83 and 125.84.

4. Following a respondent's discharge from a facility or from treatment, the administrator of the facility shall immediately report that fact to the court which ordered the respondent's commitment or treatment. The court shall issue an order confirming the respondent's discharge from the facility or from treatment, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. Copies of the order shall be sent by regular mail to the facility and the respondent.

5. A person who is placed for evaluation at a facility under section 125.83 or who is committed to a facility under section 125.84, subsection 2, shall remain at that facility unless discharged or otherwise permitted to leave by the court or administrator of the facility. If a person placed at a facility or committed to a facility leaves the facility without permission or without having been discharged, the administrator may notify the sheriff of the person's absence and the sheriff shall take the person into custody and return the person promptly to the facility.

[C75, 77, §125.19; C79, 81, §229.52(3 – 5), 229.53; 82 Acts, ch 1212, §13]  
92 Acts, ch 1072, §2; 99 Acts, ch 144, §1  
Referred to in §229.21

#### **125.86 Periodic reports required.**

1. No more than thirty days after entry of a court order for commitment to a facility under section 125.84, subsection 2, and thereafter at successive intervals not to exceed ninety days for as long as involuntary commitment of the respondent continues, the administrator of the facility shall report to the court which entered the order. The report shall be submitted in the manner required by section 125.84, shall state whether in the opinion of the chief medical officer the respondent's condition has improved, remains unchanged, or has deteriorated, and shall indicate the further length of time the respondent will be required to remain at the facility.

2. No more than sixty days after entry of a court order for treatment of a respondent under section 125.84, subsection 3, and thereafter at successive intervals not to exceed ninety days for as long as involuntary treatment continues, the administrator of the facility or the psychiatrist or psychiatric advanced registered nurse practitioner treating the patient shall report to the court which entered the order. The report shall be submitted in the manner required by section 125.84, shall state whether in the opinion of the chief medical officer or the psychiatrist or psychiatric advanced registered nurse practitioner the respondent's condition has improved, remains unchanged, or has deteriorated, and shall indicate the further length of time the respondent will require treatment by the facility. If the respondent fails or refuses to submit to treatment as ordered by the court, the administrator of the facility shall at once notify the court, which shall order the respondent committed for treatment as provided by section 125.84, subsection 3, unless the court finds that the failure or refusal was with good cause, and that the respondent is willing to receive treatment as provided in the court's order, or in a revised order if the court sees fit to enter one. If the administrator of the facility reports to the court that the respondent requires full-time custody, care, and treatment in a facility, and the respondent is willing to be admitted voluntarily to the facility for these purposes, the court may enter an order approving the placement upon consultation with the administrator of the facility in which the respondent is to be placed. If the respondent is unwilling to be admitted voluntarily to the facility, the procedure for determining involuntary commitment, as provided in section 125.84, subsection 3, shall be followed.

3. *a.* A psychiatric advanced registered nurse practitioner treating a respondent previously committed under this chapter may complete periodic reports pursuant to this section on the respondent if the respondent has been recommended for treatment on an outpatient or other appropriate basis pursuant to section 125.84, subsection 3, and if a psychiatrist licensed pursuant to chapter 148 personally evaluates the respondent on at least an annual basis.

*b.* An advanced registered nurse practitioner who is not certified as a psychiatric advanced

registered nurse practitioner but who meets the qualifications set forth in the definition of a mental health professional in section 228.1, may complete periodic reports pursuant to paragraph “a”.

[82 Acts, ch 1212, §14]

2008 Acts, ch 1082, §2, 3; 2009 Acts, ch 133, §29; 2013 Acts, ch 90, §25

Referred to in §125.83A, 229.21, 321J.3, 462A.14

Subsection 3, paragraph b amended

#### **125.87 Status during appeal.**

If a respondent appeals to the supreme court from a lower court’s finding that commitment is warranted, the respondent shall remain committed if already in custody, pursuant to an order of immediate custody under section 125.81 or pursuant to an order for evaluation and treatment under section 125.83, before notice of appeal was filed, unless the supreme court orders otherwise.

[82 Acts, ch 1212, §15]

Referred to in §229.21

#### **125.88 Status if commitment delayed.**

If a court directs a respondent who was previously ordered taken into immediate custody under section 125.81 to be placed at a facility for evaluation and appropriate treatment under section 125.83, and no suitable facility can immediately admit the respondent, the respondent shall remain in custody as previously ordered by the court, notwithstanding the time limits stated in section 125.81, until a suitable facility can admit the respondent. The court shall take appropriate steps to expedite the admission of the respondent to a suitable facility at the earliest feasible time.

[82 Acts, ch 1212, §16]

Referred to in §125.81, 229.21

#### **125.89 Respondents charged with or convicted of crime.**

1. If a court orders a respondent placed at a facility for evaluation and treatment under section 125.83 at a time when the respondent has been convicted of a public offense, or when there is pending against the respondent an unresolved formal charge of a public offense, and the respondent’s liberty has therefore been restricted in any manner, the findings of fact required by section 125.83 shall clearly so inform the administrator of the facility where the respondent is placed.

2. The commitment powers of the court under section 124.409 supersede the procedures and requirements of this division.

[82 Acts, ch 1212, §17]

Referred to in §229.21

#### **125.90 Judicial hospitalization referee.**

Judicial hospitalization referees shall be utilized as provided in section 229.21 for performing the duties of the court prescribed by this division.

[C79, 81, §229.51(3); 82 Acts, ch 1212, §18]

Referred to in §229.21

#### **125.91 Emergency detention.**

1. The procedure prescribed by this section shall only be used for a person with a substance-related disorder due to intoxication or substance-induced incapacitation who has threatened, attempted, or inflicted physical self-harm or harm on another, and is likely to inflict physical self-harm or harm on another unless immediately detained, or who is incapacitated by a substance, if an application has not been filed naming the person as the respondent pursuant to section 125.75 and the person cannot be ordered into immediate custody and detained pursuant to section 125.81.

2. *a.* A peace officer who has reasonable grounds to believe that the circumstances described in subsection 1 are applicable may, without a warrant, take or cause that person to be taken to the nearest available facility referred to in section 125.81, subsection 2, paragraph “b” or “c”. Such a person with a substance-related disorder due to intoxication

or substance-induced incapacitation who also demonstrates a significant degree of distress or dysfunction may also be delivered to a facility by someone other than a peace officer upon a showing of reasonable grounds. Upon delivery of the person to a facility under this section, the attending physician may order treatment of the person, but only to the extent necessary to preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue. The peace officer or other person who delivered the person to the facility shall describe the circumstances of the matter to the attending physician. If the person is a peace officer, the peace officer may do so either in person or by written report. If the attending physician has reasonable grounds to believe that the circumstances in subsection 1 are applicable, the attending physician shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 10. The magistrate shall, based upon the circumstances described by the attending physician, give the attending physician oral instructions either directing that the person be released forthwith, or authorizing the person's detention in an appropriate facility. The magistrate may also give oral instructions and order that the detained person be transported to an appropriate facility.

b. If the magistrate orders that the person be detained, the magistrate shall, by the close of business on the next working day, file a written order with the clerk in the county where it is anticipated that an application may be filed under section 125.75. The order may be filed by facsimile if necessary. The order shall state the circumstances under which the person was taken into custody or otherwise brought to a facility and the grounds supporting the finding of probable cause to believe that the person is a person with a substance-related disorder likely to result in physical injury to the person or others if not detained. The order shall confirm the oral order authorizing the person's detention including any order given to transport the person to an appropriate facility. The clerk shall provide a copy of that order to the attending physician at the facility to which the person was originally taken, any subsequent facility to which the person was transported, and to any law enforcement department or ambulance service that transported the person pursuant to the magistrate's order.

3. The attending physician shall examine and may detain the person pursuant to the magistrate's order for a period not to exceed forty-eight hours from the time the order is dated, excluding Saturdays, Sundays, and holidays, unless the order is dismissed by a magistrate. The facility may provide treatment which is necessary to preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue or is otherwise deemed medically necessary by the attending physician, but shall not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility and released from detention no later than the expiration of the forty-eight-hour period, unless an application for involuntary commitment is filed with the clerk pursuant to section 125.75. The detention of a person by the procedure in this section, and not in excess of the period of time prescribed by this section, shall not render the peace officer, attending physician, or facility detaining the person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, attending physician, or facility had reasonable grounds to believe that the circumstances described in subsection 1 were applicable.

4. The cost of detention in a facility under the procedure prescribed in this section shall be paid in the same way as if the person had been committed to the facility pursuant to an application filed under section 125.75.

[C75, 77, §125.17, 125.18; C79, 81, §125.34(4), 125.35; 82 Acts, ch 1212, §19]

90 Acts, ch 1085, §19; 2003 Acts, ch 68, §1, 2; 2009 Acts, ch 41, §188; 2011 Acts, ch 121, §50, 62; 2012 Acts, ch 1021, §44; 2012 Acts, ch 1079, §2

Referred to in §125.12, 125.34, 125.44, 125.92, 229.21, 602.6405

### **125.92 Rights and privileges of committed persons.**

A person who is detained, taken into immediate custody, or committed under this division has the right to:

1. Prompt evaluation, emergency services, and care and treatment as indicated by sound clinical practice.

2. Render informed consent, except for treatment provided pursuant to sections 125.81 and 125.91. If the person is incompetent treatment may be consented to by the person's next of kin or guardian notwithstanding the person's refusal. If the person refuses treatment which in the opinion of the chief medical officer is necessary or if the person is incompetent and the next of kin or guardian refuses to consent to the treatment or no next of kin or guardian is available the facility may petition a court of appropriate jurisdiction for approval to treat the person.

3. The protection of the person's constitutional rights.

4. Enjoy all legal, medical, religious, social, political, personal, and working rights and privileges, which the person would enjoy if not detained, taken into immediate custody, or committed, consistent with the effective treatment of the person and of the other persons in the facility. If the person's rights are restricted, the physician's direction to that effect shall be noted in the person's record. The person or the person's next of kin or guardian shall be advised of the person's rights and be provided a written copy upon the person's admission to or arrival at the facility.

[82 Acts, ch 1212, §20]

Referred to in §229.21

#### **125.93 Commitment records — confidentiality.**

Records of the identity, diagnosis, prognosis, or treatment of a person which are maintained in connection with the provision of substance abuse treatment services are confidential, consistent with the requirements of section 125.37, and with the federal confidentiality regulations authorized by the Drug Abuse Office and Treatment Act, 21 U.S.C. § 1175 (1976) and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, 42 U.S.C. § 4582 (1976).

[82 Acts, ch 1212, §21]

Referred to in §229.21

#### **125.94 Supreme court rules.**

The supreme court may prescribe rules of pleading, practice, and procedure and the forms of process, writs, and notices under section 602.4201, for all commitment proceedings in a court of this state under this chapter. The rules shall be drawn for the purpose of simplifying and expediting the proceedings, so far as is consistent with the rights of the parties involved. The rules shall not abridge, enlarge, or modify the substantive rights of a party to a commitment proceeding under this chapter.

[82 Acts, ch 1212, §22]

83 Acts, ch 186, §10045, 10201

Referred to in §229.21

## CHAPTER 126

## DRUGS, DEVICES, AND COSMETICS

Referred to in §124B.6, 124B.11, 155A.6, 155A.6A, 155A.6B, 155A.12, 155A.13A, 155A.17, 155A.26, 155A.42, 205.11, 205.12, 205.13

See §205.11 – 205.13 for additional provisions relating to administration and enforcement  
This chapter not enacted as a part of this title; transferred from chapter 203B in Code 1993

126.1	Title.	126.17	Rules — hearings.
126.2	Definitions.	126.18	Inspections.
126.2A	Applicability.	126.19	Publicity.
126.3	Prohibited acts.	126.20	Chapter not applicable to commercial feed.
126.4	Injunction proceedings.	126.21	Chapter not applicable to animal drugs.
126.5	Penalties — guaranty — false advertising liability.	126.22	Nitrous oxide.
126.6	Embargo.	126.23	Gamma-hydroxybutyrate.
126.7	Prosecutions.	126.23A	Pseudoephedrine retail restrictions.
126.8	Minor violations.	126.23B	Civil penalty.
126.9	Drugs and devices — adulteration.	126.24	Anthrax. Transferred to §708B.1; 2003 Acts, ch 44, §115.
126.10	Drugs and devices — misbranding — labeling.	126.25	Human immunodeficiency virus home testing kits — prohibition — penalties. Repealed by 2013 Acts, ch 81, §4.
126.11	Exemptions in cases of drugs and devices — dispensing by prescription only.	126.26	Notice of conviction under chapter.
126.12	New drugs.		
126.13	Reserved.		
126.14	Cosmetics — adulteration.		
126.15	Cosmetics — misbranding.		
126.16	False advertising.		

**126.1 Title.**

This chapter may be cited as the “*Iowa Drug, Device, and Cosmetic Act*”.

89 Acts, ch 197, §1

CS89, §203B.1

C93, §126.1

**126.2 Definitions.**

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

1. “*Advertising*” means any representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of drugs, devices, or cosmetics.

2. “*Anabolic steroid*” means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, corticosteroids, or dehydroepiandrosterone, which substance is identified as an anabolic steroid in section 124.208, subsection 6, and includes any other substance designated by the board as an anabolic steroid through the adoption of rules pursuant to chapter 17A.

3. “*Board*” means the board of pharmacy.

4. “*Contaminated with filth*” means not securely protected from dust, dirt, and as far as is necessary by all reasonable means, from all foreign or injurious contaminations.

5. “*Cosmetic*” means any of the following, but does not include soap:

a. An article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part of a human body for cleaning, beautifying, promoting attractiveness, or altering the appearance.

b. An article intended for use as a component of an article defined in paragraph “a”.

6. “*Counterfeit drug*” means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any such likeness, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed the drug

and which falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.

7. “*Device*” means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory of any of these, which is any of the following:

a. Recognized as a device in the official United States Pharmacopoeia National Formulary or any supplement to it.

b. Intended for use in the diagnosis of diseases or other conditions, or in the cure, mitigation, treatment, or prevention of diseases or other conditions in a human.

c. Intended to affect the structure or any function of the body of a human, and which does not achieve any of its principal intended purposes through chemical action within or on the body of a human and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

8. “*Drug*” means any of the following, but does not include a device:

a. An article recognized as a drug in the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to either document.

b. An article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in a human.

c. An article, other than food, intended to affect the structure or any function of the body of a human.

d. An article intended for use as a component of any articles specified in paragraphs “a”, “b”, or “c”.

9. “*Electronic prescription*” means a prescription which is transmitted by a computer device in a secure manner, including computer-to-computer transmission and computer-to-facsimile transmission.

10. “*Facsimile prescription*” means a prescription which is transmitted by a device which sends an exact image to the receiver.

11. “*Federal Act*” means the federal Food, Drug, and Cosmetic Act, which is codified in 21 U.S.C. § 301 et seq.

12. “*Immediate container*” does not include a package liner.

13. “*Label*” means a display of written, printed, or graphic matter upon the immediate container of an article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label is not complied with unless the word, statement, or other information also appears on the outside container or wrapper of the retail package of the article, or is easily legible through the outside container or wrapper.

14. “*Labeling*” means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying an article.

15. “*New drug*” means either of the following:

a. Any drug, the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling, except that a drug not so recognized is not a new drug if at any time prior to the enactment of this chapter it was subject to the federal Act, and if at that time its labeling contained the same representations concerning the conditions of its use.

b. Any drug, the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, recommended, or suggested in its labeling, has become recognized as safe and effective, but which has not, other than in such investigations, been used to a material extent or for a material time under the conditions prescribed, recommended, or suggested in its labeling.

16. “*Official compendium*” means the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to either document.

17. “*Person*” means an individual, partnership, corporation, or association.

18. “*Principal display panel*” means that part of a label that is most likely to be displayed,

presented, shown, or examined under normal and customary conditions of display for retail sale.

19. “Safe” as used in this chapter has reference to the health of a human.

20. “Secretary” means the secretary of the United States department of health and human services.

89 Acts, ch 197, §2

CS89, §203B.2

90 Acts, ch 1078, §1

C93, §126.2

2004 Acts, ch 1036, §4; 2007 Acts, ch 8, §20; 2007 Acts, ch 10, §17

Referred to in §280.16

Former unnumbered paragraph 2 transferred to §126.2A

### **126.2A Applicability.**

The provisions of this chapter regarding the selling of drugs, devices, or cosmetics are applicable to the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such article, in the conduct of any drug, device, or cosmetic establishment.

C93, §126.2(unn. 2)

CS2007, §126.2A

Section not amended; footnote deleted

### **126.3 Prohibited acts.**

The following acts and the causing of the acts within this state are unlawful:

1. The introduction or delivery for introduction into commerce of any drug, device, or cosmetic that is adulterated or misbranded.

2. The adulteration or misbranding of any drug, device, or cosmetic in commerce.

3. The receipt in commerce of a drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

4. The introduction or delivery for introduction into commerce of a drug, device, or cosmetic in violation of section 126.12.

5. The dissemination of any false advertising.

6. The refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by section 126.18; or the failure to establish or maintain any record or make any report required under section 512(j), 512(l), or 512(m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record.

7. The manufacture within this state of a drug, device, or cosmetic that is adulterated or misbranded.

8. The giving of a guaranty or undertaking referred to in section 126.5, subsection 2, if the guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect, signed by, and containing the name and address of, the person residing in this state from whom the person received the drug, device, or cosmetic in good faith.

9. The removal or disposal of a detained or embargoed drug, device, or cosmetic in violation of section 126.6, subsection 1.

10. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a drug, device, or cosmetic, if the act is done while the article is held for sale, whether or not it would be the first sale, after shipment in commerce; and if the action results in the article being adulterated or misbranded.

11. Forging, counterfeiting, simulating, or falsely representing, or without proper authority using a mark, stamp, tag, label, or other identification device authorized or required by rules or regulations adopted under this chapter or the federal Act.

12. Making, selling, disposing of, or keeping in possession, control, or custody, or concealing a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce

the trademark, trade name, or other identifying mark, imprint, or device of another trademark, trade name, mark, imprint, or device or a likeness of any trademark, trade name, mark, imprint, or device upon a drug or drug container or the labeling thereof so as to render the drug a counterfeit drug.

13. The doing of an act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

14. The use by a person to the person's own advantage, or the revealing, other than to the board or to the person's authorized representative or to the courts when relevant in a judicial proceeding under this chapter, of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection.

15. The use, on the labeling of a drug or device or in advertising relating to a drug or device, of a representation or suggestion that approval of an application with respect to the drug or device is in effect under section 126.12 or section 505, 515, or 520(g) of the federal Act, or that the drug or device complies with the provisions of any of those sections.

16. The use, in labeling, advertising, or other sales promotion of a reference to a report or analysis furnished in compliance with section 126.18 or section 704 of the federal Act.

17. If a prescription drug is distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the prescription drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer the drug who makes written request for information as to the drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. This subsection does not exempt any person from a labeling requirement imposed by or under this chapter.

18. a. Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trademark, trade name, or other identifying mark or imprint of another trademark, trade name, mark, or imprint or any likeness of such a trademark, trade name, mark, or imprint.

b. Selling, dispensing, disposing of; causing to be sold, dispensed, or disposed of; or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, a drug, device, or container thereof, with knowledge that the trademark, trade name, or other identifying mark or imprint of another trademark, trade name, mark, or imprint or any likeness of any trademark, trade name, mark, or imprint has been placed thereon in a manner prohibited by paragraph "a".

c. Making, selling, disposing of; causing to be made, sold, or disposed of; keeping in possession, control, or custody; or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another trademark, trade name, mark, or imprint or any likeness of any trademark, trade name, mark, or imprint upon a drug or container or labeling thereof so as to render the drug a counterfeit drug.

19. The failure to register in accordance with section 510 of the federal Act, the failure to provide any information required by section 510(j) or 510(k) of the federal Act, or the failure to provide a notice required by section 510(j)(2) of the federal Act.

20. a. The failure or refusal to:

(1) Comply with a requirement prescribed under section 518 or 520(g) of the federal Act.

(2) Furnish any notification or other material or information required by or under section 519 or 520(g) of the federal Act.

b. With respect to any device, the submission of any report required by or under this chapter that is false or misleading in any material respect.

21. The movement of a device in violation of an order under section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained.

22. The failure to provide the notice required by section 412(b) or 412(c) of the federal Act, the failure to make the reports required by section 412(d)(1)(B) of the federal Act, or the failure to meet the requirements prescribed under section 412(d)(2) of the federal Act.

23. Selling, dispensing, or distributing; causing to be sold, dispensed, or distributed; or possessing with intent to sell, dispense, or distribute, an anabolic steroid to a person under

eighteen years of age, with knowledge that the anabolic steroid is not necessary for the legitimate treatment of disease pursuant to an order of a physician.

89 Acts, ch 197, §3

CS89, §203B.3

90 Acts, ch 1078, §2

C93, §126.3

Referred to in §126.4, 126.5, 232.52, 321.215, 901.5

#### **126.4 Injunction proceedings.**

The board may apply to the district court for, and the court has jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of section 126.3 whether or not there exists an adequate remedy at law.

89 Acts, ch 197, §4

CS89, §203B.4

C93, §126.4

#### **126.5 Penalties — guaranty — false advertising liability.**

1. A person who violates a provision of this chapter, other than a violation of section 126.3, subsection 23, is guilty of a serious misdemeanor; but if the violation is committed after a conviction of the person under this section has become final, the person is guilty of an aggravated misdemeanor.

2. A person is not subject to the penalties of subsection 1 if the person establishes a guaranty or undertaking signed by, and containing the name and address of another person residing in this state from whom the person received the article in good faith, to the effect that the article is not adulterated or misbranded.

3. A publisher, radio-broadcast licensee, or agency or medium which disseminates false advertising, except the manufacturer, packer, distributor, or seller of the article to which false advertising relates, is not liable under this section for the dissemination of the false advertising, unless the person knew or believed that the advertising was deceptive, false, or misleading or the person has refused upon the request of the board to furnish the board the name and address, if known, of the manufacturer, packer, distributor, seller, or advertising agency which caused the person to disseminate the advertisement.

4. A person who violates section 126.3, subsection 23, commits an aggravated misdemeanor.

5. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph "a".

89 Acts, ch 197, §5

CS89, §203B.5

90 Acts, ch 1078, §3, 4; 92 Acts, ch 1062, §2

C93, §126.5

Referred to in §126.3

#### **126.6 Embargo.**

1. If a duly authorized agent of the board finds, or has probable cause to believe, that a drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, or is in violation of section 126.12, the agent shall affix to the article a tag or other appropriate marking, giving notice that the article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by an authorized agent or the court. It is unlawful for a person to remove or dispose of the detained or embargoed article by sale or otherwise without such permission.

2. When an article is adulterated or misbranded or is in violation of section 126.12 and has been detained or embargoed, a petition may be filed with the district court in whose jurisdiction the article is located, detained, or embargoed for an order for condemnation of the article. If a duly authorized agent has found that an article which is embargoed or detained is not adulterated or misbranded, the agent shall remove the tag or other marking.

3. If the court finds that a sampled, detained, or embargoed article is adulterated or misbranded, the article shall be destroyed at the expense of the claimant of the article, under the supervision of the agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of the article or the claimant's agent; but if the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after costs, fees, storage, and other expenses have been paid and a good and sufficient bond, conditioned that the article shall be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant for such labeling or processing under the supervision of a duly authorized agent of the board. The expense of supervision shall be paid by the claimant. The article shall be returned to the claimant and the bond shall be discharged on the representation to the court by the board that the article is no longer in violation of this chapter, and that the expenses of supervision have been paid.

89 Acts, ch 197, §6

CS89, §203B.6

C93, §126.6

Referred to in §126.3

### **126.7 Prosecutions.**

The attorney general, or a county attorney, or a city attorney to whom the board reports a violation of this chapter, shall cause appropriate court proceedings to be instituted without delay and to be prosecuted in the manner required by law. Before a violation of this chapter is reported to any such attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present the person's views before the board or its agent, either orally or in writing, in person or by attorney, with regard to the contemplated proceeding. However, the drug, device, or cosmetic shall be embargoed by the duly authorized agent.

89 Acts, ch 197, §7

CS89, §203B.7

C93, §126.7

Referred to in §331.756(40)

### **126.8 Minor violations.**

This chapter does not require the board to report minor violations for prosecution, or for the institution of proceedings under this chapter, if the board believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

89 Acts, ch 197, §8

CS89, §203B.8

C93, §126.8

### **126.9 Drugs and devices — adulteration.**

A drug or device is adulterated under any of the following circumstances:

1. *a.* If it consists in whole or in part of any filthy, putrid, or decomposed substance.
  - b.* If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health.
  - c.* If it is a drug and the methods used in, or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that the drug meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.
  - d.* If its container is composed, in whole or part, of any poisonous or deleterious substance which may render the contents injurious to health.
2. If it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standards set forth in the official compendium. A determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in the official

compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal Act. A drug defined in an official compendium is not adulterated under this subsection because it differs from the standard of strength, quality, or purity set forth in the official compendium, if its difference in strength, quality, or purity from such standards is plainly stated on its label. If a drug is recognized in both the United States Pharmacopoeia National Formulary and the Homeopathic Pharmacopoeia of the United States it is subject to the United States Pharmacopoeia National Formulary unless it is labeled and offered for sale as a homeopathic drug, in which case it is subject to the Homeopathic Pharmacopoeia of the United States and not to the United States Pharmacopoeia National Formulary.

3. If it is not subject to subsection 2 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

4. If it is a drug and any substance has been mixed or packed with it so as to reduce its quality or strength, or any substance has been substituted for it wholly or in part.

5. If it is, or purports to be or is represented as, a device which is subject to a performance standard established under section 514 of the federal Act, unless the device is in all respects in conformity with such standard.

6. If it is a device banned by the board or by the United States food and drug administration.

7. If it is a device and the methods used in, or the facilities or controls used for its manufacture, packing, storage, or installation are not in conformity with applicable requirements under section 520(f)(1) of the federal Act or an applicable condition as prescribed by an order under section 520(f)(2) of the federal Act.

8. If it is a device for which an exemption has been granted under section 520(g) of the federal Act for investigational use and the person who was granted the exemption or any investigator who uses the device under the exemption fails to comply with a requirement prescribed by or under that section.

89 Acts, ch 197, §9

CS89, §203B.9

C93, §126.9

#### **126.10 Drugs and devices — misbranding — labeling.**

1. A drug or device is misbranded under any of the following circumstances:

a. If its labeling is false or misleading in any particular.

b. (1) If in a package form unless it bears a label containing both of the following:

(a) The name and place of business of the manufacturer, packer, or distributor.

(b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

(2) However, under subparagraph (1), subparagraph division (a), reasonable variations shall be permitted, and exemptions as to small packages shall be allowed, in accordance with rules adopted by the board.

c. If any word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

d. If it is for use by humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such a substance, which derivative, after investigation, has been designated as habit forming, by rules adopted by the board under this chapter or by regulations adopted by the secretary pursuant to section 502(d) of the federal Act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning — May Be Habit Forming".

e. (1) If it is a drug, unless both of the following apply:

(a) Its label bears, to the exclusion of any other nonproprietary name except the applicable systematic chemical name or the chemical formula:

(i) The established name of the drug, as specified in subparagraph (3), if such exists; and

(ii) If the drug is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilide, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subparagraph subdivision, applies only to prescription drugs.

(b) For a prescription drug, the established name of the prescription drug or of an ingredient is printed, on the label and on any labeling on which a name for the prescription drug or an ingredient is used, prominently and in type at least half as large as that used thereon for any proprietary name or designation for the prescription drug or ingredient. However, to the extent that compliance with subparagraph division (a), subparagraph subdivision (ii), or this subparagraph division is impracticable, exemptions shall be allowed under rules or regulations adopted by the board or the secretary under the federal Act.

(2) If it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name, as defined in subparagraph (4), prominently printed in type at least half as large as that used thereon for any proprietary name or designation for the device, except that to the extent compliance with this subparagraph is impracticable, exemptions shall be allowed under rules or regulations adopted by the board or the secretary under the federal Act.

(3) As used in subparagraph (1), the term “*established name*”, with respect to a drug or ingredient thereof, means one of the following:

(a) The applicable official name designated pursuant to section 508 of the federal Act.

(b) If no such official name exists and the drug or ingredient is an article recognized in an official compendium, then its official title in the compendium.

(c) If neither subparagraph division (a) nor (b) applies, then the common or usual name, if any, of the drug or ingredient. However, if subparagraph division (b) applies to an article recognized in the United States Pharmacopoeia National Formulary and in the Homeopathic Pharmacopoeia of the United States under different official titles, the official title used in the United States Pharmacopoeia National Formulary applies unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia of the United States applies.

(4) As used in subparagraph (2), the term “*established name*” with respect to a device means one of the following:

(a) The applicable official name of the device pursuant to section 508 of the federal Act.

(b) If no such official name exists and the device is an article recognized in an official compendium, then its official title in the compendium.

(c) If neither subparagraph division (a) nor (b) applies, then any common or usual name of the device.

f. (1) Unless its labeling bears both of the following:

(a) Adequate directions for use.

(b) Adequate warnings against use in those pathological conditions, or by children, where its use may be dangerous to health, or against unsafe dosage or methods or durations of administration or application, in the manner and form necessary for the protection of users.

(2) However, if a requirement of subparagraph (1), subparagraph division (a), as applied to a drug or device, is not necessary for the protection of the public health, the board or the secretary shall adopt rules or regulations exempting the drug or device from that requirement.

g. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed in the official compendium. However, the method of packing may be modified with the consent of the board or the secretary. If a drug is recognized in both the United States Pharmacopoeia National Formulary and

the Homeopathic Pharmacopoeia of the United States, it is subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it is subject to the Homeopathic Pharmacopoeia of the United States, and not to the United States Pharmacopoeia National Formulary. However, if an inconsistency exists between this paragraph and paragraph “e” as to the name by which the drug or its ingredients shall be designated, paragraph “e” prevails.

*h.* If it has been found by the board or the secretary to be a drug liable to deterioration, unless it is packaged in the form and manner, and its label bears a statement of the precautions that the board or the secretary by rule or regulation requires as necessary for the protection of public health. Such a rule or regulation shall not be established for a drug recognized in an official compendium until the board or the secretary has informed the appropriate body charged with the revision of the official compendium of the need for such packaging or labeling requirements and that body has failed within a reasonable time to prescribe such requirements.

*i.* (1) If it is a drug and its container is so made, formed, or filled as to be misleading.

(2) If it is an imitation of another drug.

(3) If it is offered for sale under the name of another drug.

*j.* If it is dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in its labeling.

*k.* If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless both of the following apply:

(1) It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal Act.

(2) The certificate or release is in effect with respect to the drug.

*l.* (1) If it is, or purports to be, or is represented as a drug, composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless both of the following apply:

(a) It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal Act.

(b) The certificate or release is in effect with respect to the drug.

(2) However, this paragraph “l” does not apply to any drug or class of drugs exempted by regulations adopted under section 507(c) or 507(d) of the federal Act.

*m.* If it is a color additive, the intended use of which is for the purpose of coloring only, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to that color additive, as contained in regulations adopted under section 706 of the federal Act.

*n.* If it is a prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor includes in all advertising and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to the prescription drug a true statement of all of the following:

(1) The established name as defined in paragraph “e”, printed prominently and in type at least half as large as that used for any trade or brand name thereof.

(2) The formula showing quantitatively each ingredient of the prescription drug to the extent required for labels under paragraph “e”.

(3) Other information in brief summary relating to side effects, contraindications, and effectiveness as required in regulations adopted pursuant to section 701(e) of the federal Act.

*o.* If it was manufactured, prepared, propagated, compounded, or processed in an establishment in this state not duly registered under section 510 of the federal Act, if it was not included on a list required by section 510(j) of the federal Act, if a notice or other information respecting it was not provided as required by that section or section 510(k) of the federal Act, or if it does not bear the symbols from the uniform system for identification of devices prescribed under section 510(e) of the federal Act that are required by regulation.

*p.* If it is a drug and its packaging or labeling is in violation of an applicable regulation adopted pursuant to section 3 or 4 of the federal Poison Prevention Packaging Act of 1970, 15 U.S.C. § 1471 et seq.

q. If a trademark, trade name, or other identifying mark, imprint, or device of another trademark, trade name, mark, or imprint or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

r. In the case of a restricted device distributed or offered for sale in this state, if either of the following applies:

(1) Its advertising is false or misleading in any particular.

(2) It is sold, distributed, or used in violation of regulations adopted pursuant to section 520(e) of the federal Act.

s. In the case of a restricted device distributed or offered for sale in this state, unless the manufacturer, packer, or distributor includes in all advertising and other descriptive printed matter issued by the manufacturer, packer, or distributor with respect to the device both of the following:

(1) A true statement of the device's established name as defined in paragraph "e", printed prominently and in type at least half as large as that used for any trade or brand name thereof.

(2) A brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contraindications; and in the case of a specific device made subject to regulations adopted pursuant to the federal Act, a full description of the components of the device or the formula showing quantitatively each ingredient of the device to the extent required in regulations under the federal Act.

t. If it is a device subject to a performance standard established under section 514 of the federal Act, unless it bears labeling as prescribed in that performance standard.

u. If it is a device and there was a failure or refusal to comply with any requirement prescribed under section 518 of the federal Act respecting the device, or to furnish material required by or under section 519 of the federal Act respecting the device.

2. If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates, under the conditions of use prescribed in the labeling or advertising or under customary or usual conditions of use.

3. The representation of a drug, in its labeling, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

89 Acts, ch 197, §10

CS89, §203B.10

C93, §126.10

2009 Acts, ch 41, §189

Referred to in §126.11

### **126.11 Exemptions in cases of drugs and devices — dispensing by prescription only.**

1. The board shall adopt rules exempting from any labeling or packaging requirement of this chapter drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packaged, on condition that such drugs and devices are not adulterated or misbranded upon removal from the processing, labeling, or repackaging establishment.

2. Drug and device labeling or packaging exemptions adopted pursuant to the federal Act shall apply to drugs and devices in this state except insofar as modified or rejected by rules adopted by the board.

3. a. (1) This paragraph "a" applies to a drug intended for use by humans which is any of the following:

(a) Is a habit-forming drug to which section 126.10, subsection 1, paragraph "d" applies.

(b) Because of its toxicity or other potentiality for harmful effect, or the method of its use,

or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug.

(c) Is limited by an approved application under section 505 of the federal Act to use under the professional supervision of a practitioner licensed by law to administer the drug.

(2) Such a drug shall be dispensed only upon a written, electronic, or facsimile prescription of a practitioner licensed by law to administer the drug, or upon an oral prescription of such a practitioner which is reduced promptly to writing and filed by the pharmacist, or by refilling any such written, electronic, facsimile, or oral prescription if the refilling is authorized by the prescriber either in the original written, electronic, or facsimile prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to this paragraph "a" while the drug is held for sale results in the drug being misbranded.

b. A drug dispensed by filling or refilling a written, electronic, facsimile, or oral prescription of a practitioner licensed by law to administer the drug is exempt from section 126.10, except section 126.10, subsection 1, paragraph "a", section 126.10, subsection 1, paragraph "i", subparagraphs (2) and (3), and section 126.10, subsection 1, paragraphs "k" and "l", and the packaging requirements of section 126.10, subsection 1, paragraphs "g", "h", and "p", if the drug bears a label containing the name and address of the dispenser, the date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in the prescription. This exemption does not apply to a drug dispensed in the course of the conduct of the business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of paragraph "a" of this subsection.

c. The board may, by rule, remove a drug subject to section 126.10, subsection 1, paragraph "d", and section 505 of the federal Act from the requirements of paragraph "a" of this subsection when such requirements are not necessary for the protection of the public health.

d. A drug which is subject to paragraph "a" of this subsection is misbranded if, at any time prior to dispensing, its label fails to bear the statement: "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which paragraph "a" of this subsection does not apply is misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

e. Prescription drug samples dispensed by a practitioner licensed by law to administer such drugs are exempt from section 126.10.

f. All electronic or facsimile prescriptions transmitted under this section shall comply with section 155A.27.

89 Acts, ch 197, §11

CS89, §203B.11

C93, §126.11

2004 Acts, ch 1036, §5 – 7; 2009 Acts, ch 41, §190; 2013 Acts, ch 30, §26; 2013 Acts, ch 140, §58

Subsection 3, paragraph b amended

### **126.12 New drugs.**

1. A person shall not sell, deliver, offer for sale, hold for sale, or give away a new drug unless both of the following apply:

a. An application with respect to the new drug has been approved and the approval has not been withdrawn under section 505 of the federal Act.

b. A copy of the letter of approval or approvability issued by the United States food and drug administration is on file with the secretary of the board, if the product is manufactured in this state.

2. A person shall not use in humans a new drug limited to investigational use unless the person has filed with the United States food and drug administration a completed and signed "Notice of Claimed Investigational Exemption for a New Drug" form in accordance with 21

C.F.R. § 312.1 and the exemption has not been terminated. The drug shall be plainly labeled in compliance with section 505(i) or 507(d) of the federal Act.

3. This section does not apply to either of the following:

a. A drug which is not a new drug as defined in the federal Act.

b. A drug which is licensed under the federal Public Health Service Act of July 1, 1944, 42 U.S.C. § 201 et seq. or under the Animal Virus-Serum-Toxin Act of March 4, 1913, 21 U.S.C. § 151 et seq.

89 Acts, ch 197, §12

CS89, §203B.12

C93, §126.12

2010 Acts, ch 1061, §24

Referred to in §126.3, 126.6

**126.13** Reserved.

#### **126.14 Cosmetics — adulteration.**

A cosmetic is adulterated if any of the following apply:

1. It bears or contains a poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in its labeling or under customary or usual conditions of use. However, this does not apply to coal-tar hair dye if the label of the dye bears the following legend conspicuously displayed: “Caution — This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness”; and the label bears adequate directions for the preliminary testing. For the purposes of this subsection and subsection 5, “*hair dye*” does not include eyelash dyes or eyebrow dyes.

2. It consists in whole or in part of any filthy, putrid, or decomposed substance.

3. It has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

4. Its container is composed, in whole or in part, of a poisonous or deleterious substance which may render the contents injurious to health.

5. It is not a hair dye and it is, or it bears or contains a color additive which is “unsafe” within the meaning of section 706(a) of the federal Act.

89 Acts, ch 197, §13

CS89, §203B.14

C93, §126.14

Referred to in §126.15

Section not amended; editorial change applied

#### **126.15 Cosmetics — misbranding.**

1. A cosmetic is misbranded if any of the following apply:

a. Its labeling is false or misleading in any particular.

b. If in package form unless it bears a label containing both of the following:

(1) The name and place of business of the manufacturer, packer, or distributor.

(2) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label.

c. A word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed there with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

d. Its container is so made, formed, or filled as to be misleading.

e. It is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to that color additive prescribed under section 706 of the federal Act. This paragraph does not apply to packages of color additives

which, with respect to their use of cosmetics, are marketed and intended for use only in or on hair dyes, as specified in section 126.14, subsection 1.

f. Its packaging or labeling is in violation of an applicable regulation adopted pursuant to section 3 or 4 of the federal Poison Prevention Packaging Act of 1970, 15 U.S.C. § 1471 et seq.

2. The board shall adopt rules exempting from any labeling requirement of this chapter, cosmetics which are in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where they are originally processed or packed, on condition that such cosmetics are not adulterated or misbranded upon removal from the processing, labeling, or repacking establishment. Cosmetic labeling exemptions adopted under the federal Act apply to cosmetics in this state except as modified or rejected by rules adopted by the board.

89 Acts, ch 197, §14

CS89, §203B.15

C93, §126.15

2009 Acts, ch 41, §263

#### **126.16 False advertising.**

1. The advertising of a drug, device, or cosmetic is false if it is false or misleading in any particular.

2. For the purpose of this chapter, advertising is false if it represents a drug, device, or cosmetic to have any effect in the diagnosis, prevention, or treatment of arthritis, blood disorders, bone or joint diseases, kidney diseases or disorders, cancer, diabetes, gall bladder disease or disorders, heart and vascular disease, high blood pressure, diseases or disorders of the ear, mental disease or an intellectual disability, degenerative neurological diseases, paralysis, prostate gland disorders, conditions of the scalp affecting hair loss, baldness, endocrine disorders, sexual impotence, tumors, venereal diseases, varicose ulcers, breast enlargement, purifying blood, metabolic disorders, immune system disorders or conditions affecting the immune system, extension of life expectancy, stress and tension, brain stimulation or performance, the body's natural defense mechanisms, blood flow, and depression. However, advertising not in violation of subsection 1 is not false under this subsection if it is disseminated only to members of the medical, dental, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices. However, if the board determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named in this subsection, the board shall by rule authorize the advertising of drugs having curative or therapeutic effect for such disease, subject to the conditions and restrictions the board deems necessary in the interests of the public health. However, this subsection does not indicate that self-medication for diseases other than those named in this subsection is safe and efficacious.

89 Acts, ch 197, §15

CS89, §203B.16

C93, §126.16

2012 Acts, ch 1019, §6

#### **126.17 Rules — hearings.**

1. The board may adopt rules pursuant to chapter 17A for the efficient enforcement of this chapter. The board may make the rules adopted under this chapter conform, insofar as practicable, with those regulations adopted pursuant to the federal Act.

2. Hearings authorized or required by this chapter shall be conducted by the board or by an officer, agent, or employee designated by the board.

89 Acts, ch 197, §16

CS89, §203B.17

C93, §126.17

**126.18 Inspections.**

1. *a.* For purposes of enforcement of this chapter, the board or any of its authorized agents, upon presenting appropriate credentials to the owner, operator, or agent in charge, may do both of the following:

(1) Enter at reasonable times any factory, warehouse, or other establishment in which drugs, devices, or cosmetics are manufactured, processed, packed, or held, for introduction into commerce or after such introduction; or enter a vehicle being used to transport or hold drugs, devices, or cosmetics in commerce.

(2) Inspect at reasonable times and within reasonable limits and in a reasonable manner such a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein, and obtain samples necessary to the enforcement of this chapter. In the case of a factory, warehouse, establishment, or consulting laboratory in which prescription drugs are manufactured, processed, packed, or held, the inspection shall extend to all things therein, including records, files, papers, processes, controls, and facilities, bearing on whether prescription drugs or restricted devices which are adulterated or misbranded or which may not be manufactured, introduced into commerce, or sold or offered for sale by reason of any provision of this chapter, have been or are being manufactured, processed, packed, transported, or held in violation of or bearing on a violation of this chapter. An inspection authorized for prescription drugs by the preceding sentence shall not extend to financial data, sales data other than shipment data, pricing data, personnel data other than data as to qualifications of technical and professional personnel performing functions subject to this chapter, and research data other than data relating to new drugs, and antibiotic drugs, and devices, and subject to reporting and inspection under regulations lawfully issued pursuant to section 505(i) or 505(j), or section 507(d) or 507(g), section 519, or section 520(g) of the federal Act, and data, relating to other drugs, or devices which in the case of a new drug would be subject to reporting or inspection under lawful regulations issued pursuant to section 505(j) of the federal Act. The inspection shall be commenced and completed with reasonable promptness.

*b.* Paragraph “*a*” does not apply to any of the following:

(1) Pharmacies which maintain establishments in conformance with laws of this state regulating the practice of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs, or devices, upon prescription of practitioners licensed to administer the drugs or devices to patients under the care of the practitioners in the course of their professional practice, and which do not, either through a subsidiary or otherwise, manufacture, prepare, propagate, compound, or process drugs or devices for sale other than in the regular course of their business of dispensing or selling drugs or devices at retail.

(2) Practitioners licensed by law to prescribe or administer drugs or prescribe or use devices, and who manufacture, prepare, propagate, compound, or process drugs, or manufacture or process devices solely for use in the course of their professional practice.

(3) Persons who manufacture, prepare, propagate, compound, or process drugs, or manufacture or process devices solely for use in research, teaching, or chemical analysis and not for sale.

(4) Duly employed sales representatives of pharmaceutical companies acting in the normal and customary performance of their duties.

(5) Other classes of persons the board exempts from the application of this section by rule upon a finding that inspection as applied to such classes of persons in accordance with this section is not necessary for the protection of the public health.

2. *a.* Upon completion of an inspection of a factory, warehouse, consulting laboratory, or other establishment and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by the authorized agent which, in the judgment of the authorized agent, indicate that any drug, device, or cosmetic in the establishment meets either of the following:

(1) Consists in whole or in part of a filthy, putrid, or decomposed substance.

(2) Has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

b. A copy of the report shall be sent promptly to the board.

3. If the authorized agent making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the authorized agent shall give to the owner, operator, or agent in charge a receipt describing the sample obtained.

4. A person required under this chapter or section 519 or 520(g) of the federal Act to maintain records and a person who is in charge or custody of such records shall, upon request of an authorized agent designated by the board, permit the authorized agent at all reasonable times to have access and to copy and verify such records.

5. For the purposes of enforcing this chapter, carriers engaged in commerce, and persons receiving drugs, devices, or cosmetics in commerce or holding such articles so received, shall, upon the request of a duly authorized agent of the board, permit the agent, at reasonable times, to have access to and to copy all records showing the movement in commerce of a drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof. It is unlawful for any such carrier or person to fail to permit such access to and copying of any such record so requested when the request is accompanied by a statement in writing specifying the nature or kind of drug, device, or cosmetic to which the request relates.

6. Evidence obtained under this section or evidence which is directly or indirectly derived from such evidence obtained under this section, shall not be used in a criminal prosecution of the person from whom the evidence was obtained; and carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of drugs, devices, or cosmetics in the usual course of business as carriers.

89 Acts, ch 197, §17

CS89, §203B.18

C93, §126.18

2009 Acts, ch 41, §263

Referred to in §126.3

#### **126.19 Publicity.**

1. The board may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charges and their disposition.

2. The board may also cause to be disseminated information regarding drugs, devices, or cosmetics, in situations involving, in the opinion of the board, imminent danger to health, or gross deception of the consumer. This section does not prohibit the board from collecting, reporting, and illustrating the results of investigations by the board.

89 Acts, ch 197, §18

CS89, §203B.19

C93, §126.19

#### **126.20 Chapter not applicable to commercial feed.**

This chapter does not apply to the Iowa Commercial Feed Law of 1974 under chapter 198 or to administrative rules adopted pursuant to chapter 198.

89 Acts, ch 197, §19

CS89, §203B.20

C93, §126.20

#### **126.21 Chapter not applicable to animal drugs.**

This chapter does not apply to drugs intended for use for animals and not for humans.

89 Acts, ch 197, §20

CS89, §203B.21

C93, §126.21

#### **126.22 Nitrous oxide.**

1. *Unlawful possession.* Any person who possesses nitrous oxide or any substance

containing nitrous oxide, with the intent to breathe, inhale, or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses, or who knowingly and with the intent to do so is under the influence of nitrous oxide or any material containing nitrous oxide, is guilty of a serious misdemeanor. This subsection shall not apply to a person who is under the influence of nitrous oxide or any material containing nitrous oxide for the purpose of medical, surgical, or dental care by a person duly licensed to administer such an agent.

2. *Unlawful distribution.* Any person who distributes nitrous oxide, or possesses nitrous oxide with intent to distribute to any other person, if such distribution is with the intent to induce unlawful inhaling of the substance or is with the knowledge that the other person will unlawfully inhale the substance, is guilty of a serious misdemeanor.

97 Acts, ch 39, §6

### **126.23 Gamma-hydroxybutyrate.**

1. *Unlawful possession.* Any person who possesses gamma-hydroxybutyrate (also known as gamma-hydroxybutyric acid, or GHB), or any substance containing gamma-hydroxybutyrate, commits an aggravated misdemeanor. This subsection shall not apply to any person who obtains or possesses gamma-hydroxybutyrate or any material containing gamma-hydroxybutyrate pursuant to a lawful order of a physician or other authorized prescriber for the legitimate treatment of disease.

2. *Unlawful distribution.* Any person who distributes gamma-hydroxybutyrate, or possesses gamma-hydroxybutyrate with the intent to distribute to any other person, commits an aggravated misdemeanor if the person intends to promote or allow the unlawful use of the substance or if the person knows that the other person will use the substance for unlawful purposes.

97 Acts, ch 95, §1

### **126.23A Pseudoephedrine retail restrictions.**

1. *a.* A retailer or an employee of a retailer shall not do any of the following:

(1) Sell more than seven thousand five hundred milligrams of pseudoephedrine to the same person within a thirty-day period.

(2) Knowingly sell more than one package of a product containing pseudoephedrine to a person in a twenty-four-hour period.

(3) Sell a package of a pseudoephedrine product that can be further broken down or subdivided into two or more separate and distinct packages or offer promotions where a pseudoephedrine product is given away for free as part of any purchase transaction.

*b.* A retailer or an employee of a retailer shall do the following:

(1) Provide for the sale of a pseudoephedrine product from a locked cabinet or behind a sales counter where the public is unable to reach the product and where the public is not permitted.

(2) Require a purchaser to present a government-issued photo identification card identifying the purchaser prior to purchasing a pseudoephedrine product.

(3) Require the purchaser to sign a logbook and to also require the purchaser to legibly print the purchaser's name and address in the logbook.

(4) Print the name of the pseudoephedrine product purchased and quantity sold next to the name of each purchaser in the logbook.

(5) Determine the signature in the logbook corresponds with the name on the government-issued photo identification card.

(6) Keep the logbook twenty-four months from the date of the last entry.

(7) Provide notification in a clear and conspicuous manner in a location where a pseudoephedrine product is offered for sale stating the following:

Iowa law prohibits the over-the-counter purchase of more than one package of a product containing pseudoephedrine in a twenty-four-hour period or of more than seven thousand five hundred milligrams of pseudoephedrine within a thirty-day period. If you purchase a product

containing pseudoephedrine, you are required to sign a logbook which may be accessible to law enforcement officers.

(8) Provide notification affixed to the logbook stating that a purchaser entering a false statement or misrepresentation in the logbook may subject the purchaser to criminal penalties under 18 U.S.C. § 1001.

(9) Disclose logbook information as provided by state and federal law.

(10) Comply with training requirements pursuant to federal law.

2. A purchaser shall not do any of the following:

a. Purchase more than one package of a pseudoephedrine product within a twenty-four-hour period from a retailer.

b. Purchase more than seven thousand five hundred milligrams of pseudoephedrine from a retailer, either separately or collectively, within a thirty-day period.

3. A purchaser shall sign the logbook and also legibly print the purchaser's name and address in the logbook.

4. Enforcement of this section shall be implemented uniformly throughout the state. A political subdivision of the state shall not adopt an ordinance regulating the display or sale of products containing pseudoephedrine. An ordinance adopted in violation of this section is void and unenforceable and any enforcement activity of an ordinance in violation of this section is void.

5. The logbook may be kept in an electronic format upon approval by the department of public safety.

6. A pharmacy that sells a product that contains three hundred sixty milligrams or less of pseudoephedrine on a retail basis shall comply with the provisions of this section with respect to the sale of such product. However, a pharmacy is exempted from the provisions of this section when selling a pseudoephedrine product pursuant to section 124.212.

7. A retailer or an employee of a retailer that reports to any law enforcement agency any alleged criminal activity related to the purchase or sale of pseudoephedrine or who refuses to sell a pseudoephedrine product to a person is immune from civil liability for that conduct, except in cases of willful misconduct.

8. If a retailer or an employee of a retailer violates any provision of this section, a city or county may assess a civil penalty against the retailer upon hearing and notice as provided in section 126.23B.

9. An employee of a retailer who commits a violation of subsection 1 or a purchaser who commits a violation of subsection 2 commits a simple misdemeanor punishable by a scheduled fine under section 805.8C, subsection 6.

10. As used in this section, "retailer" means a person or business entity engaged in this state in the business of selling products on a retail basis. An "employee of a retailer" means any employee, contract employee, or agent of the retailer.

2004 Acts, ch 1127, §1; 2005 Acts, ch 15, §3, 14; 2005 Acts, ch 179, §115 – 117; 2009 Acts, ch 25, §7, 8; 2010 Acts, ch 1061, §25

Referred to in §124.212, 124.213, 126.23B, 602.8105, 714.7C, 805.8C(6)

Theft of pseudoephedrine, see §714.7C

### **126.23B Civil penalty.**

1. A city or a county may enforce section 126.23A, after giving the retailer an opportunity to be heard upon ten days' written notice by restricted certified mail stating the alleged violation and the time and place at which the retailer may appear and be heard.

2. For a violation of section 126.23A by the retailer or an employee of the retailer a civil penalty shall be assessed against the retailer as follows:

a. For a first violation, the retailer shall be assessed a civil penalty in the amount of three hundred dollars.

b. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars.

c. For a third violation within a period of three years, the retailer shall be assessed a civil

penalty in the amount of two thousand dollars. The retailer may also be prohibited from selling pseudoephedrine for up to three years from the date of assessment of the civil penalty.

d. For a fourth or subsequent violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of three thousand dollars. On a fourth or subsequent violation, the retailer shall be prohibited from selling pseudoephedrine products for three years from the date of the assessment of the civil penalty.

3. The city or county that takes legal action against a retailer under this section shall report the assessment of a civil penalty to the department of public safety within thirty days of the penalty being assessed.

4. The civil penalty shall be collected by the clerk of the district court and shall be distributed as provided in section 602.8105, subsection 4.

2005 Acts, ch 15, §4, 14

Referred to in §126.23A, 602.8105

**126.24 Anthrax.** Transferred to § 708B.1; 2003 Acts, ch 44, § 115.

**126.25 Human immunodeficiency virus home testing kits — prohibition — penalties.** Repealed by 2013 Acts, ch 81, § 4.

**126.26 Notice of conviction under chapter.**

If a person enters a plea of guilty, or forfeits bail or collateral deposited to secure the person's appearance in court, and the forfeiture is not vacated, or if a person is found guilty upon an indictment or information alleging a violation of this chapter, a copy of the minutes attached to the indictment returned by the grand jury, or to the county attorney's information, a copy of the judgment and sentence, and a copy of the opinion of the judge if one is filed, shall be sent by the clerk of the district court or the judge to the state department of transportation.

93 Acts, ch 16, §2

Referred to in §901.5

## CHAPTERS 127 to 134

RESERVED

## SUBTITLE 2

### HEALTH-RELATED ACTIVITIES

Referred to in §135.1, 135.11

## CHAPTER 135

### DEPARTMENT OF PUBLIC HEALTH

Referred to in §7E.5, 135G.6, 135H.6, 136.3, 147A.3, 163.3A, 225C.6A

Plumbing and mechanical systems board  
within the department of public health;  
see chapter 105

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## DIVISION I

### GENERAL PROVISIONS

#### 135.1 Definitions.

For the purposes of chapter 155 and Title IV, subtitle 2, excluding chapter 146, unless otherwise defined:

1. "Director" shall mean the director of public health.
2. "Health officer" shall mean the physician who is the health officer of the local board of health.
3. "Local board" shall mean the local board of health.
4. "Physician" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, or optometry under the laws of this state; but a person licensed as a physician and surgeon shall be designated as a "physician" or "surgeon", a person licensed as an osteopathic physician and surgeon shall be designated as an "osteopathic physician" or "osteopathic surgeon", a person licensed as a chiropractor shall be designated as a "chiropractor", a person licensed as a podiatrist shall be designated as a "podiatric physician", and a person licensed as an optometrist shall be designated as an "optometrist". A definition or designation contained in this subsection shall not be interpreted to expand the scope of practice of such licensees.
5. "Rules" shall include regulations and orders.

6. “State department” or “department” shall mean the Iowa department of public health. [S13, §2583-b; C24, 27, 31, 35, 39, §2181; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.1]

86 Acts, ch 1245, §1101; 88 Acts, ch 1199, §1; 94 Acts, ch 1023, §10; 95 Acts, ch 108, §2; 96 Acts, ch 1036, §1; 96 Acts, ch 1212, §15; 2008 Acts, ch 1058, §14; 2008 Acts, ch 1084, §10; 2008 Acts, ch 1088, §141; 2009 Acts, ch 133, §30; 2012 Acts, ch 1113, §16

Referred to in §36.2, 135C.1, 144.26, 514.21

### **135.2 Appointment of director and acting director.**

1. a. The governor shall appoint the director of the department, subject to confirmation by the senate. The director shall serve at the pleasure of the governor. The director is exempt from the merit system provisions of chapter 8A, subchapter IV. The governor shall set the salary of the director within the range established by the general assembly.

b. The director shall possess education and experience in public health.

2. The director may appoint an employee of the department to be acting director, who shall have all the powers and duties possessed by the director. The director may appoint more than one acting director but only one acting director shall exercise the powers and duties of the director at any time.

[C97, S13, §2564; C24, 27, 31, 35, 39, §2182, 2184, 2185; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §135.2, 135.4, 135.5; C81, §135.2]

86 Acts, ch 1245, §1102; 88 Acts, ch 1158, §32; 2003 Acts, ch 145, §186; 2006 Acts, ch 1184, §75

Referred to in §513C.3

Confirmation; §2.32

### **135.3 Disqualifications.**

The director shall not hold any other lucrative office of this state, elective or appointive, during the director’s term; provided, however, that the director may serve without compensation as an officer or member of the instructional staff of any of the state educational institutions if any such additional duties and responsibilities do not prohibit the director from performing the duties of the office of director.

[C97, S13, §2564; C24, 27, 31, 35, 39, §2183; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.3]

**135.4 and 135.5** Repealed by 80 Acts, ch 1010, § 86.

### **135.6 Assistants and employees.**

The director shall employ such assistants and employees as may be authorized by law, and the persons appointed shall perform duties as may be assigned to them by the director.

[C97, S13, §2564; C24, 27, 31, 35, 39, §2186; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.6]

86 Acts, ch 1245, §1103

### **135.7 Bonds.**

The director shall require every employee who collects fees or handles funds belonging to the state to give an official bond, properly conditioned and signed by sufficient sureties, in a sum to be fixed by the director which bond shall be approved by the director and filed in the office of the secretary of state.

[C24, 27, 31, 35, 39, §2187; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.7]

### **135.8 Seal.**

The department shall have an official seal and every commission, license, order, or other paper executed by the department may be attested with its seal.

[C24, 27, 31, 35, 39, §2188; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.8]

**135.9 Expenses.**

The director, field and office assistants, inspectors, and employees shall, in addition to salary, receive their necessary traveling expenses by the nearest traveled and practicable route and their necessary and incidental expenses when engaged in the performance of official business.

[C97, §2574; S13, §2564, 2574; C24, 27, 31, 35, 39, §2189; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.9]

**135.10 Office.**

The department shall be located at the seat of government.

[C97, §2564; S13, §2564; C24, 27, 31, 35, 39, §2190; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.10]

**135.11 Duties of department.**

The director of public health shall be the head of the “Iowa Department of Public Health”, which shall:

1. Exercise general supervision over the public health, promote public hygiene and sanitation, prevent substance abuse and unless otherwise provided, enforce the laws relating to the same.
2. Conduct campaigns for the education of the people in hygiene and sanitation.
3. Issue monthly health bulletins containing fundamental health principles and other health data deemed of public interest.
4. Make investigations and surveys in respect to the causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health. For this purpose the department may use the services of the experts connected with the state hygienic laboratory at the state university of Iowa.
5. Establish stations throughout the state for the distribution of antitoxins and vaccines to physicians, druggists, and other persons, at cost. All antitoxin and vaccine thus distributed shall be labeled “Iowa Department of Public Health”.
6. Exercise general supervision over the administration and enforcement of the sexually transmitted diseases and infections law, chapter 139A, subchapter II.
7. Exercise sole jurisdiction over the disposal and transportation of the dead bodies of human beings and prescribe the methods to be used in preparing such bodies for disposal and transportation. However, the department may approve a request for an exception to the application of specific embalming and disposition rules adopted pursuant to this subsection if such rules would otherwise conflict with tenets and practices of a recognized religious denomination to which the deceased individual adhered or of which denomination the deceased individual was a member. The department shall inform the board of mortuary science of any such approved exception which may affect services provided by a funeral director licensed pursuant to chapter 156.
8. Establish, publish, and enforce rules which require companies, corporations, and other entities to obtain a permit from the department prior to scattering cremated human remains.
9. Exercise general supervision over the administration and enforcement of the vital statistics law, chapter 144.
10. Enforce the law relative to chapter 146 and “Health-related Professions”, Title IV, subtitle 3, excluding chapter 155.
11. Establish and maintain divisions as are necessary for the proper enforcement of the laws administered by the department.
12. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of chapters 125 and 155, and Title IV, subtitle 2, excluding chapter 146 and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.
13. Administer healthy aging and essential public health services by approving grants of state funds to the local boards of health for the purposes of promoting healthy aging throughout the lifespan and enhancing health promotion and disease prevention services, and by providing guidelines for the approval of the grants and allocation of the state funds.

Guidelines, evaluation requirements and formula allocation procedures for the services shall be established by the department by rule.

14. Administer chapters 125, 136A, 136C, 139A, 142, 142A, 144, and 147A.

15. Issue an annual report to the governor as provided in section 7E.3, subsection 4.

16. Consult with the office of statewide clinical education programs at the university of Iowa college of medicine and annually submit a report to the general assembly by January 15 verifying the number of physicians in active practice in Iowa by county who are engaged in providing obstetrical care. To the extent data are readily available, the report shall include information concerning the number of deliveries per year by specialty and county, the age of physicians performing deliveries, and the number of current year graduates of the university of Iowa college of medicine and the Des Moines university — osteopathic medical center entering into residency programs in obstetrics, gynecology, and family practice. The report may include additional data relating to access to obstetrical services that may be available.

17. Administer the statewide maternal and child health program and the program for children with disabilities by conducting mobile and regional child health specialty clinics and conducting other activities to improve the health of low-income women and children and to promote the welfare of children with actual or potential conditions which may cause disabilities and children with chronic illnesses in accordance with the requirements of Tit. V of the federal Social Security Act. The department shall provide technical assistance to encourage the coordination and collaboration of state agencies in developing outreach centers which provide publicly supported services for pregnant women, infants, and children. The department shall also, through cooperation and collaborative agreements with the department of human services and the mobile and regional child health specialty clinics, establish common intake proceedings for maternal and child health services. The department shall work in cooperation with the legislative services agency in monitoring the effectiveness of the maternal and child health centers, including the provision of transportation for patient appointments and the keeping of scheduled appointments.

18. Establish, publish, and enforce rules requiring prompt reporting of methemoglobinemia, pesticide poisonings, and the reportable poisonings and illnesses established pursuant to section 139A.21.

19. Collect and maintain reports of pesticide poisonings and other poisonings, illnesses, or injuries caused by selected chemical or physical agents, including methemoglobinemia and pesticide and fertilizer hypersensitivity; and compile and publish, annually, a statewide and county-by-county profile based on the reports.

20. Adopt rules which require personnel of a licensed hospice, of a homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or of an agency which provides respite care services and receives funds to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions through a program approved by the department. The rules shall require that new employees complete the training within six months of initial employment and existing employees complete the training on or before January 1, 1989.

21. Adopt rules which require all emergency medical services personnel, firefighters, and law enforcement personnel to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions and the prevention of human immunodeficiency virus infection.

22. Adopt rules which provide for the testing of a convicted or alleged offender for the human immunodeficiency virus pursuant to sections 915.40 through 915.43. The rules shall provide for the provision of counseling, health care, and support services to the victim.

23. Establish ad hoc and advisory committees to the director in areas where technical expertise is not otherwise readily available. Members may be compensated for their actual and necessary expenses incurred in the performance of their duties. To encourage health consumer participation, public members may also receive a per diem as specified in section 7E.6 if funds are available and the per diem is determined to be appropriate by the director. Expense moneys paid to the members shall be paid from funds appropriated to the department. A majority of the members of such a committee constitutes a quorum.

24. Review and approve mandatory reporter training curricula for those persons who

work in a position classification that under law makes the persons mandatory reporters of child or dependent adult abuse and the position classification does not have a mandatory reporter training curriculum approved by a licensing or examining board.

25. Establish and administer a substance abuse treatment facility pursuant to section 135.130.

26. Administer annual grants to county boards of health for the purpose of conducting programs for the testing of private water supply wells, the closing of abandoned private water supply wells, and the renovation or rehabilitation of private water supply wells. Grants shall be funded through moneys transferred to the department from the agriculture management account of the groundwater protection fund pursuant to section 455E.11, subsection 2, paragraph “b”, subparagraph (3), subparagraph division (b). The department shall adopt rules relating to the awarding of the grants.

27. Establish and administer, if sufficient funds are available to the department, a program to assess and forecast health workforce supply and demand in the state for the purpose of identifying current and projected workforce needs. The program may collect, analyze, and report data that furthers the purpose of the program. The program shall not release information that permits identification of individual respondents of program surveys.

28. In consultation with the advisory committee for perinatal guidelines, develop and maintain the statewide perinatal program based on the recommendations of the American academy of pediatrics and the American college of obstetricians and gynecologists contained in the most recent edition of the guidelines for perinatal care, and shall adopt rules in accordance with chapter 17A to implement those recommendations. Hospitals within the state shall determine whether to participate in the statewide perinatal program, and select the hospital’s level of participation in the program. A hospital having determined to participate in the program shall comply with the guidelines appropriate to the level of participation selected by the hospital. Perinatal program surveys and reports are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the affected hospital, and are not admissible in evidence in a judicial or administrative proceeding other than a proceeding involving verification of the participating hospital under this subsection.

29. In consultation with the department of corrections, the antibiotic resistance task force, and the American federation of state, county and municipal employees, develop educational programs to increase awareness and utilization of infection control practices in institutions listed in section 904.102.

30. Administer the Iowa youth survey, in collaboration with other state agencies, as appropriate, every two years to students in grades six, eight, and eleven in Iowa’s public and nonpublic schools. Survey data shall be evaluated and reported, with aggregate data available online at the Iowa youth survey internet site.

31. Report to the chairpersons and ranking members of the joint appropriations subcommittee on health and human services, the legislative services agency, the legislative caucus staffs, and the department of management within sixty calendar days of applying for or renewing a federal grant which requires a state match or maintenance of effort and has a value of over one hundred thousand dollars. The report shall list the federal funding source and address the potential need for the commitment of state funding in order to match or continue the funding provided by the federal grant in the present or future.

1. [C97, §2565; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.11(1)]

2, 3. [C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.11(2, 3)]

4. [C97, §2565; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.11(4)]

5, 6. [C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(8, 9); C73, 75, 77, 79, 81, §135.11(7, 8)]

7. [S13, §2572-a, -b, -c; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(11); C73, §135.11(10); C75, 77, 79, 81, §135.11(9)]

8. [C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(12); C73, §135.11(11); C75, 77, 79, 81, §135.11(10)]

9. [S13, §2575-a42; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(13); C73, §135.11(12); C75, 77, 79, 81, §135.11(11)]

10. [C97, §2565; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(14); C73, §135.11(13); C75, 77, 79, 81, §135.11(12)]

11, 12. [C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(15, 16); C73, §135.11(14, 15); C75, 77, 79, 81, §135.11(13, 14)]

13. [C97, §2565; C24, 27, 31, 35, 39, §2191; C46, 50, 54, 58, 62, 66, 71, §135.11(17); C73, §135.11(16); C75, 77, 79, 81, §135.11(15)]

14. [C75, 77, 79, 81, §135.11(16)]

15. [82 Acts, ch 1260, §55]

83 Acts, ch 27, §7; 86 Acts, ch 1245, §1104; 87 Acts, ch 8, §2; 87 Acts, ch 115, §22; 87 Acts, ch 225, §202; 88 Acts, ch 1224, §12; 89 Acts, ch 304, §103; 90 Acts, ch 1259, §10; 91 Acts, ch 258, §29; 93 Acts, ch 140, §4; 94 Acts, ch 1023, §11; 94 Acts, ch 1132, §9; 96 Acts, ch 1036, §2; 96 Acts, ch 1128, §1; 96 Acts, ch 1129, §23; 97 Acts, ch 23, §13; 97 Acts, ch 197, §1; 98 Acts, ch 1053, §1; 98 Acts, ch 1087, §1; 98 Acts, ch 1090, §60, 84; 98 Acts, ch 1221, §12; 99 Acts, ch 141, §2; 2000 Acts, ch 1058, §14; 2000 Acts, ch 1066, §37; 2000 Acts, ch 1223, §18; 2001 Acts, ch 58, §3; 2001 Acts, ch 122, §1; 2001 Acts, ch 184, §6; 2001 Acts, 2nd Ex, ch 1, §25, 28; 2002 Acts, ch 1108, §7; 2003 Acts, ch 33, §8, 11; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 44, §36; 2004 Acts, ch 1167, §1; 2005 Acts, ch 89, §2, 3; 2007 Acts, ch 10, §18; 2007 Acts, ch 159, §17; 2008 Acts, ch 1058, §1, 2, 15; 2008 Acts, ch 1084, §11; 2008 Acts, ch 1088, §83; 2008 Acts, ch 1180, §20; 2009 Acts, ch 41, §263; 2009 Acts, ch 151, §30; 2010 Acts, ch 1088, §4 – 6; 2011 Acts, ch 63, §33; 2012 Acts, ch 1113, §22; 2013 Acts, ch 129, §49

Referred to in §231B.4, 232.69, 235B.16, 237.3, 455E.11

Laboratory tests, §263.7, 263.8

Establishment of state poison control center; 2000 Acts, ch 1221, §1

See Iowa Acts for appropriations for state poison control center in a given year

Establishment of wellness council under the direction of the director of public health to increase wellness activities; 2013 Acts, ch 138, §3, 133

Requirement for department to collaborate with Iowa Medicaid enterprise and child health speciality clinics to integrate initiative for first five years of children's life with various integrated care models; 2013 Acts, ch 138, §3, 133

Subsection 24 amended

### **135.11A Professional licensure division — other licensing boards — expenses — fees.**

There shall be a professional licensure division within the department of public health. Each board under chapter 147 or under the administrative authority of the department, except the board of nursing, board of medicine, dental board, and board of pharmacy, shall receive administrative and clerical support from the division and may not employ its own support staff for administrative and clerical duties.

The professional licensure division and the licensing boards may expend funds in addition to amounts budgeted, if those additional expenditures are directly the result of actual examination and exceed funds budgeted for examinations. Before the division or a licensing board expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the division or board and the division or board does not have other funds from which examination expenses can be paid. Upon approval of the department of management, the division or licensing board may expend and encumber funds for excess examination expenses. The amounts necessary to fund the excess examination expenses shall be collected as fees from additional examination applicants and shall be treated as repayment receipts as defined in section 8.2.

86 Acts, ch 1245, §1105; 91 Acts, ch 268, §306; 92 Acts, ch 1163, §34; 2007 Acts, ch 10, §19; 2007 Acts, ch 218, §192

### **135.12 Office of minority and multicultural health — established — duties.**

1. The office of minority and multicultural health is established in the department. The purpose of the office is to improve the health of racial and ethnic minorities by bridging communication, delivery, and service requirements, and by providing customized

services and practical approaches to problems and issues encountered by organizations and communities working to address the needs of these populations.

2. The office of minority and multicultural health shall be responsible for all of the following:

a. Serving as the liaison and advocate for the department on minority and multicultural health matters.

b. Assisting academic institutions, state agencies, community groups, and other entities in institutionalizing cultural competency within the health care workforce and delivery system through education, training, and practice to effectively address cross-cultural disparity and achieve health equity.

c. Promoting community strategic planning.

d. Reviewing the impact of programs, regulations, and health care resource policies on the delivery of and access to minority and multicultural health services.

2006 Acts, ch 1184, §76; 2010 Acts, ch 1192, §77

Referred to in §135.159

**135.13** Transferred to § 135.107.

**135.14 State public health dental director — duties.**

1. The position of state public health dental director is established within the department.

2. The dental director shall perform all of the following duties:

a. Plan and direct all work activities of the statewide public health dental program.

b. Develop comprehensive dental initiatives for prevention activities.

c. Evaluate the effectiveness of the statewide public health dental program and of program personnel.

d. Manage the oral health bureau including direction, supervision, and fiscal management of bureau staff.

e. Other related work as required.

2007 Acts, ch 159, §13

**135.15 Oral health bureau established — responsibilities.**

An oral health bureau is established within the division of health promotion and chronic disease prevention of the department. The bureau shall be responsible for all of the following:

1. Providing population-based oral health services, including public health training, improvement of dental support systems for families, technical assistance, awareness-building activities, and educational services, at the state and local level to assist Iowans in maintaining optimal oral health throughout all stages of life.

2. Performing infrastructure building and enabling services through the administration of state and federal grant programs targeting access improvement, prevention, and local oral health programs utilizing maternal and child health programs, Medicaid, and other new or existing programs.

3. Leveraging federal, state, and local resources for programs under the purview of the bureau.

4. Facilitating ongoing strategic planning and application of evidence-based research in oral health care policy development that improves oral health care access and the overall oral health of all Iowans.

5. Developing and implementing an ongoing oral health surveillance system for the evaluation and monitoring of the oral health status of children and other underserved populations.

2007 Acts, ch 159, §14

Referred to in §135.159

**135.16 Special women, infants, and children supplemental food program — methamphetamine education.**

As a component of the federal funding received by the department as the administering agency for the special women, infants, and children supplemental food program, from the United States department of agriculture, food and consumer service, the department shall

incorporate a methamphetamine education program into its nutrition and health-related education services. The department shall be responsible for the development of the education program to be delivered, and for the selection of qualified contract agencies to deliver the instruction under the program.

99 Acts, ch 195, §8

### **135.17 Dental screening of children.**

1. a. Except as provided in paragraphs “c” and “d”, the parent or guardian of a child enrolled in elementary school shall provide evidence to the school district or accredited nonpublic elementary school in which the child is enrolled of the child having, no earlier than three years of age but no later than four months after enrollment, at a minimum, a dental screening performed by a licensed physician, a licensed nurse, a licensed physician assistant, or a licensed dental hygienist or dentist. Except as provided in paragraphs “c” and “d”, the parent or guardian of a child enrolled in high school shall provide evidence to the school district or accredited nonpublic high school in which the child is enrolled of the child having, at a minimum, a dental screening performed no earlier than one year prior to enrollment and not later than four months after enrollment by a licensed dental hygienist or dentist. A school district or accredited nonpublic school shall provide access to a process to complete the screenings described in this paragraph as appropriate.

b. A person authorized to perform a dental screening required by this section shall record that the screening was completed, and such additional information required by the department, on uniform forms developed by the department in cooperation with the department of education. The form shall include a space for the person to summarize any condition that may indicate a need for special services.

c. The department shall specify the procedures that constitute a dental screening and authorize a waiver signed by a licensed physician, nurse, physician assistant, dental hygienist, or dentist for a person who is unduly burdened by the screening requirement.

d. The dental screening requirement shall not apply to a person who submits an affidavit signed by the person or, if the person is a minor, the person’s parent or legal guardian, stating that the dental screening conflicts with a genuine and sincere religious belief.

2. Each public and nonpublic school shall, in collaboration with the department, do the following:

a. Ensure that the parent or guardian of a student enrolled in the school has complied with the requirements of subsection 1.

b. Provide, if a student has not had a dental screening performed in accordance with subsection 1, the parent or guardian of the student with community dental screening referral resources, including contact information for the i-smile coordinator, department, or dental society.

3. By May 31 annually, each local board shall furnish the department with evidence that each student enrolled in any public or nonpublic school within the local board’s jurisdiction has met the dental screening requirement in this section.

4. The department shall adopt rules to administer this section.

2007 Acts, ch 146, §1, 2; 2008 Acts, ch 1020, §1 – 3; 2009 Acts, ch 41, §39; 2009 Acts, ch 133, §31; 2010 Acts, ch 1088, §2, 3

Dental clinics, see §280.7

Section not amended; footnote deleted

### **135.18 Conflicting statutes.**

Provisions of this chapter in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

[C73, 75, 77, 79, 81, §135.18]

2004 Acts, ch 1086, §33

### **135.19 Viral hepatitis program — awareness, vaccinations, and testing.**

1. If sufficient funds are appropriated by the general assembly, the department shall establish and administer a viral hepatitis program. The goal of the program shall be to

distribute information to citizens of this state who are at an increased risk for exposure to viral hepatitis regarding the higher incidence of hepatitis C exposure and infection among these populations, the dangers presented by the disease, and contacts for additional information and referrals. The program shall also make available hepatitis A and hepatitis B vaccinations, and hepatitis C testing.

2. The department shall establish by rule a list of individuals by category who are at increased risk for viral hepatitis exposure. The list shall be consistent with recommendations developed by the centers for disease control, and shall be developed in consultation with the Iowa viral hepatitis task force and the Iowa department of veterans affairs. The department shall also establish by rule what information is to be distributed and the form and manner of distribution. The rules shall also establish a vaccination and testing program, to be coordinated by the department through local health departments and clinics and other appropriate locations.

2006 Acts, ch 1045, §1; 2009 Acts, ch 182, §88

**135.20 Hepatitis C awareness program — veterans — vaccinations.** Repealed by 2009 Acts, ch 182, § 89.

**135.21 Pay toilets.**

No person shall make a charge or require any special device, key or slug for the use of a toilet located in a room provided for use of the public. Violation of this section is a simple misdemeanor.

[C24, 27, 31, 35, 39, §2839; C46, 50, 54, 58, 62, 66, 71, 73, 75, §170.34; C77, §732.25; C79, 81, §135.21]

**135.22 Central registry for brain or spinal cord injuries.**

1. As used in this section:

a. “*Brain injury*” means clinically evident damage to the brain resulting directly or indirectly from trauma, infection, anoxia, vascular lesions, or tumor of the brain, not primarily related to a degenerative disease or aging process, which temporarily or permanently impairs a person’s physical, cognitive, or behavioral functions, and is diagnosed by a physician. The diagnoses of clinically evident damage to the brain used for a diagnosis of brain injury shall be the same as specified by rule for eligibility for the home and community-based services waiver for persons with brain injury under the medical assistance program.

b. “*Spinal cord injury*” means the occurrence of an acute traumatic lesion of neural elements in the spinal cord including the spinal cord and cauda equina, resulting in temporary or permanent sensory deficit, motor deficit, or bladder or bowel dysfunction.

2. The director shall establish and maintain a central registry of persons with brain or spinal cord injuries in order to facilitate prevention strategies and the provision of appropriate rehabilitative services to the persons by the department and other state agencies. Hospitals shall report patients who are admitted with a brain or spinal cord injury and their diagnoses to the director no later than forty-five days after the close of a quarter in which the patient was discharged. The report shall contain the name, age, and residence of the person, the date, type, and cause of the brain or spinal cord injury, and additional information as the director requires, except that where available, hospitals shall report the Glasgow coma scale. The director shall consult with health care providers concerning the availability of additional relevant information. The department shall maintain the confidentiality of all information which would identify any person named in a report. However, the identifying information may be released for bona fide research purposes if the confidentiality of the identifying information is maintained by the researchers, or the identifying information may be released by the person with the brain or spinal cord injury or by the person’s guardian or, if the person is a minor, by the person’s parent or guardian.

89 Acts, ch 320, §10; 92 Acts, ch 1237, §6; 94 Acts, ch 1068, §3; 99 Acts, ch 141, §3; 2012 Acts, ch 1120, §66

Referred to in §135.22A, 225C.23, 335.25, 414.22

**135.22A Advisory council on brain injuries.**

1. For purposes of this section, unless the context otherwise requires:
  - a. “*Brain injury*” means a brain injury as defined in section 135.22.
  - b. “*Council*” means the advisory council on brain injuries.
2. The advisory council on brain injuries is established. The following persons or their designees shall serve as ex officio, nonvoting members of the council:
  - a. The director of public health.
  - b. The director of human services and any division administrators of the department of human services so assigned by the director.
  - c. The director of the department of education.
  - d. The chief of the special education bureau of the department of education.
  - e. The administrator of the division of vocational rehabilitation services of the department of education.
  - f. The director of the department for the blind.
3. The council shall be composed of a minimum of nine members appointed by the governor in addition to the ex officio members, and the governor may appoint additional members. Insofar as practicable, the council shall include persons with brain injuries; family members of persons with brain injuries; representatives of industry, labor, business, and agriculture; representatives of federal, state, and local government; and representatives of religious, charitable, fraternal, civic, educational, medical, legal, veteran, welfare, and other professional groups and organizations. Members shall be appointed representing every geographic and employment area of the state and shall include members of both sexes. A simple majority of the members appointed by the governor shall constitute a quorum.
4. Members of the council appointed by the governor shall be appointed for terms of two years. Vacancies on the council shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed.
5. The voting members of the council shall appoint a chairperson and a vice chairperson and other officers as the council deems necessary. The officers shall serve until their successors are appointed and qualified. Members of the council shall receive actual expenses for their services. Members may also be eligible to receive compensation as provided in section 7E.6. The council shall adopt rules pursuant to chapter 17A.
6. The council shall do all of the following:
  - a. Promote meetings and programs for the discussion of methods to reduce the debilitating effects of brain injuries, and disseminate information in cooperation with any other department, agency, or entity on the prevention, evaluation, care, treatment, and rehabilitation of persons affected by brain injuries.
  - b. Study and review current prevention, evaluation, care, treatment, and rehabilitation technologies and recommend appropriate preparation, training, retraining, and distribution of personnel and resources in the provision of services to persons with brain injuries through private and public residential facilities, day programs, and other specialized services.
  - c. Participate in developing and disseminating criteria and standards which may be required for future funding or licensing of facilities, day programs, and other specialized services for persons with brain injuries in this state.
  - d. Make recommendations to the governor for developing and administering a state plan to provide services for persons with brain injuries.
  - e. Meet at least quarterly.
7. The department is designated as Iowa’s lead agency for brain injury. For the purposes of this section, the designation of lead agency authorizes the department to perform or oversee the performance of those functions specified in subsection 6, paragraphs “a” through “c”. The council is assigned to the department for administrative purposes. The director shall be responsible for budgeting, program coordination, and related management functions.
8. The council may receive gifts, grants, or donations made for any of the purposes of its

programs and disburse and administer them in accordance with their terms and under the direction of the director.

92 Acts, ch 1237, §7; 94 Acts, ch 1068, §4; 94 Acts, ch 1109, §2; 97 Acts, ch 203, §13; 99 Acts, ch 141, §4; 2000 Acts, ch 1058, §15; 2005 Acts, ch 89, §4; 2006 Acts, ch 1184, §77; 2013 Acts, ch 124, §2

Referred to in §135.22B

Recognition of "brain injury" as a disability, §225C.23

Subsection 2, paragraph g stricken

### **135.22B Brain injury services program.**

1. *Definitions.* For the purposes of this section:

a. "Brain injury services waiver" means the state's medical assistance home and community-based services waiver for persons with brain injury implemented under chapter 249A.

b. "Program administrator" means the division of the department designated to administer the brain injury services program in accordance with subsection 2.

2. *Program created.*

a. A brain injury services program is created and shall be administered by a division of the Iowa department of public health in cooperation with counties and the department of human services.

b. The division of the department assigned to administer the advisory council on brain injuries under section 135.22A shall be the program administrator. The division duties shall include but are not limited to serving as the fiscal agent and contract administrator for the program and providing program oversight.

c. The division shall consult with the advisory council on brain injuries, established pursuant to section 135.22A, regarding the program and shall report to the council concerning the program at least quarterly. The council shall make recommendations to the department concerning the program's operation.

3. *Purpose.* The purpose of the brain injury services program is to provide services, service funding, or other support for persons with a brain injury under the cost-share program component or other components established pursuant to this section. Implementation of the cost-share component or any other component of the program is subject to the funding made available for the program.

4. *General requirements — cost-share component.* The cost-share component of the brain injury services program shall be directed to persons who have been determined to be ineligible for the brain injury services waiver or persons who are eligible for the waiver but funding was not authorized or available to provide waiver eligibility for the persons. The cost-share component is subject to general requirements which shall include but are not limited to all of the following:

a. Services offered are consistent with the services offered through the brain injury services waiver.

b. Each service consumer has a service plan developed prior to service implementation and the service plan is reviewed and updated at least quarterly.

c. All other funding sources for which the service consumer is eligible are utilized to the greatest extent possible. The funding sources potentially available include but are not limited to community resources and public and private benefit programs.

d. The maximum monthly cost of the services provided shall be based on the maximum monthly amount authorized for the brain injury services waiver.

e. Assistance under the cost-share component shall be made available to a designated number of service consumers who are eligible, as determined from the funding available for the cost-share component, on a first-come, first-served basis.

f. Nothing in this section shall be construed or is intended as, or shall imply, a grant of entitlement to services to persons who are eligible for participation in the cost-share component based upon the eligibility provisions adopted consistent with the requirements of this section. Any obligation to provide services pursuant to this section is limited to the extent of the funds appropriated or provided for the cost-share component.

5. *Cost-share component eligibility.* An individual must meet all of the following

requirements in order to be eligible for the cost-share component of the brain injury services program:

- a. The individual is age one month through sixty-four years.
- b. The individual has a diagnosis of brain injury that meets the diagnosis eligibility criteria for the brain injury services waiver.
- c. The individual is a resident of this state and either a United States citizen or a qualified alien as defined in 8 U.S.C. § 1641.
- d. The individual meets the cost-share component's financial eligibility requirements and is willing to pay a cost-share for the cost-share component.
- e. The individual does not receive services or funding under any type of medical assistance home and community-based services waiver.

6. *Cost-share requirements.*

- a. The cost-share component's financial eligibility requirements shall be established in administrative rule. In establishing the requirements, the department shall consider the eligibility and cost-share requirements used for the hawk-i program under chapter 514I.
- b. An individual's cost-share responsibility for services under the cost-share component shall be determined on a sliding scale based upon the individual's family income. An individual's cost-share shall be assessed as a copayment, which shall not exceed thirty percent of the cost payable for the service.
- c. The service provider shall bill the department for the portion of the cost payable for the service that is not covered by the individual's copayment responsibility.

7. *Application process.*

- a. The application materials for services under the cost-share component of the brain injury services program shall use the application form and other materials of the brain injury services waiver. In order to apply for the brain injury services program, the applicant must authorize the department of human services to provide the applicant's waiver application materials to the brain injury services program. The application materials provided shall include but are not limited to the waiver application and any denial letter, financial assessment, and functional assessment regarding the person.
- b. If a functional assessment for the waiver has not been completed due to a person's financial ineligibility for the waiver, the brain injury services program may provide for a functional assessment to determine the person's needs by reimbursing the department of human services for the assessment.

c. The program administrator shall file copies of the individual's application and needs assessment with the program resource facilitator assigned to the individual's geographic area.

d. The department's program administrator shall make a final determination as to whether program funding will be authorized under the cost-share component.

8. *Service providers and reimbursement.* All of the following requirements apply to service providers and reimbursement rates payable for services under the cost-share component:

a. A service provider must either be certified to provide services under the brain injury services waiver or have a contract with a county to provide services and will become certified to provide services under such waiver within a reasonable period of time specified in rule.

b. The reimbursement rate payable for the cost of a service provided under the cost-share component is the rate payable under the medical assistance program. However, if the service provided does not have a medical assistance program reimbursement rate, the rate shall be the amount payable under the county contract.

9. *Resource facilitation.* The program shall utilize resource facilitators to facilitate program services. The resource facilitator shall be available to provide ongoing support for individuals with brain injury in coping with the issues of living with a brain injury and in assisting such individuals in transitioning back to employment and living in the community. The resource facilitator is intended to provide a linkage to existing services and increase the capacity of the state's providers of services to persons with brain injury by doing all of the following:

- a. Providing brain injury-specific information, support, and resources.
- b. Enhancing the usage of support commonly available to an individual with brain

injury from the community, family, and personal contacts and linking such individuals to appropriate services and community resources.

c. Training service providers to provide appropriate brain injury services.

d. Accessing, securing, and maximizing the private and public funding available to support an individual with a brain injury.

2006 Acts, ch 1114, §1; 2007 Acts, ch 126, §35; 2008 Acts, ch 1058, §3; 2008 Acts, ch 1187, §106 – 108

**135.23** Repealed by 90 Acts, ch 1174, § 2.

**135.24 Volunteer health care provider program established — immunity from civil liability.**

1. The director shall establish within the department a program to provide to eligible hospitals, clinics, free clinics, field dental clinics, specialty health care provider offices, or other health care facilities, health care referral programs, or charitable organizations, free medical, dental, chiropractic, pharmaceutical, nursing, optometric, psychological, social work, behavioral science, podiatric, physical therapy, occupational therapy, respiratory therapy, and emergency medical care services given on a voluntary basis by health care providers. A participating health care provider shall register with the department and obtain from the department a list of eligible, participating hospitals, clinics, free clinics, field dental clinics, specialty health care provider offices, or other health care facilities, health care referral programs, or charitable organizations.

2. The department, in consultation with the department of human services, shall adopt rules to implement the volunteer health care provider program which shall include the following:

a. Procedures for registration of health care providers deemed qualified by the board of medicine, the board of physician assistants, the dental board, the board of nursing, the board of chiropractic, the board of psychology, the board of social work, the board of behavioral science, the board of pharmacy, the board of optometry, the board of podiatry, the board of physical and occupational therapy, the board of respiratory care, and the Iowa department of public health, as applicable.

b. Procedures for registration of free clinics, field dental clinics, and specialty health care provider offices.

c. Criteria for and identification of hospitals, clinics, free clinics, field dental clinics, specialty health care provider offices, or other health care facilities, health care referral programs, or charitable organizations, eligible to participate in the provision of free medical, dental, chiropractic, pharmaceutical, nursing, optometric, psychological, social work, behavioral science, podiatric, physical therapy, occupational therapy, respiratory therapy, or emergency medical care services through the volunteer health care provider program. A free clinic, a field dental clinic, a specialty health care provider office, a health care facility, a health care referral program, a charitable organization, or a health care provider participating in the program shall not bill or charge a patient for any health care provider service provided under the volunteer health care provider program.

d. Identification of the services to be provided under the program. The services provided may include but shall not be limited to obstetrical and gynecological medical services, psychiatric services provided by a physician licensed under chapter 148, dental services provided under chapter 153, or other services provided under chapter 147A, 148A, 148B, 148C, 149, 151, 152, 152B, 152E, 154, 154B, 154C, 154D, 154F, or 155A.

3. A health care provider providing free care under this section shall be considered an employee of the state under chapter 669, shall be afforded protection as an employee of the state under section 669.21, and shall not be subject to payment of claims arising out of the free care provided under this section through the health care provider's own professional liability insurance coverage, provided that the health care provider has done all of the following:

a. Registered with the department pursuant to subsection 1.

b. Provided medical, dental, chiropractic, pharmaceutical, nursing, optometric, psychological, social work, behavioral science, podiatric, physical therapy, occupational

therapy, respiratory therapy, or emergency medical care services through a hospital, clinic, free clinic, field dental clinic, specialty health care provider office, or other health care facility, health care referral program, or charitable organization listed as eligible and participating by the department pursuant to subsection 1.

4. A free clinic providing free care under this section shall be considered a state agency solely for the purposes of this section and chapter 669 and shall be afforded protection under chapter 669 as a state agency for all claims arising from the provision of free care by a health care provider registered under subsection 3 who is providing services at the free clinic in accordance with this section or from the provision of free care by a health care provider who is covered by adequate medical malpractice insurance as determined by the department, if the free clinic has registered with the department pursuant to subsection 1.

5. A field dental clinic providing free care under this section shall be considered a state agency solely for the purposes of this section and chapter 669 and shall be afforded protection under chapter 669 as a state agency for all claims arising from the provision of free care by a health care provider registered under subsection 3 who is providing services at the field dental clinic in accordance with this section or from the provision of free care by a health care provider who is covered by adequate medical malpractice insurance, as determined by the department, if the field dental clinic has registered with the department pursuant to subsection 1.

6. A specialty health care provider office providing free care under this section shall be considered a state agency solely for the purposes of this section and chapter 669 and shall be afforded protection under chapter 669 as a state agency for all claims arising from the provision of free care by a health care provider registered under subsection 3 who is providing services at the specialty health care provider office in accordance with this section or from the provision of free care by a health care provider who is covered by adequate medical malpractice insurance, as determined by the department, if the specialty health care provider office has registered with the department pursuant to subsection 1.

7. For the purposes of this section:

a. “*Charitable organization*” means a charitable organization within the meaning of section 501(c)(3) of the Internal Revenue Code.

b. “*Field dental clinic*” means a dental clinic temporarily or periodically erected at a location utilizing mobile dental equipment, instruments, or supplies, as necessary, to provide dental services.

c. “*Free clinic*” means a facility, other than a hospital or health care provider’s office which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code and which has as its sole purpose the provision of health care services without charge to individuals who are otherwise unable to pay for the services.

d. “*Health care provider*” means a physician licensed under chapter 148, a chiropractor licensed under chapter 151, a physical therapist licensed pursuant to chapter 148A, an occupational therapist licensed pursuant to chapter 148B, a podiatrist licensed pursuant to chapter 149, a physician assistant licensed and practicing under a supervising physician pursuant to chapter 148C, a licensed practical nurse, a registered nurse, or an advanced registered nurse practitioner licensed pursuant to chapter 152 or 152E, a respiratory therapist licensed pursuant to chapter 152B, a dentist, dental hygienist, or dental assistant registered or licensed to practice under chapter 153, an optometrist licensed pursuant to chapter 154, a psychologist licensed pursuant to chapter 154B, a social worker licensed pursuant to chapter 154C, a mental health counselor or a marital and family therapist licensed pursuant to chapter 154D, a speech pathologist or audiologist licensed pursuant to chapter 154F, a pharmacist licensed pursuant to chapter 155A, or an emergency medical care provider certified pursuant to chapter 147A.

e. “*Specialty health care provider office*” means the private office or clinic of an individual specialty health care provider or group of specialty health care providers as referred by the Iowa collaborative safety net provider network established in section 135.153, but does not include a field dental clinic, a free clinic, or a hospital.

93 Acts, ch 65, §1; 95 Acts, ch 121, §1; 98 Acts, ch 1027, §1 – 6; 2001 Acts, ch 176, §31; 2002 Acts, ch 1108, §8; 2003 Acts, ch 89, §1; 2005 Acts, ch 118, §1 – 6; 2007 Acts, ch 10, §20; 2007

Acts, ch 95, §1; 2007 Acts, ch 159, §18; 2007 Acts, ch 218, §101, 193; 2008 Acts, ch 1088, §84, 85; 2009 Acts, ch 118, §43; 2009 Acts, ch 133, §32

Referred to in §135M.2

#### **135.25 Emergency medical services fund.**

An emergency medical services fund is created in the state treasury under the control of the department. The fund includes, but is not limited to, amounts appropriated by the general assembly, and other moneys available from federal or private sources which are to be used for purposes of this section. Funds remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain in the emergency medical services fund, notwithstanding section 8.33. The fund is established to assist counties by matching, on a dollar-for-dollar basis, moneys spent by a county for the acquisition of equipment for the provision of emergency medical services and by providing grants to counties for education and training in the delivery of emergency medical services, as provided in this section and section 422D.6. A county seeking matching funds under this section shall apply to the emergency medical services division of the department. The department shall adopt rules concerning the application and awarding process for the matching funds and the criteria for the allocation of moneys in the fund if the moneys are insufficient to meet the emergency medical services needs of the counties. Moneys allocated by the department to a county for emergency medical services purposes may be used for equipment or training and education as determined by the board of supervisors pursuant to section 422D.6.

93 Acts, ch 58, §1; 2000 Acts, ch 1043, §1

Referred to in §144.45A, 147A.6, 147A.23, 321.34

#### **135.26 Automated external defibrillator grant program.**

The department shall establish and implement an automated external defibrillator grant program which provides matching funds to local boards of health, community organizations, or cities for the program after standards and requirements for the utilization of automated external defibrillator equipment, and training on the use of such equipment, are developed at the local level. The objective of the program shall be to enhance the emergency response system in rural areas of the state where access to health care providers is often limited by providing increased access to automated external defibrillator equipment by rural emergency and community personnel. A local board of health, community organization, or city may submit an application to the department for review. The department shall establish criteria for the review and approval of grant applications by rule, and may accept gifts, grants, bequests, and other private contributions, as well as state or federal funds, for purposes of the program. The amount of a grant shall not exceed fifty percent of the cost of the automated external defibrillator equipment to be distributed to the applicant and the training program to be administered by the applicant at the local level. Each application shall include information demonstrating that the applicant will provide matching funds of fifty percent of the cost of the program. Grant recipients shall submit an annual report to the department indicating automated external defibrillator equipment usage levels, patient outcomes, and number of individuals trained. For the purposes of this section, “rural” means a geographic area outside an urban or suburban setting with a population of less than fifty thousand persons.

2004 Acts, ch 1034, §1, 2; 2006 Acts, ch 1181, §7

#### **135.27 Iowa healthy communities initiative — grant program.**

1. *Program goals.* The department shall establish a grant program to energize local communities to transform the existing culture into a culture that promotes healthy lifestyles and leads collectively, community by community, to a healthier state. The grant program shall expand an existing healthy communities initiative to assist local boards of health, in collaboration with existing community resources, to build community capacity in addressing the prevention of chronic disease that results from risk factors including overweight and obesity conditions.

2. *Distribution of grants.* The department shall distribute the grants on a competitive basis and shall support the grantee communities in planning and developing wellness strategies and establishing methodologies to sustain the strategies. Grant criteria shall

be consistent with the existing statewide initiative between the department and the department's partners that promotes increased opportunities for physical activity and healthy eating for Iowans of all ages, or its successor, and the statewide comprehensive plan developed by the existing statewide initiative to increase physical activity, improve nutrition, and promote healthy behaviors. Grantees shall demonstrate an ability to maximize local, state, and federal resources effectively and efficiently.

3. *Departmental support.* The department shall provide support to grantees including capacity-building strategies, technical assistance, consultation, and ongoing evaluation.

4. *Eligibility.* Local boards of health representing a coalition of health care providers and community and private organizations are eligible to submit applications.

2006 Acts, ch 1006, §1, 2; 2008 Acts, ch 1188, §60

**135.27A Governor's council on physical fitness and nutrition.** Repealed by 2011 Acts, ch 129, § 94, 156.

**135.28 State substitute medical decision-making board.** Repealed by 2010 Acts, ch 1031, § 399.

**135.29 Local substitute medical decision-making board.**

1. Each county in this state may establish and fund a local substitute medical decision-making board. The local substitute medical decision-making board shall be comprised of medical professionals and lay persons appointed pursuant to the rules adopted by the department.

2. Pursuant to rules adopted by the department, the local substitute medical decision-making board may act as a substitute decision maker for patients incapable of making their own medical care decisions if no other substitute decision maker is available to act. The local substitute medical decision-making board may exercise decision-making authority in situations where there is sufficient time to review the patient's condition, and a reasonably prudent person would consider a decision to be medically necessary. Such medically necessary decisions shall constitute good cause for subsequently filing a petition in the district court for appointment of a guardian pursuant to chapter 633, but the local substitute medical decision-making board shall continue to act in the patient's best interests until a guardian is appointed. Notwithstanding any other provision to the contrary regarding confidentiality of medical records, the local substitute decision-making board may issue subpoenas relating to the production of medical records of a patient under the board's review. A person participating in good faith in releasing medical record information in response to a board subpoena is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

3. The local substitute medical decision-making board and its members shall not be held liable, jointly or severally, for any actions or omissions taken or made in the official discharge of their duties, except those acts or omissions constituting willful or wanton misconduct. A physician or other health care provider who acts on a decision or directive of the local substitute medical decision-making board shall not be held liable for any damages resulting from that act, unless such physician's or other health care provider's actions or omissions constitute negligence in the practice of the profession or occupation, or willful or wanton misconduct.

89 Acts, ch 178, §3; 90 Acts, ch 1026, §2; 93 Acts, ch 139, §3; 2010 Acts, ch 1031, §395

DIVISION II

MISCELLANEOUS PROVISIONS

**135.30 Protective eyeglasses — safety provisions.** Repealed by 2009 Acts, ch 56, § 12.

**135.30A Breast-feeding in public places.**

Notwithstanding any other provision of law to the contrary, a woman may breast-feed the woman's own child in any public place where the woman's presence is otherwise authorized.  
2000 Acts, ch 1140, §21

**135.31 Location of boards — rulemaking.**

The offices for the board of medicine, the board of pharmacy, the board of nursing, and the dental board shall be located within the department of public health. The individual boards shall have policymaking and rulemaking authority.

86 Acts, ch 1245, §1107; 2005 Acts, ch 3, §30; 2007 Acts, ch 10, §21; 2007 Acts, ch 218, §194

**135.32 Publication and distribution.** Repealed by 2012 Acts, ch 1113, § 19.**135.33 Refusal of board to enforce rules.**

If any local board shall fail to enforce the rules of the state department or carry out its lawful directions, the department may enforce the same within the territorial jurisdiction of such local board, and for that purpose it may exercise all of the powers given by statute to the local board, and may employ the necessary assistants to carry out its lawful directions.

[C97, §2572; S13, §2569-a, 2572; C24, 27, 31, 35, 39, §2212; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.33]

Powers of local board, chapter 137

**135.34 Expenses for enforcing rules.**

All expenses incurred by the state department in determining whether its rules are enforced by a local board, and in enforcing the same when a local board has failed to do so, shall be paid in the same manner as the expenses of enforcing such rules when enforced by the local board.

[S13, §2572; C24, 27, 31, 35, 39, §2213; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.34]

**135.35 Duty of peace officers.**

All peace officers of the state when called upon by the department shall enforce its rules and execute the lawful orders of the department within their respective jurisdictions.

[C97, §2572; S13, §2572; C24, 27, 31, 35, 39, §2214; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.35]

**135.36 Interference with health officer — penalties.**

Any person resisting or interfering with the department, its employees, or authorized agents, in the discharge of any duty imposed by law shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §2215; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.36]

**135.37 Tattooing — permit requirement — penalty.**

1. A person shall not own, control and lease, act as an agent for, conduct, manage, or operate an establishment to practice the art of tattooing or engage in the practice of tattooing without first applying for and receiving a permit from the Iowa department of public health.

2. A minor shall not obtain a tattoo and a person shall not provide a tattoo to a minor. For the purposes of this section, "minor" means an unmarried person who is under the age of eighteen years.

3. A person who fails to meet the requirements of subsection 1 or a person providing a tattoo to a minor is guilty of a serious misdemeanor.

4. The Iowa department of public health shall:

a. Adopt rules pursuant to chapter 17A and establish and collect all fees necessary to administer this section. The provisions of chapter 17A, including licensing provisions, judicial review, and appeal, shall apply to this chapter.

b. Establish minimum safety and sanitation criteria for the operation of tattooing establishments.

5. If the Iowa department of public health determines that a provision of this section has been or is being violated, the department may order that a tattooing establishment not be

operated until the necessary corrective action has been taken. If the establishment continues to be operated in violation of the order of the department, the department may request that the county attorney or the attorney general make an application in the name of the state to the district court of the county in which the violations have occurred for an order to enjoin the violations. This remedy is in addition to any other legal remedy available to the department.

6. As necessary to avoid duplication and promote coordination of public health inspection and enforcement activities, the department may enter into agreements with local boards of health to provide for inspection of tattooing establishments and enforcement activities in accordance with the rules and criteria implemented under this section.

89 Acts, ch 154, §1; 2008 Acts, ch 1058, §4; 2009 Acts, ch 133, §33

Referred to in §157.3A

### **135.38 Penalty.**

Any person who knowingly violates any provision of this chapter, or of the rules of the department, or any lawful order, written or oral, of the department or of its officers, or authorized agents, shall be guilty of a simple misdemeanor.

[C73, §419; C97, §2573; S13, §2575-a6; C24, 27, 31, 35, 39, §2217; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.38]

### **135.39 Federal aid.**

The state department of public health is hereby authorized to accept financial aid from the government of the United States for the purpose of assisting in carrying on public health or substance abuse responsibility in the state of Iowa.

[C31, 35, §2217-c1; C39, §2217.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135.39]

86 Acts, ch 1245, §1108

### **135.39A Gifts and grants fund — appropriation.**

The department is authorized to accept gifts, grants, or allotments of funds from any source to be used for programs authorized by this chapter or any other chapter which the department is responsible for administering. A public health gifts and grants fund is created as a separate fund in the state treasury under the control of the department. The fund shall consist of gift or grant moneys obtained from any source, including the federal government. The moneys collected under this section and deposited in the fund are appropriated to the department for the public health purposes specified in the gift or grant. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose. Notwithstanding section 8.33, moneys in the public health gifts and grants fund at the end of each fiscal year shall not revert to any other fund but shall remain in the public health gifts and grants fund for expenditure for subsequent fiscal years.

2004 Acts, ch 1168, §1

### **135.39B Early childhood immunizations — content.**

1. Beginning January 1, 2006, early childhood immunizations administered in this state shall not contain more than trace amounts of mercury.

2. For the purposes of this section:

a. “*Early childhood immunizations*” means immunizations administered to children under eight years of age, unless otherwise provided in this section.

b. “*Trace amounts*” means trace amounts as defined by the United States food and drug administration.

3. The prohibition under this section shall not apply to early childhood immunizations for influenza or in times of emergency or epidemic as determined by the director of public health. If an emergency or epidemic is determined to exist by the director of public health under this subsection, the director of public health shall notify the state board of health, the governor, and the legislative council, and shall notify the public upon request.

2004 Acts, ch 1159, §1

**135.39C Elderly wellness services — payor of last resort.**

The department shall implement elderly wellness services in a manner that ensures that the services provided are not payable by a third-party source.

2005 Acts, ch 175, §76

**135.39D Vision screening.**

1. The parent or guardian of a child to be enrolled in a public or accredited nonpublic elementary school shall ensure that the child is screened for vision impairment at least once before enrollment in kindergarten and again before enrollment in grade three. The parent or guardian of the child shall ensure that evidence of the vision screening is provided to the school district or accredited nonpublic school in which the child is enrolled. Evidence of the vision screening may be provided either directly from the parent or guardian or from a vision screening provider referred to in subsection 2, and may be provided in either written or electronic form.

2. The requirement for vision screening may be satisfied by any of the following:

a. A vision screening or comprehensive eye examination by a licensed ophthalmologist or licensed optometrist.

b. A vision screening conducted at a pediatrician's or family practice physician's office, a free clinic, a child care center, a local public health department, a public or accredited nonpublic school, or a community-based organization, or by an advanced registered nurse practitioner or physician assistant.

c. An online vision screening, which may be conducted by a child's parent or guardian.

d. A photoscreening vision screening, including a vision screening by Iowa kidsight.

3. All vision screening methods pursuant to subsection 2, including emerging vision screening technologies, shall be age-appropriate and shall be approved by the department in consultation with leading vision organizations in the state, licensed ophthalmologists, and licensed optometrists.

4. A person who performs a vision screening required pursuant to this section shall report the results of the vision screening to the department. The department may collect and maintain such reports through the statewide immunization registry or a private contractor.

5. Each public and accredited nonpublic elementary school shall, in collaboration with the department, do the following:

a. Provide the parents or guardians of students with vision screening referral resources.

b. Arrange for evidence of vision screenings provided pursuant to subsection 1 to be forwarded to the department.

6. A child shall not be prohibited from attending school based upon the failure of a parent or guardian to ensure that the child has received the vision screening required by this section.

7. If a vision screening required pursuant to this section identifies potential vision impairment in a child, the person who performed the vision screening shall, if the person is not a licensed ophthalmologist or licensed optometrist, refer the child to a licensed ophthalmologist or licensed optometrist for a comprehensive eye examination.

8. The department shall establish procedures to contact parents or guardians of children identified as having potential vision impairment based on the results of a vision screening required pursuant to subsection 1 or a comprehensive eye examination required pursuant to subsection 7 in order to provide information on obtaining necessary vision correction.

9. The department may share information with licensed health care providers, agencies, and other persons involved with vision screenings, eye examinations, follow-up services, and intervention services as necessary to administer this section. The department shall adopt rules to protect the confidentiality of the individuals involved.

10. The vision screening requirement shall not apply if the vision screening conflicts with a parent's or guardian's genuine and sincere religious belief.

11. A person who acts in good faith in complying with this section shall not be civilly or criminally liable for reporting the information required to be reported by this section.

12. The department shall adopt rules necessary to administer this section.

2013 Acts, ch 76, §1

NEW section

See also §280.7A

### DIVISION III

#### MORBIDITY AND MORTALITY STUDY

##### **135.40 Collection and distribution of information.**

Any person, hospital, sanatorium, nursing or rest home, or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the department, the Iowa medical society or any of its allied medical societies, the Iowa osteopathic medical association, any in-hospital staff committee, or the Iowa healthcare collaborative, to be used in the course of any study for the purpose of reducing morbidity or mortality, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization that has acted reasonably and in good faith, by reason of having provided such information or material, or by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

For the purposes of this section, and section 135.41, the “*Iowa healthcare collaborative*” means an organization which is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code and which is established to provide direction to promote quality, safety, and value improvement collaborative efforts by hospitals and physicians.

[C66, 71, 73, 75, 77, 79, 81, §135.40]

2006 Acts, ch 1128, §1

##### **135.41 Publication.**

The department, the Iowa medical society or any of its allied medical societies, the Iowa osteopathic medical association, any in-hospital staff committee, or the Iowa healthcare collaborative shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances. A violation of this section shall constitute a simple misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §135.41]

2006 Acts, ch 1128, §2

Referred to in §135.40

##### **135.42 Unlawful use.**

All information, interviews, reports, statements, memoranda, or other data furnished in accordance with this division and any findings or conclusions resulting from such studies shall not be used or offered or received in evidence in any legal proceedings of any kind or character, but nothing contained herein shall be construed as affecting the admissibility as evidence of the primary medical or hospital records pertaining to the patient or of any other writing, record or reproduction thereof not contemplated by this division.

[C66, 71, 73, 75, 77, 79, 81, §135.42]

## DIVISION IV

## IOWA CHILD DEATH REVIEW TEAM

**135.43 Iowa child death review team established — duties.**

1. An Iowa child death review team is established as part of the office of the state medical examiner. The office of the state medical examiner shall provide staffing and administrative support to the team.

2. The membership of the review team is subject to the provisions of sections 69.16 and 69.16A, relating to political affiliation and gender balance. Review team members who are not designated by another appointing authority shall be appointed by the state medical examiner. Membership terms shall be for three years. A membership vacancy shall be filled in the same manner as the original appointment. The review team shall elect a chairperson and other officers as deemed necessary by the review team. The review team shall meet upon the call of the state medical examiner or as determined by the review team. The members of the team are eligible for reimbursement of actual and necessary expenses incurred in the performance of their official duties. The review team shall include the following:

- a. The state medical examiner or the state medical examiner's designee.
  - b. A certified or licensed professional who is knowledgeable concerning sudden infant death syndrome.
  - c. A pediatrician who is knowledgeable concerning deaths of children.
  - d. A family practice physician who is knowledgeable concerning deaths of children.
  - e. One mental health professional who is knowledgeable concerning deaths of children.
  - f. One social worker who is knowledgeable concerning deaths of children.
  - g. A certified or licensed professional who is knowledgeable concerning domestic violence.
  - h. A professional who is knowledgeable concerning substance abuse.
  - i. A local law enforcement official.
  - j. A county attorney.
  - k. An emergency room nurse who is knowledgeable concerning the deaths of children.
  - l. A perinatal expert.
  - m. A representative of the health insurance industry.
  - n. One other appointed at large.
3. The review team shall perform the following duties:

a. Collect, review, and analyze child death certificates and child death data, including patient records or other pertinent confidential information concerning the deaths of children under age eighteen, and other information as the review team deems appropriate for use in preparing an annual report to the governor and the general assembly concerning the causes and manner of child deaths. The report shall include analysis of factual information obtained through review and recommendations regarding prevention of child deaths.

b. Recommend to the governor and the general assembly interventions to prevent deaths of children based on an analysis of the cause and manner of such deaths.

c. Recommend to the agencies represented on the review team changes which may prevent child deaths.

d. Except as authorized by this section, maintain the confidentiality of any patient records or other confidential information reviewed.

e. Recommend to the department of human services, appropriate law enforcement agencies, and any other person involved with child protection, interventions that may prevent harm to a child who is related to or is living in the same home as a child whose case is reviewed by the team.

f. If the sharing of information is necessary to assist in or initiate a child death investigation or criminal prosecution and the office or agency receiving the information does not otherwise have access to the information, share information possessed by the review team with the office of the attorney general, a county attorney's office, or an appropriate law enforcement agency. The office or agency receiving the information shall maintain the

confidentiality of the information in accordance with this section. Unauthorized release or disclosure of the information received is subject to penalty as provided in this section.

g. In order to assist a division of the department in performing the division's duties, if the division does not otherwise have access to the information, share information possessed by the review team. The division receiving the information shall maintain the confidentiality of the information in accordance with this section. Unauthorized release or disclosure of the information received is subject to penalty as provided in this section.

4. The review team shall develop protocols for a child fatality review committee, to be appointed by the state medical examiner on an ad hoc basis, to immediately review the child abuse assessments which involve the fatality of a child under age eighteen. The state medical examiner shall appoint a medical examiner, a pediatrician, and a person involved with law enforcement to the committee.

a. The purpose of the review shall be to determine whether the department of human services and others involved with the case of child abuse responded appropriately. The protocols shall provide for the committee to consult with any multidisciplinary team, as defined in section 235A.13, that is operating in the area in which the fatality occurred.

b. The committee shall have access to patient records and other pertinent confidential information and, subject to the restrictions in this subsection, may disseminate the confidential information in the committee's report.

c. Upon completion of the review, the committee shall issue a report which shall include findings concerning the case and recommendations for changes to prevent child fatalities when similar circumstances exist. The report shall include but is not limited to the following information, subject to the restrictions listed in paragraph "d":

(1) The dates, outcomes, and results of any actions taken by the department of human services and others in regard to each report and allegation of child abuse involving the child who died.

(2) The results of any review of the case performed by a multidisciplinary team, or by any other public entity that reviewed the case.

(3) Confirmation of the department of human services receipt of any report of child abuse involving the child, including confirmation as to whether or not any assessment involving the child was performed in accordance with section 232.71B, the results of any assessment, a description of the most recent assessment and the services offered to the family, the services rendered to the family, and the basis for the department's decisions concerning the case.

d. Prior to issuing the report, the committee shall consult with the county attorney responsible for prosecution of the alleged perpetrator of the child fatality. The committee's report shall include child abuse information associated with the case and the child, but is subject to the restrictions applicable to the department of human services for release of information concerning a child fatality or near fatality in accordance with section 235A.15, subsection 9.

e. Following the completion of the trial of any alleged perpetrator of the child fatality and the appeal period for the granting of a new trial, the committee shall issue a supplemental report containing the information that was withheld, in accordance with paragraph "d", so as not to jeopardize the prosecution or the rights of the alleged perpetrator to a fair trial as described in section 235A.15, subsection 9, paragraphs "e" and "f".

f. The report and any supplemental report shall be submitted to the governor and general assembly.

g. If deemed appropriate by the committee, at any point in the review the committee may recommend to the department of human services, appropriate law enforcement agencies, and any other person involved with child protection, interventions that may prevent harm to a child who is related to or is living in the same home as a child whose case is reviewed by the committee.

5. a. The following individuals shall designate a liaison to assist the review team in fulfilling its responsibilities:

- (1) The director of public health.
- (2) The director of human services.
- (3) The commissioner of public safety.

- (4) The attorney general.
- (5) The director of transportation.
- (6) The director of the department of education.

b. In addition, the chairperson of the review team shall designate a liaison from the public at large to assist the review team in fulfilling its responsibilities.

6. The review team may establish subcommittees to which the team may delegate some or all of the team’s responsibilities under subsection 3.

7. a. The state medical examiner, the Iowa department of public health, and the department of human services shall adopt rules providing for disclosure of information which is confidential under chapter 22 or any other provision of state law, to the review team for purposes of performing its child death and child abuse review responsibilities.

b. A person in possession or control of medical, investigative, assessment, or other information pertaining to a child death and child abuse review shall allow the inspection and reproduction of the information by the office of the state medical examiner upon the request of the office, to be used only in the administration and for the duties of the Iowa child death review team. Except as provided for a report on a child fatality by an ad hoc child fatality review committee under subsection 4, information and records produced under this section which are confidential under section 22.7 and chapter 235A, and information or records received from the confidential records, remain confidential under this section. A person does not incur legal liability by reason of releasing information to the department or the office of the state medical examiner as required under and in compliance with this section.

8. Review team members and their agents are immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of any act, omission, proceeding, decision, or determination undertaken or performed, or recommendation made as a review team member or agent provided that the review team members or agents acted in good faith and without malice in carrying out their official duties in their official capacity. The state medical examiner shall adopt rules pursuant to chapter 17A to administer this subsection. A complainant bears the burden of proof in establishing malice or lack of good faith in an action brought against review team members involving the performance of their duties and powers under this section.

9. A person who releases or discloses confidential data, records, or any other type of information in violation of this section is guilty of a serious misdemeanor.

95 Acts, ch 147, §2; 97 Acts, ch 159, §3, 4; 2000 Acts, ch 1051, §1; 2000 Acts, ch 1137, §1 – 3, 14; 2002 Acts, ch 1119, §129, 130; 2005 Acts, ch 6, §1 – 3; 2005 Acts, ch 179, §118; 2007 Acts, ch 159, §19, 20; 2009 Acts, ch 182, §108 – 111; 2010 Acts, ch 1069, §14

Referred to in §216A.133A, 691.6

Legislative findings and purpose; 95 Acts, ch 147, §1

Continuing effectiveness of rules adopted by department of public health until replacement rules are adopted by state medical examiner; 2009 Acts, ch 182, §113

**135.44** Repealed by 88 Acts, ch 1158, § 102.

DIVISION V  
RENAL DISEASES

**135.45 through 135.48** Repealed by 2005 Acts, ch 89, § 39.

**135.49 through 135.60** Reserved.

DIVISION VI  
HEALTH FACILITIES COUNCIL

Referred to in §249K.2

**135.61 Definitions.**

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

1. “*Affected persons*” means, with respect to an application for a certificate of need:
  - a. The person submitting the application.
  - b. Consumers who would be served by the new institutional health service proposed in the application.
  - c. Each institutional health facility or health maintenance organization which is located in the geographic area which would appropriately be served by the new institutional health service proposed in the application. The appropriate geographic service area of each institutional health facility or health maintenance organization shall be determined on a uniform basis in accordance with criteria established in rules adopted by the department.
  - d. Each institutional health facility or health maintenance organization which, prior to receipt of the application by the department, has formally indicated to the department pursuant to this division an intent to furnish in the future institutional health services similar to the new institutional health service proposed in the application.
  - e. Any other person designated as an affected person by rules of the department.
  - f. Any payer or third-party payer for health services.
2. “*Birth center*” means a facility or institution, which is not an ambulatory surgical center or a hospital or in a hospital, in which births are planned to occur following a normal, uncomplicated, low-risk pregnancy.
3. “*Consumer*” means any individual whose occupation is other than health services, who has no fiduciary obligation to an institutional health facility, health maintenance organization or other facility primarily engaged in delivery of services provided by persons in health service occupations, and who has no material financial interest in the providing of any health services.
4. “*Council*” means the state health facilities council established by this division.
5. “*Department*” means the Iowa department of public health.
6. “*Develop*”, when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation in relation to the offering of such a service.
7. “*Director*” means the director of public health, or the director’s designee.
8. “*Financial reporting*” means reporting by which hospitals and health care facilities shall respectively record their revenues, expenses, other income, other outlays, assets and liabilities, and units of services.
9. “*Health care facility*” means health care facility as defined in section 135C.1.
10. “*Health care provider*” means a person licensed or certified under chapter 147, 148, 148A, 148C, 149, 151, 152, 153, 154, 154B, 154F, or 155A to provide in this state professional health care service to an individual during that individual’s medical care, treatment, or confinement.
11. “*Health maintenance organization*” means health maintenance organization as defined in section 514B.1, subsection 6.
12. “*Health services*” means clinically related diagnostic, curative, or rehabilitative services, and includes alcoholism, drug abuse, and mental health services.
13. “*Hospital*” means hospital as defined in section 135B.1, subsection 3.
14. “*Institutional health facility*” means any of the following, without regard to whether the facilities referred to are publicly or privately owned or are organized for profit or not or whether the facilities are part of or sponsored by a health maintenance organization:
  - a. A hospital.
  - b. A health care facility.
  - c. An organized outpatient health facility.
  - d. An outpatient surgical facility.
  - e. A community mental health facility.

f. A birth center.

15. “*Institutional health service*” means any health service furnished in or through institutional health facilities or health maintenance organizations, including mobile health services.

16. “*Mobile health service*” means equipment used to provide a health service that can be transported from one delivery site to another.

17. “*Modernization*” means the alteration, repair, remodeling, replacement or renovation of existing buildings or of the equipment previously installed therein, or both.

18. “*New institutional health service*” or “*changed institutional health service*” means any of the following:

a. The construction, development or other establishment of a new institutional health facility regardless of ownership.

b. Relocation of an institutional health facility.

c. Any capital expenditure, lease, or donation by or on behalf of an institutional health facility in excess of one million five hundred thousand dollars within a twelve-month period.

d. A permanent change in the bed capacity, as determined by the department, of an institutional health facility. For purposes of this paragraph, a change is permanent if it is intended to be effective for one year or more.

e. Any expenditure in excess of five hundred thousand dollars by or on behalf of an institutional health facility for health services which are or will be offered in or through an institutional health facility at a specific time but which were not offered on a regular basis in or through that institutional health facility within the twelve-month period prior to that time.

f. The deletion of one or more health services, previously offered on a regular basis by an institutional health facility or health maintenance organization or the relocation of one or more health services from one physical facility to another.

g. Any acquisition by or on behalf of a health care provider or a group of health care providers of any piece of replacement equipment with a value in excess of one million five hundred thousand dollars, whether acquired by purchase, lease, or donation.

h. Any acquisition by or on behalf of a health care provider or group of health care providers of any piece of equipment with a value in excess of one million five hundred thousand dollars, whether acquired by purchase, lease, or donation, which results in the offering or development of a health service not previously provided. A mobile service provided on a contract basis is not considered to have been previously provided by a health care provider or group of health care providers.

i. Any acquisition by or on behalf of an institutional health facility or a health maintenance organization of any piece of replacement equipment with a value in excess of one million five hundred thousand dollars, whether acquired by purchase, lease, or donation.

j. Any acquisition by or on behalf of an institutional health facility or health maintenance organization of any piece of equipment with a value in excess of one million five hundred thousand dollars, whether acquired by purchase, lease, or donation, which results in the offering or development of a health service not previously provided. A mobile service provided on a contract basis is not considered to have been previously provided by an institutional health facility.

k. Any air transportation service for transportation of patients or medical personnel offered through an institutional health facility at a specific time but which was not offered on a regular basis in or through that institutional health facility within the twelve-month period prior to the specific time.

l. Any mobile health service with a value in excess of one million five hundred thousand dollars.

m. Any of the following:

(1) Cardiac catheterization service.

(2) Open heart surgical service.

(3) Organ transplantation service.

(4) Radiation therapy service applying ionizing radiation for the treatment of malignant disease using megavoltage external beam equipment.

19. “*Offer*”, when used in connection with health services, means that an institutional

health facility, health maintenance organization, health care provider, or group of health care providers holds itself out as capable of providing, or as having the means to provide, specified health services.

20. “*Organized outpatient health facility*” means a facility, not part of a hospital, organized and operated to provide health care to noninstitutionalized and nonhomebound persons on an outpatient basis; it does not include private offices or clinics of individual physicians, dentists or other practitioners, or groups of practitioners, who are health care providers.

21. “*Outpatient surgical facility*” means a facility which as its primary function provides, through an organized medical staff and on an outpatient basis to patients who are generally ambulatory, surgical procedures not ordinarily performed in a private physician’s office, but not requiring twenty-four hour hospitalization, and which is neither a part of a hospital nor the private office of a health care provider who there engages in the lawful practice of surgery. “*Outpatient surgical facility*” includes a facility certified or seeking certification as an ambulatory surgical center, under the federal Medicare program or under the medical assistance program established pursuant to chapter 249A.

22. “*Technologically innovative equipment*” means equipment potentially useful for diagnostic or therapeutic purposes which introduces new technology in the diagnosis or treatment of disease, the usefulness of which is not well enough established to permit a specific plan of need to be developed for the state.

[C79, 81, §135.61; 82 Acts, ch 1194, §1, 2]

87 Acts, ch 215, §39; 91 Acts, ch 225, §1; 97 Acts, ch 93, §1, 2; 2002 Acts, ch 1162, §77; 2008 Acts, ch 1088, §86

Referred to in §135.63, 135.131, 505.27, 708.3A

### **135.62 Department to administer division — health facilities council established — appointments — powers and duties.**

1. This division shall be administered by the department. The director shall employ or cause to be employed the necessary persons to discharge the duties imposed on the department by this division.

2. There is established a state health facilities council consisting of five persons appointed by the governor. The council shall be within the department for administrative and budgetary purposes.

a. *Qualifications.* The members of the council shall be chosen so that the council as a whole is broadly representative of various geographical areas of the state and no more than three of its members are affiliated with the same political party. Each council member shall be a person who has demonstrated by prior activities an informed concern for the planning and delivery of health services. A member of the council and any spouse of a member shall not, during the time that member is serving on the council, do either of the following:

(1) Be a health care provider nor be otherwise directly or indirectly engaged in the delivery of health care services nor have a material financial interest in the providing or delivery of health services.

(2) Serve as a member of any board or other policymaking or advisory body of an institutional health facility, a health maintenance organization, or any health or hospital insurer.

b. *Appointments.* Terms of council members shall be six years, beginning and ending as provided in section 69.19. A member shall be appointed in each odd-numbered year to succeed each member whose term expires in that year. Vacancies shall be filled by the governor for the balance of the unexpired term. Each appointment to the council is subject to confirmation by the senate. A council member is ineligible for appointment to a second consecutive term, unless first appointed to an unexpired term of three years or less.

c. *Chairperson.* The governor shall designate one of the council members as chairperson. That designation may be changed not later than July 1 of any odd-numbered year, effective on the date of the organizational meeting held in that year under paragraph “d”.

d. *Meetings.* The council shall hold an organizational meeting in July of each odd-numbered year, or as soon thereafter as the new appointee or appointees are confirmed

and have qualified. Other meetings shall be held as necessary to enable the council to expeditiously discharge its duties. Meeting dates shall be set upon adjournment or by call of the chairperson upon five days' notice to the other members.

*e. Compensation.* Each member of the council shall receive a per diem as specified in section 7E.6 and reimbursement for actual expenses while engaged in official duties.

*f. Duties.* The council shall do all of the following:

(1) Make the final decision, as required by section 135.69, with respect to each application for a certificate of need accepted by the department.

(2) Determine and adopt such policies as are authorized by law and are deemed necessary to the efficient discharge of its duties under this division.

(3) Have authority to direct staff personnel of the department assigned to conduct formal or summary reviews of applications for certificates of need.

(4) Advise and counsel with the director concerning the provisions of this division and the policies and procedures adopted by the department pursuant to this division.

(5) Review and approve, prior to promulgation, all rules adopted by the department under this division.

[C79, 81, §135.62]

86 Acts, ch 1245, §1109; 88 Acts, ch 1277, §26; 90 Acts, ch 1256, §30; 91 Acts, ch 225, §2, 3; 97 Acts, ch 93, §3; 2009 Acts, ch 41, §40

Confirmation, see §2.32

### **135.63 Certificate of need required — exclusions.**

1. A new institutional health service or changed institutional health service shall not be offered or developed in this state without prior application to the department for and receipt of a certificate of need, pursuant to this division. The application shall be made upon forms furnished or prescribed by the department and shall contain such information as the department may require under this division. The application shall be accompanied by a fee equivalent to three-tenths of one percent of the anticipated cost of the project with a minimum fee of six hundred dollars and a maximum fee of twenty-one thousand dollars. The fee shall be remitted by the department to the treasurer of state, who shall place it in the general fund of the state. If an application is voluntarily withdrawn within thirty calendar days after submission, seventy-five percent of the application fee shall be refunded; if the application is voluntarily withdrawn more than thirty but within sixty days after submission, fifty percent of the application fee shall be refunded; if the application is withdrawn voluntarily more than sixty days after submission, twenty-five percent of the application fee shall be refunded. Notwithstanding the required payment of an application fee under this subsection, an applicant for a new institutional health service or a changed institutional health service offered or developed by an intermediate care facility for persons with an intellectual disability or an intermediate care facility for persons with mental illness as defined pursuant to section 135C.1 is exempt from payment of the application fee.

2. This division shall not be construed to augment, limit, contravene, or repeal in any manner any other statute of this state which may authorize or relate to licensure, regulation, supervision, or control of, nor to be applicable to:

*a.* Private offices and private clinics of an individual physician, dentist, or other practitioner or group of health care providers, except as provided by section 135.61, subsection 18, paragraphs "g", "h", and "m", and section 135.61, subsections 20 and 21.

*b.* Dispensaries and first aid stations, located within schools, businesses, or industrial establishments, which are maintained solely for the use of students or employees of those establishments and which do not contain inpatient or resident beds that are customarily occupied by the same individual for more than twenty-four consecutive hours.

*c.* Establishments such as motels, hotels, and boarding houses which provide medical, nursing personnel, and other health related services as an incident to their primary business or function.

*d.* The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

e. A health maintenance organization or combination of health maintenance organizations or an institutional health facility controlled directly or indirectly by a health maintenance organization or combination of health maintenance organizations, except when the health maintenance organization or combination of health maintenance organizations does any of the following:

(1) Constructs, develops, renovates, relocates, or otherwise establishes an institutional health facility.

(2) Acquires major medical equipment as provided by section 135.61, subsection 18, paragraphs “i” and “j”.

f. A residential care facility, as defined in section 135C.1, including a residential care facility for persons with an intellectual disability, notwithstanding any provision in this division to the contrary.

g. (1) A reduction in bed capacity of an institutional health facility, notwithstanding any provision in this division to the contrary, if all of the following conditions exist:

(a) The institutional health facility reports to the department the number and type of beds reduced on a form prescribed by the department at least thirty days before the reduction. In the case of a health care facility, the new bed total must be consistent with the number of licensed beds at the facility. In the case of a hospital, the number of beds must be consistent with bed totals reported to the department of inspections and appeals for purposes of licensure and certification.

(b) The institutional health facility reports the new bed total on its next annual report to the department.

(2) If these conditions are not met, the institutional health facility is subject to review as a “new institutional health service” or “changed institutional health service” under section 135.61, subsection 18, paragraph “d”, and subject to sanctions under section 135.73. If the institutional health facility reestablishes the deleted beds at a later time, review as a “new institutional health service” or “changed institutional health service” is required pursuant to section 135.61, subsection 18, paragraph “d”.

h. (1) The deletion of one or more health services, previously offered on a regular basis by an institutional health facility or health maintenance organization, notwithstanding any provision of this division to the contrary, if all of the following conditions exist:

(a) The institutional health facility or health maintenance organization reports to the department the deletion of the service or services at least thirty days before the deletion on a form prescribed by the department.

(b) The institutional health facility or health maintenance organization reports the deletion of the service or services on its next annual report to the department.

(2) If these conditions are not met, the institutional health facility or health maintenance organization is subject to review as a “new institutional health service” or “changed institutional health service” under section 135.61, subsection 18, paragraph “f”, and subject to sanctions under section 135.73.

(3) If the institutional health facility or health maintenance organization reestablishes the deleted service or services at a later time, review as a “new institutional health service” or “changed institutional health service” may be required pursuant to section 135.61, subsection 18.

i. A residential program exempt from licensing as a health care facility under chapter 135C in accordance with section 135C.6, subsection 8.

j. The construction, modification, or replacement of nonpatient care services, including parking facilities, heating, ventilation and air conditioning systems, computers, telephone systems, medical office buildings, and other projects of a similar nature, notwithstanding any provision in this division to the contrary.

k. (1) The redistribution of beds by a hospital within the acute care category of bed usage, notwithstanding any provision in this division to the contrary, if all of the following conditions exist:

(a) The hospital reports to the department the number and type of beds to be redistributed on a form prescribed by the department at least thirty days before the redistribution.

(b) The hospital reports the new distribution of beds on its next annual report to the department.

(2) If these conditions are not met, the redistribution of beds by the hospital is subject to review as a new institutional health service or changed institutional health service pursuant to section 135.61, subsection 18, paragraph “d”, and is subject to sanctions under section 135.73.

l. The replacement or modernization of any institutional health facility if the replacement or modernization does not add new health services or additional bed capacity for existing health services, notwithstanding any provision in this division to the contrary. With respect to a nursing facility, “*replacement*” means establishing a new facility within the same county as the prior facility to be closed. With reference to a hospital, “*replacement*” means establishing a new hospital that demonstrates compliance with all of the following criteria through evidence submitted to the department:

(1) Is designated as a critical access hospital pursuant to 42 U.S.C. § 1395i-4.

(2) Serves at least seventy-five percent of the same service area that was served by the prior hospital to be closed and replaced by the new hospital.

(3) Provides at least seventy-five percent of the same services that were provided by the prior hospital to be closed and replaced by the new hospital.

(4) Is staffed by at least seventy-five percent of the same staff, including medical staff, contracted staff, and employees, as constituted the staff of the prior hospital to be closed and replaced by the new hospital.

m. Hemodialysis services provided by a hospital or freestanding facility, notwithstanding any provision in this division to the contrary.

n. Hospice services provided by a hospital, notwithstanding any provision in this division to the contrary.

o. The change in ownership, licensure, organizational structure, or designation of the type of institutional health facility if the health services offered by the successor institutional health facility are unchanged. This exclusion is applicable only if the institutional health facility consents to the change in ownership, licensure, organizational structure, or designation of the type of institutional health facility and ceases offering the health services simultaneously with the initiation of the offering of health services by the successor institutional health facility.

p. The conversion of an existing number of beds by an intermediate care facility for persons with an intellectual disability to a smaller facility environment, including but not limited to a community-based environment which does not result in an increased number of beds, notwithstanding any provision in this division to the contrary, including subsection 4, if all of the following conditions exist:

(1) The intermediate care facility for persons with an intellectual disability reports the number and type of beds to be converted on a form prescribed by the department at least thirty days before the conversion.

(2) The intermediate care facility for persons with an intellectual disability reports the conversion of beds on its next annual report to the department.

3. This division shall not be construed to be applicable to a health care facility operated by and for the exclusive use of members of a religious order, which does not admit more than two individuals to the facility from the general public, and which was in operation prior to July 1, 1986. However, this division is applicable to such a facility if the facility is involved in the offering or developing of a new or changed institutional health service on or after July 1, 1986.

4. A copy of the application shall be sent to the department of human services at the time the application is submitted to the Iowa department of public health. The department shall not process applications for and the council shall not consider a new or changed institutional health service for an intermediate care facility for persons with an intellectual disability unless both of the following conditions are met:

a. The new or changed beds shall not result in an increase in the total number of medical assistance certified intermediate care facility beds for persons with an intellectual disability in the state, exclusive of those beds at the state resource centers or other state institutions, beyond one thousand six hundred thirty-six beds.

b. A letter of support for the application is provided by the county board of supervisors, or the board's designee, in the county in which the beds would be located.

[C79, 81, §135.63; 82 Acts, ch 1194, §3]

86 Acts, ch 1150, §1; 86 Acts, ch 1245, §1110; 91 Acts, ch 225, §4; 92 Acts, ch 1043, §1; 92 Acts, ch 1206, §1; 95 Acts, ch 120, §1; 96 Acts, ch 1129, §113; 97 Acts, ch 93, §4 – 8; 2002 Acts, ch 1120, §10; 2006 Acts, ch 1184, §78; 2008 Acts, ch 1191, §47; 2009 Acts, ch 184, §38; 2012 Acts, ch 1019, §7 – 10

Referred to in §135.66, 135C.2, 231C.3

#### **135.64 Criteria for evaluation of applications.**

1. In determining whether a certificate of need shall be issued, the department and council shall consider the following:

a. The contribution of the proposed institutional health service in meeting the needs of the medically underserved, including persons in rural areas, low-income persons, racial and ethnic minorities, persons with disabilities, and the elderly, as well as the extent to which medically underserved residents in the applicant's service area are likely to have access to the proposed institutional health service.

b. The relationship of the proposed institutional health services to the long-range development plan, if any, of the person providing or proposing the services.

c. The need of the population served or to be served by the proposed institutional health services for those services.

d. The distance, convenience, cost of transportation, and accessibility to health services for persons who live outside metropolitan areas.

e. The availability of alternative, less costly, or more effective methods of providing the proposed institutional health services.

f. The immediate and long-term financial feasibility of the proposal presented in the application, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.

g. The relationship of the proposed institutional health services to the existing health care system of the area in which those services are proposed to be provided.

h. The appropriate and efficient use or prospective use of the proposed institutional health service, and of any existing similar services, including but not limited to a consideration of the capacity of the sponsor's facility to provide the proposed service, and possible sharing or cooperative arrangements among existing facilities and providers.

i. The availability of resources, including, but not limited to, health care providers, management personnel, and funds for capital and operating needs, to provide the proposed institutional health services and the possible alternative uses of those resources to provide other health services.

j. The appropriate and nondiscriminatory utilization of existing and available health care providers. Where both allopathic and osteopathic institutional health services exist, each application shall be considered in light of the availability and utilization of both allopathic and osteopathic facilities and services in order to protect the freedom of choice of consumers and health care providers.

k. The relationship, including the organizational relationship, of the proposed institutional health services to ancillary or support services.

l. Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the immediate geographic area in which the entities are located, which entities may include but are not limited to medical and other health professional schools, multidisciplinary clinics, and specialty centers.

m. The special needs and circumstances of health maintenance organizations.

n. The special needs and circumstances of biomedical and behavioral research projects designed to meet a national need and for which local conditions offer special advantages.

o. The impact of relocation of an institutional health facility or health maintenance organization on other institutional health facilities or health maintenance organizations and on the needs of the population to be served, or which was previously served, or both.

p. In the case of a construction project, the costs and methods of the proposed

construction and the probable impact of the proposed construction project on total health care costs.

q. In the case of a proposal for the addition of beds to a health care facility, the consistency of the proposed addition with the plans of other agencies of this state responsible for provision and financing of long-term care services, including home health services.

r. The recommendations of staff personnel of the department assigned to the area of certificate of need, concerning the application, if requested by the council.

2. In addition to the findings required with respect to any of the criteria listed in subsection 1 of this section, the council shall grant a certificate of need for a new institutional health service or changed institutional health service only if it finds in writing, on the basis of data submitted to it by the department, that:

a. Less costly, more efficient, or more appropriate alternatives to the proposed institutional health service are not available and the development of such alternatives is not practicable;

b. Any existing facilities providing institutional health services similar to those proposed are being used in an appropriate and efficient manner;

c. In the case of new construction, alternatives including but not limited to modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;

d. Patients will experience serious problems in obtaining care of the type which will be furnished by the proposed new institutional health service or changed institutional health service, in the absence of that proposed new service.

3. In the evaluation of applications for certificates of need submitted by university hospital at Iowa City, the unique features of that institution relating to statewide tertiary health care, health science education, and clinical research shall be given due consideration. Further, in administering this division, the unique capacity of university hospitals for the evaluation of technologically innovative equipment and other new health services shall be utilized.

[C79, 81, §135.64]

91 Acts, ch 225, §5; 92 Acts, ch 1043, §2; 96 Acts, ch 1129, §113; 2002 Acts, ch 1120, §11

Referred to in §135.65, 135.66, 135.72

#### **135.65 Letter of intent to precede application — review and comment.**

1. Before applying for a certificate of need, the sponsor of a proposed new institutional health service or changed institutional health service shall submit to the department a letter of intent to offer or develop a service requiring a certificate of need. The letter shall be submitted as soon as possible after initiation of the applicant's planning process, and in any case not less than thirty days before applying for a certificate of need and before substantial expenditures to offer or develop the service are made. The letter shall include a brief description of the proposed new or changed service, its location, and its estimated cost.

2. Upon request of the sponsor of the proposed new or changed service, the department shall make a preliminary review of the letter for the purpose of informing the sponsor of the project of any factors which may appear likely to result in denial of a certificate of need, based on the criteria for evaluation of applications in section 135.64. A comment by the department under this section shall not constitute a final decision.

[C79, 81, §135.65]

91 Acts, ch 225, §6; 97 Acts, ch 93, §9

Referred to in §135.67

#### **135.66 Procedure upon receipt of application — public notification.**

1. Within fifteen business days after receipt of an application for a certificate of need, the department shall examine the application for form and completeness and accept or reject it. An application shall be rejected only if it fails to provide all information required by the department pursuant to section 135.63, subsection 1. The department shall promptly return to the applicant any rejected application, with an explanation of the reasons for its rejection.

2. Upon acceptance of an application for a certificate of need, the department shall promptly undertake to notify all affected persons in writing that formal review of the

application has been initiated. Notification to those affected persons who are consumers or third-party payers or other payers for health services may be provided by distribution of the pertinent information to the news media.

3. Each application accepted by the department shall be formally reviewed for the purpose of furnishing to the council the information necessary to enable it to determine whether or not to grant the certificate of need. A formal review shall consist at a minimum of the following steps:

a. Evaluation of the application against the criteria specified in section 135.64.

b. A public hearing on the application, to be held prior to completion of the evaluation required by paragraph "a", shall be conducted by the council.

4. When a hearing is to be held pursuant to subsection 3, paragraph "b", the department shall give at least ten days' notice of the time and place of the hearing. At the hearing, any affected person or that person's designated representative shall have the opportunity to present testimony.

[C79, 81, §135.66]

91 Acts, ch 225, §7

Referred to in §135.70

#### **135.67 Summary review procedure.**

1. The department may waive the letter of intent procedures prescribed by section 135.65 and substitute a summary review procedure, which shall be established by rules of the department, when it accepts an application for a certificate of need for a project which meets any of the criteria in paragraphs "a" through "e":

a. A project which is limited to repair or replacement of a facility or equipment damaged or destroyed by a disaster, and which will not expand the facility nor increase the services provided beyond the level existing prior to the disaster.

b. A project necessary to enable the facility or service to achieve or maintain compliance with federal, state, or other appropriate licensing, certification, or safety requirements.

c. A project which will not change the existing bed capacity of the applicant's facility or service, as determined by the department, by more than ten percent or ten beds, whichever is less, over a two-year period.

d. A project the total cost of which will not exceed one hundred fifty thousand dollars.

e. Any other project for which the applicant proposes and the department agrees to summary review.

2. The department's decision to disallow a summary review shall be binding upon the applicant.

[C79, 81, §135.67]

91 Acts, ch 225, §8 – 10; 2009 Acts, ch 41, §191

Referred to in §135.72

#### **135.68 Status reports on review in progress.**

While formal review of an application for a certificate of need is in progress, the department shall upon request inform any affected person of the status of the review, any findings which have been made in the course of the review, and any other appropriate information concerning the review.

[C79, 81, §135.68]

#### **135.69 Council to make final decision.**

The department shall complete its formal review of the application within ninety days after acceptance of the application, except as otherwise provided by section 135.72, subsection 4. Upon completion of the formal review, the council shall approve or deny the application. The council shall issue written findings stating the basis for its decision on the application, and the department shall send copies of the council's decision and the written findings supporting the decision to the applicant and to any other person who so requests.

Failure by the council to issue a written decision on an application for a certificate of need

within the time required by this section shall constitute denial of and final administrative action on the application.

[C79, 81, §135.69]

91 Acts, ch 225, §11

Referred to in §135.62, 135.70, 135.72

### **135.70 Appeal of certificate of need decisions.**

The council's decision on an application for certificate of need, when announced pursuant to section 135.69, is a final decision. Any dissatisfied party who is an affected person with respect to the application, and who participated or sought unsuccessfully to participate in the formal review procedure prescribed by section 135.66, may request a rehearing in accordance with chapter 17A and rules of the department. If a rehearing is not requested or an affected party remains dissatisfied after the request for rehearing, an appeal may be taken in the manner provided by chapter 17A. Notwithstanding the Iowa administrative procedure Act, chapter 17A, a request for rehearing is not required, prior to appeal under section 17A.19.

[C79, 81, §135.70]

91 Acts, ch 225, §12

### **135.71 Period for which certificate is valid — extension or revocation.**

A certificate of need shall be valid for a maximum of one year from the date of issuance. Upon the expiration of the certificate, or at any earlier time while the certificate is valid the holder thereof shall provide the department such information on the development of the project covered by the certificate as the department may request. The council shall determine at the end of the certification period whether sufficient progress is being made on the development of the project. The certificate of need may be extended by the council for additional periods of time as are reasonably necessary to expeditiously complete the project, but may be revoked by the council at the end of the first or any subsequent certification period for insufficient progress in developing the project.

Upon expiration of certificate of need, and prior to extension thereof, any affected person shall have the right to submit to the department information which may be relevant to the question of granting an extension. The department may call a public hearing for this purpose.

[C79, 81, §135.71]

97 Acts, ch 93, §10

### **135.72 Authority to adopt rules.**

The department shall adopt, with approval of the council, such administrative rules as are necessary to enable it to implement this division. These rules shall include:

1. Additional procedures and criteria for review of applications for certificates of need.
2. Uniform procedures for variations in application of criteria specified by section 135.64 for use in formal review of applications for certificates of need, when such variations are appropriate to the purpose of a particular review or to the type of institutional health service proposed in the application being reviewed.
3. Uniform procedures for summary reviews conducted under section 135.67.
4. Criteria for determining when it is not feasible to complete formal review of an application for a certificate of need within the time limits specified in section 135.69. The rules adopted under this subsection shall include criteria for determining whether an application proposes introduction of technologically innovative equipment, and if so, procedures to be followed in reviewing the application. However, a rule adopted under this subsection shall not permit a deferral of more than sixty days beyond the time when a decision is required under section 135.69, unless both the applicant and the department agree to a longer deferment.

[C79, 81, §135.72]

91 Acts, ch 225, §13

Referred to in §135.69

### **135.73 Sanctions.**

1. Any party constructing a new institutional health facility or an addition to or renovation

of an existing institutional health facility without first obtaining a certificate of need or, in the case of a mobile health service, ascertaining that the mobile health service has received certificate of need approval, as required by this division, shall be denied licensure or change of licensure by the appropriate responsible licensing agency of this state.

2. A party violating this division shall be subject to penalties in accordance with this section. The department shall adopt rules setting forth the violations by classification, the criteria for the classification of any violation not listed, and procedures for implementing this subsection.

a. A class I violation is one in which a party offers a new institutional health service or changed institutional health service modernization or acquisition without review and approval by the council. A party in violation is subject to a penalty of three hundred dollars for each day of a class I violation. The department may seek injunctive relief which shall include restraining the commission or continuance of an act which would violate the provisions of this paragraph. Notice and opportunity to be heard shall be provided to a party pursuant to rule of civil procedure 1.1507 and contested case procedures in accordance with chapter 17A. The department may reduce, alter, or waive a penalty upon the party showing good faith compliance with the department's request to immediately cease and desist from conduct in violation of this section.

b. A class II violation is one in which a party violates the terms or provisions of an approved application. The department may seek injunctive relief which shall include restraining the commission or continuance of or abating or eliminating an act which would violate the provisions of this subsection. Notice and opportunity to be heard shall be provided to a party pursuant to rule of civil procedure 1.1507 and contested case procedures in accordance with chapter 17A. The department may reduce, alter, or waive a penalty upon the party showing good faith compliance with the department's request to immediately cease and desist from conduct in violation of this section. A class II violation shall be abated or eliminated within a stated period of time determined by the department and specified by the department in writing. The period of time may be modified by the department for good cause shown. A party in violation may be subject to a penalty of five hundred dollars for each day of a class II violation.

3. Notwithstanding any other sanction imposed pursuant to this section, a party offering or developing any new institutional health service or changed institutional health service without first obtaining a certificate of need as required by this division may be temporarily or permanently restrained from doing so by any court of competent jurisdiction in any action brought by the state, any of its political subdivisions, or any other interested person.

4. The sanctions provided by this section are in addition to, and not in lieu of, any penalty prescribed by law for the acts against which these sanctions are invoked.

[C79, 81, §135.73]

91 Acts, ch 225, §14

Referred to in §135.63

### **135.74 Uniform financial reporting.**

1. The department, after study and in consultation with any advisory committees which may be established pursuant to law, shall promulgate by rule pursuant to chapter 17A uniform methods of financial reporting, including such allocation methods as may be prescribed, by which hospitals and health care facilities shall respectively record their revenues, expenses, other income, other outlays, assets and liabilities, and units of service, according to functional activity center. These uniform methods of financial reporting shall not preclude a hospital or health care facility from using any accounting methods for its own purposes provided these accounting methods can be reconciled to the uniform methods of financial reporting prescribed by the department and can be audited for validity and completeness. Each hospital and each health care facility shall adopt the appropriate system for its fiscal year, effective upon such date as the department shall direct. In determining the effective date for reporting requirements, the department shall consider both the immediate need for uniform reporting of information to effectuate the purposes of this division and the administrative and economic difficulties which hospitals and health care facilities may encounter in complying with the

uniform financial reporting requirement, but the effective date shall not be later than January 1, 1980.

2. In establishing uniform methods of financial reporting, the department shall consider all of the following:

a. The existing systems of accounting and reporting currently utilized by hospitals and health care facilities.

b. Differences among hospitals and health care facilities, respectively, according to size, financial structure, methods of payment for services, and scope, type and method of providing services.

c. Other pertinent distinguishing factors.

3. The department shall, where appropriate, provide for modification, consistent with the purposes of this division, of reporting requirements to correctly reflect the differences among hospitals and among health care facilities referred to in subsection 2, and to avoid otherwise unduly burdensome costs in meeting the requirements of uniform methods of financial reporting.

4. The uniform financial reporting methods, where appropriate, shall be structured so as to establish and differentiate costs incurred for patient-related services rendered by hospitals and health care facilities, as distinguished from those incurred in the course of educational, research and other nonpatient-related activities including but not limited to charitable activities of these hospitals and health care facilities.

[C79, 81, §135.74]

2013 Acts, ch 30, §27

Referred to in §135.78, 135.79

Subsection 2 amended

#### **135.75 Annual reports by hospitals, health care facilities.**

1. Each hospital and each health care facility shall annually, after the close of its fiscal year, file all of the following with the department:

a. A balance sheet detailing the assets, liabilities and net worth of the hospital or health care facility.

b. A statement of its income and expenses.

c. Such other reports of the costs incurred in rendering services as the department may prescribe.

2. Where more than one licensed hospital or health care facility is operated by the reporting organization, the information required by this section shall be reported separately for each licensed hospital or health care facility. The department shall require preparation of specified financial reports by a certified public accountant, and may require attestation of responsible officials of the reporting hospital or health care facility that the reports submitted are to the best of their knowledge and belief prepared in accordance with the prescribed methods of reporting. The department shall have the right to inspect the books, audits and records of any hospital or health care facility as reasonably necessary to verify reports submitted pursuant to this division.

3. In obtaining the reports required by this section, the department and other state agencies shall coordinate their reporting requirements.

4. All reports filed under this section, except privileged medical information, shall be open to public inspection.

[C79, 81, §135.75]

2013 Acts, ch 30, §28

Referred to in §135.78, 135.79, 135.164

Subsection 1 amended

#### **135.76 Analyses and studies by department.**

1. The department shall from time to time undertake analyses and studies relating to hospital and health care facility costs and to the financial status of hospitals or health care facilities, or both, which are subject to the provisions of this division. It shall further require the filing of information concerning the total financial needs of each individual hospital or health care facility and the resources currently or prospectively available to meet these needs,

including the effect of proposals made by health systems agencies. The department shall also prepare and file such summaries and compilations or other supplementary reports based on the information filed with it as will, in its judgment, advance the purposes of this division.

2. The analyses and studies required by this section shall be conducted with the objective of providing a basis for determining whether or not regulation of hospital and health care facility rates and charges by the state of Iowa is necessary to protect the health or welfare of the people of the state.

3. In conducting its analyses and studies, the department should determine whether:

a. The rates charged and costs incurred by hospitals and health care facilities are reasonably related to the services offered by those respective groups of institutions.

b. Aggregate rates of hospitals and of health care facilities are reasonably related to the aggregate costs incurred by those respective groups of institutions.

c. Rates are set equitably among all purchasers or classes of purchasers of hospital and of health care facility services.

d. The rates for particular services, supplies or materials established by hospitals and by health care facilities are reasonable. Determination of reasonableness of rates shall include consideration of a fair rate of return to proprietary hospitals and health care facilities.

4. All data gathered and compiled and all reports prepared under this section, except privileged medical information, shall be open to public inspection.

[C79, 81, §135.76]

Referred to in §135.78, 135.79, 135.83, 135.164

**135.77** Repealed by 97 Acts, ch 203, § 18.

**135.78 Data to be compiled.**

The department shall compile all relevant financial and utilization data in order to have available the statistical information necessary to properly monitor hospital and health care facility charges and costs. Such data shall include necessary operating expenses, appropriate expenses incurred for rendering services to patients who cannot or do not pay, all properly incurred interest charges, and reasonable depreciation expenses based on the expected useful life of the property and equipment involved. The department shall also obtain from each hospital and health care facility a current rate schedule as well as any subsequent amendments or modifications of that schedule as it may require. In collection of the data required by this section and sections 135.74 through 135.76, the department and other state agencies shall coordinate their reporting requirements.

[C79, 81, §135.78]

2002 Acts, ch 1119, §14; 2003 Acts, ch 108, §34

Referred to in §135.79, 135.83, 135.164

**135.79 Civil penalty.**

Any hospital or health care facility which fails to file with the department the financial reports required by sections 135.74 to 135.78 is subject to a civil penalty of not to exceed five hundred dollars for each offense.

[C79, 81, §135.79]

**135.80 Mental health professional shortage area program.** Transferred to § 135.180; 2011 Acts, ch 25, §80.

**135.81** Repealed by 83 Acts, ch 101, § 129.

**135.82** Repealed by 91 Acts, ch 225, § 15.

**135.83 Contracts for assistance with analyses, studies, and data.**

In furtherance of the department's responsibilities under sections 135.76 and 135.78, the director may contract with the Iowa hospital association and third-party payers, the Iowa health care facilities association and third-party payers, or leading age Iowa and third-party payers for the establishment of pilot programs dealing with prospective rate review in

hospitals or health care facilities, or both. Such contract shall be subject to the approval of the executive council and shall provide for an equitable representation of health care providers, third-party payers, and health care consumers in the determination of criteria for rate review. No third-party payer shall be excluded from positive financial incentives based upon volume of gross patient revenues. No state or federal funds appropriated or available to the department shall be used for any such pilot program.

[C79, 81, §135.83]

98 Acts, ch 1100, §13; 2001 Acts, ch 74, §2; 2002 Acts, ch 1050, §16; 2013 Acts, ch 30, §29

Referred to in §135.164

Section amended

**135.84** Repealed by 88 Acts, ch 1276, § 46.

**135.85 through 135.89** Reserved.

#### DIVISION VII

##### LICENSED HOSPICE PROGRAMS

**135.90 through 135.96** Transferred to chapter 135J; 90 Acts, ch 1204, § 66.

**135.97 through 135.99** Reserved.

#### DIVISION VIII

##### LEAD ABATEMENT PROGRAM

#### **135.100 Definitions.**

For the purposes of this division, unless the context otherwise requires:

1. “*Department*” means the Iowa department of public health.
2. “*Local board*” means the local board of health.

87 Acts, ch 55, §1

#### **135.101 Childhood lead poisoning prevention program.**

There is established a childhood lead poisoning prevention program within the Iowa department of public health. The department shall implement and review programs necessary to eliminate potentially dangerous toxic lead levels in children in Iowa in a year for which funds are appropriated to the department for this purpose.

87 Acts, ch 55, §2; 99 Acts, ch 141, §5

#### **135.102 Rules.**

The department shall adopt rules, pursuant to chapter 17A, regarding the:

1. Implementation of the grant program pursuant to section 135.103.
2. Maintenance of laboratory facilities for the childhood lead poisoning prevention program.
3. Maximum blood lead levels in children living in targeted rental dwelling units.
4. Standards and program requirements of the grant program pursuant to section 135.103.
5. Prioritization of proposed childhood lead poisoning prevention programs, based on the geographic areas known with children identified with elevated blood lead level resulting from surveys completed by the department.
6. Model regulations for lead hazard remediation to be used in instances in which a child is confirmed as lead poisoned. The department shall make the model regulations available to local boards of health and shall promote the adoption of the regulations at the local level, in cities and counties implementing lead hazard remediation programs. Nothing in this subsection shall be construed as requiring the adoption of the model regulations.

7. Implementation of a requirement that children receive a blood lead test prior to the age of six and before enrolling in any elementary school in Iowa in accordance with section 135.105D.

87 Acts, ch 55, §3; 99 Acts, ch 141, §6; 2001 Acts, ch 182, §9; 2007 Acts, ch 79, §1  
Referred to in §135.105D

### **135.103 Grant program.**

The department shall implement a childhood lead poisoning prevention grant program which provides federal, state, or other funds to local boards of health or cities for the program after standards and requirements for the local program are developed. The department may also use federal, state, or other funds provided for the childhood lead poisoning prevention grant program to purchase environmental and blood testing services from a public health laboratory.

87 Acts, ch 55, §4; 91 Acts, ch 268, §307; 99 Acts, ch 141, §7; 2004 Acts, ch 1168, §2  
Referred to in §135.102, 135.105

### **135.104 Requirements.**

The program by a local board of health or city receiving funding for an approved childhood lead poisoning prevention grant program shall include:

1. A public education program about lead poisoning and dangers of lead poisoning to children.
2. An effective outreach effort to ensure availability of services in the predicted geographic area.
3. A screening program for children, with emphasis on children less than six years of age.
4. Access to laboratory services for lead analysis.
5. A program of referral of identified children for assessment and treatment.
6. An environmental assessment of suspect dwelling units.
7. Surveillance to ensure correction of the identified hazardous settings.
8. A plan of intent to continue the program on a maintenance basis after the grant is discontinued.

87 Acts, ch 55, §5; 99 Acts, ch 141, §8, 9; 2002 Acts, ch 1108, §9; 2004 Acts, ch 1168, §3

### **135.105 Department duties.**

The department shall:

1. Coordinate the childhood lead poisoning prevention program with the department of natural resources, the university of Iowa poison control program, the mobile and regional child health specialty clinics, and any agency or program known for a direct interest in lead levels in the environment.
2. Survey geographic areas not included in the grant program pursuant to section 135.103 periodically to determine prioritization of such areas for future grant programs.

87 Acts, ch 55, §6; 99 Acts, ch 141, §10; 2012 Acts, ch 1023, §24

### **135.105A Lead inspector, lead abater, and lead-safe renovator training and certification program established — civil penalty.**

1. The department shall establish a program for the training and certification of lead inspectors, lead abaters, and lead-safe renovators. The department shall maintain a listing, available to the public and to city and county health departments, of lead inspector, lead abater, and lead-safe renovator training programs that have been approved by the department, and of lead inspectors, lead abaters, and lead-safe renovators who have successfully completed the training program and have been certified by the department. A person may be certified as a lead inspector, a lead abater, or a lead-safe renovator, or may be certified to provide two or more of such services. However, a person who holds more than one such certification shall not provide inspection service and also provide abatement service or renovation service at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site.

2. A person who owns real property which includes a residential dwelling and who performs lead inspection, lead abatement, or renovation of the residential dwelling is not

required to obtain certification to perform these measures, unless the residential dwelling is occupied by a person other than the owner or a member of the owner's immediate family while the measures are being performed. However, the department shall encourage property owners who are not required to be certified to complete the applicable training course to ensure the use of appropriate and safe lead inspection, lead abatement, or lead-safe renovation procedures.

3. Except as otherwise provided in this section, a person shall not perform lead abatement or lead inspections, and shall not perform renovations on target housing or a child-occupied facility, unless the person has completed a training program approved by the department and has obtained certification pursuant to this section. All lead abatement and lead inspections; and lead inspector, lead abater, and lead-safe renovation training programs; and renovations on target housing or a child-occupied facility, shall be performed and conducted in accordance with work practice standards established by the department. A person shall not conduct a training program for lead inspectors, lead abaters, or lead-safe renovators unless the program has been submitted to and approved by the department.

4. A person who violates this section is subject to a civil penalty not to exceed five thousand dollars for each offense.

5. The department shall adopt rules regarding minimum requirements for lead inspector, lead abater, and lead-safe renovator training programs, certification, work practice standards, and suspension and revocation requirements, and shall implement the training and certification programs. The department shall seek federal funding and shall establish fees in amounts sufficient to defray the cost of the programs. The fees shall be used for any of the department's duties under this division, including but not limited to the costs of full-time equivalent positions for program services and investigations. Fees received shall be considered repayment receipts as defined in section 8.2.

96 Acts, ch 1161, §1, 4; 97 Acts, ch 159, §5; 98 Acts, ch 1100, §14; 2004 Acts, ch 1167, §2; 2009 Acts, ch 37, §1; 2010 Acts, ch 1192, §49, 73

Referred to in §135.105C

For definitions, see §135.105C(2)

2010 amendment to subsection 5 applies to any fees collected pursuant to this section during or after the fiscal year beginning July 1, 2009; 2010 Acts, ch 1192, §73

### **135.105B Voluntary guidelines — health and environmental measures — confirmed cases of lead poisoning.**

1. The department may develop voluntary guidelines which may be used to develop and administer local programs to address the health and environmental needs of children who are confirmed as lead poisoned.

2. The voluntary guidelines may be based upon existing local ordinances that address the medical case management of children's health needs and the mitigation of the environmental factors which contributed to the lead poisoning.

3. Following development of the voluntary guidelines, cities or counties may elect to utilize the guidelines in developing and administering local programs through city or county health departments on a city, county, or multicounty basis or may request that the state develop and administer the local program. However, cities and counties are not required to develop and administer local programs based upon the guidelines.

96 Acts, ch 1161, §2, 4

### **135.105C Renovation, remodeling, and repainting — lead hazard notification process established.**

1. *a.* A person who performs renovation, remodeling, or repainting services for target housing or a child-occupied facility for compensation shall provide an approved lead hazard information pamphlet to the owner and occupant of the housing or facility prior to commencing the services. The department shall adopt rules to implement the renovation, remodeling, and repainting lead hazard notification process under this section.

*b.* The rules shall include but are not limited to an authorization that the lead hazard notification to parents or guardians of the children attending a child-occupied facility may be completed by posting an informational sign and a copy of the approved lead hazard

information pamphlet. The rules shall also address requirements for notification of parents or guardians of the children visiting a child-occupied facility when the facility is vacant for an extended period of time.

2. For the purpose of this section and section 135.105A, unless the context otherwise requires:

a. (1) “*Child-occupied facility*” means a building, or portion of a building, constructed prior to 1978, that is described by all of the following:

(a) The building is visited on a regular basis by the same child, who is less than six years of age, on at least two different days within any week. For purposes of this paragraph “a”, a week is a Sunday through Saturday period.

(b) Each day’s visit by the child lasts at least three hours, and the combined annual visits total at least sixty hours.

(2) A child-occupied facility may include but is not limited to a child care center, preschool, or kindergarten classroom. A child-occupied facility also includes common areas that are routinely used by children who are less than six years of age, such as restrooms and cafeterias, and the exterior walls and adjoining space of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under the age of six years.

b. “*Target housing*” means housing constructed prior to 1978 with the exception of housing for the elderly or for persons with disabilities and housing that does not contain a bedroom, unless at least one child, under six years of age, resides or is expected to reside in the housing.

3. A person who violates this section is subject to a civil penalty not to exceed five thousand dollars for each offense.

97 Acts, ch 159, §6, 24; 2000 Acts, ch 1140, §22; 2001 Acts, ch 58, §4; 2009 Acts, ch 37, §2

### **135.105D Blood lead testing — provider education — payor of last resort.**

1. For purposes of this section:

a. “*Blood lead testing*” means taking a capillary or venous sample of blood and sending it to a laboratory to determine the level of lead in the blood.

b. “*Capillary*” means a blood sample taken from the finger or heel for lead analysis.

c. “*Health care provider*” means a physician who is licensed under chapter 148, or a person who is licensed as a physician assistant under chapter 148C or as an advanced registered nurse practitioner.

d. “*Venous*” means a blood sample taken from a vein in the arm for lead analysis.

2. a. A parent or guardian of a child under the age of two is strongly encouraged to have the child tested for elevated blood lead levels by the age of two. Except as provided in paragraph “b” and subsection 4, a parent or guardian shall provide evidence to the school district elementary attendance center or the accredited nonpublic elementary school in which the parent’s or guardian’s child is enrolled that the child was tested for elevated blood lead levels by the age of six according to recommendations provided by the department.

b. The board of directors of each school district and the authorities in charge of each nonpublic school shall, in collaboration with the department, do the following:

(1) Ensure that the parent or guardian of a student enrolled in the school has complied with the requirements of paragraph “a”.

(2) Provide, if the parent or guardian cannot provide evidence that the child received a blood lead test in accordance with paragraph “a”, the parent or guardian with community blood lead testing program information, including contact information for the department.

c. Notwithstanding any other provision to the contrary, nothing in this section shall subject a parent, guardian, or legal custodian of a child of compulsory attendance age to any penalties under chapter 299.

3. The board of directors of each school district and the authorities in charge of each nonpublic school shall furnish the department, in the format specified by the department, within sixty days after the start of the school calendar, a list of the children enrolled in kindergarten. The department shall notify the school districts and nonpublic schools of the children who have not met the blood lead testing requirements set forth in this section

and shall work with the school districts, nonpublic schools, and the local childhood lead poisoning prevention programs to assure that these children are tested as required by this section.

4. The department may waive the requirements of subsection 2 if the department determines that a child is of very low risk for elevated blood lead levels, or if the child's parent or legal guardian submits an affidavit, signed by the parent or legal guardian, stating that the blood lead testing conflicts with a genuine and sincere religious belief.

5. The department shall provide rules adopted pursuant to section 135.102, subsection 7, to local school boards and the authorities in charge of nonpublic schools.

6. The department shall work with health care provider associations to educate health care providers regarding requirements for testing children who are enrolled in certain federally funded programs and regarding department recommendations for testing other children for lead poisoning.

7. The department shall implement blood lead testing for children under six years of age who are not eligible for the testing services to be paid by a third-party source. The department shall contract with one or more public health laboratories to provide blood lead analysis for such children. The department shall establish by rule the procedures for health care providers to submit samples to the contracted public health laboratories for analysis. The department shall also establish by rule a method to reimburse health care providers for drawing blood samples from such children and the dollar amount that the department will reimburse health care providers for the service. The department shall also establish by rule a method to reimburse health care providers for analyzing blood lead samples using a portable blood lead testing instrument and the dollar amount that the department will reimburse health care providers for the service. Payment for blood lead analysis and drawing blood samples shall be limited to the amount appropriated for the program in a fiscal year.

2006 Acts, ch 1184, §79; 2007 Acts, ch 79, §2, 3; 2007 Acts, ch 215, §88; 2008 Acts, ch 1020, §4 – 6; 2008 Acts, ch 1088, §87

Referred to in §135.102, 299.4

Nurse licensure, see chapter 152

Section not amended; footnote deleted

## DIVISION IX

### HEALTHY FAMILIES PROGRAM

#### **135.106 Healthy families programs — HOPES-HFI program.**

1. The Iowa department of public health shall establish a healthy opportunities for parents to experience success (HOPES) – healthy families Iowa (HFI) program to provide services to families and children during the prenatal through preschool years. The program shall be designed to do all of the following:

- a. Promote optimal child health and development.
- b. Improve family coping skills and functioning.
- c. Promote positive parenting skills and intrafamilial interaction.
- d. Prevent child abuse and neglect and infant mortality and morbidity.

2. The HOPES-HFI program shall be developed by the Iowa department of public health, and may be implemented, in whole or in part, by contracting with a nonprofit child abuse prevention organization, local nonprofit certified home health program or other local nonprofit organizations, and shall include, but is not limited to, all of the following components:

a. Identification of barriers to positive birth outcomes, encouragement of collaboration and cooperation among providers of health care, social and human services, and other services to pregnant women and infants, and encouragement of pregnant women and women of childbearing age to seek health care and other services which promote positive birth outcomes.

b. Provision of community-based home-visiting family support to pregnant women and

new parents who are identified through a standardized screening process to be at high risk for problems with successfully parenting their child.

c. Provision by family support workers of individual guidance, information, and access to health care and other services through care coordination and community outreach, including transportation.

d. Provision of systematic screening, prenatally or upon the birth of a child, to identify high-risk families.

e. Interviewing by a HOPES-HFI program worker or hospital social worker of families identified as high risk and encouragement of acceptance of family support services.

f. Provision of services including, but not limited to, home visits, support services, and instruction in child care and development.

g. Individualization of the intensity and scope of services based upon the family's needs, goals, and level of risk.

h. Assistance by a family support worker to participating families in creating a link to a "medical home" in order to promote preventive health care.

i. Evaluation and reporting on the program, including an evaluation of the program's success in reducing participants' risk factors and provision of services and recommendations for changes in or expansion of the program.

j. Provision of continuous follow-up contact with a family served by the program until identified children reach age three or age four in cases of continued high need or until the family attains its individualized goals for health, functioning, and self-sufficiency.

k. Provision or employment of family support workers who have experience as a parent, knowledge of health care services, social and human services, or related community services and have participated in a structured training program.

l. Provision of a training program that meets established standards for the education of family support workers. The structured training program shall include at a minimum the fundamentals of child health and development, dynamics of child abuse and neglect, and principles of effective parenting and parenting education.

m. Provision of crisis child care through utilization of existing child care services to participants in the program.

n. Program criteria shall include a required match of one dollar provided by the organization contracting to deliver services for each two dollars provided by the state grant. This requirement shall not restrict the department from providing unmatched grant funds to communities to plan new or expanded programs for HOPES-HFI. The department shall establish a limit on the amount of administrative costs that can be supported with state funds.

o. Involvement with the community assessment and planning process in the community served by HOPES-HFI programs to enhance collaboration and integration of family support programs.

p. Collaboration, to the greatest extent possible, with other family support programs funded or operated by the state.

q. Utilization of private party, third party, and medical assistance for reimbursement to defray the costs of services provided by the program to the extent possible.

3. It is the intent of the general assembly to provide communities with the discretion and authority to redesign existing local programs and services targeted at and assisting families expecting babies and families with children who are newborn through five years of age. The Iowa department of public health, department of human services, department of education, and other state agencies and programs, as appropriate, shall provide technical assistance and support to communities desiring to redesign their local programs and shall facilitate the consolidation of existing state funding appropriated and made available to the community for family support services. Funds which are consolidated in accordance with this subsection shall be used to support the redesigned service delivery system. In redesigning services, communities are encouraged to implement a single uniform family risk assessment mechanism and shall demonstrate the potential for improved outcomes for children and families. Requests by local communities for the redesigning of services shall be submitted to the Iowa department of public health, department of human services, and department of education, and are subject to the approval of the early childhood Iowa

state board in consultation with the departments, based on the practices utilized with early childhood Iowa areas under chapter 256I.

4. It is the intent of the general assembly that priority for home visitation funding be given to approaches using evidence-based or promising models for home visitation.

92 Acts, 2nd Ex, ch 1001, §419; 97 Acts, ch 138, §1; 98 Acts, ch 1206, §10; 2004 Acts, ch 1086, §35; 2006 Acts, ch 1157, §15; 2010 Acts, ch 1031, §290; 2011 Acts, ch 129, §84, 156

Referred to in §232.69, 2561.13

Section not amended; footnote deleted

## DIVISION X

### RURAL HEALTH AND PRIMARY CARE

#### **135.107 Center for rural health and primary care established — duties.**

1. The center for rural health and primary care is established within the department.

2. The center for rural health and primary care shall do all of the following:

a. Provide technical planning assistance to rural communities and counties exploring innovative means of delivering rural health services through community health services assessment, planning, and implementation, including but not limited to hospital conversions, cooperative agreements among hospitals, physician and health practitioner support, recruitment and retention of primary health care providers, public health services, emergency medical services, medical assistance facilities, rural health care clinics, and alternative means which may be included in the long-term community health services assessment and developmental plan. The center for rural health and primary care shall encourage collaborative efforts of the local boards of health, hospital governing boards, and other public and private entities located in rural communities to adopt a long-term community health services assessment and developmental plan pursuant to rules adopted by the department and perform the duties required of the Iowa department of public health in section 135B.33.

b. Provide technical assistance to assist rural communities in improving Medicare reimbursements through the establishment of rural health clinics, defined pursuant to 42 U.S.C. § 1395x, and distinct part skilled nursing facility beds.

c. Coordinate services to provide research for the following items:

(1) Examination of the prevalence of rural occupational health injuries in the state.

(2) Assessment of training and continuing education available through local hospitals and others relating to diagnosis and treatment of diseases associated with rural occupational health hazards.

(3) Determination of continuing education support necessary for rural health practitioners to diagnose and treat illnesses caused by exposure to rural occupational health hazards.

(4) Determination of the types of actions that can help prevent agricultural accidents.

(5) Surveillance and reporting of disabilities suffered by persons engaged in agriculture resulting from diseases or injuries, including identifying the amount and severity of agricultural-related injuries and diseases in the state, identifying causal factors associated with agricultural-related injuries and diseases, and indicating the effectiveness of intervention programs designed to reduce injuries and diseases.

d. Cooperate with the center for agricultural health and safety established under section 262.78, the center for health effects of environmental contamination established under section 263.17, and the department of agriculture and land stewardship. The agencies shall coordinate programs to the extent practicable.

e. Administer grants for farm safety education efforts directed to rural families for the purpose of preventing farm-related injuries to children.

3. The center for rural health and primary care shall establish a primary care provider recruitment and retention endeavor, to be known as PRIMECARRE. The endeavor shall include a community grant program, a primary care provider loan repayment program, and

a primary care provider community scholarship program. The endeavor shall be developed and implemented in a manner to promote and accommodate local creativity in efforts to recruit and retain health care professionals to provide services in the locality. The focus of the endeavor shall be to promote and assist local efforts in developing health care provider recruitment and retention programs.

*a. Community grant program.*

(1) The center for rural health and primary care shall adopt rules establishing an application process to be used by the center to establish a grant assistance program as provided in this paragraph, and establishing the criteria to be used in evaluating the applications. Selection criteria shall include a method for prioritizing grant applications based on illustrated efforts to meet the health care provider needs of the locality and surrounding area. Such assistance may be in the form of a forgivable loan, grant, or other nonfinancial assistance as deemed appropriate by the center. An application submitted shall contain a commitment of at least a dollar-for-dollar match of the grant assistance. Application may be made for assistance by a single community or group of communities.

(2) Grants awarded under the program shall be subject to the following limitations:

(a) Ten thousand dollars for a single community or region with a population of ten thousand or less. An award shall not be made under this program to a community with a population of more than ten thousand.

(b) An amount not to exceed one dollar per capita for a region in which the population exceeds ten thousand. For purposes of determining the amount of a grant for a region, the population of the region shall not include the population of any community with a population of more than ten thousand located in the region.

*b. Primary care provider loan repayment program.*

(1) A primary care provider loan repayment program is established to increase the number of health professionals practicing primary care in federally designated health professional shortage areas of the state. Under the program, loan repayment may be made to a recipient for educational expenses incurred while completing an accredited health education program directly related to obtaining credentials necessary to practice the recipient's health profession.

(2) The center for rural health and primary care shall adopt rules relating to the establishment and administration of the primary care provider loan repayment program. Rules adopted pursuant to this paragraph shall provide, at a minimum, for all of the following:

(a) Determination of eligibility requirements and qualifications of an applicant to receive loan repayment under the program, including but not limited to years of obligated service, clinical practice requirements, and residency requirements. One year of obligated service shall be provided by the applicant in exchange for each year of loan repayment, unless federal requirements otherwise require. Loan repayment under the program shall not be approved for a health provider whose license or certification is restricted by a medical regulatory authority of any jurisdiction of the United States, other nations, or territories.

(b) Identification of federally designated health professional shortage areas of the state and prioritization of such areas according to need.

(c) Determination of the amount and duration of the loan repayment an applicant may receive, giving consideration to the availability of funds under the program, and the applicant's outstanding educational loans and professional credentials.

(d) Determination of the conditions of loan repayment applicable to an applicant.

(e) Enforcement of the state's rights under a loan repayment program contract, including the commencement of any court action.

(f) Cancellation of a loan repayment program contract for reasonable cause.

(g) Participation in federal programs supporting repayment of loans of health care providers and acceptance of gifts, grants, and other aid or amounts from any person, association, foundation, trust, corporation, governmental agency, or other entity for the purposes of the program.

(h) Upon availability of state funds, determination of eligibility criteria and qualifications

for participating communities and applicants not located in federally designated shortage areas.

(i) Other rules as necessary.

(3) The center for rural health and primary care may enter into an agreement under chapter 28E with the college student aid commission for the administration of this program.

c. *Primary care provider community scholarship program.*

(1) A primary care provider community scholarship program is established to recruit and to provide scholarships to train primary health care practitioners in federally designated health professional shortage areas of the state. Under the program, scholarships may be awarded to a recipient for educational expenses incurred while completing an accredited health education program directly related to obtaining the credentials necessary to practice the recipient's health profession.

(2) The department shall adopt rules relating to the establishment and administration of the primary care provider community scholarship program. Rules adopted pursuant to this paragraph shall provide, at a minimum, for all of the following:

(a) Determination of eligibility requirements and qualifications of an applicant to receive scholarships under the program, including but not limited to years of obligated service, clinical practice requirements, and residency requirements. One year of obligated service shall be provided by the applicant in exchange for each year of scholarship receipt, unless federal requirements otherwise require.

(b) Identification of federally designated health professional shortage areas of the state and prioritization of such areas according to need.

(c) Determination of the amount of the scholarship an applicant may receive.

(d) Determination of the conditions of scholarship to be awarded to an applicant.

(e) Enforcement of the state's rights under a scholarship contract, including the commencement of any court action.

(f) Cancellation of a scholarship contract for reasonable cause.

(g) Participation in federal programs supporting scholarships for health care providers and acceptance of gifts, grants, and other aid or amounts from any person, association, foundation, trust, corporation, governmental agency, or other entity for the purposes of the program.

(h) Upon availability of state funds, determination of eligibility criteria and qualifications for participating communities and applicants not located in federally designated shortage areas.

(i) Other rules as necessary.

(3) The center for rural health and primary care may enter into an agreement under chapter 28E with the college student aid commission for the administration of this program.

4. a. Eligibility under any of the programs established under the primary care provider recruitment and retention endeavor shall be based upon a community health services assessment completed under subsection 2, paragraph "a". A community or region, as applicable, shall submit a letter of intent to conduct a community health services assessment and to apply for assistance under this subsection. The letter shall be in a form and contain information as determined by the center. A letter of intent shall be submitted to the center by January 1 preceding the fiscal year for which an application for assistance is to be made.

b. Assistance under this subsection shall not be granted until such time as the community or region making application has completed the community health services assessment and adopted a long-term community health services assessment and developmental plan. In addition to any other requirements, a developmental plan shall include a clear commitment to informing high school students of the health care opportunities which may be available to such students.

c. The center for rural health and primary care shall seek additional assistance and resources from other state departments and agencies, federal agencies and grant programs, private organizations, and any other person, as appropriate. The center is authorized and directed to accept on behalf of the state any grant or contribution, federal or otherwise, made to assist in meeting the cost of carrying out the purpose of this subsection. All federal grants to and the federal receipts of the center are appropriated for the purpose set forth in

such federal grants or receipts. Funds appropriated by the general assembly to the center for implementation of this subsection shall first be used for securing any available federal funds requiring a state match, with remaining funds being used for the community grant program.

d. The center for rural health and primary care may, to further the purposes of this subsection, provide financial assistance in the form of grants to support the effort of a community which is clearly part of the community's long-term community health services assessment and developmental plan. Efforts for which such grants may be awarded include but are not limited to the procurement of clinical equipment, clinical facilities, and telecommunications facilities, and the support of locum tenens arrangements and primary care provider mentor programs.

5. a. There is established an advisory committee to the center for rural health and primary care consisting of one representative, approved by the respective agency, of each of the following agencies: the department of agriculture and land stewardship, the Iowa department of public health, the department of inspections and appeals, the national institute for rural health policy, the rural health resource center, the institute of agricultural medicine and occupational health, and the Iowa state association of counties. The governor shall appoint two representatives of consumer groups active in rural health issues and a representative of each of two farm organizations active within the state, a representative of an agricultural business in the state, a representative of a critical needs hospital, a practicing rural family physician, a practicing rural physician assistant, a practicing rural advanced registered nurse practitioner, and a rural health practitioner who is not a physician, physician assistant, or advanced registered nurse practitioner, as members of the advisory committee. The advisory committee shall also include as members two state representatives, one appointed by the speaker of the house of representatives and one by the minority leader of the house, and two state senators, one appointed by the majority leader of the senate and one by the minority leader of the senate.

b. The advisory committee shall regularly meet with the administrative head of the center as well as the director of the center for agricultural health and safety established under section 262.78. The head of the center and the director of the center for agricultural health and safety shall consult with the advisory committee and provide the committee with relevant information regarding their agencies.

c. A simple majority of the membership of the advisory committee shall constitute a quorum. Action may be taken by the affirmative vote of a majority of the advisory committee membership.

89 Acts, ch 304, §702; 90 Acts, ch 1207, §1, 2; 90 Acts, ch 1223, §18

C93, §135.13

94 Acts, ch 1168, §2

C95, §135.107

95 Acts, ch 67, §10; 96 Acts, ch 1128, §2, 3; 97 Acts, ch 23, §14; 97 Acts, ch 203, §14; 98 Acts, ch 1100, §15; 2000 Acts, ch 1058, §16, 17; 2000 Acts, ch 1140, §23 – 25; 2000 Acts, ch 1223, §20, 21; 2005 Acts, ch 89, §5; 2009 Acts, ch 41, §41; 2010 Acts, ch 1031, §396; 2010 Acts, ch 1061, §26

Referred to in §262.78, 263.17

Legislative findings; 94 Acts, ch 1168, §1

## DIVISION XI

### DOMESTIC ABUSE DEATH REVIEW TEAM

#### **135.108 Definitions.**

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

1. "Department" means the Iowa department of public health.
2. "Director" means the director of public health.
3. "Domestic abuse death" means a homicide or suicide that involves or is a result of an

assault as defined in section 708.1 and to which any of the following circumstances apply to the parties involved:

- a. The alleged or convicted perpetrator is related to the decedent as spouse, separated spouse, or former spouse.
- b. The alleged or convicted perpetrator resided with the decedent at the time of the assault that resulted in the homicide or suicide.
- c. The alleged or convicted perpetrator and the decedent resided together in the past but did not reside together at the time of the assault that resulted in the homicide or suicide.
- d. The alleged or convicted perpetrator and decedent are parents of the same minor child, whether they were married or lived together at any time.
- e. The alleged or convicted perpetrator was in an ongoing personal relationship with the decedent.
- f. The alleged or convicted perpetrator was arrested for or convicted of stalking or harassing the decedent, or an order or court-approved agreement was entered against the perpetrator under chapter 232, 236, 598, or 915 to restrict contact by the perpetrator with the decedent.
- g. The decedent was related by blood or affinity to an individual who lived in the same household with or was in the workplace or proximity of the decedent, and that individual was threatened with assault by the perpetrator.

4. “*Team*” means the domestic abuse death review team established in section 135.109.

2000 Acts, ch 1136, §1

Referred to in §135.112

#### **135.109 Iowa domestic abuse death review team membership.**

1. An Iowa domestic abuse death review team is established as an independent agency of state government.
2. The department shall provide staffing and administrative support to the team.
3. The team shall include the following members:
  - a. The state medical examiner or the state medical examiner’s designee.
  - b. A licensed physician or nurse who is knowledgeable concerning domestic abuse injuries and deaths, including suicides.
  - c. A licensed mental health professional who is knowledgeable concerning domestic abuse.
  - d. A representative or designee of the Iowa coalition against domestic violence.
  - e. A certified or licensed professional who is knowledgeable concerning substance abuse.
  - f. A law enforcement official who is knowledgeable concerning domestic abuse.
  - g. A law enforcement investigator experienced in domestic abuse investigation.
  - h. An attorney experienced in prosecuting domestic abuse cases.
  - i. A judicial officer appointed by the chief justice of the supreme court.
  - j. A clerk of the district court appointed by the chief justice of the supreme court.
  - k. An employee or subcontractor of the department of corrections who is a trained batterers’ education program facilitator.
  - l. An attorney licensed in this state who provides criminal defense assistance or child custody representation, and who has experience in dissolution of marriage proceedings.
  - m. Both a female and a male victim of domestic abuse.
  - n. A family member of a decedent whose death resulted from domestic abuse.
4. The following individuals shall each designate a liaison to assist the team in fulfilling the team’s duties:
  - a. The attorney general.
  - b. The director of the Iowa department of corrections.
  - c. The director of public health.
  - d. The director of human services.
  - e. The commissioner of public safety.
  - f. The administrator of the bureau of vital records of the Iowa department of public health.
  - g. The director of the department of education.
  - h. The state court administrator.

- i. The director of the department of human rights.
- j. The director of the state law enforcement academy.
- 5. a. The director of public health, in consultation with the attorney general, shall appoint review team members who are not designated by another appointing authority.
- b. A membership vacancy shall be filled in the same manner as the original appointment.
- c. The membership of the review team is subject to the provisions of sections 69.16 and 69.16A, relating to political affiliation and gender balance.
- d. A member of the team may be reappointed to serve additional terms on the team, subject to the provisions of chapter 69.
- 6. Membership terms shall be three-year staggered terms.
- 7. Members of the team are eligible for reimbursement of actual and necessary expenses incurred in the performance of their official duties.
- 8. Team members and their agents are immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of any act, omission, proceeding, decision, or determination undertaken or performed, or recommendation made as a team member or agent provided that the team members or agents acted reasonably and in good faith and without malice in carrying out their official duties in their official capacity. A complainant bears the burden of proof in establishing malice or unreasonableness or lack of good faith in an action brought against team members involving the performance of their duties and powers.

2000 Acts, ch 1136, §2; 2006 Acts, ch 1184, §80, 81

Referred to in §135.108, 135.112, 216A.133A

### **135.110 Iowa domestic abuse death review team powers and duties.**

- 1. The review team shall perform the following duties:
  - a. Prepare a biennial report for the governor, supreme court, attorney general, and the general assembly concerning the following subjects:
    - (1) The causes and manner of domestic abuse deaths, including an analysis of factual information obtained through review of domestic abuse death certificates and domestic abuse death data, including patient records and other pertinent confidential and public information concerning domestic abuse deaths.
    - (2) The contributing factors of domestic abuse deaths.
    - (3) Recommendations regarding the prevention of future domestic abuse deaths, including actions to be taken by communities, based on an analysis of these contributing factors.
  - b. Advise and consult the agencies represented on the team and other state agencies regarding program and regulatory changes that may prevent domestic abuse deaths.
  - c. Develop protocols for domestic abuse death investigations and team review.
- 2. In performing duties pursuant to subsection 1, the review team shall review the relationship between the decedent victim and the alleged or convicted perpetrator from the point where the abuse allegedly began, until the domestic abuse death occurred, and shall review all relevant documents pertaining to the relationship between the parties, including but not limited to protective orders and dissolution, custody, and support agreements and related court records, in order to ascertain whether a correlation exists between certain events in the relationship and any escalation of abuse, and whether patterns can be established regarding such events in relation to domestic abuse deaths in general. The review team shall consider such conclusions in making recommendations pursuant to subsection 1.
- 3. The team shall meet upon the call of the chairperson, upon the request of a state agency, or as determined by a majority of the team.
- 4. The team shall annually elect a chairperson and other officers as deemed necessary by the team.
- 5. The team may establish committees or panels to whom the team may assign some or all of the team's responsibilities.
- 6. Members of the team who are currently practicing attorneys or current employees of the judicial branch of state government shall not participate in the following:

a. An investigation by the team that involves a case in which the team member is presently involved in the member’s professional capacity.

b. Development of protocols by the team for domestic abuse death investigations and team review.

c. Development of regulatory changes related to domestic abuse deaths.

2000 Acts, ch 1136, §3; 2000 Acts, ch 1232, §48; 2002 Acts, ch 1119, §131; 2006 Acts, ch 1184, §82

Referred to in §135.112

**135.111 Confidentiality of domestic abuse death records.**

1. A person in possession or control of medical, investigative, or other information pertaining to a domestic abuse death and related incidents and events preceding the domestic abuse death, shall allow for the inspection and review of written or photographic information related to the death, whether the information is confidential or public in nature, by the department upon the request of the department and the team, to be used only in the administration and for the official duties of the team. Information and records produced under this section that are confidential under the law of this state or under federal law, or because of any legally recognized privilege, and information or records received from the confidential records, remain confidential under this section.

2. A person does not incur legal liability by reason of releasing information to the department as required under and in compliance with this section.

3. A person who releases or discloses confidential data, records, or any other type of information in violation of this section is guilty of a serious misdemeanor.

2000 Acts, ch 1136, §4

Referred to in §135.112

**135.112 Rulemaking.**

The department shall adopt rules pursuant to chapter 17A relating to the administration of the domestic abuse death review team and sections 135.108 through 135.111.

2000 Acts, ch 1136, §5

**135.113 through 135.117** Reserved.

DIVISION XII

CHILD PROTECTION —

CHILD PROTECTION CENTER GRANTS

— SHAKEN BABY SYNDROME PREVENTION

**135.118 Child protection center grant program.**

1. A child protection center grant program is established in the Iowa department of public health in accordance with this section. The director of public health shall establish requirements for the grant program and shall award grants. A grant may be used for establishment of a new center or for support of an existing center.

2. The eligibility requirements for a child protection center grant shall include but are not limited to all of the following:

a. A grantee must meet or be in the process of meeting the standards established by the national children’s alliance for children’s advocacy centers.

b. A grantee must have in place an interagency memorandum of understanding regarding participation in the operation of the center and for coordinating the activities of the government entities that respond to cases of child abuse in order to facilitate the appropriate disposition of child abuse cases through the juvenile and criminal justice systems. Agencies participating under the memorandum must include the following that are operating in the area served by the grantee:

- (1) Department of human services county offices assigned to child protection.
- (2) County and municipal law enforcement agencies.

(3) Office of the county attorney.

(4) Other government agencies involved with child abuse assessments or service provision.

c. The interagency memorandum must provide for a cooperative team approach to responding to child abuse, reducing the number of interviews required of a victim of child abuse, and establishing an approach that emphasizes the best interest of the child and that provides investigation, assessment, and rehabilitative services.

d. As necessary to address serious cases of child abuse such as those involving sexual abuse, serious physical abuse, and substance abuse, a grantee must be able to involve or consult with persons from various professional disciplines who have training and expertise in addressing special types of child abuse. These persons may include but are not limited to physicians and other health care professionals, mental health professionals, social workers, child protection workers, attorneys, juvenile court officers, public health workers, child development experts, child educators, and child advocates.

3. The director shall create a committee to consider grant proposals and to make grant recommendations to the director. The committee membership may include but is not limited to representatives of the following: departments of human services, justice, and public health, Iowa medical society, Iowa hospital association, Iowa nurses association, and an association representing social workers.

4. Implementation of the grant program is subject to the availability of funding for the grant program.

2001 Acts, ch 166, §1

#### **135.119 Shaken baby syndrome prevention program.**

1. For the purposes of this section:

a. “*Birth center*” and “*birthing hospital*” mean the same as defined in section 135.131.

b. “*Child care provider*” means the same as a child care facility, as defined in section 237A.1, that is providing child care to a child who is newborn through age three.

c. “*Family support program*” means a program offering instruction and support for families in which home visitation is the primary service delivery mechanism.

d. “*Parent*” means the same as “*custodian*”, “*guardian*”, or “*parent*”, as defined in section 232.2, of a child who is newborn through age three.

e. “*Person responsible for the care of a child*” means the same as defined in section 232.68, except that it is limited to persons responsible for the care of a child who is newborn through age three.

f. “*Shaken baby syndrome*” means the collection of signs and symptoms resulting from the vigorous shaking of a child who is three years of age or younger. Shaken baby syndrome may result in bleeding inside the child’s head and may cause one or more of the following conditions: irreversible brain damage; blindness, retinal hemorrhage, or eye damage; cerebral palsy; hearing loss; spinal cord injury, including paralysis; seizures; learning disability; central nervous system injury; closed head injury; rib fracture; subdural hematoma; or death. Shaken baby syndrome also includes the symptoms included in the diagnosis code for shaken infant syndrome utilized by Iowa hospitals.

2. a. The department shall establish a statewide shaken baby syndrome prevention program to educate parents and persons responsible for the care of a child about the dangers to children three years of age or younger caused by shaken baby syndrome and to discuss ways to reduce the syndrome’s risks. The program plan shall allow for voluntary participation by parents and persons responsible for the care of a child.

b. The program plan shall describe strategies for preventing shaken baby syndrome by providing education and support to parents and persons responsible for the care of a child and shall identify multimedia resources, written materials, and other resources that can assist in providing the education and support.

c. The department shall consult with experts with experience in child abuse prevention, child health, and parent education in developing the program plan.

d. The program plan shall incorporate a multiyear, collaborative approach for implementation of the plan. The plan shall address how to involve those who regularly work

with parents and persons responsible for the care of a child, including but not limited to child abuse prevention programs, child care resource and referral programs, child care providers, family support programs, programs receiving funding through the early childhood Iowa initiative, public and private schools, health care providers, local health departments, birth centers, and birthing hospitals.

e. The program plan shall identify the methodology to be used for improving the tracking of shaken baby syndrome incidents and for evaluating the effectiveness of the plan's education and support efforts.

f. The program plan shall describe how program results will be reported.

g. The program plan may provide for implementation of the program through a contract with a private agency or organization experienced in furnishing the services set forth in the program plan.

3. The department shall implement the program plan to the extent of the amount appropriated or made available for the program for a fiscal year.

2009 Acts, ch 7, §1; 2010 Acts, ch 1031, §291

### DIVISION XIII

#### TAXATION OF ORGANIZED DELIVERY SYSTEMS

##### **135.120 Taxation of organized delivery systems.**

Payments received by an organized delivery system licensed by the director for health care services, insurance, indemnity, or other benefits to which an enrollee is entitled through an organized delivery system authorized under 1993 Iowa Acts, ch. 158, and payments by an organized delivery system licensed by the director to providers for health care services, to insurers, or corporations authorized under chapter 514 for insurance, indemnity, or other service benefits authorized under 1993 Iowa Acts, ch. 158, are not premiums received and taxable under the provisions of section 432.1 for the first five years of the existence of the organized delivery system, its successors or assigns, or the first five years after July 1, 1996, whichever is the later. After the first five years, the payments received shall be considered premiums received and shall be taxable under the provisions of section 432.1, subsection 1. However, payments made by the United States secretary of health and human services under contracts issued under section 1833 or 1876 of the federal Social Security Act, section 4015 of the federal Omnibus Budget Reconciliation Act of 1987, or chapter 249A for enrolled members shall not be considered premiums received and shall not be taxable under section 432.1.

96 Acts, ch 1146, §1; 2002 Acts, ch 1158, §1

**135.121 through 135.129** Reserved.

### DIVISION XIV

#### SUBSTANCE ABUSE TREATMENT FACILITY FOR PERSONS ON PROBATION

##### **135.130 Substance abuse treatment facility for persons on probation.**

1. The director shall establish and operate a facility for the purpose of providing a structured treatment program for persons with a substance abuse problem who are on probation and under the supervision of a judicial district department of correctional services. The department shall enter into an agreement pursuant to chapter 28E with the department of corrections for assistance in establishing security for the facility. The department, in consultation with the department of corrections, shall adopt rules pursuant to chapter 17A to administer this section. The rules adopted shall include rules related to the treatment requirements of the program.

2. A substance abuse treatment facility advisory council is established within the department to advise and make recommendations to the director regarding the establishment and operation of a facility for persons with a substance abuse problem who are on probation and to assist with the implementation of treatment programs that are proven to be effective for offenders. The substance abuse treatment facility advisory council shall consist of the directors of the eight judicial district departments of correctional services and one representative each from the judicial branch, the Iowa department of public health, the department of corrections, and the governor's office of drug control policy.

3. The department, in consultation with the department of corrections and the advisory council, shall adopt rules pursuant to chapter 17A to establish and operate the facility.

2001 Acts, ch 184, §7

Referred to in §135.11, 901B.1

## DIVISION XV

### NEWBORN AND INFANT HEARING SCREENING

#### **135.131 Universal newborn and infant hearing screening.**

1. For the purposes of this section, unless the context otherwise requires:
  - a. "Birth center" means birth center as defined in section 135.61.
  - b. "Birthing hospital" means a private or public hospital licensed pursuant to chapter 135B that has a licensed obstetric unit or is licensed to provide obstetric services.
2. All newborns and infants born in this state shall be screened for hearing loss in accordance with this section. The person required to perform the screening shall use at least one of the following procedures:
  - a. Automated or diagnostic auditory brainstem response.
  - b. Otoacoustic emissions.
  - c. Any other technology approved by the department.
3.
  - a. A birthing hospital shall screen every newborn delivered in the hospital for hearing loss prior to discharge of the newborn from the birthing hospital. A birthing hospital that transfers a newborn for acute care prior to completion of the hearing screening shall notify the receiving facility of the status of the hearing screening. The receiving facility shall be responsible for completion of the newborn hearing screening.
  - b. The birthing hospital or other facility completing the hearing screening under this subsection shall report the results of the screening to the parent or guardian of the newborn and to the department in a manner prescribed by rule of the department. The birthing hospital or other facility shall also report the results of the hearing screening to the primary care provider of the newborn or infant upon discharge from the birthing hospital or other facility. If the newborn or infant was not tested prior to discharge, the birthing hospital or other facility shall report the status of the hearing screening to the primary care provider of the newborn or infant.
4. A birth center shall refer the newborn to a licensed audiologist, physician, or hospital for screening for hearing loss prior to discharge of the newborn from the birth center. The hearing screening shall be completed within thirty days following discharge of the newborn. The person completing the hearing screening shall report the results of the screening to the parent or guardian of the newborn and to the department in a manner prescribed by rule of the department. Such person shall also report the results of the screening to the primary care provider of the newborn.
5. If a newborn is delivered in a location other than a birthing hospital or a birth center, the physician or other health care professional who undertakes the pediatric care of the newborn or infant shall ensure that the hearing screening is performed within three months of the date of the newborn's or infant's birth. The physician or other health care professional shall report the results of the hearing screening to the parent or guardian of the newborn or infant, to the

primary care provider of the newborn or infant, and to the department in a manner prescribed by rule of the department.

6. A birthing hospital, birth center, physician, or other health care professional required to report information under subsection 3, 4, or 5 shall report all of the following information to the department relating to a newborn's or infant's hearing screening, as applicable:

a. The name, address, and telephone number, if available, of the mother of the newborn or infant.

b. The primary care provider at the time of the newborn's or infant's discharge from the birthing hospital or birth center.

c. The results of the hearing screening.

d. Any rescreenings and the diagnostic audiological assessment procedures used.

e. Any known risk indicators for hearing loss of the newborn or infant.

f. Other information specified in rules adopted by the department.

7. The department may share information with agencies and persons involved with newborn and infant hearing screenings, follow-up, and intervention services, including the local birth-to-three coordinator or similar agency, the local area education agency, and local health care providers. The department shall adopt rules to protect the confidentiality of the individuals involved.

8. An audiologist who provides services addressed by this section shall conduct diagnostic audiological assessments of newborns and infants in accordance with standards specified in rules adopted by the department. The audiologist shall report all of the following information to the department relating to a newborn's or infant's hearing, follow-up, diagnostic audiological assessment, and intervention services, as applicable:

a. The name, address, and telephone number, if available, of the mother of the newborn or infant.

b. The results of the hearing screening and any rescreenings, including the diagnostic audiological assessment procedures used.

c. The nature of any follow-up or other intervention services provided to the newborn or infant.

d. Any known risk indicators for hearing loss of the newborn or infant.

e. Other information specified in rules adopted by the department.

9. This section shall not apply if the parent objects to the screening. If a parent objects to the screening, the birthing hospital, birth center, physician, or other health care professional required to report information under subsection 3, 4, or 5 to the department shall obtain a written refusal from the parent, shall document the refusal in the newborn's or infant's medical record, and shall report the refusal to the department in the manner prescribed by rule of the department.

10. A person who acts in good faith in complying with this section shall not be civilly or criminally liable for reporting the information required to be reported by this section.

2003 Acts, ch 102, §1; 2009 Acts, ch 37, §3

Referred to in §135.119, 135B.18A

## DIVISION XVI

### INTERAGENCY PHARMACEUTICALS BULK PURCHASING COUNCIL

#### **135.132 Interagency pharmaceuticals bulk purchasing council.**

1. For the purposes of this section, "*interagency pharmaceuticals bulk purchasing council*" or "*council*" means the interagency pharmaceuticals bulk purchasing council created in this section.

2. An interagency pharmaceuticals bulk purchasing council is created within the Iowa department of public health. The department shall provide staff support to the council and the department of pharmaceutical care of the university of Iowa hospitals and clinics shall act

in an advisory capacity to the council. The council shall be composed of all of the following members:

- a. The director of public health, or the director's designee.
  - b. The director of human services, or the director's designee.
  - c. The director of the department of administrative services, or the director's designee.
  - d. A representative of the state board of regents.
  - e. The director of the department of corrections, or the director's designee.
  - f. The director, or the director's designee, of any other agency that purchases pharmaceuticals designated to be included as a member by the director of public health.
3. The council shall select a chairperson annually from its membership. A majority of the members of the council shall constitute a quorum.
4. The council shall do all of the following:
- a. Develop procedures that member agencies must follow in purchasing pharmaceuticals. However, a member agency may elect not to follow the council's procedures if the agency is able to purchase the pharmaceuticals for a lower price than the price available through the council. An agency that does not follow the council's procedures shall report all of the following to the council:
    - (1) The purchase price for the pharmaceuticals.
    - (2) The name of the wholesaler, retailer, or manufacturer selling the pharmaceuticals.
  - b. Designate a member agency as the central purchasing agency for purchasing of pharmaceuticals.
  - c. Use existing distribution networks, including wholesale and retail distributors, to distribute the pharmaceuticals.
  - d. Investigate options that maximize purchasing power, including expanding purchasing under the medical assistance program, qualifying for participation in purchasing programs under 42 U.S.C. § 256b, as amended, and utilizing rebate programs, hospital disproportionate share purchasing, multistate purchasing alliances, and health department and federally qualified health center purchasing.
  - e. In collaboration with the department of pharmaceutical care of the university of Iowa hospitals and clinics, make recommendations to member agencies regarding drug utilization review, prior authorization, the use of restrictive formularies, the use of mail order programs, and copayment structures. This paragraph shall not apply to the medical assistance program but only to the operations of the member agencies.
5. The central purchasing agency may enter into agreements with a local governmental entity to purchase pharmaceuticals for the local governmental entity.
6. The council shall develop procedures under which the council may disclose information relating to the prices manufacturers or wholesalers charge for pharmaceuticals by category of pharmaceutical. The procedure shall prohibit the council from disclosing information that identifies a specific manufacturer or wholesaler or the prices charged by a specific manufacturer or wholesaler for a specific pharmaceutical.

2003 Acts, ch 112, §1; 2003 Acts, ch 145, §286

**135.133 through 135.139** Reserved.

## DIVISION XVII DISASTER PREPAREDNESS

### **135.140 Definitions.**

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

1. "*Bioterrorism*" means the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism.

2. “*Department*” means the Iowa department of public health.
3. “*Director*” means the director of public health or the director’s designee.
4. “*Disaster*” means disaster as defined in section 29C.2.
5. “*Division*” means the division of acute disease prevention and emergency response of the department.
6. “*Public health disaster*” means a state of disaster emergency proclaimed by the governor in consultation with the department pursuant to section 29C.6 for a disaster which specifically involves an imminent threat of an illness or health condition that meets any of the following conditions of paragraphs “a” and “b”:
  - a. Is reasonably believed to be caused by any of the following:
    - (1) Bioterrorism or other act of terrorism.
    - (2) The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin.
    - (3) A chemical attack or accidental release.
    - (4) An intentional or accidental release of radioactive material.
    - (5) A nuclear or radiological attack or accident.
    - (6) A natural occurrence or incident, including but not limited to fire, flood, storm, drought, earthquake, tornado, or windstorm.
    - (7) A man-made occurrence or incident, including but not limited to an attack, spill, or explosion.
  - b. Poses a high probability of any of the following:
    - (1) A large number of deaths in the affected population.
    - (2) A large number of serious or long-term disabilities in the affected population.
    - (3) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of the affected population.
    - (4) Short-term or long-term physical or behavioral health consequences to a large number of the affected population.
7. “*Public health response team*” means a team of professionals, including licensed health care providers, nonmedical professionals skilled and trained in disaster or emergency response, and public health practitioners, which is sponsored by a hospital or other entity and approved by the department to provide disaster assistance in the event of a disaster or threatened disaster.

2003 Acts, ch 33, §1, 11; 2003 Acts, ch 179, §64; 2005 Acts, ch 89, §6, 7; 2006 Acts, ch 1184, §83; 2009 Acts, ch 37, §4, 5

Referred to in §29C.6, 135M.1, 135M.3, 135M.4, 137.116, 139A.2

### **135.141 Division of acute disease prevention and emergency response — establishment — duties of department.**

1. A division of acute disease prevention and emergency response is established within the department. The division shall coordinate the administration of this division of this chapter with other administrative divisions of the department and with federal, state, and local agencies and officials.
2. The department shall do all of the following:
  - a. Coordinate with the department of homeland security and emergency management the administration of emergency planning matters which involve the public health, including development, administration, and execution of the public health components of the comprehensive emergency plan and emergency management program pursuant to section 29C.8.
  - b. Coordinate with federal, state, and local agencies and officials, and private agencies, organizations, companies, and persons, the administration of emergency planning, response, and recovery matters that involve the public health.
  - c. Conduct and maintain a statewide risk assessment of any present or potential danger to the public health from biological agents.
  - d. If a public health disaster exists, or if there is reasonable cause to believe that a public health disaster is imminent, conduct a risk assessment of any present or potential danger to the public health from chemical, radiological, or other potentially dangerous agents.

e. For the purpose of paragraphs “c” and “d”, an employee or agent of the department may enter into and examine any premises containing potentially dangerous agents with the consent of the owner or person in charge of the premises or, if the owner or person in charge of the premises refuses admittance, with an administrative search warrant obtained under section 808.14. Based on findings of the risk assessment and examination of the premises, the director may order reasonable safeguards or take any other action reasonably necessary to protect the public health pursuant to rules adopted to administer this subsection.

f. Coordinate the location, procurement, storage, transportation, maintenance, and distribution of medical supplies, drugs, antidotes, and vaccines to prepare for or in response to a public health disaster, including receiving, distributing, and administering items from the strategic national stockpile program of the centers for disease control and prevention of the United States department of health and human services.

g. Conduct or coordinate public information activities regarding emergency and disaster planning, response, and recovery matters that involve the public health.

h. Apply for and accept grants, gifts, or other funds to be used for programs authorized by this division of this chapter.

i. Establish and coordinate other programs or activities as necessary for the prevention, detection, management, and containment of public health disasters, and for the recovery from such disasters.

j. Adopt rules pursuant to chapter 17A for the administration of this division of this chapter including rules adopted in cooperation with the Iowa pharmacy association and the Iowa hospital association for the development of a surveillance system to monitor supplies of drugs, antidotes, and vaccines to assist in detecting a potential public health disaster. Prior to adoption, the rules shall be approved by the state board of health and the director of the department of homeland security and emergency management.

2003 Acts, ch 33, §2, 11; 2003 Acts, ch 179, §157; 2005 Acts, ch 89, §8; 2009 Acts, ch 37, §6; 2009 Acts, ch 41, §42; 2012 Acts, ch 1021, §45; 2013 Acts, ch 29, §45

Subsection 2, paragraphs a and j amended

### **135.142 Health care supplies.**

1. The department may purchase and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies as deemed advisable in the interest of preparing for or controlling a public health disaster.

2. If a public health disaster exists or there is reasonable cause to believe that a public health disaster is imminent and if the public health disaster or belief that a public health disaster is imminent results in a statewide or regional shortage or threatened shortage of any product described under subsection 1, whether or not such product has been purchased by the department, the department may control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of the relevant product necessary to protect the public health, safety, and welfare of the people of this state. The department shall collaborate with persons who have control of the products when reasonably possible.

3. In making rationing or other supply and distribution decisions, the department shall give preference to health care providers, disaster response personnel, and mortuary staff.

4. During a public health disaster, the department may procure, store, or distribute any antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies located within the state as may be reasonable and necessary to respond to the public health disaster, and may take immediate possession of these pharmaceutical agents and supplies. If a public health disaster affects more than one state, this section shall not be construed to allow the department to obtain antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies for the primary purpose of hoarding such items or preventing the fair and equitable distribution of these pharmaceutical and medical supplies among affected states. The department shall collaborate with affected states and persons when reasonably possible.

5. The state shall pay just compensation to the owner of any product lawfully taken or appropriated by the department for the department’s temporary or permanent use in

accordance with this section. The amount of compensation shall be limited to the costs incurred by the owner to procure the item.

2003 Acts, ch 33, §3, 11; 2004 Acts, ch 1086, §34

#### **135.143 Public health response teams.**

1. The department shall approve public health response teams to supplement and support disrupted or overburdened local medical and public health personnel, hospitals, and resources. Assistance shall be rendered under the following circumstances:

a. At or near the site of a disaster or threatened disaster by providing direct medical care to victims or providing other support services.

b. If local medical or public health personnel or hospitals request the assistance of a public health response team to provide direct medical care to victims or to provide other support services in relation to any of the following incidents:

(1) During an incident resulting from a novel or previously controlled or eradicated infectious agent, disease, or biological toxin.

(2) After a chemical attack or accidental chemical release.

(3) After an intentional or accidental release of radioactive material.

(4) In response to a nuclear or radiological attack or accident.

(5) Where an incident poses a high probability of a large number of deaths or long-term disabilities in the affected population.

(6) During or after a natural occurrence or incident, including but not limited to fire, flood, storm, drought, earthquake, tornado, or windstorm.

(7) During or after a man-made occurrence or incident, including but not limited to an attack, spill, or explosion.

2. The department shall provide by rule a process for registration and approval of public health response team members and sponsor entities and shall authorize specific public health response teams, which may include but are not limited to disaster assistance teams and environmental health response teams. The department may expedite the registration and approval process during a disaster, threatened disaster, or other incident described in subsection 1.

3. A member of a public health response team acting pursuant to this division of this chapter shall be considered an employee of the state under section 29C.21 and chapter 669, shall be afforded protection as an employee of the state under section 669.21, and shall be considered an employee of the state for purposes of workers' compensation, disability, and death benefits, provided that the member has done all of the following:

a. Registered with and received approval to serve on a public health response team from the department.

b. Provided direct medical care or other support services during a disaster, threatened disaster, or other incident described in subsection 1; or participated in a training exercise to prepare for a disaster or other incident described in subsection 1.

4. The department shall provide the department of administrative services with a list of individuals who have registered with and received approval from the department to serve on a public health response team. The department shall update the list on a quarterly basis, or as necessary for the department of administrative services to determine eligibility for coverage.

5. Upon notification of a compensable loss, the department of administrative services shall seek authorization from the executive council to pay as an expense from the appropriations addressed in section 7D.29 those costs associated with covered workers' compensation benefits.

2003 Acts, ch 33, §4, 11; 2003 Acts, ch 145, §286; 2005 Acts, ch 89, §9; 2009 Acts, ch 37, §7, 8; 2011 Acts, ch 131, §25, 158

Referred to in §29C.20

#### **135.144 Additional duties of the department related to a public health disaster.**

If a public health disaster exists, the department, in conjunction with the governor, may do any of the following:

1. Decontaminate or cause to be decontaminated, to the extent reasonable and necessary

to address the public health disaster, any facility or material if there is cause to believe the contaminated facility or material may endanger the public health.

2. Adopt and enforce measures to provide for the identification and safe disposal of human remains, including performance of postmortem examinations, transportation, embalming, burial, cremation, interment, disinterment, and other disposal of human remains. To the extent possible, religious, cultural, family, and individual beliefs of the deceased person or the deceased person's family shall be considered when disposing of any human remains.

3. Take reasonable measures as necessary to prevent the transmission of infectious disease and to ensure that all cases of communicable disease are properly identified, controlled, and treated.

4. Take reasonable measures as necessary to ensure that all cases of chemical, biological, and radiological contamination are properly identified, controlled, and treated.

5. Order physical examinations and tests and collect specimens as necessary for the diagnosis or treatment of individuals, to be performed by any qualified person authorized to do so by the department. An examination or test shall not be performed or ordered if the examination or test is reasonably likely to lead to serious harm to the affected individual. The department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any individual whose refusal of medical examination or testing results in uncertainty regarding whether the individual has been exposed to or is infected with a communicable or potentially communicable disease or otherwise poses a danger to public health.

6. Vaccinate or order that individuals be vaccinated against an infectious disease and to prevent the spread of communicable or potentially communicable disease. Vaccinations shall be administered by any qualified person authorized to do so by the department. The vaccination shall not be provided or ordered if it is reasonably likely to lead to serious harm to the affected individual. To prevent the spread of communicable or potentially communicable disease, the department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any person who is unable or unwilling to undergo vaccination pursuant to this subsection.

7. Treat or order that individuals exposed to or infected with disease receive treatment or prophylaxis. Treatment or prophylaxis shall be administered by any qualified person authorized to do so by the department. Treatment or prophylaxis shall not be provided or ordered if the treatment or prophylaxis is reasonably likely to lead to serious harm to the affected individual. To prevent the spread of communicable or potentially communicable disease, the department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any individual who is unable or unwilling to undergo treatment or prophylaxis pursuant to this section.

8. Isolate or quarantine individuals or groups of individuals pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter.

9. Inform the public when a public health disaster has been declared or terminated, about protective measures to take during the disaster, and about actions being taken to control the disaster.

10. Accept grants and loans from the federal government pursuant to section 29C.6 or available provisions of federal law.

11. If a public health disaster or other public health emergency situation exists which poses an imminent threat to the public health, safety, and welfare, the department, in conjunction with the governor, may provide financial assistance, from funds appropriated to the department that are not otherwise encumbered, to political subdivisions as needed to alleviate the disaster or the emergency. If the department does not have sufficient unencumbered funds, the governor may request the executive council to authorize the payment of up to one million dollars as an expense from the appropriations addressed in section 7D.29 to alleviate the disaster or the emergency. If additional financial assistance is required in excess of one million dollars, approval by the legislative council is also required.

12. Temporarily reassign department employees for purposes of response and recovery efforts, to the extent such employees consent to the reassignments.

13. Order, in conjunction with the department of education, temporary closure of any

public school or nonpublic school, as defined in section 280.2, to prevent or control the transmission of a communicable disease as defined in section 139A.2.

2003 Acts, ch 33, §5, 11; 2003 Acts, ch 179, §65; 2004 Acts, ch 1097, §1; 2005 Acts, ch 19, §32; 2009 Acts, ch 37, §9; 2010 Acts, ch 1088, §1; 2011 Acts, ch 131, §26, 158

#### **135.145 Information sharing.**

1. When the department of public safety or other federal, state, or local law enforcement agency learns of a case of a disease or health condition, unusual cluster, or a suspicious event that may be the cause of a public health disaster, the department or agency shall immediately notify the department, the director of the department of homeland security and emergency management, the department of agriculture and land stewardship, and the department of natural resources as appropriate.

2. When the department learns of a case of a disease or health condition, an unusual cluster, or a suspicious event that may be the cause of a public health disaster, the department shall immediately notify the department of public safety, the department of homeland security and emergency management, and other appropriate federal, state, and local agencies and officials.

3. Sharing of information on diseases, health conditions, unusual clusters, or suspicious events between the department and public safety authorities and other governmental agencies shall be restricted to sharing of only the information necessary for the prevention, control, and investigation of a public health disaster.

4. Release of information pursuant to this section shall be consistent with the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

2003 Acts, ch 33, §6, 11; 2003 Acts, ch 179, §157; 2006 Acts, ch 1079, §1; 2013 Acts, ch 29, §46

Communicable and infectious diseases and poisonings, see chapter 139A  
Subsections 1 and 2 amended

#### **135.146 First responder vaccination program.**

1. In the event that federal funding is received for administering vaccinations for first responders, the department shall offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. For purposes of this section, “*first responder*” means state and local law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to sites of bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, and other disasters. The vaccinations shall include, but not be limited to, vaccinations for hepatitis B, diphtheria, tetanus, influenza, and other vaccinations when recommended by the United States public health service and in accordance with federal emergency management agency policy. Immune globulin will be made available when necessary.

2. Participation in the vaccination program shall be voluntary, except for first responders who are classified as having occupational exposure to blood-borne pathogens as defined by the occupational safety and health administration standard contained in 29 C.F.R. § 1910.1030. First responders who are so classified shall be required to receive the vaccinations as described in subsection 1. A first responder shall be exempt from this requirement, however, when a written statement from a licensed physician is presented indicating that a vaccine is medically contraindicated for that person or the first responder signs a written statement that the administration of a vaccination conflicts with religious tenets.

3. The department shall establish first responder notification procedures regarding the existence of the program by rule, and shall develop, and distribute to first responders, educational materials on methods of preventing exposure to infectious diseases. In administering the program, the department may contract with county and local health departments, not-for-profit home health care agencies, hospitals, physicians, and military unit clinics.

2004 Acts, ch 1012, §1, 2; 2005 Acts, ch 3, §31

**135.147 Immunity for emergency aid — exceptions.**

1. A person, corporation, or other legal entity, or an employee or agent of such person, corporation, or entity, who, during a public health disaster, in good faith and at the request of or under the direction of the department or the department of public defense renders emergency care or assistance to a victim of the public health disaster shall not be liable for civil damages for causing the death of or injury to a person, or for damage to property, unless such acts or omissions constitute recklessness.

2. The immunities provided in this section shall not apply to any person, corporation, or other legal entity, or an employee or agent of such person, corporation, or entity, whose act or omission caused in whole or in part the public health disaster and who would otherwise be liable therefor.

2007 Acts, ch 159, §21

**135.148 and 135.149** Reserved.

## DIVISION XVIII

## GAMBLING TREATMENT PROGRAM

**135.150 Gambling treatment program — standards and licensing.**

1. *a.* The department shall operate a gambling treatment program to provide programs which may include but are not limited to outpatient and follow-up treatment for persons affected by problem gambling, rehabilitation and residential treatment programs, information and referral services, crisis call access, education and preventive services, and financial management and credit counseling services.

*b.* A person shall not maintain or conduct a gambling treatment program funded through the department unless the person has obtained a license for the program from the department. The department shall adopt rules to establish standards for the licensing and operation of gambling treatment programs under this section. The rules shall specify, but are not limited to specifying, the qualifications for persons providing gambling treatment services, standards for the organization and administration of gambling treatment programs, and a mechanism to monitor compliance with this section and the rules adopted under this section.

2. The department shall report semiannually to the general assembly's standing committees on government oversight regarding the operation of the gambling treatment program. The report shall include but is not limited to information on the moneys expended and grants awarded for operation of the gambling treatment program.

2004 Acts, ch 1136, §55; 2005 Acts, ch 175, §77; 2009 Acts, ch 182, §106; 2010 Acts, ch 1069, §15

Department of public health to continue to implement a process for creation of a system for uniform delivery of gambling and substance abuse treatment services; 2008 Acts, ch 1187, §3; 2009 Acts, ch 182, §2; 2010 Acts, ch 1192, §2; 2011 Acts, ch 123, §13, 16; 2011 Acts, ch 129, §2, 114, 156; 2012 Acts, ch 1133, §2; 2013 Acts, ch 138, §3, 133  
Section not amended; footnote revised

**135.151** Reserved.

## DIVISION XIX

OBSTETRICAL AND NEWBORN  
INDIGENT PATIENT  
CARE PROGRAM**135.152 Statewide obstetrical and newborn indigent patient care program.**

1. The department shall establish a statewide obstetrical and newborn indigent patient care program to provide obstetrical and newborn care to medically indigent residents of this

state at the appropriate and necessary level, at a licensed hospital or health care facility closest and most available to the residence of the indigent individual.

2. The department shall administer the program, and appropriations by the general assembly for the program shall be allocated to the obstetrical and newborn patient care fund within the department to be utilized for the obstetrical and newborn indigent patient care program.

3. The department shall adopt administrative rules pursuant to chapter 17A to administer the program.

4. The department shall establish a patient quota formula for determining the maximum number of obstetrical and newborn patients eligible for the program, annually, from each county. The formula used shall be based upon the annual appropriation for the program, the average number of live births in each county for the most recent three-year period, and the per capita income for each county for the most recent year. The formula shall also provide for reassignment of an unused county quota allotment on April 1 of each year.

5. *a.* The department, in collaboration with the department of human services and the Iowa state association of counties, shall adopt rules pursuant to chapter 17A to establish minimum standards for eligibility for obstetrical and newborn care, including physician examinations, medical testing, ambulance services, and inpatient transportation services under the program. The minimum standards shall provide that the individual is not otherwise eligible for assistance under the medical assistance program or for assistance under the medically needy program without a spend-down requirement pursuant to chapter 249A. If the individual is eligible for assistance pursuant to chapter 249A, or if the individual is eligible for maternal and child health care services covered by a maternal and child health program, the obstetrical and newborn indigent patient care program shall not provide the assistance, care, or covered services provided under the other program.

*b.* The minimum standards for eligibility shall provide eligibility for persons with family incomes at or below one hundred eighty-five percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, and shall provide, but shall not be limited to providing, eligibility for uninsured and underinsured persons financially unable to pay for necessary obstetrical and newborn care. The minimum standards may include a spend-down provision. The resource standards shall be set at or above the resource standards under the federal supplemental security income program. The resource exclusions allowed under the federal supplemental security income program shall be allowed and shall include resources necessary for self-employment.

*c.* The department, in cooperation with the department of human services, shall develop a standardized application form for the program and shall coordinate the determination of eligibility for the medical assistance and medically needy programs under chapter 249A, and the obstetrical and newborn indigent patient care program.

6. The department shall establish application procedures and procedures for certification of an individual for obstetrical and newborn care under this section.

7. An individual certified for obstetrical and newborn care under this division may choose to receive the appropriate level of care at any licensed hospital or health care facility.

8. The obstetrical and newborn care costs of an individual certified for such care under this division at a licensed hospital or health care facility or from licensed physicians shall be paid by the department from the obstetrical and newborn patient care fund.

9. All providers of services to obstetrical and newborn patients under this division shall agree to accept as full payment the reimbursements allowable under the medical assistance program established pursuant to chapter 249A, adjusted for intensity of care.

10. The department shall establish procedures for payment for providers of services to obstetrical and newborn patients under this division from the obstetrical and newborn patient care fund. All billings from such providers shall be submitted directly to the department. However, payment shall not be made unless the requirements for application and certification for care pursuant to this division and rules adopted by the department are met.

11. Moneys encumbered prior to June 30 of a fiscal year for a certified eligible pregnant woman scheduled to deliver in the next fiscal year shall not revert from the obstetrical and

newborn patient care fund to the general fund of the state. Moneys allocated to the obstetrical and newborn patient care fund shall not be transferred nor voluntarily reverted from the fund within a given fiscal year.

2005 Acts, ch 167, §43, 66; 2013 Acts, ch 138, §116, 127

2013 amendment to subsection 5, paragraphs a and c, takes effect January 1, 2014; 2013 Acts, ch 138, §127  
Subsection 5, paragraphs a and c amended

## DIVISION XX

### COLLABORATIVE SAFETY NET PROVIDER NETWORK

#### **135.153 Iowa collaborative safety net provider network established.**

1. The department shall establish an Iowa collaborative safety net provider network that includes community health centers, rural health clinics, free clinics, maternal and child health centers, local boards of health that provide direct services, Iowa family planning network agencies, child health specialty clinics, and other safety net providers. The network shall be a continuation of the network established pursuant to 2005 Iowa Acts, ch. 175, section 2, subsection 12. The network shall include all of the following:

a. An Iowa safety net provider advisory group consisting of representatives of community health centers, rural health clinics, free clinics, maternal and child health centers, local boards of health that provide direct services, Iowa family planning network agencies, child health specialty clinics, other safety net providers, patients, and other interested parties.

b. A planning process to logically and systematically implement the Iowa collaborative safety net provider network.

c. A database of all community health centers, rural health clinics, free clinics, maternal and child health centers, local boards of health that provide direct services, Iowa family planning network agencies, child health specialty clinics, and other safety net providers. The data collected shall include the demographics and needs of the vulnerable populations served, current provider capacity, and the resources and needs of the participating safety net providers.

d. Network initiatives to, at a minimum, improve quality, improve efficiency, reduce errors, and provide clinical communication between providers. The network initiatives shall include but are not limited to activities that address all of the following:

- (1) Training.
- (2) Information technology.
- (3) Financial resource development.
- (4) A referral system for ambulatory care.
- (5) A referral system for specialty care.
- (6) Pharmaceuticals.
- (7) Recruitment of health professionals.

2. The network shall form a governing group which includes two individuals each representing community health centers, rural health clinics, free clinics, maternal and child health centers, local boards of health that provide direct services, the state board of health, Iowa family planning network agencies, child health specialty clinics, and other safety net providers.

3. The department shall provide for evaluation of the network and its impact on the medically underserved.

2007 Acts, ch 218, §103; 2013 Acts, ch 138, §117 – 119, 127

Referred to in §135.24, 135.153A, 135.156, 135.159, 135.175

Development of plan for coordination of care for individuals with diabetes who receive care from safety net providers; 2010 Acts, ch 1134, §4

2013 amendments to this section take effect January 1, 2014; 2013 Acts, ch 138, §127

Subsection 1, unnumbered paragraph 1 amended

Subsection 1, paragraphs a and c amended

Subsection 2 amended

**135.153A Safety net provider recruitment and retention initiatives program — repeal.**

The department, in accordance with efforts pursuant to sections 135.163 and 135.164 and in cooperation with the Iowa collaborative safety net provider network governing group as described in section 135.153, shall establish and administer a safety net provider recruitment and retention initiatives program to address the health care workforce shortage relative to safety net providers. Funding for the program may be provided through the health care workforce shortage fund or the safety net provider network workforce shortage account created in section 135.175. The department, in cooperation with the governing group, shall adopt rules pursuant to chapter 17A to implement and administer such program. This section is repealed June 30, 2014.

2009 Acts, ch 118, §44, 54

Referred to in §135.175

Implementation of section conditioned upon availability of funding; 2009 Acts, ch 118, §54

## DIVISION XXI

## IOWA HEALTH INFORMATION NETWORK

**135.154 Definitions.**

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

1. “*Advisory council*” means the electronic health information advisory council created in section 135.156.
2. “*Authorized*” means having met the requirements as a participant for access to and use of the Iowa health information network.
3. “*Board*” means the state board of health created pursuant to section 136.1.
4. “*Department*” means the department of public health.
5. “*Exchange*” means the authorized electronic sharing of health information between health care professionals, payors, consumers, public health agencies, the department, and other authorized participants utilizing the Iowa health information network and Iowa health information network services.
6. “*Executive committee*” means the executive committee of the electronic health information advisory council created in section 135.156.
7. “*Health care professional*” means a person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.
8. “*Health information*” means health information as defined in 45 C.F.R. § 160.103 that is created or received by an authorized participant.
9. “*Health information technology*” means the application of information processing, involving both computer hardware and software, that deals with the storage, retrieval, sharing, and use of health care information, data, and knowledge for communication, decision making, quality, safety, and efficiency of clinical practice, and may include but is not limited to:
  - a. An electronic health record that electronically compiles and maintains health information that may be derived from multiple sources about the health status of an individual and may include a core subset of each care delivery organization’s electronic medical record such as a continuity of care record or a continuity of care document, computerized physician order entry, electronic prescribing, or clinical decision support.
  - b. A personal health record through which an individual and any other person authorized by the individual can maintain and manage the individual’s health information.
  - c. An electronic medical record that is used by health care professionals to electronically document, monitor, and manage health care delivery within a care delivery organization, is the legal record of the patient’s encounter with the care delivery organization, and is owned by the care delivery organization.
  - d. A computerized provider order entry function that permits the electronic ordering of diagnostic and treatment services, including prescription drugs.

e. A decision support function to assist physicians and other health care providers in making clinical decisions by providing electronic alerts and reminders to improve compliance with best practices, promote regular screenings and other preventive practices, and facilitate diagnoses and treatments.

f. Tools to allow for the collection, analysis, and reporting of information or data on adverse events, the quality and efficiency of care, patient satisfaction, and other health care-related performance measures.

10. “*Health Insurance Portability and Accountability Act*” means the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, including amendments thereto and regulations promulgated thereunder.

11. “*Hospital*” means licensed hospital as defined in section 135B.1.

12. “*Individually identifiable health information*” means individually identifiable health information as defined in 45 C.F.R. § 160.103 that is created or received by an authorized participant.

13. “*Interoperability*” means the ability of two or more systems or components to exchange information or data in an accurate, effective, secure, and consistent manner and to use the information or data that has been exchanged and includes but is not limited to:

a. The capacity to connect to a network for the purpose of exchanging information or data with other users.

b. The ability of a connected, authenticated user to demonstrate appropriate permissions to participate in the instant transaction over the network.

c. The capacity of a connected, authenticated user to access, transmit, receive, and exchange usable information with other users.

14. “*Iowa health information network*” or “*network*” means the statewide health information technology network created in this division.

15. “*Iowa Medicaid enterprise*” means the centralized medical assistance program infrastructure, based on a business enterprise model, and designed to foster collaboration among all program stakeholders by focusing on quality, integrity, and consistency.

16. “*Participant*” means an authorized health care professional, payor, patient, health care organization, public health agency, or the department that has agreed to authorize, submit, access, or disclose health information through the Iowa health information network in accordance with this chapter and all applicable laws, rules, agreements, policies, and standards.

17. “*Patient*” means a person who has received or is receiving health services from a health care professional.

18. “*Payor*” means a person who makes payments for health services, including but not limited to an insurance company, self-insured employer, government program, individual, or other purchaser that makes such payments.

19. “*Protected health information*” means protected health information as defined in 45 C.F.R. § 160.103 that is created or received by an authorized participant.

20. “*Public health agency*” means an entity that is governed by or contractually responsible to a local board of health or the department to provide services focused on the health status of population groups and their environments.

21. “*Purchaser*” means any individual, employer, or organization that purchases health insurance or services and includes intermediaries.

22. “*Recognized interoperability standard*” means interoperability standards recognized by the office of the national coordinator for health information technology of the United States department of health and human services.

2008 Acts, ch 1188, §23; 2012 Acts, ch 1080, §1, 17; 2013 Acts, ch 138, §120, 127

Referred to in §249K.2

2013 amendment to subsection 15 takes effect January 1, 2014; 2013 Acts, ch 138, §127

Subsection 15 amended

### **135.155 Iowa health information network — principles — goals.**

1. Health information technology is rapidly evolving so that it can contribute to the goals of improving access to and quality of health care, enhancing efficiency, and reducing costs.

2. To be effective, the Iowa health information network shall comply with all of the following principles:

- a. Be patient-centered and market-driven.
  - b. Be based on approved standards developed with input from all stakeholders.
  - c. Protect the privacy of consumers and the security and confidentiality of all health information.
  - d. Promote interoperability.
  - e. Ensure the accuracy, completeness, and uniformity of data.
3. Widespread adoption of health information technology is critical to a successful Iowa health information network and is best achieved when all of the following occur:
- a. The market provides a variety of certified products from which to choose in order to best fit the needs of the user.
  - b. The network provides incentives for health care professionals to utilize the health information technology and provides rewards for any improvement in quality and efficiency resulting from such utilization.
  - c. The network provides protocols to address critical problems.
  - d. The network is financed by all who benefit from the improved quality, efficiency, savings, and other benefits that result from use of health information technology.

2008 Acts, ch 1188, §24; 2012 Acts, ch 1080, §2, 3, 17

Referred to in §135.156

#### **135.155A Findings and intent — Iowa health information network.**

1. The general assembly finds all of the following:
  - a. Technology used to support health care-related functions is known as health information technology. Health information technology provides a mechanism to transform the delivery of health and medical care in Iowa and across the nation.
  - b. A health information network involves the secure electronic sharing of health information across the boundaries of individual practice and institutional health settings and with consumers. Broad use of health information technology and a health information network should improve health care quality and the overall health of the population, increase efficiencies in administrative health care, reduce unnecessary health care costs, and help prevent medical errors.
2. It is the intent of the general assembly that Iowa establish a statewide health information technology network. The Iowa health information network shall not constitute a health benefit network or a health insurance network. Nothing in this division shall be interpreted to impede or preclude the formation and operation of regional, population-specific, or local health information networks or their participation in the Iowa health information network.

2012 Acts, ch 1080, §4, 17

Referred to in §135.156

#### **135.156 Electronic health information — department duties — advisory council — executive committee.**

1. a. The department shall direct a public and private collaborative effort to promote the adoption and use of health information technology in this state in order to improve health care quality, increase patient safety, reduce health care costs, enhance public health, and empower individuals and health care professionals with comprehensive, real-time medical information to provide continuity of care and make the best health care decisions. The department shall provide coordination for the development and implementation of an interoperable electronic health records system, telehealth expansion efforts, the health information technology infrastructure, the Iowa health information network, and other health information technology initiatives in this state. The department shall be guided by the principles and goals specified in section 135.155 and the findings and intent specified for an Iowa health information network in section 135.155A.
- b. All health information technology efforts shall endeavor to represent the interests and meet the needs of consumers and the health care sector, protect the privacy of individuals and

the confidentiality of individuals' information, promote physician best practices, and make information easily accessible to the appropriate parties. The network developed shall be consumer-driven, flexible, and expandable.

2. a. An electronic health information advisory council is established which shall consist of the representatives of entities involved in the electronic health records system task force established pursuant to section 217.41A, Code 2007, a pharmacist, a licensed practicing physician, a consumer who is a member of the state board of health, a representative of the state's Medicare quality improvement organization, the executive director of the Iowa communications network, a representative of the private telecommunications industry, a representative of the Iowa collaborative safety net provider network created in section 135.153, a nurse informaticist from the university of Iowa, and any other members the department or executive committee of the advisory council determines necessary and appoints to assist the department or executive committee at various stages of development of the Iowa health information network. Executive branch agencies shall also be included as necessary to assist in the duties of the department and the executive committee. Public members of the advisory council shall receive reimbursement for actual expenses incurred while serving in their official capacity only if they are not eligible for reimbursement by the organization that they represent. Any legislative members shall be paid the per diem and expenses specified in section 2.10.

b. An executive committee of the advisory council is established. Members of the executive committee of the advisory council shall receive reimbursement for actual expenses incurred while serving in their official capacity only if they are not eligible for reimbursement by the organization that they represent. The executive committee shall consist of the following members:

(1) Three members, each of whom is the chief information officer of one of the three largest private health care systems in the state.

(2) One member who is the chief information officer of the university of Iowa hospitals and clinics, or the chief information officer's designee, selected by the director of the university of Iowa hospitals and clinics.

(3) One member who is a representative of a rural hospital which is a member of the Iowa hospital association, selected by the Iowa hospital association.

(4) One member who is a consumer member of the state board of health, selected by the state board of health.

(5) One member who is a licensed practicing physician, selected by the Iowa medical society.

(6) One member who is licensed to practice nursing, selected by the Iowa nurses association.

(7) One representative of an insurance carrier, selected by the federation of Iowa insurers.

3. The executive committee, with the technical assistance of the advisory council and the support of the department, shall do all of the following:

a. Develop a statewide health information technology plan by July 1, 2009. In developing the plan, the executive committee shall seek the input of providers, payers, and consumers. Standards and policies developed for the plan shall promote and be consistent with national standards developed by the office of the national coordinator for health information technology of the United States department of health and human services and shall address or provide for all of the following:

(1) The effective, efficient, statewide use of electronic health information in patient care, health care policymaking, clinical research, health care financing, and continuous quality improvement. The executive committee shall recommend requirements for interoperable electronic health records in this state including a recognized interoperability standard.

(2) Education of the public and health care sector about the value of health information technology in improving patient care, and methods to promote increased support and collaboration of state and local public health agencies, health care professionals, and consumers in health information technology initiatives.

(3) Standards for the exchange of health care information.

(4) Policies relating to the protection of privacy of patients and the security and confidentiality of patient information.

(5) Policies relating to information ownership.

(6) Policies relating to governance of the various facets of the Iowa health information network.

(7) A single patient identifier or alternative mechanism to share secure patient information. If no alternative mechanism is acceptable to the executive committee, all health care professionals shall utilize the mechanism selected by the executive committee by July 1, 2010.

(8) A standard continuity of care record and other issues related to the content of electronic transmissions. All health care professionals shall utilize the standard continuity of care record by July 1, 2010.

(9) Requirements for electronic prescribing.

(10) Economic incentives and support to facilitate participation in an interoperable network by health care professionals.

b. Identify existing and potential health information technology efforts in this state, regionally, and nationally, and integrate existing efforts to avoid incompatibility between efforts and avoid duplication.

c. Coordinate public and private efforts to provide the network backbone infrastructure for the Iowa health information network. In coordinating these efforts, the executive committee shall do all of the following:

(1) Develop policies to effectuate the logical cost-effective usage of and access to the state-owned network, and support of telecommunication carrier products, where applicable.

(2) Consult with the Iowa communications network, private fiberoptic networks, and any other communications entity to seek collaboration, avoid duplication, and leverage opportunities in developing a network backbone.

(3) Establish protocols to ensure compliance with any applicable federal standards.

(4) Determine costs for accessing the network at a level that provides sufficient funding for the network.

d. Promote the use of telemedicine.

(1) Examine existing barriers to the use of telemedicine and make recommendations for eliminating these barriers.

(2) Examine the most efficient and effective systems of technology for use and make recommendations based on the findings.

e. Address the workforce needs generated by increased use of health information technology.

f. Recommend rules to be adopted in accordance with chapter 17A to implement all aspects of the statewide health information technology plan and the network.

g. Coordinate, monitor, and evaluate the adoption, use, interoperability, and efficiencies of the various facets of health information technology in this state.

h. Seek and apply for any federal or private funding to assist in the implementation and support of the Iowa health information network and make recommendations for funding mechanisms for the ongoing development and maintenance costs of the Iowa health information network.

i. Identify state laws and rules that present barriers to the development of the Iowa health information network and recommend any changes to the governor and the general assembly.

4. Recommendations and other activities resulting from the work of the department or the executive committee shall be presented to the board for action or implementation.

2008 Acts, ch 1188, §25; 2012 Acts, ch 1080, §5 – 9, 17; 2013 Acts, ch 30, §30

Referred to in §135.154, 136.3

Subsection 2, paragraph b, unnumbered paragraph 1 amended

### **135.156A Iowa health information network — business and financial sustainability plan and participant fees.**

1. The board, with the support of the department and the advice of the executive committee and advisory council, shall establish and annually review and update a business

and financial sustainability plan for the Iowa health information network. The plan shall include fees to be paid to the department by participants who choose to access and use the Iowa health information network. The participant fee schedule shall be structured using fair share, value-based principles.

2. The department shall update and submit a financial model, including fee schedule, revenue and expense projections, and a budget, to the executive committee and the board for approval on an annual basis.

2012 Acts, ch 1080, §10, 17

#### **135.156B Iowa health information network — duties of the department.**

The department shall do all of the following:

1. Develop, implement, and enforce the following, as approved by the board:
  - a. Strategic, operational, and business and financial sustainability plans for the Iowa health information network.
  - b. Standards, requirements, policies, and procedures for access to and use, secondary use, and privacy and security of health information exchanged through the Iowa health information network, consistent with applicable federal and state standards and laws.
  - c. Rules, policies, and procedures for monitoring participant usage of the Iowa health information network and enforcing compliance with applicable standards, requirements, policies, rules, and procedures.
  - d. Policies and procedures for administering the infrastructure, technology, and associated professional services required for operation of the Iowa health information network and the provision of services through the Iowa health information network.
  - e. An annual budget and fiscal report for the business and technical operations of the Iowa health information network and an annual report for the Iowa health information network and the services provided through the Iowa health information network.
2. Provide human resources, budgeting, project and activity coordination, and related management functions to the Iowa health information network and the services provided through the Iowa health information network.
3. Enter into participation agreements with participants in the Iowa health information network.
4. Collect participant fees, record receipts and approvals of payments, and file required financial reports.
5. Apply for, acquire by gift or purchase, and hold, dispense, or dispose of funds and real or personal property from any person, governmental entity, or organization in the exercise of the department's powers or performance of the department's duties in accordance with this division.
6. Select and contract with vendors of goods and services in compliance with all applicable state and federal procurement laws and regulations.
7. Work to align interstate and intrastate interoperability standards in accordance with national health information exchange standards.
8. Execute all instruments necessary or incidental to the performance of the department's duties and the execution of the department's powers under this division.

2012 Acts, ch 1080, §11, 17; 2013 Acts, ch 30, §31

Subsections 5 and 8 amended

#### **135.156C Iowa health information network fund.**

1. The Iowa health information network fund is created as a separate fund within the state treasury under the control of the board. Revenues, donations, gifts, interest, participant fees, and other moneys received or generated relative to the operation and administration of the Iowa health information network shall be deposited in the fund.

2. Moneys in the fund are appropriated to and shall be expended by the department only for activities and operations suitable to the performance of the department's duties, subject to executive committee review and board approval. Disbursements may be made from the fund for purposes related to the administration, management, operations, functions, activities, or sustainability of the Iowa health information network.

3. Notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the fund shall be credited to the fund. Moneys in the fund at the end of each fiscal year shall not revert to another fund but shall remain in the fund for expenditure in subsequent fiscal years.

4. The moneys in the fund shall be subject to financial and compliance audits by the auditor of state.

2012 Acts, ch 1080, §12, 17

#### **135.156D Technical infrastructure.**

1. The Iowa health information network shall provide a mechanism to facilitate and support the secure electronic exchange of health information between participants.

2. The Iowa health information network shall not function as a central repository of all health information.

3. The Iowa health information network shall provide a mechanism for participants without an electronic health records system to access health information from the Iowa health information network.

2012 Acts, ch 1080, §13, 17

#### **135.156E Legal and policy.**

1. Upon approval from the board, the department shall implement appropriate security standards, policies, and procedures to protect the transmission and receipt of protected health information exchanged through the Iowa health information network, which shall, at a minimum, comply with the Health Insurance Portability and Accountability Act security rule pursuant to 45 C.F.R. pt. 164, subpt. C, and shall reflect all of the following:

a. Include authorization controls, including the responsibility to authorize, maintain, and terminate a participant's use of the Iowa health information network.

b. Require authentication controls to verify the identity and role of the participant using the Iowa health information network.

c. Include role-based access controls to restrict functionality and information available through the Iowa health information network.

d. Include a secure and traceable electronic audit system to document and monitor the sender and the recipient of health information exchanged through the Iowa health information network.

e. Require standard participation agreements which define the minimum privacy and security obligations of all participants using the Iowa health information network and services available through the Iowa health information network.

f. Include controls over access to and the collection, organization, and maintenance of records and data for purposes of research or population health that protect the confidentiality of consumers who are the subject of the health information.

2. A patient shall have the opportunity to decline exchange of the patient's health information through the Iowa health information network. A patient shall not be denied care or treatment for declining to exchange the patient's health information, in whole or in part, through the Iowa health information network. The board shall provide by rule the means and process by which patients may decline participation. The means and process utilized under the rules shall minimize the burden on patients and health care professionals.

3. Unless otherwise authorized by law or rule, a patient's decision to decline participation means that none of the patient's health information shall be accessible through the record locator service function of the Iowa health information network. A patient's decision to decline having health information shared through the record locator service function shall not limit a health care professional with whom the patient has or is considering a treatment relationship from sharing health information concerning the patient through the secure messaging function of the Iowa health information network.

4. A patient who declines participation in the Iowa health information network may later decide to have health information shared through the Iowa health information network. A patient who is participating in the Iowa health information network may later decline participation in the network.

5. A participant shall not release or use protected health information exchanged through the Iowa health information network for purposes unrelated to prevention, treatment, payment, or health care operations unless otherwise authorized or required by state or federal law. Participants shall limit the use and disclosure of protected health information for payment or health care operations to the minimum amount required to accomplish the intended purpose of the use or request, in compliance with the Health Insurance Portability and Accountability Act and other applicable state or federal law. Use or distribution of the information for a marketing purpose, as defined by the Health Insurance Portability and Accountability Act, is strictly prohibited.

6. The department and all persons using the Iowa health information network are individually responsible for following breach notification policies as provided by the Health Insurance Portability and Accountability Act.

7. A participant shall not be compelled by subpoena, court order, or other process of law to access health information through the Iowa health information network in order to gather records or information not created by the participant.

8. All participants exchanging health information and data through the Iowa health information network shall grant to other participants of the network a nonexclusive license to retrieve and use that information in accordance with applicable state and federal laws, and the policies, standards, and rules established by the board.

9. The board shall establish by rule the procedures for a patient who is the subject of health information to do all of the following:

a. Receive notice of a violation of the confidentiality provisions required under this division.

b. Upon request to the department, view an audit report created under this division for the purpose of monitoring access to the patient's health care information.

10. A health care professional who relies reasonably and in good faith upon any health information provided through the Iowa health information network in treatment of a patient who is the subject of the health information shall be immune from criminal or civil liability arising from any damages caused by such reasonable, good-faith reliance. Such immunity shall not apply to acts or omissions constituting negligence, recklessness, or intentional misconduct.

11. A participant that has disclosed health information through the Iowa health information network in compliance with applicable law and the standards, requirements, policies, procedures, and agreements of the network shall not be subject to criminal or civil liability for the use or disclosure of the health information by another participant.

12. Notwithstanding chapter 22, the following records shall be kept confidential, unless otherwise ordered by a court or consented to by the patient or by a person duly authorized to release such information:

a. The protected health information contained in, stored in, submitted to, transferred or exchanged by, or released from the Iowa health information network.

b. Any protected health information in the possession of the department due to its administration of the Iowa health information network.

13. Unless otherwise provided in this division, when using the Iowa health information network or a private health information network maintained in this state that complies with the privacy and security requirements of this chapter for the purposes of patient treatment, a health care professional or a hospital is exempt from any other state law that is more restrictive than the Health Insurance Portability and Accountability Act that would otherwise prevent or hinder the exchange of patient information by the patient's health care professional or hospital.

2012 Acts, ch 1080, §14, 17; 2012 Acts, ch 1138, §48, 80, 81

#### **135.156F Governance review.**

1. The governance structure as provided in this division consisting of the department acting on behalf of the board subject to executive committee review and board approval shall continue during the term of the state health information exchange cooperative agreement between the department and the office of the national coordinator for health information

technology to address the development of standards, policies, and procedures; dissemination of interoperability standards; the installation, testing, and operation of the Iowa health information network infrastructure; and the evolution of Iowa health information network services to improve patient care for the population.

2. During the final year of the term of the cooperative agreement, the executive committee and the department shall review the governance structure, operations of the Iowa health information network, and the business and financial sustainability plan and make recommendations to the board regarding the future governance of the Iowa health information network.

2012 Acts, ch 1080, §15, 17

## DIVISION XXII

### MEDICAL HOME

Referred to in §249N.6

#### **135.157 Definitions.**

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

1. “*Board*” means the state board of health created pursuant to section 136.1.
2. “*Dental home*” means a network of individualized care based on risk assessment, which includes oral health education, dental screenings, preventive services, diagnostic services, treatment services, and emergency services.
3. “*Department*” means the department of public health.
4. “*Health care professional*” means a person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.
5. “*Medical home*” means a team approach to providing health care that originates in a primary care setting; fosters a partnership among the patient, the personal provider, and other health care professionals, and where appropriate, the patient’s family; utilizes the partnership to access and integrate all medical and nonmedical health-related services across all elements of the health care system and the patient’s community as needed by the patient and the patient’s family to achieve maximum health potential; maintains a centralized, comprehensive record of all health-related services to promote continuity of care; and has all of the characteristics specified in section 135.158.
6. “*National committee for quality assurance*” means the nationally recognized, independent nonprofit organization that measures the quality and performance of health care and health care plans in the United States; provides accreditation, certification, and recognition programs for health care plans and programs; and is recognized in Iowa as an accrediting organization for commercial and Medicaid-managed care organizations.
7. “*Personal provider*” means the patient’s first point of contact in the health care system with a primary care provider who identifies the patient’s health-related needs and, working with a team of health care professionals and providers of medical and nonmedical health-related services, provides for and coordinates appropriate care to address the health-related needs identified.
8. “*Primary care*” means health care which emphasizes providing for a patient’s general health needs and utilizes collaboration with other health care professionals and consultation or referral as appropriate to meet the needs identified.
9. “*Primary care provider*” means any of the following who provide primary care and meet certification standards:
  - a. A physician who is a family or general practitioner, a pediatrician, an internist, an obstetrician, or a gynecologist.
  - b. An advanced registered nurse practitioner.
  - c. A physician assistant.

d. A chiropractor licensed pursuant to chapter 151.

2008 Acts, ch 1188, §44; 2009 Acts, ch 41, §43; 2013 Acts, ch 138, §121, 127, 174, 187

Referred to in §249N.2

2013 amendment to subsection 2 takes effect January 1, 2014; 2013 Acts, ch 138, §127

NEW subsection 2 and former subsections 2 – 8 renumbered as 3 – 9

Subsections 5 and 7 amended

### **135.158 Medical home purposes — characteristics.**

1. The purposes of a medical home are the following:

a. To reduce disparities in health care access, delivery, and health care outcomes.

b. To improve quality of health care and lower health care costs, thereby creating savings to allow more Iowans to have health care coverage and to provide for the sustainability of the health care system.

c. To provide a tangible method to document if each Iowan has access to health care.

2. A medical home has all of the following characteristics:

a. A personal provider. Each patient has an ongoing relationship with a personal provider trained to provide first contact and continuous and comprehensive care.

b. A provider-directed team-based medical practice. The personal provider leads a team of individuals at the practice level who collectively take responsibility for the ongoing health-related needs of patients.

c. Whole person orientation. The personal provider is responsible for providing for all of a patient's health-related needs or taking responsibility for appropriately arranging for health-related services provided by other qualified health care professionals and providers of medical and nonmedical health-related services. This responsibility includes health-related care at all stages of life including provision of preventive care, acute care, chronic care, long-term care, transitional care between providers and settings, and end-of-life care. This responsibility includes whole-person care consisting of physical health care including but not limited to oral, vision, and other specialty care, pharmacy management, and behavioral health care.

d. Coordination and integration of care. Care is coordinated and integrated across all elements of the complex health care system and the patient's community. Care coordination and integration provides linkages to community and social supports to address social determinants of health, to engage and support patients in managing their own health, and to track the progress of these community and social supports in providing whole-person care. Care is facilitated by registries, information technology, health information exchanges, and other means to assure that patients receive the indicated care when and where they need and want the care in a culturally and linguistically appropriate manner.

e. Quality and safety. The following are quality and safety components of the medical home:

(1) Provider-directed medical practices advocate for their patients to support the attainment of optimal, patient-centered outcomes that are defined by a care planning process driven by a compassionate, robust partnership between providers, the patient, and the patient's family.

(2) Evidence-based medicine and clinical decision-support tools guide decision making.

(3) Providers in the medical practice accept accountability for continuous quality improvement through voluntary engagement in performance measurement and improvement.

(4) Patients actively participate in decision making and feedback is sought to ensure that the patients' expectations are being met.

(5) Information technology is utilized appropriately to support optimal patient care, performance measurement, patient education, and enhanced communication.

(6) Practices participate in a voluntary recognition process conducted by an appropriate nongovernmental entity to demonstrate that the practice has the capabilities to provide patient-centered services consistent with the medical home model.

(7) Patients and families participate in quality improvement activities at the practice level.

f. Enhanced access to health care. Enhanced access to health care is available through

systems such as open scheduling, expanded hours, and new options for communication between the patient, the patient's personal provider, and practice staff.

g. Payment. The payment system appropriately recognizes the added value provided to patients who have a patient-centered medical home. The payment structure framework of the medical home provides all of the following:

(1) Reflects the value of provider and nonprovider staff and patient-centered care management work that is in addition to the face-to-face visit.

(2) Pays for services associated with coordination of health care both within a given practice and between consultants, ancillary providers, and community resources.

(3) Supports adoption and use of health information technology for quality improvement.

(4) Supports provision of enhanced communication access such as secure electronic mail and telephone consultation.

(5) Recognizes the value of provider work associated with remote monitoring of clinical data using technology.

(6) Allows for separate fee-for-service payments for face-to-face visits. Payments for health care management services that are in addition to the face-to-face visit do not result in a reduction in the payments for face-to-face visits.

(7) Recognizes case mix differences in the patient population being treated within the practice.

(8) Allows providers to share in savings from reduced hospitalizations associated with provider-guided health care management in the office setting.

(9) Allows for additional payments for achieving measurable and continuous quality improvements.

2008 Acts, ch 1188, §45; 2013 Acts, ch 138, §175, 187

Referred to in §135.157, 135.159

Subsection 2, paragraphs b – d amended

### **135.159 Medical home system — advisory council — development and implementation.**

1. The department shall administer the medical home system. The department shall collaborate with the department of human services in administering medical homes under the medical assistance program. The department shall adopt rules pursuant to chapter 17A necessary to administer the medical home system, and shall collaborate with the department of human services in adopting rules for medical homes under the medical assistance program.

2. a. The department shall establish an advisory council which shall include but is not limited to all of the following members, selected by their respective organizations, and any other members the department determines necessary to assist in the department's duties at various stages of development of the medical home system:

(1) The director of human services, or the director's designee.

(2) The commissioner of insurance, or the commissioner's designee.

(3) A representative of the federation of Iowa insurers.

(4) A representative of the Iowa dental association.

(5) A representative of the Iowa nurses association.

(6) A physician and an osteopathic physician licensed pursuant to chapter 148 who are family physicians and members of the Iowa academy of family physicians.

(7) A health care consumer.

(8) A representative of the Iowa collaborative safety net provider network established pursuant to section 135.153.

(9) A representative of the Iowa developmental disabilities council.

(10) A representative of the Iowa chapter of the American academy of pediatrics.

(11) A representative of the child and family policy center.

(12) A representative of the Iowa pharmacy association.

(13) A representative of the Iowa chiropractic society.

(14) A representative of the university of Iowa college of public health.

b. Public members of the advisory council shall receive reimbursement for actual expenses incurred while serving in their official capacity only if they are not eligible for reimbursement by the organization that they represent.

3. The department shall develop a plan for implementation of a statewide medical home system. The department, in collaboration with parents, schools, communities, health plans, and providers, shall endeavor to increase healthy outcomes for children and adults by linking the children and adults with a medical home, identifying health improvement goals for children and adults, and linking reimbursement strategies to increasing healthy outcomes for children and adults. The plan shall provide that the medical home system shall do all of the following:

a. Coordinate and provide access to evidence-based health care services, emphasizing convenient, comprehensive primary care and including preventive, screening, and well-child health services.

b. Provide access to appropriate specialty care and inpatient services.

c. Provide quality-driven and cost-effective health care.

d. Provide access to pharmacist-delivered medication reconciliation and medication therapy management services, where appropriate.

e. Promote strong and effective medical management including but not limited to planning treatment strategies, monitoring health outcomes and resource use, sharing information, and organizing care to avoid duplication of service. The plan shall provide that in sharing information, the priority shall be the protection of the privacy of individuals and the security and confidentiality of the individual's information. Any sharing of information required by the medical home system shall comply and be consistent with all existing state and federal laws and regulations relating to the confidentiality of health care information and shall be subject to written consent of the patient.

f. Emphasize patient and provider accountability.

g. Prioritize local access to the continuum of health care services in the most appropriate setting.

h. Establish a baseline for medical home goals and establish performance measures that indicate a child or adult has an established and effective medical home. For children, these goals and performance measures may include but are not limited to childhood immunization rates, well-child care utilization rates, care management for children with chronic illnesses, emergency room utilization, and oral health service utilization.

i. For children, coordinate with and integrate guidelines, data, and information from existing newborn and child health programs and entities, including but not limited to the healthy opportunities for parents to experience success – healthy families Iowa program, the early childhood Iowa initiative, the center for congenital and inherited disorders screening and health care programs, standards of care for pediatric health guidelines, the office of minority and multicultural health established in section 135.12, the oral health bureau established in section 135.15, and other similar programs and services.

4. The department shall develop an organizational structure for the medical home system in this state. The organizational structure plan shall integrate existing resources, provide a strategy to coordinate health care services, provide for monitoring and data collection on medical homes, provide for training and education to health care professionals and families, and provide for transition of children to the adult medical care system. The organizational structure may be based on collaborative teams of stakeholders throughout the state such as local public health agencies, the collaborative safety net provider network established in section 135.153, or a combination of statewide organizations. Care coordination may be provided through regional offices or through individual provider practices. The organizational structure may also include the use of telemedicine resources, and may provide for partnering with pediatric and family practice residency programs to improve access to preventive care for children. The organizational structure shall also address the need to organize and provide health care to increase accessibility for patients including using venues more accessible to patients and having hours of operation that are conducive to the population served.

5. The department shall adopt standards and a process to certify medical homes based on the national committee for quality assurance standards. The certification process and standards shall provide mechanisms to monitor performance and to evaluate, promote, and improve the quality of health of and health care delivered to patients through a medical

home. The mechanism shall require participating providers to monitor clinical progress and performance in meeting applicable standards and to provide information in a form and manner specified by the department. The evaluation mechanism shall be developed with input from consumers, providers, and payers. At a minimum the evaluation shall determine any increased quality in health care provided and any decrease in cost resulting from the medical home system compared with other health care delivery systems. The standards and process shall also include a mechanism for other ancillary service providers to become affiliated with a certified medical home.

6. The department shall adopt education and training standards for health care professionals participating in the medical home system.

7. The department shall provide for system simplification through the use of universal referral forms, internet-based tools for providers, and a central medical home internet site for providers.

8. The department shall recommend a reimbursement methodology and incentives for participation in the medical home system to ensure that providers enter and remain participating in the system. In developing the recommendations for incentives, the department shall consider, at a minimum, providing incentives to promote wellness, prevention, chronic care management, immunizations, health care management, and the use of electronic health records. In developing the recommendations for the reimbursement system, the department shall analyze, at a minimum, the feasibility of all of the following:

a. Reimbursement under the medical assistance program to promote wellness and prevention, provide care coordination, and provide chronic care management.

b. Increasing reimbursement to Medicare levels for certain wellness and prevention services, chronic care management, and immunizations.

c. Providing reimbursement for primary care services by addressing the disparities between reimbursement for specialty services and primary care services.

d. Increased funding for efforts to transform medical practices into certified medical homes, including emphasizing the implementation of the use of electronic health records.

e. Targeted reimbursement to providers linked to health care quality improvement measures established by the department.

f. Reimbursement for specified ancillary support services such as transportation for medical appointments and other such services.

g. Providing reimbursement for medication reconciliation and medication therapy management service, where appropriate.

9. The department shall coordinate the requirements and activities of the medical home system with the requirements and activities of a dental home. The department shall recommend financial incentives for dentists and nondental providers to promote oral health care coordination through preventive dental intervention, early identification of oral disease risk, health care coordination and data tracking, treatment, chronic care management, education and training, parental guidance, and oral health promotions for children. Additionally, the department shall establish requirements for the medical home system to provide linkages to accessible dental homes for adults and older individuals.

10. The department shall integrate the recommendations and policies developed pursuant to section 135.161, Code 2011, into the medical home system and shall incorporate the development and implementation of the state initiative for prevention and chronic care management as developed pursuant to section 135.161, Code 2011, into the duties of the medical home system advisory council beginning January 1, 2012.

11. a. The department shall collaborate with the department of human services to make medical homes accessible to the greatest extent possible to all of the following no later than January 1, 2015:

(1) Children who are recipients of full benefits under the medical assistance program.

(2) Adults who are recipients of benefits under the medical assistance program pursuant to section 249A.3, subsection 1.

(3) Medicare and dually eligible Medicare and medical assistance program recipients, to the extent approved by the centers for Medicare and Medicaid services of the United States department of health and human services.

b. The department shall work with the department of administrative services to allow state employees to utilize the medical home system.

c. The department shall work with insurers and self-insured companies, if requested, to make the medical home system available to individuals with private health care coverage.

d. The department shall assist the department of human services in developing a reimbursement methodology to compensate providers participating under the medical assistance program as a medical home.

e. Any integrated care model implemented on or after July 1, 2013, that delivers health care to medical assistance program recipients shall incorporate medical homes as its foundation. The medical home shall act as the catalyst in any such integrated care model to ensure compliance with the purposes, characteristics, and implementation plan requirements specified in section 135.158 and this section, including an emphasis on whole-person orientation and coordination and integration of both clinical services and nonclinical community and social supports that address social determinants of health.

12. The department shall provide oversight for all certified medical homes. The department shall review the progress of the medical home system and recommend improvements to the system, as necessary.

13. The department shall annually evaluate the medical home system and make recommendations to the governor and the general assembly regarding improvements to and continuation of the system.

14. Recommendations and other activities resulting from the duties authorized for the department under this section shall require approval by the board prior to any subsequent action or implementation.

2008 Acts, ch 1188, §46; 2009 Acts, ch 41, §44; 2009 Acts, ch 133, §34; 2010 Acts, ch 1031, §292; 2010 Acts, ch 1141, §23; 2011 Acts, ch 25, §16; 2011 Acts, ch 129, §78, 82; 2012 Acts, ch 1023, §25; 2013 Acts, ch 138, §176, 187

Referred to in §136.3, 249N.6  
Subsections 1, 9, and 11 amended

### DIVISION XXIII

#### PREVENTION AND CHRONIC CARE MANAGEMENT

**135.160 Definitions.** Repealed by 2012 Acts, ch 1021, § 120.

**135.161 Prevention and chronic care management initiative — advisory council.** Repealed by 2011 Acts, ch 129, § 81, 82. See § 135.159(10).

**135.162 Clinicians advisory panel.** Repealed by 2011 Acts, ch 63, § 35.

### DIVISION XXIV

#### HEALTH AND LONG-TERM CARE ACCESS

**135.163 Health and long-term care access.**

The department shall coordinate public and private efforts to develop and maintain an appropriate health care delivery infrastructure and a stable, well-qualified, diverse, and sustainable health care workforce in this state. The health care delivery infrastructure and the health care workforce shall address the broad spectrum of health care needs of Iowans throughout their lifespan including long-term care needs. The department shall, at a minimum, do all of the following:

1. Develop a strategic plan for health care delivery infrastructure and health care workforce resources in this state.

2. Provide for the continuous collection of data to provide a basis for health care strategic planning and health care policymaking.

3. Make recommendations regarding the health care delivery infrastructure and the health care workforce that assist in monitoring current needs, predicting future trends, and informing policymaking.

2008 Acts, ch 1188, §57

Referred to in §135.153A, 135.175

### **135.164 Strategic plan.**

1. The strategic plan for health care delivery infrastructure and health care workforce resources shall describe the existing health care system, describe and provide a rationale for the desired health care system, provide an action plan for implementation, and provide methods to evaluate the system. The plan shall incorporate expenditure control methods and integrate criteria for evidence-based health care. The department shall do all of the following in developing the strategic plan for health care delivery infrastructure and health care workforce resources:

a. Conduct strategic health planning activities related to preparation of the strategic plan.  
b. Develop a computerized system for accessing, analyzing, and disseminating data relevant to strategic health planning. The department may enter into data sharing agreements and contractual arrangements necessary to obtain or disseminate relevant data.

c. Conduct research and analysis or arrange for research and analysis projects to be conducted by public or private organizations to further the development of the strategic plan.

2. The strategic plan shall include statewide health planning policies and goals related to the availability of health care facilities and services, the quality of care, and the cost of care. The policies and goals shall be based on the following principles:

a. That a strategic health planning process, responsive to changing health and social needs and conditions, is essential to the health, safety, and welfare of Iowans. The process shall be reviewed and updated as necessary to ensure that the strategic plan addresses all of the following:

(1) Promoting and maintaining the health of all Iowans.  
(2) Providing accessible health care services through the maintenance of an adequate supply of health facilities and an adequate workforce.

(3) Controlling excessive increases in costs.

(4) Applying specific quality criteria and population health indicators.

(5) Recognizing prevention and wellness as priorities in health care programs to improve quality and reduce costs.

(6) Addressing periodic priority issues including disaster planning, public health threats, and public safety dilemmas.

(7) Coordinating health care delivery and resource development efforts among state agencies including those tasked with facility, services, and professional provider licensure; state and federal reimbursement; health service utilization data systems; and others.

(8) Recognizing long-term care as an integral component of the health care delivery infrastructure and as an essential service provided by the health care workforce.

b. That both consumers and providers throughout the state must be involved in the health planning process, outcomes of which shall be clearly articulated and available for public review and use.

c. That the supply of a health care service has a substantial impact on utilization of the service, independent of the effectiveness, medical necessity, or appropriateness of the particular health care service for a particular individual.

d. That given that health care resources are not unlimited, the impact of any new health care service or facility on overall health expenditures in this state must be considered.

e. That excess capacity of health care services and facilities places an increased economic burden on the public.

f. That the likelihood that a requested new health care facility, service, or equipment will improve health care quality and outcomes must be considered.

g. That development and ongoing maintenance of current and accurate health care

information and statistics related to cost and quality of health care and projections of the need for health care facilities and services are necessary to developing an effective health care planning strategy.

*h.* That the certificate of need program as a component of the health care planning regulatory process must balance considerations of access to quality care at a reasonable cost for all Iowans, optimal use of existing health care resources, fostering of expenditure control, and elimination of unnecessary duplication of health care facilities and services, while supporting improved health care outcomes.

*i.* That strategic health care planning must be concerned with the stability of the health care system, encompassing health care financing, quality, and the availability of information and services for all residents.

3. The health care delivery infrastructure and health care workforce resources strategic plan developed by the department shall include all of the following:

*a.* A health care system assessment and objectives component that does all of the following:

(1) Describes state and regional population demographics, health status indicators, and trends in health status and health care needs.

(2) Identifies key policy objectives for the state health care system related to access to care, health care outcomes, quality, and cost-effectiveness.

*b.* A health care facilities and services plan that assesses the demand for health care facilities and services to inform state health care planning efforts and direct certificate of need determinations for those facilities and services subject to certificate of need. The plan shall include all of the following:

(1) An inventory of each geographic region's existing health care facilities and services.

(2) Projections of the need for each category of health care facility and service, including those subject to certificate of need.

(3) Policies to guide the addition of new or expanded health care facilities and services to promote the use of quality, evidence-based, cost-effective health care delivery options, including any recommendations for criteria, standards, and methods relevant to the certificate of need review process.

(4) An assessment of the availability of health care providers, public health resources, transportation infrastructure, and other considerations necessary to support the needed health care facilities and services in each region.

*c.* A health care data resources plan that identifies data elements necessary to properly conduct planning activities and to review certificate of need applications, including data related to inpatient and outpatient utilization and outcomes information, and financial and utilization information related to charity care, quality, and cost. The plan shall provide all of the following:

(1) An inventory of existing data resources, both public and private, that store and disclose information relevant to the health care planning process, including information necessary to conduct certificate of need activities. The plan shall identify any deficiencies in the inventory of existing data resources and the data necessary to conduct comprehensive health care planning activities. The plan may recommend that the department be authorized to access existing data sources and conduct appropriate analyses of such data or that other agencies expand their data collection activities as statutory authority permits. The plan may identify any computing infrastructure deficiencies that impede the proper storage, transmission, and analysis of health care planning data.

(2) Recommendations for increasing the availability of data related to health care planning to provide greater community involvement in the health care planning process and consistency in data used for certificate of need applications and determinations. The plan shall also integrate the requirements for annual reports by hospitals and health care facilities pursuant to section 135.75, the provisions relating to analyses and studies by the department pursuant to section 135.76, the data compilation provisions of section 135.78, and the provisions for contracts for assistance with analyses, studies, and data pursuant to section 135.83.

*d.* An assessment of emerging trends in health care delivery and technology as they

relate to access to health care facilities and services, quality of care, and costs of care. The assessment shall recommend any changes to the scope of health care facilities and services covered by the certificate of need program that may be warranted by these emerging trends. In addition, the assessment may recommend any changes to criteria used by the department to review certificate of need applications, as necessary.

e. A rural health care resources plan to assess the availability of health resources in rural areas of the state, assess the unmet needs of these communities, and evaluate how federal and state reimbursement policies can be modified, if necessary, to more efficiently and effectively meet the health care needs of rural communities. The plan shall consider the unique health care needs of rural communities, the adequacy of the rural health care workforce, and transportation needs for accessing appropriate care.

f. A health care workforce resources plan to assure a competent, diverse, and sustainable health care workforce in Iowa and to improve access to health care in underserved areas and among underserved populations. The plan shall include the establishment of an advisory council to inform and advise the department and policymakers regarding issues relevant to the health care workforce in Iowa. The health care workforce resources plan shall recognize long-term care as an essential service provided by the health care workforce.

2008 Acts, ch 1188, §58; 2013 Acts, ch 138, §79, 80

Referred to in §84A.11, 135.153A, 135.175

Subsection 1, paragraph d stricken

Subsection 4 stricken

## DIVISION XXV

### HEALTH CARE TRANSPARENCY

**135.165 Health care transparency — reporting requirements — hospitals and nursing facilities.** Repealed by 2012 Acts, ch 1113, § 24.

#### **135.166 Health care data — collection from hospitals.**

1. The department of public health shall enter into a memorandum of understanding to utilize the Iowa hospital association to act as the department's intermediary in collecting, maintaining, and disseminating hospital inpatient, outpatient, and ambulatory information, as initially authorized in 1996 Iowa Acts, ch. 1212, section 5, subsection 1, paragraph "a", subparagraph (4) and 641 IAC 177.3.

2. The memorandum of understanding shall include but is not limited to provisions that address the duties of the department and the Iowa hospital association regarding the collection, reporting, disclosure, storage, and confidentiality of the data.

2009 Acts, ch 118, §57

**135.167 through 135.170** Reserved.

## DIVISION XXVI

### ALZHEIMER'S DISEASE SERVICE NEEDS

#### **135.171 Alzheimer's disease service needs.**

1. The department shall regularly analyze Iowa's population by county and age to determine the existing service utilization and future service needs of persons with Alzheimer's disease and similar forms of irreversible dementia. The analysis shall also address the availability of existing caregiver services for such needs and the appropriate service level for the future.

2. The department shall modify its community needs assessment activities to include

questions to identify and quantify the numbers of persons with Alzheimer's disease and similar forms of irreversible dementia at the community level.

3. The department shall collect data on the numbers of persons demonstrating combative behavior related to Alzheimer's disease and similar forms of irreversible dementia. The department shall also collect data on the number of physicians and geropsychiatric units available in the state to provide treatment and services to such persons. Health care facilities that serve such persons shall provide information to the department for the purposes of the data collection required by this subsection.

4. The department's implementation of the requirements of this section shall be limited to the extent of the funding appropriated or otherwise made available for the requirements.

2008 Acts, ch 1140, §1

See also §231.62

**135.172** Reserved.

DIVISION XXVII  
EARLY CHILDHOOD IOWA  
COUNCIL

**135.173 Early childhood Iowa council.** Repealed by 2010 Acts, ch 1031, § 308.

**135.173A Child care advisory committee.**

1. The early childhood Iowa council\* shall establish a state child care advisory committee as part of the council. The advisory committee shall advise and make recommendations to the governor, general assembly, department of human services, and other state agencies concerning child care.

2. The membership of the advisory committee shall consist of a broad spectrum of parents and other persons from across the state with an interest in or involvement with child care.

3. Except as otherwise provided, the voting members of the advisory committee shall be appointed by the council from a list of names submitted by a nominating committee to consist of one member of the advisory committee, one member of the department of human services' child care staff, three consumers of child care, and one member of a professional child care organization. Two names shall be submitted for each appointment. The voting members shall be appointed for terms of three years.

4. The voting membership of the advisory committee shall be appointed in a manner so as to provide equitable representation of persons with an interest in child care and shall include all of the following:

- a. Two parents of children served by a registered child development home.
- b. Two parents of children served by a licensed center.
- c. Two not-for-profit child care providers.
- d. Two for-profit child care providers.
- e. One child care home provider.
- f. Three child development home providers.
- g. One child care resource and referral service grantee.
- h. One nongovernmental child advocacy group representative.
- i. One designee of the department of human services.
- j. One designee of the Iowa department of public health.
- k. One designee of the department of education.
- l. One head start program provider.
- m. One person who is a business owner or executive officer from nominees submitted by the Iowa chamber of commerce executives.
- n. One designee of the community empowerment office\*\* of the department of management.
- o. One person who is a member of the Iowa afterschool alliance.

p. One person who is part of a local program implementing the statewide preschool program for four-year-old children under chapter 256C.

q. One person who represents the early childhood Iowa council.\*

5. In addition to the voting members of the advisory committee, the membership shall include four legislators as ex officio, nonvoting members. The four legislators shall be appointed one each by the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives for terms as provided in section 69.16B.

6. In fulfilling the advisory committee's role, the committee shall do all of the following:

a. Consult with the department of human services and make recommendations concerning policy issues relating to child care.

b. Advise the department of human services concerning services relating to child care, including but not limited to any of the following:

(1) Resource and referral services.

(2) Provider training.

(3) Quality improvement.

(4) Public-private partnerships.

(5) Standards review and development.

(6) The federal child care and development block grant, state funding, grants, and other funding sources for child care.

c. Assist the department of human services in developing an implementation plan to provide seamless service to recipients of public assistance, which includes child care services. For the purposes of this subsection, "seamless service" means coordination, where possible, of the federal and state requirements which apply to child care.

d. Advise and provide technical services to the director of the department of education or the director's designee relating to prekindergarten, kindergarten, and before and after school programming and facilities.

e. Make recommendations concerning child care expansion programs that meet the needs of children attending a core education program by providing child care before and after the core program hours and during times when the core program does not operate.

f. Make recommendations for improving collaborations between the child care programs involving the department of human services and programs supporting the education and development of young children including but not limited to the federal head start program; the statewide preschool program for four-year-old children; and the early childhood, at-risk, and other early education programs administered by the department of education.

g. Make recommendations for eliminating duplication and otherwise improving the eligibility determination processes used for the state child care assistance program and other programs supporting low-income families, including but not limited to the federal head start, early head start, and even start programs; the early childhood, at-risk, and preschool programs administered by the department of education; the family and self-sufficiency grant program; and the family investment program.

h. Make recommendations as to the most effective and efficient means of managing the state and federal funding available for the state child care assistance program.

i. Review program data from the department of human services and other departments concerning child care as deemed to be necessary by the advisory committee, although a department shall not provide personally identifiable data or information.

j. Advise and assist the early childhood Iowa council in developing the strategic plan required pursuant to section 135.173.\*

7. The department of human services shall provide information to the advisory committee semiannually on all of the following:

a. Federal, state, local, and private revenues and expenditures for child care including but not limited to updates on the current and future status of the revenues and expenditures.

b. Financial information and data relating to regulation of child care by the department of human services and the usage of the state child care assistance program.

c. Utilization and availability data relating to child care regulation, quantity, and quality from consumer and provider perspectives.

d. Statistical and demographic data regarding child care providers and the families utilizing child care.

e. Statistical data regarding the processing time for issuing notices of decision to state child care assistance applicants and for issuing payments to child care providers.

8. The advisory committee shall coordinate with the early childhood Iowa council\* its reporting annually in December to the governor and general assembly concerning the status of child care in the state, providing findings, and making recommendations. The annual report may be personally presented to the general assembly's standing committees on human resources by a representative of the advisory committee.

2010 Acts, ch 1031, §354, 361

Referred to in §237A.1, 256.9

\*Former section 135.173, creating the early childhood Iowa council, is repealed; see 2010 Acts, ch 1031, §361; 2010 Acts, ch 1192, §84

\*\*Former section 28.3, establishing the community empowerment office, is repealed; membership slots on the child care advisory committee to be identified by the early childhood Iowa state board; see 2010 Acts, ch 1031, §361; 2010 Acts, ch 1192, §84

**135.174 Lead agency and other state agencies.** Repealed by 2010 Acts, ch 1031, § 308.

## DIVISION XXVIII

### HEALTH CARE WORKFORCE SUPPORT INITIATIVE AND FUND

**135.175 Health care workforce support initiative — workforce shortage fund — accounts — repeal.**

1. a. A health care workforce support initiative is established to provide for the coordination and support of various efforts to address the health care workforce shortage in this state. This initiative shall include the medical residency training state matching grants program created in section 135.176, the nurse residency state matching grants program created in section 135.178, the health care professional and Iowa needs nurses now initiative created in sections 261.128 and 261.129, the safety net provider recruitment and retention initiatives program created in section 135.153A, health care workforce shortage national initiatives, and the physician assistant mental health fellowship program created in section 135.177.

b. A health care workforce shortage fund is created in the state treasury as a separate fund under the control of the department, in cooperation with the entities identified in this section as having control over the accounts within the fund. The fund and the accounts within the fund shall be controlled and managed in a manner consistent with the principles specified and the strategic plan developed pursuant to sections 135.163 and 135.164.

2. The fund and the accounts within the fund shall consist of moneys appropriated from the general fund of the state for the purposes of the fund or the accounts within the fund; moneys received from the federal government for the purposes of addressing the health care workforce shortage; contributions, grants, and other moneys from communities and health care employers; and moneys from any other public or private source available.

3. The department and any entity identified in this section as having control over any of the accounts within the fund, may receive contributions, grants, and in-kind contributions to support the purposes of the fund and the accounts within the fund. Not more than five percent of the moneys allocated to any account within the fund may be used for administrative costs.

4. The fund and the accounts within the fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the fund and the accounts within the fund shall not be considered revenue of the state, but rather shall be moneys of the fund or the accounts. The moneys in the fund and the accounts within the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund and the accounts within the fund.

5. The fund shall consist of the following accounts:

a. The medical residency training account. The medical residency training account shall be under the control of the department and the moneys in the account shall be used for the purposes of the medical residency training state matching grants program as specified in section 135.176. Moneys in the account shall consist of moneys appropriated or allocated for deposit in or received by the fund or the account and specifically dedicated to the medical residency training state matching grants program or account for the purposes of such account.

b. The health care professional and Iowa needs nurses now initiative account. The health care professional and Iowa needs nurses now initiative account shall be under the control of the college student aid commission created in section 261.1 and the moneys in the account shall be used for the purposes of the health care professional incentive payment program and the Iowa needs nurses now initiative as specified in sections 261.128 and 261.129. Moneys in the account shall consist of moneys appropriated or allocated for deposit in or received by the fund or the account and specifically dedicated to the health care professional and Iowa needs nurses now initiative or the account for the purposes of the account.

c. The safety net provider network workforce shortage account. The safety net provider network workforce shortage account shall be under the control of the governing group of the Iowa collaborative safety net provider network created in section 135.153 and the moneys in the account shall be used for the purposes of the safety net provider recruitment and retention initiatives program as specified in section 135.153A. Moneys in the account shall consist of moneys appropriated or allocated for deposit in or received by the fund or the account and specifically dedicated to the safety net provider recruitment and retention initiatives program or the account for the purposes of the account.

d. The health care workforce shortage national initiatives account. The health care workforce shortage national initiatives account shall be under the control of the state entity identified for receipt of the federal funds by the federal government entity through which the federal funding is available for a specified health care workforce shortage initiative. Moneys in the account shall consist of moneys appropriated or allocated for deposit in or received by the fund or the account and specifically dedicated to health care workforce shortage national initiatives or the account and for a specified health care workforce shortage initiative.

e. The physician assistant mental health fellowship program account. The physician assistant mental health fellowship program account shall be under the control of the department and the moneys in the account shall be used for the purposes of the physician assistant mental health fellowship program as specified in section 135.177. Moneys in the account shall consist of moneys appropriated or allocated for deposit in or received by the fund or the account and specifically dedicated to the physician assistant mental health fellowship program or the account for the purposes of the account.

f. The Iowa needs nurses now infrastructure account. The Iowa needs nurses now infrastructure account shall be under the control of the department and the moneys in the account shall be used to award grants in accordance with rules adopted by the department, in consultation with the board of nursing, the department of education, and a statewide association that represents nurses specified by the director, pursuant to chapter 17A, for clinical simulators, laboratory facilities, health information technology, and other infrastructure to improve the training of nurses and nurse educators in the state and to enhance the clinical experience for nurses. Grants awarded shall authorize the use of a reasonable portion of the grant moneys for training in the use of the infrastructure purchased with the grant moneys. Moneys in the account shall consist of moneys appropriated or allocated for deposit in or received by the fund or the account and specifically dedicated to the Iowa needs nurses now infrastructure account for the purposes of the account.

g. The nurse residency state matching grants program account. The nurse residency state matching grants program account shall be under the control of the department and the moneys in the account shall be used for the purposes of the nurse residency state matching grants program as specified in section 135.178. Moneys in the account shall consist of moneys appropriated or allocated for deposit in or received by the fund or the account and

specifically dedicated to the nurse residency state matching grants program account for the purposes of such account.

6. a. Moneys in the fund and the accounts in the fund shall only be appropriated in a manner consistent with the principles specified and the strategic plan developed pursuant to sections 135.163 and 135.164 to support the medical residency training state matching grants program, the nurse residency state matching grants program, the health care professional incentive payment program, the Iowa needs nurses now initiative, the safety net recruitment and retention initiatives program, for national health care workforce shortage initiatives, for the physician assistant mental health fellowship program, for the purposes of the Iowa needs nurses now infrastructure account, and to provide funding for state health care workforce shortage programs as provided in this section.

b. State programs that may receive funding from the fund and the accounts in the fund, if specifically designated for the purpose of drawing down federal funding, are the primary care recruitment and retention endeavor (PRIMECARRE), the Iowa affiliate of the national rural recruitment and retention network, the primary care office shortage designation program, the state office of rural health, and the Iowa health workforce center, administered through the bureau of health care access of the department of public health; the area health education centers programs at Des Moines university — osteopathic medical center and the university of Iowa; the Iowa collaborative safety net provider network established pursuant to section 135.153; any entity identified by the federal government entity through which federal funding for a specified health care workforce shortage initiative is received; and a program developed in accordance with the strategic plan developed by the department of public health in accordance with sections 135.163 and 135.164.

c. State appropriations to the fund shall be allocated in equal amounts to each of the accounts within the fund, unless otherwise specified in the appropriation or allocation. Any federal funding received for the purposes of addressing state health care workforce shortages shall be deposited in the health care workforce shortage national initiatives account, unless otherwise specified by the source of the funds, and shall be used as required by the source of the funds. If use of the federal funding is not designated, twenty-five percent of such funding shall be deposited in the safety net provider network workforce shortage account to be used for the purposes of the account and the remainder of the funds shall be used in accordance with the strategic plan developed by the department of public health in accordance with sections 135.163 and 135.164, or to address workforce shortages as otherwise designated by the department of public health. Other sources of funding shall be deposited in the fund or account and used as specified by the source of the funding.

7. No more than five percent of the moneys in any of the accounts within the fund, not to exceed one hundred thousand dollars in each account, shall be used for administrative purposes, unless otherwise provided by the appropriation, allocation, or source of the funds.

8. The department, in cooperation with the entities identified in this section as having control over any of the accounts within the fund, shall submit an annual report to the governor and the general assembly regarding the status of the health care workforce support initiative, including the balance remaining in and appropriations from the health care workforce shortage fund and the accounts within the fund.

9. This section is repealed June 30, 2014.

2009 Acts, ch 118, §45, 54; 2010 Acts, ch 1147, §2 – 6, 13

Referred to in §135.153A, 135.176, 135.177, 135.178, 249M.4, 261.128, 261.129

Implementation of section conditioned upon availability of funding; 2009 Acts, ch 118, §54

Implementation of 2010 amendments conditioned upon availability of funding; 2010 Acts, ch 1147, §13

## DIVISION XXIX

### HEALTH CARE WORKFORCE SUPPORT

#### **135.176 Medical residency training state matching grants program — repeal.**

1. The department shall establish a medical residency training state matching grants program to provide matching state funding to sponsors of accredited graduate medical

education residency programs in this state to establish, expand, or support medical residency training programs. Funding for the program may be provided through the health care workforce shortage fund or the medical residency training account created in section 135.175. For the purposes of this section, unless the context otherwise requires, “*accredited*” means a graduate medical education program approved by the accreditation council for graduate medical education or the American osteopathic association. The grant funds may be used to support medical residency programs through any of the following:

a. The establishment of new or alternative campus accredited medical residency training programs. For the purposes of this paragraph, “*new or alternative campus accredited medical residency training program*” means a program that is accredited by a recognized entity approved for such purpose by the accreditation council for graduate medical education or the American osteopathic association with the exception that a new medical residency training program that, by reason of an insufficient period of operation is not eligible for accreditation on or before the date of submission of an application for a grant, may be deemed accredited if the accreditation council for graduate medical education or the American osteopathic association finds, after consultation with the appropriate accreditation entity, that there is reasonable assurance that the program will meet the accreditation standards of the entity prior to the date of graduation of the initial class in the program.

b. The provision of new residency positions within existing accredited medical residency or fellowship training programs.

c. The funding of residency positions which are in excess of the federal residency cap. For the purposes of this paragraph, “*in excess of the federal residency cap*” means a residency position for which no federal Medicare funding is available because the residency position is a position beyond the cap for residency positions established by the federal Balanced Budget Act of 1997, Pub. L. No. 105-33.

2. The department shall adopt rules pursuant to chapter 17A to provide for all of the following:

a. Eligibility requirements for and qualifications of a sponsor of an accredited graduate medical education residency program to receive a grant. The requirements and qualifications shall include but are not limited to all of the following:

(1) Only a sponsor that establishes a dedicated fund to support a residency program that meets the specifications of this section shall be eligible to receive a matching grant. A sponsor funding residency positions in excess of the federal residency cap, as defined in subsection 1, paragraph “c”, exclusive of funds provided under the medical residency training state matching grants program established in this section, is deemed to have satisfied this requirement and shall be eligible for a matching grant equal to the amount of funds expended for such residency positions, subject to the limitation on the maximum award of grant funds specified in paragraph “e”.

(2) A sponsor shall demonstrate, through documented financial information as prescribed by rule of the department, that funds have been reserved and will be expended by the sponsor in the amount required to provide matching funds for each residency proposed in the request for state matching funds.

(3) A sponsor shall demonstrate, through objective evidence as prescribed by rule of the department, a need for such residency program in the state.

b. The application process for the grant.

c. Criteria for preference in awarding of the grants, including preference in the residency specialty.

d. Determination of the amount of a grant. The total amount of a grant awarded to a sponsor shall be limited to no more than twenty-five percent of the amount that the sponsor has demonstrated through documented financial information has been reserved and will be expended by the sponsor for each residency sponsored for the purpose of the residency program.

e. The maximum award of grant funds to a particular individual sponsor per year. An individual sponsor shall not receive more than twenty-five percent of the state matching funds available each year to support the program. However, if less than ninety-five percent of the available funds has been awarded in a given year, a sponsor may receive more

than twenty-five percent of the state matching funds available if total funds awarded do not exceed ninety-five percent of the available funds. If more than one sponsor meets the requirements of this section and has established, expanded, or supported a graduate medical residency training program, as specified in subsection 1, in excess of the sponsor's twenty-five percent maximum share of state matching funds, the state matching funds shall be divided proportionately among such sponsors.

*f.* Use of the funds awarded. Funds may be used to pay the costs of establishing, expanding, or supporting an accredited graduate medical education program as specified in this section, including but not limited to the costs associated with residency stipends and physician faculty stipends.

3. This section is repealed June 30, 2014.

2009 Acts, ch 118, §46, 54

Referred to in §135.175

Implementation of section conditioned upon availability of funding; 2009 Acts, ch 118, §54

**135.177 Physician assistant mental health fellowship program — repeal.**

1. The department, in cooperation with the college student aid commission, shall establish a physician assistant mental health fellowship program in accordance with this section. Funding for the program may be provided through the health care workforce shortage fund or the physician assistant mental health fellowship program account created in section 135.175. The purpose of the program is to determine the effect of specialized training and support for physician assistants in providing mental health services on addressing Iowa's shortage of mental health professionals.

2. The program shall provide for all of the following:

*a.* Collaboration with a hospital serving a thirteen-county area in central Iowa that provides a clinic at the Iowa veterans home, a private nonprofit agency headquartered in a city with a population of more than one hundred ninety thousand that operates a freestanding psychiatric medical institution for children, a private university with a medical school educating osteopathic physicians located in a city with a population of more than one hundred ninety thousand, the Iowa veterans home, and any other clinical partner designated for the program. Population figures used in this paragraph refer to the most recent certified federal census. The clinical partners shall provide supervision, clinical experience, training, and other support for the program and physician assistant students participating in the program.

*b.* Elderly, youth, and general population clinical experiences.

*c.* A fellowship of twelve months for three physician assistant students, annually.

*d.* Supervision of students participating in the program provided by the university and the other clinical partners participating in the program.

*e.* A student participating in the program shall be eligible for a stipend of not more than fifty thousand dollars for the twelve months of the fellowship plus related fringe benefits. In addition, a student who completes the program and practices in Iowa in a mental health professional shortage area, as defined in section 135.180, shall be eligible for up to twenty thousand dollars in loan forgiveness. The stipend and loan forgiveness provisions shall be determined by the department and the college student aid commission, in consultation with the clinical partners.

*f.* The state and private entity clinical partners shall regularly evaluate and document their experiences with the approaches utilized and outcomes achieved by the program to identify an optimal model for operating the program. The evaluation process shall include but is not limited to identifying ways the program's clinical and training components could be modified to facilitate other student and practicing physician assistants specializing as mental health professionals.

3. This section is repealed June 30, 2014.

2009 Acts, ch 118, §47, 54; 2011 Acts, ch 25, §129

Referred to in §135.175

Implementation of section conditioned upon availability of funding; 2009 Acts, ch 118, §54

**135.178 Nurse residency state matching grants program — repeal.**

1. The department shall establish a nurse residency state matching grants program to provide matching state funding to sponsors of nurse residency programs in this state to establish, expand, or support nurse residency programs that meet standards adopted by rule of the department. Funding for the program may be provided through the health care workforce shortage fund or the nurse residency state matching grants program account created in section 135.175. The department, in cooperation with the Iowa board of nursing, the department of education, Iowa institutions of higher education with board of nursing-approved programs to educate nurses, and the Iowa nurses association, shall adopt rules pursuant to chapter 17A to establish minimum standards for nurse residency programs to be eligible for a matching grant that address all of the following:

- a. Eligibility requirements for and qualifications of a sponsor of a nurse residency program to receive a grant, including that the program includes both rural and urban components.
- b. The application process for the grant.
- c. Criteria for preference in awarding of the grants.
- d. Determination of the amount of a grant.
- e. Use of the funds awarded. Funds may be used to pay the costs of establishing, expanding, or supporting a nurse residency program as specified in this section, including but not limited to the costs associated with residency stipends and nursing faculty stipends.

2. This section is repealed June 30, 2014.

2010 Acts, ch 1147, §7, 13

Referred to in §135.175

Implementation of section conditioned upon availability of funding; 2010 Acts, ch 1147, §13

**135.179 Reserved.**

## DIVISION XXX

## MENTAL HEALTH PROFESSIONAL SHORTAGE AREA PROGRAM

**135.180 Mental health professional shortage area program.**

1. For the purposes of this section, “*mental health professional shortage areas*” means geographic areas in this state that have been designated by the United States department of health and human services, health resources and services administration, bureau of health professionals, as having a shortage of mental health professionals.

2. The department shall establish and administer a mental health professional shortage area program in accordance with this section. Implementation of the program shall be limited to the extent of the funding appropriated or otherwise made available for the program.

3. The program shall provide stipends to support psychiatrist positions with an emphasis on securing and retaining medical directors at community mental health centers, providers of mental health services to county residents pursuant to a waiver approved under section 225C.7, subsection 3, and hospital psychiatric units that are located in mental health professional shortage areas.

4. The department shall apply the rules in determining the number and amounts of stipends within the amount of funding available for the program for a fiscal year.

5. For each fiscal year in which funding is allocated by the program, the department shall report to the governor and general assembly summarizing the program’s activities and the impact made to address the shortage of mental health professionals.

2007 Acts, ch 218, §102

CS2007, §135.80

2011 Acts, ch 25, §80

CS2011, §135.180

Referred to in §135.177

Allocation of funds; 2007 Acts, ch 218, §97; 2008 Acts, ch 1187, §62; 2009 Acts, ch 182, §60; 2010 Acts, ch 1192, §2

## CHAPTER 135A

## PUBLIC HEALTH MODERNIZATION ACT

Legislative findings and intent; purpose;  
2009 Acts, ch 182, §114, 126  
Implementation of chapter subject to funding, see §135A.11

135A.1	Short title.	135A.7	Governmental public health system and accreditation data collection system.
135A.2	Definitions.	135A.8	Governmental public health system fund.
135A.3	Governmental public health system modernization — lead agency.	135A.9	Rules.
135A.4	Governmental public health advisory council.	135A.10	Prohibited acts — fraudulently claiming accreditation — civil penalty.
135A.5	Governmental public health evaluation committee.	135A.11	Implementation.
135A.6	Governmental public health system.		

**135A.1 Short title.**

This chapter shall be known and may be cited as the “*Iowa Public Health Modernization Act*”.

2009 Acts, ch 182, §115, 126

**135A.2 Definitions.**

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

1. “*Academic institution*” means an institution of higher education in the state which grants undergraduate and postgraduate degrees and is accredited by a nationally recognized accrediting agency as determined by the United States secretary of education. For purposes of this definition, “*accredited*” means a certification of the quality of an institution of higher education.

2. “*Accrediting entity*” means a legal, independent, nonprofit or governmental entity or entities approved by the state board of health for the purpose of accrediting designated local public health agencies and the department pursuant to the voluntary accreditation program developed under this chapter.

3. “*Administration*” means the operational procedures, personnel and fiscal management systems, and facility requirements that must be in place for the delivery and assurance of public health services.

4. “*Committee*” means the governmental public health evaluation committee as established in this chapter.

5. “*Communication and information technology*” means the processes, procedures, and equipment needed to provide public information and transmit and receive information among public health entities and community partners; and applies to the procedures, physical hardware, and software required to transmit, receive, and process electronic information.

6. “*Council*” means the governmental public health advisory council as established in this chapter.

7. “*Department*” means the department of public health.

8. “*Designated local public health agency*” means an entity that is either governed by or contractually responsible to a local board of health and designated by the local board to comply with the Iowa public health standards for a jurisdiction.

9. “*Governance*” means the functions and responsibilities of the local boards of health and the state board of health to oversee governmental public health matters.

10. “*Governmental public health system*” means the system described in section 135A.6.

11. “*Iowa public health standards*” means the governmental public health standards adopted by rule by the state board of health.

12. “*Local board of health*” means a county or district board of health.

13. “*Organizational capacity*” means the governmental public health infrastructure that must be in place in order to deliver public health services.

14. “*Public health region*” means, at a minimum, one of six geographical areas approved by the state board of health for the purposes of coordination, resource sharing, and planning and to improve delivery of public health services.

15. “*Public health services*” means the basic public health services that all Iowans should reasonably expect to be provided by designated local public health agencies and the department.

16. “*Voluntary accreditation*” means verification of a designated local public health agency or the department that demonstrates compliance with the Iowa public health standards by an accrediting entity.

17. “*Workforce*” means the necessary qualified and competent staff required to deliver public health services.

2009 Acts, ch 182, §116, 126

Referred to in §137.102

### **135A.3 Governmental public health system modernization — lead agency.**

1. The department is designated as the lead agency in this state to administer this chapter.

2. The department, in collaboration with the governmental public health advisory council and the governmental public health evaluation committee, shall coordinate implementation of this chapter including but not limited to the voluntary accreditation of designated local public health agencies and the department in accordance with the Iowa public health standards. Such implementation shall include evaluation of and quality improvement measures for the governmental public health system.

2009 Acts, ch 182, §117, 126

### **135A.4 Governmental public health advisory council.**

1. A governmental public health advisory council is established to advise the department and make policy recommendations to the director of the department concerning administration, implementation, and coordination of this chapter and to make recommendations to the department regarding the governmental public health system. The council shall meet at least quarterly. The council shall consist of no fewer than fifteen members and no more than twenty-three members. The members shall be appointed by the director. The director may solicit and consider recommendations from professional organizations, associations, and academic institutions in making appointments to the council.

2. Council members shall not be members of the governmental public health evaluation committee.

3. Council members shall serve for a term of two years and may be reappointed for a maximum of three consecutive terms. Initial appointment shall be in staggered terms. Vacancies shall be filled for the remainder of the original appointment.

4. The membership of the council shall satisfy all of the following requirements:

a. One member who has expertise in injury prevention.

b. One member who has expertise in environmental health.

c. One member who has expertise in emergency preparedness.

d. One member who has expertise in health promotion and chronic disease prevention.

e. One member who has epidemiological expertise in communicable and infectious disease prevention and control.

f. One member representing each of Iowa’s six public health regions who is an employee of a designated local public health agency or member of a local board of health. Such members shall include a minimum of one local public health administrator and one physician member of a local board of health.

g. Two members who are representatives of the department.

h. The director of the state hygienic laboratory at the university of Iowa, or the director’s designee.

i. At least one representative from academic institutions which grant undergraduate and

postgraduate degrees in public health or other related health field and are accredited by a nationally recognized accrediting agency as determined by the United States secretary of education. For purposes of this paragraph, “accredited” means a certification of the quality of an institution of higher education.

j. Two members who serve on a county board of supervisors.

k. Four nonvoting, ex officio members who shall consist of four members of the general assembly, two from the senate and two from the house of representatives, with not more than one member from each chamber being from the same political party. The two senators shall be designated, one member each, by the majority leader of the senate after consultation with the president and by the minority leader of the senate. The two representatives shall be designated, one member each, by the speaker of the house of representatives after consultation with the majority leader of the house of representatives and by the minority leader of the house of representatives.

l. A member of the state board of health who shall be a nonvoting, ex officio member.

5. The council may utilize other relevant public health expertise when necessary to carry out its roles and responsibilities.

6. The council shall do all of the following:

a. Advise the department and make policy recommendations to the director of the department concerning administration, implementation, and coordination of this chapter and the governmental public health system.

b. Propose to the director public health standards that should be utilized for voluntary accreditation of designated local public health agencies and the department that include but are not limited to the organizational capacity and public health service components described in section 135A.6, subsection 1, by October 1, 2009.

c. Recommend to the department an accrediting entity and identify the roles and responsibilities for the oversight and implementation of the voluntary accreditation of designated local public health agencies and the department by January 2, 2010. This shall include completion of a pilot accreditation process for one designated local public health agency and the department by July 1, 2011.

d. Recommend to the director strategies to implement voluntary accreditation of designated local public health agencies and the department effective January 2, 2012.

e. Periodically review and make recommendations to the department regarding revisions to the public health standards pursuant to paragraph “b”, as needed and based on reports prepared by the governmental public health evaluation committee pursuant to section 135A.5.

f. Review rules developed and adopted by the state board of health under this chapter and make recommendations to the department for revisions to further promote implementation of this chapter and modernization of the governmental public health system.

g. Form and utilize subcommittees as necessary to carry out the duties of the council.

2009 Acts, ch 182, §118, 126; 2010 Acts, ch 1061, §27

Referred to in §135A.9

#### **135A.5 Governmental public health evaluation committee.**

1. A governmental public health evaluation committee is established to develop and implement the evaluation of the governmental public health system and voluntary accreditation program. The committee shall meet at least quarterly. The committee shall consist of no fewer than eleven members and no more than thirteen members. The members shall be appointed by the director of the department. The director may solicit and consider recommendations from professional organizations, associations, and academic institutions in making appointments to the committee.

2. Committee members shall not be members of the governmental public health advisory council.

3. Committee members shall serve for a term of two years and may be reappointed for a maximum of three consecutive terms. Initial appointment shall be in staggered terms. Vacancies shall be filled for the remainder of the original appointment.

4. The membership of the committee shall satisfy all of the following requirements:

a. At least one member representing each of Iowa’s six public health regions. Each

representative shall be an employee or administrator of a designated local public health agency or a member of a local board of health. Such members shall be appointed to ensure expertise in the areas of communicable and infectious diseases, environmental health, injury prevention, healthy behaviors, and emergency preparedness.

- b. Two members who are representatives of the department.
  - c. A representative of the state hygienic laboratory at the university of Iowa.
  - d. At least two representatives from academic institutions which grant undergraduate and postgraduate degrees in public health or other health-related fields.
  - e. At least one economist who has demonstrated experience in public health, health care, or a health-related field.
  - f. At least one research analyst.
5. The committee may utilize other relevant public health expertise when necessary to carry out its roles and responsibilities.
6. The committee shall do all of the following:
- a. Develop and implement processes for evaluation of the governmental public health system and the voluntary accreditation program.
  - b. Collect and report baseline information for organizational capacity and public health service delivery based on the Iowa public health standards prior to implementation of the voluntary accreditation program on January 2, 2012.
  - c. Evaluate the effectiveness of the accrediting entity and the voluntary accreditation process.
  - d. Evaluate the appropriateness of the Iowa public health standards and develop measures to determine reliability and validity.
  - e. Determine what process and outcome improvements in the governmental public health system are attributable to voluntary accreditation.
  - f. Assure that the evaluation process is capturing data to support key research in public health system effectiveness and health outcomes.
  - g. Annually submit a report to the department by July 1.
  - h. Form and utilize subcommittees as necessary to carry out the duties of the committee.

Referred to in §135A.4

### **135A.6 Governmental public health system.**

1. The governmental public health system, in accordance with the Iowa public health standards, shall include but not be limited to the following organizational capacity components and public health service components:

- a. Organizational capacity components shall include all of the following:
  - (1) Governance.
  - (2) Administration.
  - (3) Communication and information technology.
  - (4) Workforce.
  - (5) Community assessment and planning. This component consists of collaborative data collection and analysis for the completion of population-based community health assessments and community health profiles and the process of developing improvement plans to address the community health needs and identified gaps in public health services.
  - (6) Evaluation.
- b. Public health service components shall include all of the following:
  - (1) Prevention of epidemics and the spread of disease. This component includes the surveillance, detection, investigation, and prevention and control measures that prevent, reduce, or eliminate the spread of infectious disease.
  - (2) Protection against environmental hazards. This component includes activities that reduce or eliminate the risk factors detrimental to the public's health within the natural or man-made environment.
  - (3) Prevention of injuries. This component includes activities that facilitate the prevention, reduction, or elimination of intentional and unintentional injuries.

(4) Promotion of healthy behaviors. This component includes activities to assure services that promote healthy behaviors to prevent chronic disease and reduce illness.

(5) Preparation for, response to, and recovery from public health emergencies. This component includes activities to prepare the public health system and community partners to respond to public health threats, emergencies, and disasters and to assist in the recovery process.

2. The governmental public health system shall include but not be limited to the following entities:

- a. Local boards of health.
- b. State board of health.
- c. Designated local public health agencies.
- d. The department.

2009 Acts, ch 182, §120, 126

Referred to in §135A.2, 135A.4

### **135A.7 Governmental public health system and accreditation data collection system.**

1. The department shall establish and maintain a governmental public health system and an accreditation data collection system by which the state board of health, the director, the department, the council, and the committee may monitor the implementation and effectiveness of the governmental public health system based on the Iowa public health standards.

2. Notwithstanding section 22.7 or any other provision of law, local boards of health shall provide to the department and the accrediting entity upon request all data and information necessary to determine the local board's capacity to comply with the Iowa public health standards, including but not limited to data and information regarding governance, administration, communication and information technology, workforce, personnel, staffing, budget, contracts, and other program and agency information.

3. The department may share any data or information collected pursuant to this section with the council or the committee as necessary to perform the duties of the council and committee. Data and information provided to the department under this section which are confidential pursuant to section 22.7, subsection 2, 11, or 50, section 139A.3, or other provision of law, remain confidential and shall not be released by the department, the council, or the committee.

4. During the pendency of the accreditation process, all accreditation files and reports prepared for or maintained by the accrediting entity are confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release. After the accrediting entity has issued its recommendation or report only the preliminary drafts of the recommendation or report, and records otherwise confidential pursuant to chapter 22 or other provision of state or federal law, shall remain confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release.

5. To the extent possible, activities under this section shall be coordinated with other health data collection systems including those maintained by the department.

2009 Acts, ch 182, §121, 126

### **135A.8 Governmental public health system fund.**

1. The department is responsible for the funding of the administrative costs for implementation of this chapter. A governmental public health system fund is created as a separate fund in the state treasury under the control of the department. The fund shall consist of moneys obtained from any source, including the federal government, unless otherwise prohibited by law or the entity providing the funding. Moneys deposited in the fund are appropriated to the department for the public health purposes specified in this chapter. Moneys in the fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section. Notwithstanding section 8.33, moneys in the governmental public health system fund at the end of the fiscal year shall not revert to any other fund but shall remain in the fund for subsequent fiscal years.

2. The fund is established to assist local boards of health and the department with the

provision of governmental public health system organizational capacity and public health service delivery and to achieve and maintain voluntary accreditation in accordance with the Iowa public health standards. At least seventy percent of the funds shall be made available to local boards of health and up to thirty percent of the funds may be utilized by the department.

3. Moneys in the fund may be allocated by the department to a local board of health for organizational capacity and service delivery. Such allocation may be made on a matching, dollar-for-dollar basis for the acquisition of equipment, or by providing grants to achieve and maintain voluntary accreditation in accordance with the Iowa public health standards.

4. A local board of health seeking matching funds or grants under this section shall apply to the department. The state board of health shall adopt rules concerning the application and award process for the allocation of moneys in the fund and shall establish the criteria for the allocation of moneys in the fund if the moneys are insufficient to meet the needs of local boards of health.

2009 Acts, ch 182, §122, 126

#### **135A.9 Rules.**

The state board of health shall adopt rules pursuant to chapter 17A to implement this chapter which shall include but are not limited to the following:

1. Incorporation of the Iowa public health standards recommended to the department pursuant to section 135A.4, subsection 6.

2. A voluntary accreditation process to begin no later than January 2, 2012, for designated local public health agencies and the department.

3. Rules relating to the operation of the governmental public health advisory council.

4. Rules relating to the operation of the governmental public health system evaluation committee.

5. The application and award process for governmental public health system fund moneys.

6. Rules relating to data collection for the governmental public health system and the voluntary accreditation program.

7. Rules otherwise necessary to implement the chapter.

2009 Acts, ch 182, §123, 126; 2010 Acts, ch 1061, §29

#### **135A.10 Prohibited acts — fraudulently claiming accreditation — civil penalty.**

A local board of health or local public health agency that imparts or conveys, or causes to be imparted or conveyed, information claiming that it is accredited pursuant to this chapter or that uses any other term to indicate or imply it is accredited without being accredited under this chapter is subject to a civil penalty not to exceed one thousand dollars per day for each offense. However, nothing in this chapter shall be construed to restrict a local board of health or local public health agency from providing any services for which it is duly authorized.

2009 Acts, ch 182, §124, 126

#### **135A.11 Implementation.**

The department shall implement this chapter only to the extent that funding is available.

2009 Acts, ch 182, §125, 126

Appropriation of funds for FY 2009-2010 to begin implementation of public health modernization; 2009 Acts, ch 182, §2, 60

## CHAPTER 135B

### LICENSURE AND REGULATION OF HOSPITALS

Referred to in §8D.2, 8D.3, 8D.13, 10A.104, 21.5, 97B.52A, 105.11, 125.2, 125.13, 125.43A, 135.131, 135C.5, 135H.6, 142C.2, 144A.7A, 147.138, 147A.21, 157.13, 206.2, 231B.16, 231C.17, 231D.16, 235A.15, 235B.6, 235E.2, 237.1, 237.4, 237A.1, 249L.2, 249M.2, 252A.2, 282.27, 331.382, 423.3, 455B.133, 476B.1, 505.8, 505.27, 514C.13, 519.1, 519A.2, 582.1, 614.1, 622.31, 714H.4

Abortion liability exculpation, chapter 146  
 Psychiatric medical institutions for children, chapter 135H

DIVISION I GENERAL PROVISIONS	DIVISION II PATHOLOGY AND RADIOLOGY SERVICES IN HOSPITALS
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#### DIVISION I

##### GENERAL PROVISIONS

#### **135B.1 Definitions.**

As used in this chapter:

1. “*Department*” means the department of inspections and appeals.
2. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.
3. “*Hospital*” means a place which is devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care over a period exceeding twenty-four hours of two or more nonrelated individuals suffering from illness, injury, or deformity, or a place which is devoted primarily to the rendering over a period exceeding twenty-four hours of obstetrical or other medical or nursing care for two or more nonrelated individuals, or any institution, place, building or agency in which any accommodation is primarily maintained, furnished or offered for the care over a period exceeding twenty-four hours of two or more nonrelated aged or infirm persons requiring or receiving chronic or convalescent care; and shall include sanatoriums or other related institutions within the meaning of this chapter. Provided, however, nothing in this chapter shall apply to hotels or other similar places that furnish only food and lodging, or either, to their guests or to a freestanding hospice facility

which operates a hospice program in accordance with 42 C.F.R. § 418. “Hospital” shall include, in any event, any facilities wholly or partially constructed or to be constructed with federal financial assistance, pursuant to Pub. L. No. 79-725, 60 Stat. 1040, approved August 13, 1946.

4. “Person” means any individual, firm, partnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee or other similar representative thereof.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.1]

90 Acts, ch 1107, §1; 90 Acts, ch 1204, §2; 2006 Acts, ch 1010, §52

Referred to in §135.61, 135.154, 135C.33, 139A.2, 142D.2, 144A.2, 144C.2, 144D.1, 152B.4, 233.1, 235E.1, 427.1(14a)

#### **135B.2 Purpose.**

The purpose of this chapter is to provide for the development, establishment and enforcement of basic standards for the care and treatment of individuals in hospitals and for the construction, maintenance and operation of such hospitals, which, in the light of existing knowledge, will promote safe and adequate treatment of such individuals in hospitals, in the interest of the health, welfare and safety of the public.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.2]

#### **135B.3 Licensure.**

No person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital in this state without a license.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.3]

#### **135B.4 Application for license.**

Licenses shall be obtained from the department. Applications shall be upon forms and shall contain information as the department may reasonably require, which may include affirmative evidence of ability to comply with reasonable standards and rules prescribed under this chapter. Each application for license shall be accompanied by the license fee, which shall be refunded to the applicant if the license is denied and which shall be deposited into the state treasury and credited to the general fund if the license is issued. Hospitals having fifty beds or less shall pay an initial license fee of fifteen dollars; hospitals of more than fifty beds and not more than one hundred beds shall pay an initial license fee of twenty-five dollars; all other hospitals shall pay an initial license fee of fifty dollars.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.4]

90 Acts, ch 1204, §3

#### **135B.5 Issuance and renewal of license.**

1. Upon receipt of an application for license and the license fee, the department shall issue a license if the applicant and hospital facilities comply with this chapter and the rules of the department. Each licensee shall receive annual reapproval upon payment of five hundred dollars and upon filing of an application form which is available from the department. The annual licensure fee shall be dedicated to support and provide educational programs on regulatory issues for hospitals licensed under this chapter in consultation with the hospital licensing board. Licenses shall be either general or restricted in form. Each license shall be issued only for the premises and persons or governmental units named in the application and is not transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by rule of the department.

2. The provisions of this section shall not in any way affect, change, deny or nullify any rights set forth in, or arising from the provisions of this chapter and particularly section 135B.7, arising before or after December 31, 1960.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.5]

90 Acts, ch 1204, §4; 2008 Acts, ch 1191, §48

**135B.6 Denial, suspension, or revocation of license — hearings and review.**

The department may deny, suspend, or revoke a license in any case where it finds that there has been a substantial failure to comply with this chapter or the rules or minimum standards adopted pursuant to this chapter.

A denial, suspension, or revocation shall be effected by mailing to the applicant or licensee by certified mail, or by personal service of, a notice setting forth the particular reasons for the action. A denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within the thirty-day period gives written notice to the department requesting a hearing, in which case the notice is suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the department. At any time at or prior to hearing, the department may rescind the notice of denial, suspension, or revocation upon being satisfied that the reasons for the denial, suspension, or revocation have been or will be removed. On the basis of a hearing or upon default of the applicant or licensee, the determination involved in the notice may be affirmed, modified, or set aside by the department. A copy of the decision, setting forth the finding of facts and the particular reasons for the decision shall be sent by certified mail, or served personally upon, the applicant or licensee.

The procedure governing hearings authorized by this section shall be in accordance with rules adopted by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial review is sought pursuant to section 135B.14. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing the copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.6]

90 Acts, ch 1204, §5

**135B.7 Rules and enforcement.**

1. *a.* The department, with the advice and approval of the hospital licensing board and approval of the state board of health, shall adopt rules setting out the standards for the different types of hospitals to be licensed under this chapter. The department shall enforce the rules.

*b.* Rules or standards shall not be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed, solely by reason of the school or system of practice employed or permitted to be employed by physicians in the hospital, if the school or system of practice is recognized by the laws of this state.

2. *a.* The rules shall state that a hospital shall not deny clinical privileges to physicians and surgeons, podiatric physicians, osteopathic physicians and surgeons, dentists, certified health service providers in psychology, physician assistants, or advanced registered nurse practitioners licensed under chapter 148, 148C, 149, 152, or 153, or section 154B.7, solely by reason of the license held by the practitioner or solely by reason of the school or institution in which the practitioner received medical schooling or postgraduate training if the medical schooling or postgraduate training was accredited by an organization recognized by the council on postsecondary accreditation or an accrediting group recognized by the United States department of education.

*b.* A hospital may establish procedures for interaction between a patient and a practitioner. The rules shall not prohibit a hospital from limiting, restricting, or revoking clinical privileges of a practitioner for violation of hospital rules, regulations, or procedures established under this paragraph, when applied in good faith and in a nondiscriminatory manner.

*c.* This subsection shall not require a hospital to expand the hospital's current scope of service delivery solely to offer the services of a class of providers not currently providing services at the hospital. This section shall not be construed to require a hospital to establish rules which are inconsistent with the scope of practice established for licensure of practitioners to whom this subsection applies.

*d.* This section shall not be construed to authorize the denial of clinical privileges to a

practitioner or class of practitioners solely because a hospital has as employees of the hospital identically licensed practitioners providing the same or similar services.

3. The rules shall require that a hospital establish and implement written criteria for the granting of clinical privileges. The written criteria shall include but are not limited to consideration of all of the following:

a. The ability of an applicant for privileges to provide patient care services independently and appropriately in the hospital.

b. The license held by the applicant to practice.

c. The training, experience, and competence of the applicant.

d. The relationship between the applicant's request for the granting of privileges and the hospital's current scope of patient care services, as well as the hospital's determination of the necessity to grant privileges to a practitioner authorized to provide comprehensive, appropriate, and cost-effective services.

4. The department shall also adopt rules requiring hospitals to establish and implement protocols for responding to the needs of patients who are victims of domestic abuse, as defined in section 236.2.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.7]

83 Acts, ch 101, §16; 85 Acts, ch 169, §1; 90 Acts, ch 1093, §1; 90 Acts, ch 1204, §6; 91 Acts, ch 218, §3; 93 Acts, ch 108, §1; 96 Acts, ch 1034, §68; 99 Acts, ch 42, §1; 2008 Acts, ch 1088, §88; 2009 Acts, ch 41, §45

Referred to in §135B.5

#### **135B.7A Procedures — orders.**

The department shall adopt rules that require hospitals to establish procedures for authentication of all verbal orders by a practitioner within a period not to exceed thirty days following a patient's discharge.

2001 Acts, ch 93, §1; 2007 Acts, ch 93, §1

#### **135B.8 Effective date of rules.**

Any hospital which is in operation at the time of promulgation of any applicable rules or minimum standards under this chapter shall be given a reasonable time, not to exceed one year from the date of such promulgation, within which to comply with such rules and minimum standards.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.8]

#### **135B.9 Inspections and qualifications for hospital inspectors — protection and advocacy agency investigations.**

1. The department shall make or cause to be made inspections as it deems necessary in order to determine compliance with applicable rules. Hospital inspectors shall meet the following qualifications:

a. Be free of conflicts of interest. A hospital inspector shall not participate in an inspection or complaint investigation of a hospital in which the inspector or a member of the inspector's immediate family works or has worked within the last two years. For purposes of this paragraph, "*immediate family member*" means a spouse; natural or adoptive parent, child, or sibling; or stepparent, stepchild, or stepsibling.

b. Complete a yearly conflict of interest disclosure statement.

c. Biennially, complete a minimum of ten hours of continuing education pertaining to hospital operations including but not limited to quality and process improvement standards, trauma system standards, and regulatory requirements.

2. In the state resource centers and state mental health institutes operated by the department of human services, the designated protection and advocacy agency as provided in section 135C.2, subsection 4, shall have the authority to investigate all complaints of abuse and neglect of persons with developmental disabilities or mental illnesses if the complaints are reported to the protection and advocacy agency or if there is probable cause to believe that the abuse has occurred. Such authority shall include the examination of all records pertaining to the care provided to the residents and contact or interview with any

resident, employee, or any other person who might have knowledge about the operation of the institution.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.9]

88 Acts, ch 1249, §1; 90 Acts, ch 1204, §7; 95 Acts, ch 51, §1; 2000 Acts, ch 1112, §51; 2010 Acts, ch 1177, §1

Referred to in §135C.37

#### **135B.10 Hospital licensing board.**

The governor shall appoint six individuals to serve as the hospital licensing board within the department.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.10]

86 Acts, ch 1245, §527; 90 Acts, ch 1204, §8; 2008 Acts, ch 1191, §49

#### **135B.11 Functions of hospital licensing board — compensation.**

1. The hospital licensing board shall have the following responsibilities and duties:

a. To consult with and advise the department in matters of policy affecting administration of this chapter, and in the development of rules and standards provided for under this chapter.

b. To review and approve rules and standards authorized under this chapter prior to their approval by the state board of health and adoption by the department.

2. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.11]

86 Acts, ch 1245, §528; 87 Acts, ch 8, §4; 90 Acts, ch 1204, §9; 2009 Acts, ch 41, §263

#### **135B.12 Confidentiality.**

The department's final findings or the final survey findings of the joint commission on the accreditation of health care organizations or the American osteopathic association with respect to compliance by a hospital with requirements for licensing or accreditation shall be made available to the public in a readily available form and place. Other information relating to a hospital obtained by the department which does not constitute the department's findings from an inspection of the hospital or the final survey findings of the joint commission on the accreditation of health care organizations or the American osteopathic association shall not be made available to the public, except in proceedings involving the denial, suspension, or revocation of a license under this chapter. The name of a person who files a complaint with the department shall remain confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees or agents involved in the investigation of the complaint.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.12]

88 Acts, ch 1249, §2; 90 Acts, ch 1204, §10; 91 Acts, ch 107, §2

#### **135B.13 Annual report of department.**

The department shall prepare and publish an annual report of its activities under this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.13]

90 Acts, ch 1204, §11

#### **135B.14 Judicial review.**

Judicial review of the action of the department may be sought in accordance with chapter 17A. Notwithstanding the terms of chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the hospital is located or to be located, and the status quo of the petitioner or licensee shall be preserved pending final disposition of the matter in the courts.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.14]

90 Acts, ch 1204, §12

Referred to in §135B.6

**135B.15 Penalties.**

Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a serious misdemeanor, and each day of continuing violation after conviction shall be considered a separate offense.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.15]

**135B.16 Injunction.**

Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.16]

**135B.17 Construction.**

This chapter is in addition to and not in conflict with chapter 235.

Provisions of this chapter in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.17]

83 Acts, ch 101, §17; 2004 Acts, ch 1086, §36

**135B.18 County care facilities exempted.**

The provisions of this chapter shall not apply to county care facilities established pursuant to chapter 347B and managed by the county board of supervisors.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.18]

**135B.18A Universal newborn and infant hearing screening.**

Beginning January 1, 2004, a birthing hospital as defined in section 135.131 shall comply with section 135.131 relating to universal newborn and infant hearing screening.

2003 Acts, ch 102, §2

## DIVISION II

## PATHOLOGY AND RADIOLOGY SERVICES IN HOSPITALS

**135B.19 Title of division.**

This division may be cited as the “*Pathology and Radiology Services in Hospitals Law*”.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.19]

2011 Acts, ch 34, §36

**135B.20 Definitions.**

Definitions as used in this division:

1. “*Doctor*” shall mean any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state.

2. “*Employees*” as used in section 135B.24, and “*employment*” as used in section 135B.25, shall include and pertain to members of the religious order operating the hospital even though the relationship of employer and employee does not exist between such members and the hospital.

3. “*Hospital*” shall mean all hospitals licensed under this chapter.

4. “*Joint conference committee*” shall mean the joint conference committee as required by the joint commission on accreditation of health care organizations or, in a hospital having no such committee, a similar committee, an equal number of which shall be members of the medical staff selected by the staff and an equal number of which shall be selected by the governing board of the hospital.

5. “Technician” shall mean technologist as well.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.20]

98 Acts, ch 1100, §16; 2008 Acts, ch 1088, §141; 2009 Acts, ch 133, §35

#### **135B.21 Functions of hospital.**

The ownership and maintenance of the laboratory and X-ray facilities and the operation of same under this division are proper functions of a hospital.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.21]

#### **135B.22 Character of services.**

Pathology and radiology services performed in hospitals are the product of the joint contribution of hospitals, doctors and technicians but these services constitute medical services which must be performed by or under the direction and supervision of a doctor, and no hospital shall have the right, directly or indirectly, to direct, control or interfere with the professional medical acts and duties of the doctor in charge of the pathology or radiology facilities or of the technicians under the doctor’s supervision. Nothing herein contained shall affect the rights of third parties as a result of negligence in the operation or maintenance of the aforesaid pathology and radiology facilities.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.22]

#### **135B.23 Agreement with doctor.**

Each hospital shall arrange for such services and for the direction and supervision of its pathology or radiology department by entering into either an oral or written agreement with a doctor who is a member of or acceptable to the hospital medical staff. Such doctor may or may not be a specialist. The department may be supervised and directed by a qualified member of the staff and specific services may be referred to a specialist, or the specialist may also direct and supervise the department as may be desired. Any contract so entered into shall be in accordance with the provisions of this division.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.23]

#### **135B.24 Employees.**

Unless the department is leased or unless the hospital and doctor mutually agree otherwise, technicians and other personnel, not including doctors, shall be employees of the hospital, subject to the rules of the hospital applicable to employees generally, but under the direction and supervision of the doctor in charge of the department as set forth elsewhere in this division.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.24]

Referred to in §135B.20

#### **135B.25 Hiring and dismissal of technicians.**

The doctor and hospital shall mutually agree upon the employment of any technicians necessary for the proper operation of said department and no technicians shall be dismissed from said employment without the mutual consent of the parties, provided, however, that in the event the hospital and doctor are unable mutually to agree upon the hiring or discharge or disciplining of any employee of said department, the matter shall be promptly submitted to the joint conference committee for final determination.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.25]

Referred to in §135B.20

#### **135B.26 Compensation.**

The contract between the hospital and doctor in charge of the laboratory or X-ray facilities may contain any provision for compensation of each upon which they mutually agree. The contract may create the relationship of employer and employee between the hospital and the radiologist or pathologist. A percentage arrangement or a relationship of employer and employee between the hospital and the radiologist or pathologist is not unprofessional

conduct on the part of the doctor or in violation of the statutes of this state upon the part of the hospital.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.26]  
83 Acts, ch 27, §8  
Referred to in §514B.32

#### **135B.27 Admission agreement.**

The hospital admission agreement signed by the patient or the patient's legal representative shall contain the following statement:

Pathology and radiology services are medical services performed or supervised by doctors, and the personnel and facilities are or may be furnished by the hospital for said services. Charges for such services are or may be collected, however, by the hospital on behalf of said doctors pursuant to an agreement between said doctors and the hospital, and from said charges I consent that an agreed sum will be retained by the hospital in accordance with an existing agreement between the doctor and the hospital.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.27]

#### **135B.28 Hospital bill.**

1. The hospital bill shall properly include the charges for pathology and radiology services as long as the name of the doctor is stated and it fairly appears that the charge is for medical services.

2. The hospital bill shall also contain a statement substantially in the following form:

The pathology and radiology charges are for medical services rendered by or under the direction of the doctor listed above and are collected by the hospital on behalf of the doctor, from which charges an agreed sum will be retained by the hospital in accordance with an existing agreement to which retention you consented at the time of your admission to the hospital.

3. Upon the effective date of regulations which may be adopted by the United States department of health and human services prohibiting combined billing by hospitals and hospital-based physicians under Tit. XVIII of the federal Social Security Act, the charges for all pathology and radiology services in a hospital, may upon the mutual agreement of the hospital, physician, and third-party payer, be billed separately, the hospital component of the charges being included in the hospital bill and the doctor component being billed by the doctor.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.28]  
83 Acts, ch 27, §9; 2009 Acts, ch 41, §46

#### **135B.29 Fees.**

All fees to be charged by the doctors for pathology and radiology services shall be mutually agreed upon by the hospital and the doctor. In the event dispute shall arise between the parties the matter shall be submitted to the joint conference committee for final determination.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.29]

#### **135B.30 Radiology and pathology fees.**

Fees for radiology and pathology services must be paid for as medical and not hospital services. In all cases where payment is to be made by a corporation organized pursuant to chapter 514, payment for radiology and pathology services shall be made by a medical service corporation and not by a hospital service corporation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.30]

**135B.31 Exceptions.**

This division is not intended and shall not affect in any way the obligation of public hospitals under chapter 347 or municipal hospitals to provide medical care or treatment to patients of certain entitlement, nor the operation by the state of mental or other hospitals authorized by law. This division shall not in any way affect or limit the practice of dentistry or the practice of oral surgery by a dentist.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.31]

87 Acts, ch 233, §427; 2005 Acts, ch 167, §44, 66

**135B.32 Construction.**

Nothing herein shall deprive any hospital of its tax exempt or nonprofit status.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135B.32]

## DIVISION III

## TECHNICAL PLANNING ASSISTANCE

**135B.33 Technical assistance — plan — grants.**

1. Subject to availability of funds, the Iowa department of public health shall provide technical planning assistance to local boards of health and hospital governing boards to ensure access to hospital services in rural areas. The department shall encourage the local boards of health and hospital governing boards to adopt a long-term community health services and developmental plan including the following:

a. An analysis of demographic trends in the health facility services area, affecting health facility and health-facility-related health care utilizations.

b. A review of inpatient services currently provided, by type of service and the frequency of provision of that service, and the cost-effectiveness of that service.

c. An analysis of resources available in proximate health facilities and services that might be provided through alternative arrangements with such health facilities.

d. An analysis of cooperative arrangements that could be developed with other health facilities in the area that could assist those health facilities in the provision of services.

e. An analysis of community health needs, including long-term care, nursing facility care, pediatric and maternity services, and the health facilities' potential role in facilitating the provision of services to meet these needs.

f. An analysis of alternative uses for existing health facility space and real property, including use for community health-related and human service-related purposes.

g. An analysis of mechanisms to meet indigent patient care needs and the responsibilities for the care of indigent patients.

h. An analysis of the existing tax levying of the health facilities for patient care, on a per capita basis and per hospital patient basis, and projections on future needs for tax levying to continue for the provision of care.

2. Providers may cooperatively coordinate to develop one long-term community health services and developmental plan for a geographic area, provided the plan addresses the issues enumerated in this section.

3. The health facilities may seek technical assistance or apply for matching grant funds for the plan development. The department shall require compliance with subsection 1, paragraphs "a" through "h", when the facility applies for matching grant funds.

86 Acts, ch 1200, §2; 90 Acts, ch 1039, §1; 2009 Acts, ch 41, §192

Referred to in §135.107

Section not amended; editorial change applied

DIVISION IV  
EMPLOYEE RECORD CHECKS

**135B.34 Hospital employees — criminal history and abuse record checks — penalty.**

1. Prior to employment of a person in a hospital, the hospital shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state. A hospital shall inform all persons prior to employment regarding the performance of the record checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. A hospital shall include the following inquiry in an application for employment:

Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?

2. *a.* If it is determined that a person being considered for employment in a hospital has committed a crime, the department of public safety shall notify the hospital that upon the request of the hospital the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person's employment in the hospital.

*b.* (1) If a person being considered for employment, other than employment involving the operation of a motor vehicle, has been convicted of a crime listed in subparagraph (2) but does not have a record of founded child or dependent abuse and the hospital has requested an evaluation in accordance with paragraph "a" to determine whether the crime warrants prohibition of the person's employment, the hospital may employ the person for not more than sixty calendar days pending completion of the evaluation.

(2) Subparagraph (1) applies to a crime that is a simple misdemeanor offense under section 123.47 or chapter 321, and to a crime that is a first offense of operating a motor vehicle while intoxicated under section 321J.2, subsection 1.

*c.* If a department of human services child or dependent adult abuse record check shows that the person has a record of founded child or dependent adult abuse, the department of human services shall notify the hospital that upon the request of the hospital the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of the person's employment in the hospital.

*d.* An evaluation performed under this subsection shall be performed in accordance with procedures adopted for this purpose by the department of human services.

*e.* (1) If a person owns or operates more than one hospital, and an employee of one of such hospitals is transferred to another such hospital without a lapse in employment, the hospital is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

(2) If the ownership of a hospital is transferred, at the time of transfer the record checks required by this section shall be performed for each employee for whom there is no documentation that such record checks have been performed. The hospital may continue to employ such employee pending the performance of the record checks and any related evaluation.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. If the department of human services performs an evaluation for the purposes of

this section, the department of human services has final authority in determining whether prohibition of the person's employment is warranted.

4. *a.* Except as provided in paragraph "b" and subsection 2, a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a hospital licensed under this chapter unless an evaluation has been performed by the department of human services.

*b.* A person with a criminal or abuse record who is or was employed by a hospital licensed under this chapter and is hired by another hospital shall be subject to the criminal history and abuse record checks required pursuant to subsection 1. However, if an evaluation was previously performed by the department of human services concerning the person's criminal or abuse record and it was determined that the record did not warrant prohibition of the person's employment and the latest record checks do not indicate a crime was committed or founded abuse record was entered subsequent to that evaluation, the person may commence employment with the other hospital in accordance with the department of human services' evaluation and an exemption from the requirements in paragraph "a" for reevaluation of the latest record checks is authorized. Otherwise, the requirements of paragraph "a" remain applicable to the person's employment. Authorization of an exemption under this paragraph "b" from requirements for reevaluation of the latest record checks by the department of human services is subject to all of the following provisions:

(1) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

(2) Any restrictions placed on the person's employment in the previous evaluation by the department of human services shall remain applicable in the person's subsequent employment.

(3) The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record checks shall be reevaluated.

(4) Although an exemption under this lettered paragraph "b" may be authorized, the subsequent employer may instead request a reevaluation of the record checks and may employ the person while the reevaluation is being performed.

5. *a.* If a person employed by a hospital that is subject to this section is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the hospital of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The hospital shall act to verify the information within forty-eight hours of notification. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the hospital to determine whether or not the person's employment is continued. The hospital may continue to employ the person pending the performance of an evaluation by the department of human services to determine whether prohibition of the person's employment is warranted. A person who is required by this subsection to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor.

*b.* If a hospital receives credible information, as determined by the hospital, that a person employed by the hospital has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment from a person other than the employee and the employee has not informed the hospital of such information within the period required under paragraph "a", the hospital shall act to verify the credible information within forty-eight hours of receipt of the credible information. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the hospital to determine whether or not the person's employment is continued.

*c.* The hospital may notify the county attorney for the county where the hospital is located

of any violation or failure by an employee to notify the hospital of a criminal conviction or entry of an abuse record within the period required under paragraph “a”.

6. A hospital licensed in this state may access the single contact repository established by the department pursuant to section 135C.33 as necessary for the hospital to perform record checks of persons employed or being considered for employment by the hospital.

2002 Acts, ch 1034, §1; 2008 Acts, ch 1187, §111; 2013 Acts, ch 21, §1, 2, 6, 7

2013 amendments adding paragraph b to subsection 2 and amending subsection 4, paragraph b, take effect April 5, 2013, and apply retroactively to persons for whom a record check was requested not more than 60 calendar days prior to April 5, 2013; 2013 Acts, ch 21, §6, 7

Subsection 2, NEW paragraph b and former paragraphs b – d redesignated as c – e  
 Subsection 4, paragraph b amended

## CHAPTER 135C

### HEALTH CARE FACILITIES

Referred to in §10A.104, 105.11, 135.63, 135G.4, 135H.6, 157.13, 225C.4, 227.4, 229.21, 229.43, 230.32, 231B.16, 231C.17, 231D.16, 235E.2, 237.1, 237.4, 249.3, 249A.12, 249A.16, 331.382, 335.25, 414.22, 422.9, 423.3, 455B.505, 483A.24, 505.27, 514H.1, 519A.2, 622.31, 714H.4

Cost-related systems, §249.12  
 Modified price-based case-mix reimbursement for nursing facilities; 2001 Acts, ch 192, §4;  
 2002 Acts, ch 1172, §2; 2003 Acts, ch 112, §9;  
 2003 Acts, ch 175, §50; 2003 Acts, ch 179, §165;  
 2004 Acts, ch 1175, §154; 2005 Acts, ch 175, §31;  
 2006 Acts, ch 1184, §30; 2007 Acts, ch 218, §33, 67;  
 2008 Acts, ch 1187, §32, 33; 2009 Acts, ch 182, §32, 33;  
 2009 Acts, ch 183, §73; 2010 Acts, ch 1182, §20 – 23, 36;  
 2010 Acts, ch 1192, §33; 2010 Acts, ch 1193, §73;  
 2011 Acts, ch 129, §28, 141, 156; 2012 Acts, ch 1133, §32;  
 2013 Acts, ch 138, §29, 43, 159

	GENERAL PROVISIONS	135C.22	Applicable to governmental units.
135C.1	Definitions.	135C.23	Express requirements for admission or residence.
135C.2	Purpose — rules — special classifications — protection and advocacy agency.	135C.24	Personal property or affairs of patients or residents.
135C.3	Nature of care.	135C.25	Resident advocate committee appointments — duties — disclosure — liability.
135C.4	Residential care facilities.		Repealed by 2013 Acts, ch 18, §34.
135C.5	Limitations on use.		
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135C.13	Judicial review.		
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135C.15	Time to comply.	135C.31A	Assessment of residents — program eligibility — prescription drug coverage.
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## GENERAL PROVISIONS

### 135C.1 Definitions.

1. “*Adult day services*” means adult day services as defined in section 231D.1 that are provided in a licensed health care facility.

2. “*Certified volunteer long-term care ombudsman*” means a volunteer long-term care ombudsman certified pursuant to section 231.45.

3. “*Department*” means the department of inspections and appeals.

4. “*Direction*” means authoritative policy or procedural guidance for the accomplishment of a function or activity.

5. “*Director*” means the director of the department of inspections and appeals, or the director's designee.

6. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

7. “*Health care facility*” or “*facility*” means a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons with an intellectual disability.

8. “*House physician*” means a physician who has entered into a two-party contract with a health care facility to provide services in that facility.

9. “*Intermediate care facility for persons with an intellectual disability*” means an institution or distinct part of an institution with a primary purpose to provide health or rehabilitative services to three or more individuals, who primarily have an intellectual disability or a related condition and who are not related to the administrator or owner within the third degree of consanguinity, and which meets the requirements of this chapter and federal standards for intermediate care facilities for persons with an intellectual disability established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1396d, which are contained in 42 C.F.R. pt. 483, subpt. D, § 410 – 480.

10. “*Intermediate care facility for persons with mental illness*” means an institution, place, building, or agency designed to provide accommodation, board, and nursing care for a period exceeding twenty-four consecutive hours to three or more individuals, who primarily have mental illness and who are not related to the administrator or owner within the third degree of consanguinity.

11. “*Licensee*” means the holder of a license issued for the operation of a facility, pursuant to this chapter.

12. “*Mental illness*” means a substantial disorder of thought or mood which significantly impairs judgment, behavior, or the capacity to recognize reality or the ability to cope with the ordinary demands of life.

13. “*Nursing care*” means those services which can be provided only under the direction of a registered nurse or a licensed practical nurse.

14. “*Nursing facility*” means an institution or a distinct part of an institution housing three or more individuals not related to the administrator or owner within the third degree of consanguinity, which is primarily engaged in providing health-related care and services,

including rehabilitative services, but which is not engaged primarily in providing treatment or care for mental illness or an intellectual disability, for a period exceeding twenty-four consecutive hours for individuals who, because of a mental or physical condition, require nursing care and other services in addition to room and board.

15. “*Office of long-term care ombudsman*” means the office of long-term care ombudsman established pursuant to section 231.42.

16. “*Person*” means any individual, firm, partnership, corporation, company, association or joint stock association; and includes trustee, receiver, assignee or other similar representative thereof.

17. “*Physician*” has the meaning assigned that term by section 135.1, subsection 4.

18. “*Rehabilitative services*” means services to encourage and assist restoration of optimum mental and physical capabilities of the individual resident of a health care facility.

19. “*Residential care facility*” means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, personal assistance and other essential daily living activities to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis or who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis if home and community-based services, other than nursing care, as defined by this chapter and departmental rule, are provided. For the purposes of this definition, the home and community-based services to be provided are limited to the type included under the medical assistance program provided pursuant to chapter 249A, are subject to cost limitations established by the department of human services under the medical assistance program, and except as otherwise provided by the department of inspections and appeals with the concurrence of the department of human services, are limited in capacity to the number of licensed residential care facilities and the number of licensed residential care facility beds in the state as of December 1, 2003.

20. “*Resident*” means an individual admitted to a health care facility in the manner prescribed by section 135C.23.

21. “*Respite care services*” means an organized program of temporary supportive care provided for twenty-four hours or more to a person in order to relieve the usual caregiver of the person from providing continual care to the person.

22. “*Social services*” means services relating to the psychological and social needs of the individual in adjusting to living in a health care facility, and minimizing stress arising from that circumstance.

23. “*State long-term care ombudsman*” means the state long-term care ombudsman appointed pursuant to section 231.42.

24. “*Supervision*” means direct oversight and inspection of the act of accomplishing a function or activity.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.1]

87 Acts, ch 194, §1; 90 Acts, ch 1039, §2 – 5; 94 Acts, ch 1151, §1; 96 Acts, ch 1129, §24; 2001 Acts, ch 64, §2; 2003 Acts, ch 165, §18; 2004 Acts, ch 1085, §1, 11; 2012 Acts, ch 1019, §11; 2013 Acts, ch 18, §5; 2013 Acts, ch 90, §26

Referred to in §16.1, 80.9, 100.1, 100.35, 124.501, 135.61, 135.63, 135C.6, 135M.2, 139A.2, 142D.2, 144C.2, 144D.1, 148A.3, 152.1, 231.4, 232.69, 233.1, 235E.1, 237A.5, 249.3, 249A.3, 249A.18A, 249A.21, 249A.30A, 249K.2, 249L.2, 347.14, 347.26, 419.1, 427.1(14a), 427.9, 514D.5, 692A.114, 692A.115, 726.7

NEW subsection 2 and former subsections 2 – 7 renumbered as 3 – 8

Former subsection 8 renumbered as 10

Subsection 9 amended

Former subsections 10 – 13 renumbered as 11 – 14

NEW subsection 15 and former subsections 14 – 20 renumbered as 16 – 22

NEW subsection 23 and former subsection 21 renumbered as 24

### **135C.2 Purpose — rules — special classifications — protection and advocacy agency.**

1. The purpose of this chapter is to promote and encourage adequate and safe care and housing for individuals who are aged or who, regardless of age, are infirm, convalescent, or

mentally or physically dependent, by both public and private agencies by providing for the adoption and enforcement of rules and standards:

a. For the housing, care, and treatment of individuals in health care facilities, and

b. For the location, construction, maintenance, renovation, and sanitary operation of such health care facilities which will promote safe and adequate care of individuals in such homes so as to further the health, welfare, and safety of such individuals.

2. Rules and standards prescribed, promulgated, and enforced under this chapter shall not be arbitrary, unreasonable, or confiscatory and the department or agency prescribing, promulgating, or enforcing such rules or standards shall have the burden of proof to establish that such rules or standards meet such requirements and are consistent with the economic problems and conditions involved in the care and housing of persons in health care facilities.

3. a. The department shall establish by administrative rule the following special classifications:

(1) Within the residential care facility category, a special license classification for residential facilities intended to serve persons with mental illness.

(2) Within the nursing facility category, a special license classification for nursing facilities which designate and dedicate the facility or a special unit within the facility to provide care for persons who suffer from chronic confusion or a dementing illness. A nursing facility which designates and dedicates the facility or a special unit within the facility for the care of persons who suffer from chronic confusion or a dementing illness shall be specially licensed. For the purposes of this subsection, “*designate*” means to identify by a distinctive title or label and “*dedicate*” means to set apart for a definite use or purpose and to promote that purpose.

b. The department may also establish by administrative rule special classifications within the residential care facility, intermediate care facility for persons with mental illness, intermediate care facility for persons with an intellectual disability, or nursing facility categories, for facilities intended to serve individuals who have special health care problems or conditions in common. Rules establishing a special classification shall define the problem or condition to which the special classification is relevant and establish requirements for an approved program of care commensurate with the problem or condition. The rules may grant special variances or considerations to facilities licensed within the special classification.

c. The rules adopted for intermediate care facilities for persons with an intellectual disability shall be consistent with, but no more restrictive than, the federal standards for intermediate care facilities for persons with an intellectual disability established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1396d, in effect on January 1, 1989. However, in order for an intermediate care facility for persons with an intellectual disability to be licensed, the state fire marshal must certify to the department that the facility meets the applicable provisions of the rules adopted for such facilities by the state fire marshal. The state fire marshal’s rules shall be based upon such a facility’s compliance with either the provisions applicable to health care occupancies or residential board and care occupancies of the life safety code of the national fire protection association, 2000 edition. The department shall adopt additional rules for intermediate care facilities for persons with an intellectual disability pursuant to section 135C.14, subsection 8.

d. Notwithstanding the limitations set out in this subsection regarding rules for intermediate care facilities for persons with an intellectual disability, the department shall consider the federal interpretive guidelines issued by the federal centers for Medicare and Medicaid services when interpreting the department’s rules for intermediate care facilities for persons with an intellectual disability. This use of the guidelines is not subject to the rulemaking provisions of sections 17A.4 and 17A.5, but the guidelines shall be published in the Iowa administrative bulletin and the Iowa administrative code.

4. The protection and advocacy agency designated in the state, under Pub. L. No. 98-527, the Developmental Disabilities Act of 1984, Pub. L. No. 99-319, the Protection and Advocacy for Mentally Ill Individuals Act of 1986, and Pub. L. No. 100-146, the federal Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, is recognized as an agency legally authorized and constituted to ensure the implementation of the purposes of this chapter for populations under its authority and in the manner designated by Pub. L. No.

98-527, Pub. L. No. 99-319, and Pub. L. No. 100-146 and in the assurances of the governor of the state.

5. The department shall establish a special classification within the residential care facility category in order to foster the development of residential care facilities which serve persons with an intellectual disability, chronic mental illness, a developmental disability, or brain injury, as described under section 225C.26, and which contain five or fewer residents. A facility within the special classification established pursuant to this subsection is exempt from the requirements of section 135.63. The department shall adopt rules which are consistent with rules previously developed for the waiver demonstration project pursuant to 1986 Iowa Acts, chapter 1246, section 206, and which include all of the following provisions:

a. A facility provider under the special classification must comply with rules adopted by the department for the special classification. However, a facility provider which has been accredited by the council on quality and leadership shall be deemed to be in compliance with the rules adopted by the department.

b. A facility must be located in an area zoned for single or multiple-family housing or in an unincorporated area and must be constructed in compliance with applicable local requirements and the rules adopted for the special classification by the state fire marshal in accordance with the concept of the least restrictive environment for the facility residents. Local requirements shall not be more restrictive than the rules adopted for the special classification by the state fire marshal and the state building code requirements for single or multiple-family housing, under section 103A.7.

c. Facility provider plans for the facility's accessibility to residents must be in place.

d. A written plan must be in place which documents that a facility meets the needs of the facility's residents pursuant to individual program plans developed according to age appropriate and least restrictive program requirements.

e. A written plan must be in place which documents that a facility's residents have reasonable access to employment or employment-related training, education, generic community resources, and integrated opportunities to promote interaction with the community.

f. The facilities licensed under this subsection shall be eligible for funding utilized by other licensed residential care facilities for persons with an intellectual disability, or licensed residential care facilities for persons with mental illness, including but not limited to funding under or from the federal social services block grant, the state supplementary assistance program, state mental health and developmental disabilities services funds, and county funding provisions.

6. a. This chapter shall not apply to adult day services provided in a health care facility. However, adult day services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

b. The level of care certification provisions pursuant to sections 135C.3 and 135C.4, the license application and fee provisions pursuant to section 135C.7, and the involuntary discharge provisions pursuant to section 135C.14, subsection 8, shall not apply to respite care services provided in a health care facility. However, respite care services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

c. The department shall adopt rules to implement this subsection.

7. The rules adopted by the department regarding nursing facilities shall provide that a nursing facility may choose to be inspected either by the department or by the joint commission on accreditation of health care organizations. The rules regarding acceptance of inspection by the joint commission on accreditation of health care organizations shall include recognition, in lieu of inspection by the department, of comparable inspections and inspection findings of the joint commission on accreditation of health care organizations, if the department is provided with copies of all requested materials relating to the inspection process.

[C50, 54, §135C.5; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.2]

85 Acts, ch 114, §1; 87 Acts, ch 234, §426; 88 Acts, ch 1249, §3; 89 Acts, ch 115, §1; 89 Acts, ch 269, §1; 90 Acts, ch 1039, §6; 90 Acts, ch 1267, §27; 91 Acts, ch 267, §139; 92 Acts, ch 1241,

§48; 94 Acts, ch 1151, §2, 3; 94 Acts, ch 1170, §7, 22; 95 Acts, ch 67, §11; 96 Acts, ch 1053, §1; 96 Acts, ch 1129, §25, 26, 113; 98 Acts, ch 1119, §12; 99 Acts, ch 141, §11; 2001 Acts, ch 64, §3; 2002 Acts, ch 1050, §17; 2003 Acts, ch 44, §114; 2003 Acts, ch 101, §1, 4; 2012 Acts, ch 1019, §12 – 14; 2013 Acts, ch 30, §32

Referred to in §135B.9, 135C.37, 135C.38, 155.1, 235A.15, 235B.6

Rules requiring special license classification for facility or unit designated and dedicated to caring for persons with chronic confusion or a dementing illness; applicability; existing facilities; 90 Acts, ch 1016, §1

Subsection 7 is effective contingent upon passage of federal legislation; see 96 Acts, ch 1053, §3

Subsection 5, paragraph a amended

### **135C.3 Nature of care.**

1. A licensed nursing facility shall provide an organized twenty-four-hour program of services commensurate with the needs of its residents and under the immediate direction of a licensed nurse. Medical and nursing services must be provided under the direction of either a house physician or an individually selected physician. Surgery or obstetrical care shall not be provided within the facility. An admission to the nursing facility must be based on a physician's written order certifying that the individual being admitted requires no greater degree of nursing care than the facility to which the admission is made is licensed to provide and is capable of providing. The nursing facility is not required to admit an individual through court order, referral, or other means without the express prior approval of the administrator of the nursing facility.

2. A licensed intermediate care facility for persons with mental illness shall provide an organized twenty-four-hour program of services commensurate with the needs of its residents and under the immediate direction of a licensed registered nurse, who has had at least two years of recent experience in a chronic or acute psychiatric setting. Medical and nursing service must be provided under the direction of either a house physician or an individually selected physician. Surgery or obstetrical care shall not be provided within the facility. An admission to the intermediate care facility for persons with mental illness must be based on a physician's written order certifying that the individual being admitted requires no greater degree of nursing care than the facility to which the admission is made is licensed to provide and is capable of providing.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.3]

90 Acts, ch 1039, §7; 96 Acts, ch 1129, §113; 2012 Acts, ch 1079, §3

Referred to in §135C.2, 347B.6

### **135C.4 Residential care facilities.**

1. Each facility licensed as a residential care facility shall provide an organized continuous twenty-four-hour program of care commensurate with the needs of the residents of the home and under the immediate direction of a person approved and certified by the department whose combined training and supervised experience is such as to ensure adequate and competent care.

2. All admissions to residential care facilities shall be based on an order written by a physician certifying that the individual being admitted does not require nursing services or that the individual's need for nursing services can be avoided if home and community-based services, other than nursing care, as defined by this chapter and departmental rule, are provided.

3. For the purposes of this section, the home and community-based services to be provided shall be limited to the type included under the medical assistance program provided pursuant to chapter 249A, shall be subject to cost limitations established by the department of human services under the medical assistance program, and except as otherwise provided by the department of inspections and appeals with the concurrence of the department of human services, shall be limited in capacity to the number of licensed residential care facilities and the number of licensed residential care facility beds in the state as of December 1, 2003.

4. A residential care facility is not required to admit an individual through court order,

referral, or other means without the express prior approval of the administrator of the residential care facility.

[C50, 54, §135C.9; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.4]  
2004 Acts, ch 1085, §2, 11; 2012 Acts, ch 1079, §4  
Referred to in §135C.2, 347B.6

### **135C.5 Limitations on use.**

Another business or activity serving persons other than the residents of a health care facility may be operated or provided in a designated part of the physical structure of the health care facility if the other business or activity meets the requirements of applicable state and federal laws, administrative rules, and federal regulations. The department shall not limit the ability of a health care facility to operate or provide another business or activity in the designated part of the facility if the business or activity does not interfere with the use of the facility by the residents or with the services provided to the residents, and is not disturbing to the residents. In denying the ability of a health care facility to operate or provide another business or activity under this section, the burden of proof shall be on the department to demonstrate that the other business or activity substantially interferes with the use of the facility by the residents or the services provided to the residents, or is disturbing to the residents. The state fire marshal, in accordance with chapter 17A, shall adopt rules which establish criteria for approval of a business or activity to be operated or provided in a designated part of the physical structure of a health care facility. For the purposes of this section, “*another business or activity*” shall not include laboratory services with the exception of laboratory services for which a waiver from regulatory oversight has been obtained under the federal Clinical Laboratory Improvement Amendments of 1988, Pub. L. No. 100-578, as amended, radiological services, anesthesiology services, obstetrical services, surgical services, or emergency room services provided by hospitals licensed under chapter 135B.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.5]  
91 Acts, ch 241, §1; 2005 Acts, ch 126, §1

### **135C.6 License required — exemptions.**

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate a health care facility in this state without a license for the facility. A supported community living service, as defined in section 225C.21, is not required to be licensed under this chapter, but is subject to approval under section 225C.21 in order to receive public funding.

2. A health care facility suitable for separation and operation with distinct parts may, where otherwise qualified in all respects, be issued multiple licenses authorizing various parts of such facilities to be operated as health care facilities of different license categories.

3. No change in a health care facility, its operation, program, or services, of a degree or character affecting continuing licensure shall be made without prior approval thereof by the department. The department may by rule specify the types of changes which shall not be made without its prior approval.

4. No department, agency, or officer of this state or of any of its political subdivisions shall pay or approve for payment from public funds any amount or amounts to a health care facility under any program of state aid in connection with services provided or to be provided an actual or prospective resident in a health care facility, unless the facility has a current license issued by the department and meets such other requirements as may be in effect pursuant to law.

5. No health care facility established and operated in compliance with law prior to January 1, 1976, shall be required to change its corporate or business name by reason of the definitions prescribed in section 135C.1, provided that no health care facility shall at any time represent or hold out to the public or to any individual that it is licensed as, or provides the services of, a health care facility of a type offering a higher grade of care than such health care facility is licensed to provide. Any health care facility which, by virtue of this section, operates under a name not accurately descriptive of the type of license which it holds shall clearly indicate

in any printed advertisement, letterhead, or similar material, the type of license or licenses which it has in fact been issued. No health care facility established or renamed after January 1, 1976, shall use any name indicating that it holds a different type of license than it has been issued.

6. A health care facility operated by and for the exclusive use of members of a religious order, which does not admit more than two individuals to the facility from the general public, may be operated without obtaining a license under this chapter and shall not be deemed to be licensed by the state.

7. A freestanding hospice facility which operates a hospice program in accordance with 42 C.F.R. § 418 may be operated without obtaining a license under this chapter and shall not be deemed to be licensed by the state.

8. The following residential programs to which the department of human services applies accreditation, certification, or standards of review shall not be required to be licensed as a health care facility under this chapter:

a. Residential programs providing care to not more than four individuals and receiving moneys appropriated to the department of human services under provisions of a federally approved home and community-based services waiver for persons with an intellectual disability or other medical assistance program under chapter 249A. In approving a residential program under this paragraph, the department of human services shall consider the geographic location of the program so as to avoid an overconcentration of such programs in an area. In order to be approved under this paragraph, a residential program shall not be required to involve the conversion of a licensed residential care facility for persons with an intellectual disability.

b. Not more than forty residential care facilities for persons with an intellectual disability that are licensed to serve not more than five individuals may be authorized by the department of human services to convert to operation as a residential program under the provisions of a medical assistance home and community-based services waiver for persons with an intellectual disability. A converted residential program operating under this paragraph is subject to the conditions stated in paragraph "a" except that the program shall not serve more than five individuals.

c. A residential program approved by the department of human services pursuant to this paragraph "c" to receive moneys appropriated to the department of human services under provisions of a federally approved home and community-based services habilitation or waiver program may provide care to not more than five individuals. The department shall approve a residential program under this paragraph that complies with all of the following conditions:

(1) Approval of the program will not result in an overconcentration of such programs in an area.

(2) The county in which the residential program is located submits to the department of human services a letter of support for approval of the program.

(3) The county in which the residential program is located provides to the department of human services verification in writing that the program is needed to address one or more of the following:

(a) The quantity of services currently available in the county is insufficient to meet the need.

(b) The quantity of affordable rental housing in the county is insufficient.

(c) Implementation of the program will cause a reduction in the size or quantity of larger congregate programs.

9. Contingent upon the department of human services receiving federal approval, a residential program which serves not more than eight individuals and is licensed as an intermediate care facility for persons with an intellectual disability may surrender the facility license and continue to operate under a federally approved medical assistance home and community-based services waiver for persons with an intellectual disability, if the department of human services has approved a plan submitted by the residential program.

10. Notwithstanding section 135C.9, nursing facilities which are accredited by the joint commission on accreditation of health care organizations shall be licensed without inspection

by the department, if the nursing facility has chosen to be inspected by the joint commission on accreditation of health care organizations in lieu of inspection by the department.

[C50, 54, §135C.2; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.6]

85 Acts, ch 141, §2; 86 Acts, ch 1245, §1113; 90 Acts, ch 1107, §2; 92 Acts, ch 1043, §3; 96 Acts, ch 1053, §2; 97 Acts, ch 169, §18, 26; 98 Acts, ch 1181, §11, 14; 99 Acts, ch 160, §17; 2002 Acts, ch 1120, §1; 2003 Acts, ch 101, §2, 4; 2010 Acts, ch 1031, §390; 2012 Acts, ch 1019, §15, 16; 2012 Acts, ch 1138, §49; 2013 Acts, ch 23, §1; 2013 Acts, ch 30, §33

Referred to in §135.63, 135C.9

Subsection 10 is effective contingent upon passage of federal legislation; see 96 Acts, ch 1053, §3

Subsection 3 amended

Subsection 8, paragraph c, unnumbered paragraph 1 amended

### **135C.7 Application — fees.**

1. Licenses shall be obtained from the department. Applications shall be upon such forms and shall include such information as the department may reasonably require, which may include affirmative evidence of compliance with such other statutes and local ordinances as may be applicable. Each application for license shall be accompanied by the annual license fee prescribed by this section, subject to refund to the applicant if the license is denied, which fee shall be paid over into the state treasury and credited to the general fund if the license is issued. There shall be an annual license fee based upon the bed capacity of the health care facility, as follows:

- a. Ten beds or less, twenty dollars.
- b. More than ten and not more than twenty-five beds, forty dollars.
- c. More than twenty-five and not more than seventy-five beds, sixty dollars.
- d. More than seventy-five and not more than one hundred fifty beds, eighty dollars.
- e. More than one hundred fifty beds, one hundred dollars.

2. In addition to the license fees listed in this section, there shall be an annual assessment assessed to each licensee in an amount to cover the cost of independent reviewers provided pursuant to section 135C.42. The department shall, in consultation with licensees, establish the assessment amount by rule based on the award of a request for proposals. The assessment shall be retained by the department as a repayment receipt as defined in section 8.2 and used for the purpose of paying the cost of the independent reviewers.

[C50, 54, §135C.3, 135C.4; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.7]

2013 Acts, ch 140, §16

Referred to in §135C.2, 135C.8

Unnumbered paragraph 1 and subsections 1 – 5 editorially redesignated as subsection 1, unnumbered paragraph 1, and paragraphs a – e respectively

NEW subsection 2

### **135C.8 Scope of license.**

Licenses for health care facilities shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the department, obtained prior to the purchase of the facility involved. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by regulation of the department. Such licenses, unless sooner suspended or revoked, shall expire one year after the date of issuance and shall be renewed annually upon an application by the licensee. Applications for such renewal shall be made in writing to the department, accompanied by the required fee, at least thirty days prior to the expiration of such license in accordance with regulations promulgated by the department. Health care facilities which have allowed their licenses to lapse through failure to make timely application for renewal of their licenses shall pay an additional fee of twenty-five percent of the annual license fee prescribed in section 135C.7.

[C50, 54, §135C.5; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.8]

Referred to in §135C.30

### **135C.9 Inspection before issuance — notice of deficiencies.**

1. The department shall not issue a health care facility license to any applicant until:

- a. The department has ascertained that the staff and equipment of the facility is adequate to provide the care and services required of a health care facility of the category for which

the license is sought. Prior to the review and approval of plans and specifications for any new facility and the initial licensing under a new licensee, a resume of the programs and services to be furnished and of the means available to the applicant for providing the same and for meeting requirements for staffing, equipment, and operation of the health care facility, with particular reference to the professional requirements for services to be rendered, shall be submitted in writing to the department for review and approval. The resume shall be reviewed by the department within ten working days and returned to the applicant. The resume shall, upon the department's request, be revised as appropriate by the facility from time to time after issuance of a license.

b. The facility has been inspected by the state fire marshal or a deputy appointed by the fire marshal for that purpose, who may be a member of a municipal fire department, and the department has received either a certificate of compliance or a provisional certificate of compliance by the facility with the fire hazard and fire safety rules and standards of the department as promulgated by the fire marshal and, where applicable, the fire safety standards required for participation in programs authorized by either Tit. XVIII or Tit. XIX of the United States Social Security Act (42 U.S.C. § 1395 – 1395ll and 1396 – 1396g). The certificate or provisional certificate shall be signed by the fire marshal or the fire marshal's deputy who made the inspection. If the state fire marshal or a deputy finds a deficiency upon inspection, the notice to the facility shall be provided in a timely manner and shall specifically describe the nature of the deficiency, identifying the Code section or subsection or the rule or standard violated. The notice shall also specify the time allowed for correction of the deficiency, at the end of which time the fire marshal or a deputy shall perform a follow-up inspection.

2. The rules and standards promulgated by the fire marshal pursuant to subsection 1, paragraph "b" of this section shall be substantially in keeping with the latest generally recognized safety criteria for the facilities covered, of which the applicable criteria recommended and published from time to time by the national fire protection association shall be prima facie evidence. The rules and standards promulgated by the fire marshal shall be promulgated in consultation with the department and shall, to the greatest extent possible, be consistent with rules adopted by the department under this chapter.

3. The state fire marshal or the fire marshal's deputy may issue successive provisional certificates of compliance for periods of one year each to a facility which is in substantial compliance with the applicable fire hazard and fire safety rules and standards, upon satisfactory evidence of an intent, in good faith, by the owner or operator of the facility to correct the deficiencies noted upon inspection within a reasonable period of time as determined by the state fire marshal or the fire marshal's deputy. Renewal of a provisional certificate shall be based on a showing of substantial progress in eliminating deficiencies noted upon the last previous inspection of the facility without the appearance of additional deficiencies other than those arising from changes in the fire hazard and fire safety rules, regulations and standards which have occurred since the last previous inspection, except that substantial progress toward achievement of a good faith intent by the owner or operator to replace the entire facility within a reasonable period of time, as determined by the state fire marshal or the fire marshal's deputy, may be accepted as a showing of substantial progress in eliminating deficiencies, for the purposes of this section.

4. If a facility subject to licensure under this chapter, a facility exempt from licensure under this chapter pursuant to section 135C.6, or a family home under section 335.25 or 414.22, has been issued a certificate of compliance or a provisional certificate of compliance under subsection 1 or 3, or has otherwise been approved as complying with a rule or standard by the state or a deputy fire marshal or a local building department as defined in section 103A.3, the state or deputy fire marshal or local building department which issued the certificate, provisional certificate, or approval shall not apply additional requirements for compliance with the rule or standard unless the rule or standard is revised in accordance

with chapter 17A or with local regulatory procedure following issuance of the certificate, provisional certificate, or approval.

[C50, 54, §135C.6; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.9]

97 Acts, ch 169, §19; 2001 Acts, ch 30, §1, 2; 2010 Acts, ch 1061, §180

Referred to in §135C.6, 135C.16

#### **135C.10 Denial, suspension or revocation.**

The department shall have the authority to deny, suspend, or revoke a license in any case where the department finds that there has been repeated failure on the part of the facility to comply with the provisions of this chapter or the rules or minimum standards promulgated hereunder, or for any of the following reasons:

1. Cruelty or indifference to health care facility residents.
2. Appropriation or conversion of the property of a health care facility resident without the resident's written consent or the written consent of the resident's legal guardian.
3. Permitting, aiding, or abetting the commission of any illegal act in the health care facility.
4. Inability or failure to operate and conduct the health care facility in accordance with the requirements of this chapter and the minimum standards and rules issued pursuant thereto.
5. Obtaining or attempting to obtain or retain a license by fraudulent means, misrepresentation, or by submitting false information.
6. Habitual intoxication or addiction to the use of drugs by the applicant, manager or supervisor of the health care facility.
7. Securing the devise or bequest of the property of a resident of a health care facility by undue influence.
8. Willful failure or neglect to maintain a continuing in-service education and training program for all personnel employed in the facility.
9. In the case of an application by an existing licensee for a new or newly acquired facility, continuing or repeated failure of the licensee to operate any previously licensed facility or facilities in compliance with the provisions of this chapter or of the rules adopted pursuant to it.
10. In the case of a license applicant or existing licensee which is an entity other than an individual, the department may deny, suspend, or revoke a license if any individual, who is in a position of control or is an officer of the entity, engages in any act or omission proscribed by this section.

[C50, 54, §135C.6; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.10]

90 Acts, ch 1204, §13

Referred to in §135C.12

#### **135C.11 Notice — hearings.**

1. The denial, suspension, or revocation of a license shall be effected by delivering to the applicant or licensee by certified mail or by personal service of a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within such thirty-day period, shall give written notice to the department requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the department. At any time at or prior to the hearing the department may rescind the notice of the denial, suspension, or revocation upon being satisfied that the reasons for the denial, suspension, or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee, the determination involved in the notice may be affirmed, modified, or set aside by the department. A copy of such decision shall be sent by certified mail, or served personally upon the applicant or licensee. The applicant or licensee may seek judicial review pursuant to section 135C.13.

2. The procedure governing hearings authorized by this section shall be in accordance with the rules promulgated by the department. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless judicial

review is sought pursuant to section 135C.13. Copies of the transcript may be obtained by an interested party upon payment of the cost of preparing the copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the department's rules. The director may, after advising the certified volunteer long-term care ombudsman, either proceed in accordance with section 135C.30, or remove all residents and suspend the license or licenses of any health care facility, prior to a hearing, when the director finds that the health or safety of residents of the health care facility requires such action on an emergency basis. The fact that a certified volunteer long-term care ombudsman has not been appointed for a particular facility shall not bar the director from exercising the emergency powers granted by this subsection with respect to that facility.

[C50, 54, §135C.6; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.11]

99 Acts, ch 129, §1; 2013 Acts, ch 18, §6

Referred to in §135C.30

Subsection 2 amended

### **135C.12 Conditional operation.**

If the department has the authority under section 135C.10 to deny, suspend or revoke a license, the department or director may, as an alternative to those actions:

1. Apply to the district court of the county in which the licensee's health care facility is located for appointment by the court of a receiver for the facility pursuant to section 135C.30.

2. Conditionally issue or continue a license dependent upon the performance by the licensee of reasonable conditions within a reasonable period of time as set by the department so as to permit the licensee to commence or continue the operation of the health care facility pending full compliance with this chapter or the regulations or minimum standards promulgated under this chapter. If the licensee does not make diligent efforts to comply with the conditions prescribed, the department may, under the proceedings prescribed by this chapter, suspend or revoke the license. No health care facility shall be operated on a conditional license for more than one year.

3. The department, in evaluating corrections of deficiencies in a facility in receivership or operating on a conditional license, may determine what is satisfactory compliance, provided that in so doing it shall employ established criteria which shall be uniformly applied to all facilities of the same license category.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.12]

Referred to in §135C.30

For legislative intent regarding imposition of a conditional license if failure of full compliance will result in single class I citation that is not an immediate jeopardy; see 99 Acts, ch 199, §10

### **135C.13 Judicial review.**

Judicial review of any action of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of chapter 17A, petitions for judicial review may be filed in the district court of the county where the facility or proposed facility is located, and pending final disposition of the matter the status quo of the applicant or licensee shall be preserved except when the director, with the advice and consent of the certified volunteer long-term care ombudsman, determines that the health, safety or welfare of the residents of the facility is in immediate danger, in which case the director may order the immediate removal of such residents. The fact that a certified volunteer long-term care ombudsman has not been appointed for a particular facility shall not bar the director from exercising the emergency powers granted by this section with respect to that facility.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.13]

99 Acts, ch 129, §2; 2003 Acts, ch 44, §114; 2013 Acts, ch 18, §7

Referred to in §135C.11

Section amended

### **135C.14 Rules.**

The department shall, in accordance with chapter 17A and with the approval of the state board of health, adopt and enforce rules setting minimum standards for health care facilities. In so doing, the department, with the approval of the state board of health, may

adopt by reference, with or without amendment, nationally recognized standards and rules, which shall be specified by title and edition, date of publication, or similar information. The rules and standards required by this section shall be formulated in consultation with the director of human services or the director's designee, with the state fire marshal, and with affected industry, professional, and consumer groups, and shall be designed to further the accomplishment of the purposes of this chapter and shall relate to:

1. Location and construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions, which shall ensure the health, safety and comfort of residents and protection from fire hazards. The rules of the department relating to protection from fire hazards and fire safety shall be promulgated by the state fire marshal in consultation with the department, and shall be in keeping with the latest generally recognized safety criteria for the facilities covered of which the applicable criteria recommended and published from time to time by the national fire protection association are prima facie evidence. To the greatest extent possible, the rules promulgated by the state fire marshal shall be consistent with the rules adopted by the department under this chapter.

2. Number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care provided to residents.

3. All sanitary conditions within the facility and its surroundings including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents.

4. Diet related to the needs of each resident and based on good nutritional practice and on recommendations which may be made by the physician attending the resident.

5. Equipment essential to the health and welfare of the resident.

6. Requirements that a minimum number of registered or licensed practical nurses and nurses' aides, relative to the number of residents admitted, be employed by each licensed facility. Staff-to-resident ratios established under this subsection need not be the same for facilities holding different types of licenses, nor for facilities holding the same type of license if there are significant differences in the needs of residents which the respective facilities are serving or intend to serve.

7. Social services and rehabilitative services provided for the residents.

8. Facility policies and procedures regarding the treatment, care, and rights of residents. The rules shall apply the federal resident's rights contained in the federal Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, and the regulations adopted pursuant to the Act and contained in 42 C.F.R. § 483.10, 483.12, 483.13, and 483.15, as amended to February 2, 1989, to all health care facilities as defined in this chapter and shall include procedures for implementing and enforcing the federal rules. The department shall also adopt rules relating to the following:

a. The transfer of residents to other rooms within a facility.

b. The involuntary discharge or transfer of residents from a facility including provisions for notice and agency hearings and for the development of a patient discharge or transfer plan and for providing counseling services to a patient being discharged or transferred.

c. The required holding of a bed for a resident under designated circumstances upon payment of a prescribed charge for the bed.

d. The notification of certified volunteer long-term care ombudsmen by the department of all complaints relating to health care facilities and the involvement of the certified volunteer long-term care ombudsmen in resolution of the complaints.

e. For the recoupment of funds or property to residents when the resident's personal funds or property have been used without the resident's written consent or the written consent of the resident's guardian.

f. The involuntary discharge of a resident of the Iowa veterans home including provisions for notice and agency hearings, the development of a resident discharge plan, and for providing counseling services to a resident being discharged. As used in this paragraph "f", "collaborative care plan" and "interdisciplinary resident care committee" mean as defined in section 35D.15, subsection 2. The rules shall provide that a resident shall be involuntarily discharged for any of the following reasons:

(1) (a) The resident has been diagnosed with a substance use disorder but continues

to abuse alcohol or an illegal drug in violation of the resident's conditional or provisional agreement entered into at the time of admission, and all of the following conditions are met:

(i) The resident has been provided sufficient notice of any changes in the resident's collaborative care plan.

(ii) The resident has been notified of the resident's commission of three offenses and has been given the opportunity to correct the behavior through either of the following options:

(A) Being given the opportunity to receive the appropriate level of treatment in accordance with best practices for standards of care.

(B) By having been placed on probation by the Iowa veterans home for a second offense.

(b) Notwithstanding the resident's meeting the criteria for discharge under this subparagraph (1), if the resident has demonstrated progress toward the goals established in the resident's collaborative care plan, the interdisciplinary resident care committee and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, a resident may be immediately discharged under this subparagraph (1) if the resident's actions or behavior jeopardizes the life or safety of other residents or staff.

(2) (a) The resident refuses to utilize the resources available to address issues identified in the resident's collaborative care plan, and all of the following conditions are met:

(i) The resident has been provided sufficient notice of any changes in the resident's collaborative care plan.

(ii) The resident has been notified of the resident's commission of three offenses and the resident has been placed on probation by the Iowa veterans home for a second offense.

(b) Notwithstanding the resident's meeting the criteria for discharge under this subparagraph (2), if the resident has demonstrated progress toward the goals established in the resident's collaborative care plan, the interdisciplinary resident care committee and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the resident may be immediately discharged under this subparagraph (2) if the resident's actions or behavior jeopardizes the life or safety of other residents or staff.

(3) The resident's medical or life skills needs have been met to the extent possible through the services provided by the Iowa veterans home and the resident no longer requires a residential or nursing level of care, as determined by the interdisciplinary resident care committee.

(4) The resident requires a level of licensed care not provided at the Iowa veterans home.

[C50, 54, §135C.5; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.14; 81 Acts, ch 60, §1]

83 Acts, ch 96, §157, 159; 83 Acts, ch 101, §18; 89 Acts, ch 241, §1, 2; 90 Acts, ch 1204, §14; 99 Acts, ch 129, §3; 2001 Acts, ch 30, §3, 4; 2009 Acts, ch 62, §2; 2013 Acts, ch 18, §8

Referred to in §35D.15, 135C.2, 135C.36  
Subsection 8, paragraph d amended

### **135C.15 Time to comply.**

1. Any health care facility which is in operation at the time of adoption or promulgation of any applicable rules or minimum standards under this chapter shall be given reasonable time from the date of such promulgation to comply with such rules and minimum standards as provided for by the department. The director may grant successive thirty-day extensions of the time for compliance where evidence of a good faith attempt to achieve compliance is furnished, if the extensions will not place in undue jeopardy the residents of the facility to which the extensions are granted.

2. Renovation of an existing health care facility, not already in compliance with all applicable standards, shall be permitted only if the fixtures and equipment to be installed and the services to be provided in the renovated portion of the facility will conform substantially to current operational standards. Construction of an addition to an existing health care facility shall be permitted only if the design of the structure, the fixtures and equipment to be installed, and the services to be provided in the addition will conform substantially to current construction and operational standards.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.15]

**135C.16 Inspections.**

1. In addition to the inspections required by sections 135C.9 and 135C.38, the department shall make or cause to be made such further unannounced inspections as it deems necessary to adequately enforce this chapter. At least one general unannounced inspection shall be conducted for each health care facility within a thirty-month period. The inspector shall show identification to the person in charge of the facility and state that an inspection is to be made before beginning the inspection. An employee of the department who gives unauthorized advance notice of an inspection made or planned to be made under this subsection or section 135C.38 shall be disciplined as determined by the director, except that if the employee is employed pursuant to the merit system provisions of chapter 8A, subchapter IV, the discipline shall not exceed the discipline authorized pursuant to that subchapter.

2. *a.* The department shall prescribe by rule that any licensee or applicant for license desiring to make specific types of physical or functional alterations or additions to its facility or to construct new facilities shall, before commencing the alteration or additions or new construction, submit plans and specifications to the department for preliminary inspection and approval or recommendations with respect to compliance with the department's rules and standards.

*b.* When the plans and specifications have been properly approved by the department or other appropriate state agency, for a period of at least five years from completion of the construction or alteration, the facility or the portion of the facility constructed or altered in accord with the plans and specifications shall not be considered deficient or ineligible for licensing by reason of failure to meet any rule or standard established subsequent to approval of the plans and specifications.

*c.* When construction or alteration of a facility or portion of a facility has been completed in accord with plans and specifications submitted as required by this subsection and properly approved by the department or other appropriate state agency, and it is discovered that the facility or portion of a facility is not in compliance with a requirement of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, and the deficiency was apparent from the plans and specifications submitted but was not noted or objected to by the department or other appropriate state agency, the department or agency responsible for the oversight shall either waive the requirement or reimburse the licensee or applicant for any costs which are necessary to bring the new or reconstructed facility or portion of a facility into compliance with the requirement and which the licensee or applicant would not have incurred if the facility or portion of the facility had been constructed in compliance with the requirements of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted.

*d.* If within two years from the completion of the construction or alteration of the facility or portion thereof, a department or agency of the state orders that the new or reconstructed facility or portion thereof be brought into compliance with the requirements of this chapter or the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, the state shall have a claim for damages to the extent of any reimbursement paid to the licensee or applicant against any person who designed the facility or portion thereof for negligence in the preparation of the plans and specifications therefor, subject to all defenses based upon the negligence of the state in reviewing and approving those plans and specifications, but not thereafter.

*e.* The provisions of this subsection shall not apply where the deficiency presents a clear and present danger to the safety of the residents of the facility.

3. An inspector of the department may enter any licensed health care facility without a warrant, and may examine all records pertaining to the care provided residents of the facility. An inspector of the department may contact or interview any resident, employee, or any other person who might have knowledge about the operation of a health care facility. An inspector of the department of human services shall have the same right with respect to any facility where one or more residents are cared for entirely or partially at public expense, and an investigator of the designated protection and advocacy agency shall have the same right with respect to any facility where one or more residents have developmental disabilities or

mental illnesses, and the state fire marshal or a deputy appointed pursuant to section 135C.9, subsection 1, paragraph “b” shall have the same right of entry into any facility and the right to inspect any records pertinent to fire safety practices and conditions within that facility. If any such inspector has probable cause to believe that any institution, building, or agency not licensed as a health care facility is in fact a health care facility as defined by this chapter, and upon producing identification that the individual is an inspector is denied entry thereto for the purpose of making an inspection, the inspector may, with the assistance of the county attorney of the county in which the purported health care facility is located, apply to the district court for an order requiring the owner or occupant to permit entry and inspection of the premises to determine whether there have been any violations of this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.16; 82 Acts, ch 1065, §1]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1227, §1; 87 Acts, ch 234, §427; 90 Acts, ch 1204, §15; 92 Acts, ch 1242, §26; 2000 Acts, ch 1180, §1; 2003 Acts, ch 145, §187; 2009 Acts, ch 41, §47

#### **135C.16A Inspectors — conflicts of interest.**

1. Any of the following circumstances disqualifies an inspector from inspecting a particular health care facility under this chapter:

a. The inspector currently works or, within the past two years, has worked as an employee or employment agency staff at the health care facility, or as an officer, consultant, or agent for the health care facility to be inspected.

b. The inspector has any financial interest or any ownership interest in the facility. For purposes of this paragraph, indirect ownership, such as through a broad-based mutual fund, does not constitute financial or ownership interest.

c. The inspector has an immediate family member who has a relationship with the facility as described in paragraph “a” or “b”.

d. The inspector has an immediate family member who currently resides in the facility.

2. For purposes of this section, “*immediate family member*” means the same as set forth in 42 C.F.R. § 488.301, and includes a husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, or stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; or grandparent or grandchild.

2009 Acts, ch 156, §1

#### **135C.17 Duties of other departments.**

It shall be the duty of the department of human services, state fire marshal, and the officers and agents of other state and local governmental units, and the designated protection and advocacy agency to assist the department in carrying out the provisions of this chapter, insofar as the functions of these respective offices and departments are concerned with the health, welfare, and safety of any resident of any health care facility. It shall be the duty of the department to cooperate with the protection and advocacy agency by responding to all reasonable requests for assistance and information as required by federal law and this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.17]

83 Acts, ch 96, §157, 159; 87 Acts, ch 234, §428

Referred to in §135C.21

#### **135C.18 Employees.**

The department may employ, pursuant to chapter 8A, subchapter IV, such assistants and inspectors as may be necessary to administer and enforce the provisions of this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.18]

2003 Acts, ch 145, §188

#### **135C.19 Public disclosure of inspection findings — posting of citations.**

1. Following an inspection of a health care facility by the department pursuant to this chapter, the department’s final findings with respect to compliance by the facility with requirements for licensing shall be made available to the public in a readily available form and place. Other information relating to a health care facility obtained by the department

which does not constitute the department's findings from an inspection of the facility shall not be made available to the public except in proceedings involving the citation of a facility for a violation under section 135C.40, or the denial, suspension, or revocation of a license under this chapter. The name of a person who files a complaint with the department shall be confidential.

2. *a.* A citation for a class I or class II violation which is issued to a health care facility and which has become final, or a copy of the citation, shall be prominently posted as prescribed in rules, until the violation is corrected to the department's satisfaction. The citation or copy shall be posted in a place in plain view of the residents of the facility cited, persons visiting the residents, and persons inquiring about placement in the facility.

*b.* A copy of each citation required to be posted by this subsection shall be sent by the department to the department of human services and to the designated protection and advocacy agency if the facility has one or more residents with developmental disabilities or mental illness.

3. If the facility cited subsequently advises the department of human services that the violation has been corrected to the satisfaction of the department of inspections and appeals, the department of human services shall maintain this advisory in the same file with the copy of the citation. The department of human services shall not disseminate to the public any information regarding citations issued by the department of inspections and appeals, but shall forward or refer inquiries to the department of inspections and appeals.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.19]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1227, §2; 87 Acts, ch 234, §429; 90 Acts, ch 1039, §8; 90 Acts, ch 1204, §16, 17; 2009 Acts, ch 41, §263

Referred to in §135C.40

### **135C.20 Information distributed.**

The department shall prepare, publish and send to licensed health care facilities an annual report of its activities and operations under this chapter and such other bulletins containing fundamental health principles and data as may be deemed essential to assure proper operation of health care facilities, and publish for public distribution copies of the laws, standards and rules pertaining to their operation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.20]

### **135C.20A Report cards — facility inspections — complaint procedures — availability to public — electronic access.**

1. The department shall develop and utilize a report card system for the recording of the findings of any inspection of a health care facility. The report card shall include but is not limited to a summary of the findings of the inspection, any violation found, any enforcement action taken including any citations issued and penalties assessed, any actions taken to correct violations or deficiencies, and the nature and status of any action taken with respect to any uncorrected violation for which a citation was issued.

2. The report card form shall be developed by the department in cooperation with representatives of the department on aging, the state long-term care ombudsman, representatives of certified volunteer long-term care ombudsmen, representatives of protection and advocacy entities, consumers, and other interested persons.

3. The department shall make any completed report cards electronically accessible to the public, on a monthly basis, and shall compile the report cards on an annual basis and make the compilation electronically accessible to the public. The annual compilation shall also be available at the office of the department at the seat of government and shall be available to the public by mail, upon request and at the department's expense.

4. In addition to the monthly and annual compilations, the department shall provide compilations of the report cards on a cumulative basis. The cumulative compilation shall reflect the report cards of health care facilities during the four-year period prior to the production of the cumulative compilation. The cumulative compilation shall be applicable to a particular health care facility as a four-year report card history of that facility becomes

available. The cumulative compilation shall be available to the public in the same manner as the annual compilation.

98 Acts, ch 1141, §1; 99 Acts, ch 129, §4; 2009 Acts, ch 23, §9; 2013 Acts, ch 18, §9

Referred to in §135C.20B

Subsection 2 amended

### **135C.20B Governor's award — quality care.**

1. A governor's award for quality care is established, to be awarded annually by the governor to a health care facility in the state which demonstrates provision of the highest quality care to residents.

2. The department shall adopt rules establishing the criteria to determine quality care. In developing the criteria, the department shall consult with the members of Iowa partners for resident care and shall also consider all of the following:

a. The report cards completed pursuant to section 135C.20A.

b. Any unique services provided by a facility to its residents to improve the quality of care in the facility.

c. Any information submitted by residents with regard to the quality of care of the facility.

d. Whether the facility accepts residents for whom costs of care are paid under chapter 249A.

99 Acts, ch 132, §1; 2013 Acts, ch 18, §10

Subsection 2, paragraph c amended

### **135C.21 Penalties.**

1. Any person establishing, conducting, managing, or operating any health care facility without a license shall be guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. Any such person establishing, conducting, managing or operating any health care facility without a license may be by any court of competent jurisdiction temporarily or permanently restrained therefrom in any action brought by the state.

2. Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department or of any of the agencies referred to in section 135C.17 in the lawful enforcement of this chapter or of the rules adopted pursuant to it is guilty of a simple misdemeanor. As used in this subsection, lawful enforcement includes but is not limited to:

a. Contacting or interviewing any resident of a health care facility in private at any reasonable hour and without advance notice.

b. Examining any relevant books or records of a health care facility.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to it.

[C50, 54, §135C.7; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.21]

### **135C.22 Applicable to governmental units.**

The provisions of this chapter shall be applicable to institutions operated by or under the control of the department of human services, the state board of regents, or any other governmental unit.

[C50, 54, §135C.8; C58, 62, 66, 71, 73, 75, 77, 79, 81, §135C.22]

83 Acts, ch 96, §157, 159

### **135C.23 Express requirements for admission or residence.**

No individual shall be admitted to or permitted to remain in a health care facility as a resident, except in accordance with the requirements of this section.

1. Each resident shall be covered by a contract executed at the time of admission or prior thereto by the resident, or the resident's legal representative, and the health care facility, except as otherwise provided by subsection 5 with respect to residents admitted at public expense to a county care facility operated under chapter 347B. Each party to the contract shall be entitled to a duplicate original thereof, and the health care facility shall keep on file

all contracts which it has with residents and shall not destroy or otherwise dispose of any such contract for at least one year after its expiration. Each such contract shall expressly set forth:

- a. The terms of the contract.
- b. The services and accommodations to be provided by the health care facility and the rates or charges therefor.
- c. Specific descriptions of any duties and obligations of the parties in addition to those required by operation of law.

d. Any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter, nor contain any disclaimer of responsibility for injury to the resident, or to relatives or other persons visiting the resident, which occurs on the premises of the facility or, with respect to injury to the resident, which occurs while the resident is under the supervision of any employee of the facility whether on or off the premises of the facility.

2. a. A health care facility shall not knowingly admit or retain a resident:

- (1) Who is dangerous to the resident or other residents.
- (2) Who is in an acute stage of alcoholism, drug addiction, or mental illness.
- (3) Whose condition or conduct is such that the resident would be unduly disturbing to other residents.
- (4) Who is in need of medical procedures, as determined by a physician, or services which cannot be or are not being carried out in the facility.

b. This section does not prohibit the admission of a patient with a history of dangerous or disturbing behavior to an intermediate care facility for persons with mental illness, intermediate care facility for persons with an intellectual disability, nursing facility, or county care facility when the intermediate care facility for persons with mental illness, intermediate care facility for persons with an intellectual disability, nursing facility, or county care facility has a program which has received prior approval from the department to properly care for and manage the patient. An intermediate care facility for persons with mental illness, intermediate care facility for persons with an intellectual disability, nursing facility, or county care facility is required to transfer or discharge a resident with dangerous or disturbing behavior when the intermediate care facility for persons with mental illness, intermediate care facility for persons with an intellectual disability, nursing facility, or county care facility cannot control the resident's dangerous or disturbing behavior. The department, in coordination with the state mental health and disability services commission created in section 225C.5, shall adopt rules pursuant to chapter 17A for programs to be required in intermediate care facilities for persons with mental illness, intermediate care facilities for persons with an intellectual disability, nursing facilities, and county care facilities that admit patients or have residents with histories of dangerous or disturbing behavior.

c. The denial of admission of a person to a health care facility shall not be based upon the patient's condition, which is the existence of a specific disease in the patient, but the decision to accept or deny admission of a patient with a specific disease shall be based solely upon the ability of the health care facility to provide the level of care required by the patient.

3. Except in emergencies, a resident who is not essentially capable of managing the resident's own affairs shall not be transferred out of a health care facility or discharged for any reason without prior notification to the next of kin, legal representative, or agency acting on the resident's behalf. When such next of kin, legal representative, or agency cannot be reached or refuses to cooperate, proper arrangements shall be made by the facility for the welfare of the resident before the resident's transfer or discharge.

4. No owner, administrator, employee, or representative of a health care facility shall pay any commission, bonus, or gratuity in any form whatsoever, directly or indirectly, to any person for residents referred to such facility, nor accept any commission, bonus, or gratuity in any form whatsoever, directly or indirectly, for professional or other services or supplies purchased by the facility or by any resident, or by any third party on behalf of any resident, of the facility.

5. Each county which maintains a county care facility under chapter 347B shall develop a

statement in lieu of, and setting forth substantially the same items as, the contracts required of other health care facilities by subsection 1. The statement must be approved by the county board of supervisors and by the department. When so approved, the statement shall be considered in force with respect to each resident of the county care facility.

[C71, 73, 75, 77, 79, 81, §135C.23]

83 Acts, ch 76, §1; 87 Acts, ch 190, §1; 88 Acts, ch 1234, §9; 90 Acts, ch 1039, §9; 94 Acts, ch 1170, §23; 96 Acts, ch 1129, § 113; 2004 Acts, ch 1090, §1; 2009 Acts, ch 41, §263; 2010 Acts, ch 1031, §389; 2012 Acts, ch 1019, §17

Referred to in §135C.1, 229.21, 331.382, 335.25, 347B.9, 414.22

#### **135C.24 Personal property or affairs of patients or residents.**

The admission of a resident to a health care facility and the resident's presence therein shall not in and of itself confer on such facility, its owner, administrator, employees, or representatives any authority to manage, use, or dispose of any property of the resident, nor any authority or responsibility for the personal affairs of the resident, except as may be necessary for the safety and orderly management of the facility and as required by this section.

1. No health care facility, and no owner, administrator, employee or representative thereof shall act as guardian, trustee or conservator for any resident of such facility, or any of such resident's property, unless such resident is related to the person acting as guardian within the third degree of consanguinity.

2. A health care facility shall provide for the safekeeping of personal effects, funds and other property of its residents, provided that whenever necessary for the protection of valuables or in order to avoid unreasonable responsibility therefor, the facility may require that they be excluded or removed from the premises of the facility and kept at some place not subject to the control of the facility.

3. A health care facility shall keep complete and accurate records of all funds and other effects and property of its residents received by it for safekeeping.

4. Any funds or other property belonging to or due a resident, or expendable for the resident's account, which are received by a health care facility shall be trust funds, shall be kept separate from the funds and property of the facility and of its other residents, or specifically credited to such resident, and shall be used or otherwise expended only for the account of the resident. Upon request the facility shall furnish the resident, the guardian, trustee or conservator, if any, for any resident, or any governmental unit or private charitable agency contributing funds or other property on account of any resident, a complete and certified statement of all funds or other property to which this subsection applies detailing the amounts and items received, together with their sources and disposition.

5. The provisions of this section notwithstanding, upon the verified petition of the county board of supervisors the district court may appoint the administrator of a county care facility as conservator or guardian, or both, of a resident of such county care facility, in accordance with the provisions of chapter 633. Such administrator shall serve as conservator or guardian, or both, without fee. The county attorney shall serve as attorney for the administrator in such conservatorship or guardianship, or both, without fee. The administrator may establish either separate or common bank accounts for cash funds of such resident wards.

[C71, 73, 75, 77, 79, 81, §135C.24]

Referred to in §331.382, 331.756(27)

**135C.25 Resident advocate committee appointments — duties — disclosure — liability.** Repealed by 2013 Acts, ch 18, § 34.

#### **135C.26 Director notified of casualties.**

The director shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing major injury or death, and any fire or natural or other disaster occurring in a health care facility.

[C71, 73, 75, 77, 79, 81, §135C.26]

**135C.27 Federal funds to implement program.**

If the department's services are necessary in order to assist another governmental unit to implement a federal program, the department may accept in compensation for such services federal funds initially available from the federal government to such other governmental unit for such purpose. Any governmental unit is authorized to transfer to the department for such services any federal funds available to such governmental unit, in accordance with applicable federal laws and regulations.

[C71, 73, 75, 77, 79, 81, §135C.27]

**135C.28 Conflicting statutes.**

Provisions of this chapter in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

[C73, 75, 77, 79, 81, §135C.28]

2004 Acts, ch 1086, §37

**135C.29 License list to county commissioner of elections.**

To facilitate the implementation of section 53.8, subsection 3 and section 53.22, the director shall provide to each county commissioner of elections at least annually a list of each licensed health care facility in that county. The list shall include the street address or location, and the mailing address if it is other than the street address or location, of each facility.

[C77, 79, 81, §135C.29]

Referred to in §53.8

**135C.30 Operation of facility under receivership.**

When so authorized by section 135C.11, subsection 2, or section 135C.12, subsection 1, the director may file a verified application in the district court of the county where a health care facility licensed under this chapter is located, requesting that an individual nominated by the director be appointed as receiver for the facility with responsibility to bring the operation and condition of the facility into conformity with this chapter and the rules or minimum standards promulgated under this chapter.

1. The court shall expeditiously hold a hearing on the application, at which the director shall present evidence in support of the application. The licensee against whose facility the petition is filed may also present evidence, and both parties may subpoena witnesses. The court may appoint a receiver for the health care facility in advance of the hearing if the director's verified application states that an emergency exists which presents an imminent danger of resultant death or physical harm to the residents of the facility. If the licensee against whose facility the receivership petition is filed informs the court at or before the time set for the hearing that the licensee does not object to the application, the court shall waive the hearing and at once appoint a receiver for the facility.

2. The court, on the basis of the verified application and evidence presented at the hearing, may order the facility placed under receivership, and if so ordered, the court shall direct either that the receiver assume the duties of administrator of the health care facility or that the receiver supervise the facility's administrator in conducting the day-to-day business of the facility. The receiver shall be empowered to control the facility's financial resources and to apply its revenues as the receiver deems necessary to the operation of the facility in compliance with this chapter and the rules or minimum standards promulgated under this chapter, but shall be accountable to the court for management of the facility's financial resources.

3. A receivership established under this section may be terminated by the district court which established it, after a hearing upon an application for termination. The application may be filed:

a. Jointly by the receiver and the current licensee of the health care facility which is in receivership, stating that the deficiencies in the operation, maintenance or other circumstances which were the grounds for establishment of the receivership have been corrected and that there are reasonable grounds to believe that the facility will be operated

in compliance with this chapter and the rules or minimum standards promulgated under this chapter.

b. By the current licensee of the facility, alleging that termination of the receivership is merited for the reasons set forth in paragraph “a” of this subsection, but that the receiver has declined to join in the petition for termination of the receivership.

c. By the receiver, stating that all residents of the facility have been relocated elsewhere and that there are reasonable grounds to believe it will not be feasible to again operate the facility on a sound financial basis and in compliance with this chapter and the rules or minimum standards promulgated under this chapter, and asking that the court approve surrender of the facility’s license to the department and subsequent return of control of the facility’s premises to the owners of the premises.

4. a. Payment of the expenses of a receivership established under this section is the responsibility of the facility for which the receiver is appointed, unless the court directs otherwise. The expenses include but are not limited to:

(1) Salary of the receiver.

(2) Expenses incurred by the facility for the continuing care of the residents of the facility.

(3) Expenses incurred by the facility for the maintenance of buildings and grounds of the facility.

(4) Expenses incurred by the facility in the ordinary course of business, such as employees’ salaries and accounts payable.

b. The receiver is not personally liable for the expenses of the facility during the receivership. The receiver is an employee of the state as defined in section 669.2, subsection 4, only for the purpose of defending a claim filed against the receiver. Chapter 669 applies to all suits filed against the receiver.

5. This section does not:

a. Preclude the sale or lease of a health care facility, and the transfer or assignment of the facility’s license in the manner prescribed by section 135C.8, while the facility is in receivership, provided these actions are not taken without approval of the receiver.

b. Affect the civil or criminal liability of the licensee of the facility placed in receivership, for any acts or omissions of the licensee which occurred before the receiver was appointed.

[C81, §135C.30]

84 Acts, ch 1136, §1; 91 Acts, ch 107, §3; 2009 Acts, ch 41, §263

Referred to in §135C.11, 135C.12

### **135C.31 Discharge of Medicaid patients.**

A resident of a health care facility shall not be discharged solely because the cost of the resident’s care is being paid under chapter 249A or because the resident’s source of payment is changing from private support to payment under chapter 249A.

[81 Acts, ch 60, §2]

Referred to in §135C.36

### **135C.31A Assessment of residents — program eligibility — prescription drug coverage.**

1. A health care facility shall assist the Iowa department of veterans affairs in identifying, upon admission of a resident, the resident’s eligibility for benefits through the United States department of veterans affairs. The department of inspections and appeals, in cooperation with the department of human services, shall adopt rules to administer this section, including a provision that ensures that if a resident is eligible for benefits through the United States department of veterans affairs or other third-party payor, the payor of last resort for reimbursement to the health care facility is the medical assistance program. The rules shall also require the health care facility to request information from a resident or resident’s personal representative regarding the resident’s veteran status and to report to the Iowa department of veterans affairs only the names of residents identified as potential veterans along with the names of their spouses and any dependents. Information reported by the health care facility shall be verified by the Iowa department of veterans affairs. This section shall not apply to the admission of an individual to a state mental health institute for acute psychiatric care or to the admission of an individual to the Iowa veterans home.

2. *a.* If a resident is identified, upon admission to a health care facility, as eligible for benefits through the United States department of veterans affairs pursuant to subsection 1 or through other means, the health care facility shall allow the resident to access any prescription drug benefit included in such benefits for which the resident is also eligible. The health care facility shall also assist the Iowa department of veterans affairs in identifying individuals residing in such health care facilities on July 1, 2009, who are eligible for the prescription drug benefit.

*b.* The department of inspections and appeals, the department of veterans affairs, and the department of human services shall identify any barriers to residents in accessing such prescription drug benefits and shall assist health care facilities in adjusting their procedures for medication administration to comply with this subsection.

2003 Acts, ch 112, §2; 2003 Acts, ch 179, §160; 2004 Acts, ch 1175, §226; 2005 Acts, ch 115, §28, 40; 2006 Acts, ch 1109, §1; 2009 Acts, ch 63, §1

### **135C.32 Hospice services covered by Medicare.**

The requirement that the care of a resident of a health care facility must be provided under the immediate direction of either the facility or the resident's personal physician does not apply if all of the following conditions are met:

1. The resident is terminally ill.
2. The resident has elected to receive hospice services under the federal Medicare program from a Medicare certified hospice program.
3. The health care facility and the Medicare certified hospice program have entered into a written agreement under which the hospice program takes full responsibility for the professional management of the resident's hospice care and the facility agrees to provide room and board to the resident.

88 Acts, ch 1037, §1

### **135C.33 Employees and certified nurse aide trainees — child or dependent adult abuse information and criminal record checks — evaluations — application to other providers — penalty.**

1. *a.* For the purposes of this section, the term "*crime*" does not include offenses under chapter 321 classified as a simple misdemeanor or equivalent simple misdemeanor offenses from another jurisdiction.

*b.* Prior to employment of a person in a facility, the facility shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state. A facility shall inform all persons prior to employment regarding the performance of the record checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. A facility shall include the following inquiry in an application for employment:

Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime other than a simple misdemeanor offense relating to motor vehicles and laws of the road under chapter 321 or equivalent provisions, in this state or any other state?

2. *a.* If it is determined that a person being considered for employment in a facility has been convicted of a crime under a law of any state, the department of public safety shall notify the licensee that upon the request of the licensee the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person's employment in the facility.

*b.* (1) If a person being considered for employment, other than employment involving the operation of a motor vehicle, has been convicted of a crime listed in subparagraph (2) but does not have a record of founded child or dependent abuse and the licensee has requested an evaluation in accordance with paragraph "*a*" to determine whether the crime warrants prohibition of the person's employment, the licensee may employ the person for not more than sixty calendar days pending completion of the evaluation.

(2) Subparagraph (1) applies to a crime that is a simple misdemeanor offense under

section 123.47 or chapter 321, and to a crime that is a first offense of operating a motor vehicle while intoxicated under section 321J.2, subsection 1.

c. If a department of human services child or dependent adult abuse record check shows that such person has a record of founded child or dependent adult abuse, the department of human services shall notify the licensee that upon the request of the licensee the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of employment in the facility.

d. An evaluation performed under this subsection shall be performed in accordance with procedures adopted for this purpose by the department of human services.

e. (1) If a person owns or operates more than one facility, and an employee of one of such facilities is transferred to another such facility without a lapse in employment, the facility is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

(2) If the ownership of a facility is transferred, at the time of transfer the record checks required by this section shall be performed for each employee for whom there is no documentation that such record checks have been performed. The facility may continue to employ such employee pending the performance of the record checks and any related evaluation.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. If the department of human services performs an evaluation for the purposes of this section, the department of human services has final authority in determining whether prohibition of the person's employment is warranted.

4. a. Except as provided in paragraph "b" and subsection 2, a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a facility licensed under this chapter unless an evaluation has been performed by the department of human services.

b. A person with a criminal or abuse record who is or was employed by a facility licensed under this chapter and is hired by another licensee shall be subject to the criminal history and abuse record checks required pursuant to subsection 1. However, if an evaluation was previously performed by the department of human services concerning the person's criminal or abuse record and it was determined that the record did not warrant prohibition of the person's employment and the latest record checks do not indicate a crime was committed or founded abuse record was entered subsequent to that evaluation, the person may commence employment with the other licensee in accordance with the department of human services' evaluation and an exemption from the requirements in paragraph "a" for reevaluation of the latest record checks is authorized. Otherwise, the requirements of paragraph "a" remain applicable to the person's employment. Authorization of an exemption under this paragraph "b" from requirements for reevaluation of the latest record checks by the department of human services is subject to all of the following provisions:

(1) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

(2) Any restrictions placed on the person's employment in the previous evaluation by the department of human services shall remain applicable in the person's subsequent employment.

(3) The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record checks shall be reevaluated.

(4) Although an exemption under this paragraph "b" may be authorized, the subsequent

employer may instead request a reevaluation of the record checks and may employ the person while the reevaluation is being performed.

5. a. This section shall also apply to prospective employees of all of the following, if the provider is regulated by the state or receives any state or federal funding:

(1) An employee of a homemaker-home health aide, home care aide, adult day services, or other provider of in-home services if the employee provides direct services to consumers.

(2) An employee of a hospice, if the employee provides direct services to consumers.

(3) An employee who provides direct services to consumers under a federal home and community-based services waiver.

(4) An employee of an elder group home certified under chapter 231B, if the employee provides direct services to consumers.

(5) An employee of an assisted living program certified under chapter 231C, if the employee provides direct services to consumers.

b. In substantial conformance with the provisions of this section, prior to the employment of such an employee, the provider shall request the performance of the criminal and child and dependent adult abuse record checks. The provider shall inform the prospective employee and obtain the prospective employee's signed acknowledgment. The department of human services shall perform the evaluation of any criminal record or founded child or dependent adult abuse record and shall make the determination of whether a prospective employee of a provider shall not be employed by the provider.

6. a. The department of inspections and appeals, in conjunction with other departments and agencies of state government involved with criminal history and abuse registry information, shall establish a single contact repository for facilities and other providers to have electronic access to data to perform background checks for purposes of employment, as required of the facilities and other providers under this section.

b. The department may access the single contact repository for any of the following purposes:

(1) To verify data transferred from the department's nurse aide registry to the repository.

(2) To conduct record checks of applicants for employment with the department.

7. a. If a person employed by a facility, service, or program employer that is subject to this section is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The employer shall act to verify the information within forty-eight hours of notification. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied by the employer to determine whether or not the person's employment is continued. The employer may continue to employ the person pending the performance of an evaluation by the department of human services to determine whether prohibition of the person's employment is warranted. A person who is required by this subsection to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor.

b. If a facility, service, or program employer receives credible information, as determined by the employer, that a person employed by the employer has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment from a person other than the employee and the employee has not informed the employer of such information within the period required under paragraph "a", the employer shall act to verify the credible information within forty-eight hours of receipt of the credible information. If the information is verified, the requirements of subsections 2, 3, and 4 regarding employability and evaluations shall be applied to determine whether or not the person's employment is continued.

c. The employer may notify the county attorney for the county where the employer is located of any violation or failure by an employee to notify the employer of a criminal conviction or entry of an abuse record within the period required under paragraph "a".

8. a. For the purposes of this subsection, unless the context otherwise requires:

(1) "Certified nurse aide training program" means a program approved in accordance with

the rules for such programs adopted by the department of human services for the training of persons seeking to be a certified nurse aide for employment in any of the facilities or programs this section applies to or in a hospital, as defined in section 135B.1.

(2) “*Student*” means a person applying for, enrolled in, or returning to a certified nurse aide training program.

b. Prior to a student beginning or returning to a certified nurse aide training program, the program shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks, in this state, of the student. The program may access the single contact repository established pursuant to this section as necessary for the program to initiate the record checks.

c. If a student has a criminal record or a record of founded child or dependent adult abuse, the student shall not be involved in a clinical education component of the certified nurse aide training program involving children or dependent adults unless an evaluation has been performed by the department of human services. Upon request of the certified nurse aide training program, the department of human services shall perform an evaluation to determine whether the record warrants prohibition of the student’s involvement in a clinical education component of the certified nurse aide training program involving children or dependent adults. The evaluation shall be performed in accordance with the criteria specified in subsection 3, and the department of human services shall report the results of the evaluation to the certified nurse aide training program. The department of human services has final authority in determining whether prohibition of the student’s involvement in the clinical education component is warranted.

d. (1) If a student’s clinical education component of the training program involves children or dependent adults but does not involve operation of a motor vehicle, and the student has been convicted of a crime listed in subparagraph (2), but does not have a record of founded child or dependent adult abuse, and the training program has requested an evaluation in accordance with paragraph “c” to determine whether the crime warrants prohibition of the student’s involvement in such clinical education component, the training program may allow the student’s participation in the component for not more than sixty days pending completion of the evaluation.

(2) Subparagraph (1) applies to a crime that is a simple misdemeanor offense under section 123.47 or chapter 321, and to a crime that is a first offense of operating a motor vehicle while intoxicated under section 321J.2, subsection 1.

e. (1) If a student is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the record checks and any evaluation have been performed, the student shall inform the certified nurse aide training program of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The program shall act to verify the information within forty-eight hours of notification. If the information is verified, the requirements of paragraph “c” shall be applied by the program to determine whether or not the student’s involvement in a clinical education component may continue. The program may allow the student involvement to continue pending the performance of an evaluation by the department of human services. A student who is required by this subparagraph to inform the program of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor.

(2) If a program receives credible information, as determined by the program, that a student has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after the record checks and any evaluation have been performed, from a person other than the student and the student has not informed the program of such information within the period required under subparagraph (1), the program shall act to verify the credible information within forty-eight hours of receipt of the credible information. If the information is verified, the requirements of paragraph “c” shall be applied to determine whether or not the student’s involvement in a clinical education component may continue.

(3) The program may notify the county attorney for the county where the program is

located of any violation or failure by a student to notify the program of a criminal conviction or entry of an abuse record within the period required under subparagraph (1).

f. If a certified nurse aide training program is conducted by a health care facility and a student of that program subsequently accepts and begins employment with the facility within thirty days of completing the program, the criminal history and abuse registry checks of the student performed pursuant to this subsection shall be deemed to fulfill the requirements for such checks prior to employment pursuant to subsection 1.

94 Acts, ch 1130, §12; 97 Acts, ch 42, §1; 98 Acts, ch 1141, §2; 98 Acts, ch 1223, §20, 21; 99 Acts, ch 96, §11; 99 Acts, ch 114, §5; 2001 Acts, ch 8, §1; 2001 Acts, ch 20, §2, 3; 2001 Acts, ch 64, §4; 2002 Acts, ch 1050, §18; 2003 Acts, ch 166, §2; 2006 Acts, ch 1069, §1; 2008 Acts, ch 1187, §112; 2009 Acts, ch 133, §36; 2010 Acts, ch 1012, §1, 2; 2012 Acts, ch 1074, §1; 2013 Acts, ch 21, §3, 4, 6, 7

Referred to in §135B.34, 135C.36, 152.5, 231B.2, 231C.3, 231D.14, 235A.15, 235A.16, 235B.6, 237A.5

Legislative intent; 98 Acts, ch 1217, §36

2013 amendments adding paragraph b to subsection 2 and adding paragraph d to subsection 8 take effect April 5, 2013, and apply retroactively to persons for whom a record check was requested not more than 60 calendar days prior to April 5, 2013; 2013 Acts, ch 21, §6, 7

Subsection 2, NEW paragraph b and former paragraphs b – d redesignated as c – e

Subsection 8, NEW paragraph d and former paragraphs d and e redesignated as e and f

### **135C.34 Medication aide — certification.**

The department of inspections and appeals, in cooperation with other appropriate agencies, shall establish a procedure to allow a person who is certified as a medication aide in another state to become certified in this state upon completion and passage of both the certified nurse aide and certified medication aide challenge examinations, without additional requirements for certification, including but not limited to, required employment in this state prior to certification. The department shall adopt rules pursuant to chapter 17A to administer this section.

94 Acts, ch 1036, §1

### **135C.35 Training of inspectors.**

1. Subject to the availability of funding, all nursing facility inspectors shall receive twelve hours of annual continuing education in gerontology, wound care, dementia, falls, or a combination of these subjects.

2. An inspector shall not be personally liable for financing the training required under subsection 1.

3. The department shall consult with the collective bargaining representative of the inspector in regard to the training required under this section.

2009 Acts, ch 156, §2

## **VIOLATIONS**

### **135C.36 Violations classified — penalties.**

Every violation by a health care facility of any provision of this chapter or of the rules adopted pursuant to it shall be classified by the department in accordance with this section. The department shall adopt and may from time to time modify, in accordance with chapter 17A rules setting forth so far as feasible the specific violations included in each classification and stating criteria for the classification of any violation not so listed.

1. A Class I violation is one which presents an imminent danger or a substantial probability of resultant death or physical harm to the residents of the facility in which the violation occurs. A physical condition or one or more practices in a facility may constitute a Class I violation. A Class I violation shall be abated or eliminated immediately unless the department determines that a stated period of time, specified in the citation issued under section 135C.40, is required to correct the violation. A licensee is subject to a penalty of not less than two thousand nor more than ten thousand dollars for each Class I violation for which the licensee's facility is cited.

2. A Class II violation is one which has a direct or immediate relationship to the health,

safety, or security of residents of a health care facility, but which presents no imminent danger nor substantial probability of death or physical harm to them. A physical condition or one or more practices within a facility, including either physical abuse of any resident or failure to treat any resident with consideration, respect, and full recognition of the resident's dignity and individuality, in violation of a specific rule adopted by the department, may constitute a Class II violation. A violation of section 135C.14, subsection 8, or section 135C.31 and rules adopted under those sections shall be at least a Class II violation and may be a Class I violation. A Class II violation shall be corrected within a stated period of time determined by the department and specified in the citation issued under section 135C.40. The stated period of time specified in the citation may subsequently be modified by the department for good cause shown. A licensee is subject to a penalty of not less than one hundred nor more than five hundred dollars for each Class II violation for which the licensee's facility is cited; however the director may, upon written request of the facility, waive the penalty if the violation is corrected within the time specified in the citation. The department shall adopt rules in accordance with chapter 17A establishing criteria for the granting or denial of a waiver request.

3. A Class III violation is any violation of this chapter or of the rules adopted pursuant to it which violation is not classified in the department's rules nor classifiable under the criteria stated in those rules as a Class I or a Class II violation. A licensee shall not be subject to a penalty for a Class III violation, except as provided by section 135C.40, subsection 1, for failure to correct the violation within a reasonable time specified by the department in the notice of the violation.

4. Any state penalty, including a fine or citation, issued as a result of the federal survey and certification process shall be dismissed if the corresponding federal deficiency or citation is dismissed or removed.

5. If a facility self-identifies a deficient practice prior to an on-site visit inspection, there has been no complaint filed with the department related to that specific deficient practice, and the facility corrects such practice prior to an inspection, no citation shall be issued or fine assessed pursuant to subsection 2 or 3 except for those penalties arising pursuant to section 135C.33; 481 IAC § 57.12(2)(d), 57.12(3), 57.15(5), 57.25(1), 57.39, 58.11(3), 58.14(5), 58.19(2)(a), 58.19(2)(h), 58.28(1)(a), 58.43, 62.9(5), 62.15(1)(a), 62.19(2)(c), 62.19(7), 62.23(23)-(25), 63.11(2)(d), 63.11(3), 63.23(1)(a), 63.37, 64.4(9), 64.33, 64.34, 65.9(5), 65.15, or 65.25(3)-(5), or the successor to any of such rules; or 42 C.F.R. § 483.420(d), 483.460(c)(4), or 483.470(j), or the successor to any of such federal regulations.

[C77, 79, 81, §135C.36; 81 Acts, ch 60, §3]

86 Acts, ch 1168, §1; 2009 Acts, ch 156, §3, 4

Referred to in §135C.40, 135C.41, 135C.44, 135C.44A, 249A.57

### **135C.37 Complaints alleging violations — confidentiality.**

A person may request an inspection of a health care facility by filing with the department, certified volunteer long-term care ombudsman, or the office of long-term care ombudsman, a complaint of an alleged violation of applicable requirements of this chapter or the rules adopted pursuant to this chapter. A person alleging abuse or neglect of a resident with a developmental disability or with mental illness may also file a complaint with the protection and advocacy agency designated pursuant to section 135B.9 or section 135C.2. A copy of a complaint filed with a certified volunteer long-term care ombudsman or the office of long-term care ombudsman shall be forwarded to the department. The complaint shall state in a reasonably specific manner the basis of the complaint, and a statement of the nature of the complaint shall be delivered to the facility involved at the time of the inspection. The name of the person who files a complaint with the department, certified volunteer long-term care ombudsman, or the office of long-term care ombudsman shall be kept confidential and

shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved in the investigation of the complaint.

[C77, 79, 81, §135C.37]

84 Acts, ch 1227, §3; 85 Acts, ch 186, §2; 89 Acts, ch 241, §3; 89 Acts, ch 321, §28; 91 Acts, ch 107, §4; 99 Acts, ch 129, §6; 2005 Acts, ch 45, §1; 2010 Acts, ch 1062, §1; 2013 Acts, ch 18, §11

Referred to in §135C.38, 135C.40, 135C.46, 135C.48  
Section amended

### **135C.38 Inspections upon complaints.**

1. *a.* Upon receipt of a complaint made in accordance with section 135C.37, the department or certified volunteer long-term care ombudsman shall make a preliminary review of the complaint. Unless the department or certified volunteer long-term care ombudsman concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, the department or certified volunteer long-term care ombudsman shall make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint within the time period determined pursuant to the following guidelines, which period shall commence on the date of receipt of the complaint:

(1) For nursing facilities, an on-site inspection shall be initiated as follows:

(a) Within two working days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged immediate jeopardy situation.

(b) Within ten working days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged high-level, nonimmediate jeopardy situation.

(c) Within forty-five calendar days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged nonimmediate jeopardy situation, other than a high-level situation.

(2) For all other types of health care facilities, an on-site inspection shall be initiated as follows:

(a) Within two working days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged immediate jeopardy situation.

(b) Within twenty working days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged high-level, nonimmediate jeopardy situation.

(c) Within forty-five calendar days for a complaint determined by the department or certified volunteer long-term care ombudsman to be an alleged nonimmediate jeopardy situation, other than a high-level situation.

*b.* The complaint investigation shall include, at a minimum, an interview with the complainant, the alleged perpetrator, and the victim of the alleged violation, if the victim is able to communicate, if the complainant, alleged perpetrator, or victim is identifiable, and if the complainant, alleged perpetrator, or victim is available. Additionally, witnesses who have knowledge of facts related to the complaint shall be interviewed, if identifiable and available. The names of witnesses may be obtained from the complainant or the victim. The files of the facility may be reviewed to ascertain the names of staff persons on duty at the time relevant to the complaint. The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. For the purposes of this subsection, “*a preponderance of the evidence standard*” means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. “*A preponderance of the evidence standard*” does not require that the investigator personally witnessed the alleged violation.

*c.* The department may refer to the certified volunteer long-term care ombudsman of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action by the certified volunteer long-term care ombudsman.

2. *a.* The complainant shall be promptly informed of the result of any action taken by the department or certified volunteer long-term care ombudsman in the matter. The complainant shall also be notified of the name, address, and telephone number of the designated protection

and advocacy agency if the alleged violation involves a facility with one or more residents with developmental disabilities or mental illness.

b. Upon conclusion of the investigation, the department shall notify the complainant of the results. The notification shall include a statement of the factual findings as determined by the investigator, the statutory or regulatory provisions alleged to have been violated, and a summary of the reasons for which the complaint was or was not substantiated.

c. The department shall mail the notification to the complainant without charge. Upon the request of the complainant, the department shall mail to the complainant, without charge, a copy of the most recent final findings regarding compliance with licensing requirements by the facility against which the complaint was filed.

d. A person who is dissatisfied with any aspect of the department's handling of the complaint may contact the office of long-term care ombudsman, or may contact the protection and advocacy agency designated pursuant to section 135C.2 if the complaint relates to a resident with a developmental disability or a mental illness.

3. An inspection made pursuant to a complaint filed under section 135C.37 need not be limited to the matter or matters included in the complaint. However, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection or unless in the course of the complaint investigation a violation is evident to the inspector. Upon arrival at the facility to be inspected, the inspector shall show identification to the person in charge of the facility and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department or certified volunteer long-term care ombudsman, the complainant or the complainant's representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any time if the inspector determines that the privacy of any resident of the facility to be inspected would otherwise be violated. The protection and dignity of the resident shall be given first priority by the inspector and others.

4. If upon an inspection of a facility by its certified volunteer long-term care ombudsman pursuant to this section, the certified volunteer long-term care ombudsman advises the department of any circumstance believed to constitute a violation of this chapter or of any rule adopted pursuant to it, the certified volunteer long-term care ombudsman shall similarly advise the facility at the same time. If the facility's licensee or administrator disagrees with the conclusion of the certified volunteer long-term care ombudsman regarding the supposed violation, an informal conference may be requested and if requested shall be arranged by the department as provided in section 135C.42 before a citation is issued. If the department thereafter issues a citation pursuant to the certified volunteer long-term care ombudsman's finding, the facility shall not be entitled to a second informal conference on the same violation and the citation shall be considered affirmed. The facility cited may proceed under section 135C.43 if it so desires.

[C77, 79, 81, §135C.38]

87 Acts, ch 234, §430; 89 Acts, ch 241, §4; 91 Acts, ch 107, §5, 6; 99 Acts, ch 129, §7, 8; 2000 Acts, ch 1180, §2; 2007 Acts, ch 93, §2; 2010 Acts, ch 1062, §2; 2013 Acts, ch 18, §12 – 14

Referred to in §135C.16, 135C.39

Subsection 1, paragraphs a and c amended

Subsection 2, paragraphs a and d amended

Subsections 3 and 4 amended

### **135C.39 No advance notice of inspection — exception.**

No advance notice of an on-site inspection made pursuant to section 135C.38 shall be given the health care facility or the licensee thereof unless previously and specifically authorized in writing by the director or required by federal law. The person in charge of the facility shall be informed of the substance of the complaint at the commencement of the on-site inspection.

[C77, 79, 81, §135C.39]

89 Acts, ch 241, §5; 90 Acts, ch 1039, §10

Administrative penalty; see §135C.45A

**135C.40 Citations when violations found — penalties — exception.**

1. If the director determines, based on the findings of an inspection or investigation of a health care facility, that the facility is in violation of this chapter or rules adopted under this chapter, the director within five working days after making the determination, may issue a written citation to the facility. The citation shall be served upon the facility personally, by electronic mail, or by certified mail, except that a citation for a Class III violation may be sent by ordinary mail. Each citation shall specifically describe the nature of the violation, identifying the Code section or subsection or the rule or standard violated, and the classification of the violation under section 135C.36. Where appropriate, the citation shall also state the period of time allowed for correction of the violation, which shall in each case be the shortest period of time the department deems feasible. Failure to correct a violation within the time specified, unless the licensee shows that the failure was due to circumstances beyond the licensee's control, shall subject the facility to a further penalty of fifty dollars for each day that the violation continues after the time specified for correction.

a. If a facility licensed under this chapter is subject to or will be subject to denial of payment including payment for Medicare or medical assistance under chapter 249A, or denial of payment for all new admissions pursuant to 42 C.F.R. § 488.417, and submits a plan of correction relating to a statement of deficiencies or a response to a citation issued under rules adopted by the department and the department elects to conduct an on-site revisit inspection, the department shall commence the revisit inspection within the shortest time feasible of the date that the plan of correction is received, or the date specified within the plan of correction alleging compliance, whichever is later.

b. If the department recommends the issuance of federal remedies pursuant to 42 C.F.R. § 488.406(a)(2) or (a)(3), relating to an inspection conducted by the department, the department shall issue the statement of deficiencies within twenty-four hours of the date that the centers for Medicare and Medicaid services of the United States department of health and human services was notified of the recommendation for the imposition of remedies.

c. The facility shall be provided an exit interview at the conclusion of an inspection and the facility representative shall be informed of all issues and areas of concern related to the deficient practices. The department may conduct the exit interview either in person or by telephone, and a second exit interview shall be provided if any additional issues or areas of concern are identified. The facility shall be provided two working days from the date of the exit interview to submit additional or rebuttal information to the department.

2. When a citation is served upon or mailed to a health care facility under subsection 1 and the licensee of the facility is not actually involved in the daily operation of the facility, a copy of the citation shall be mailed to the licensee. If the licensee is a corporation, a copy of the citation shall be sent to the corporation's office of record. If the citation was issued pursuant to an inspection resulting from a complaint filed under section 135C.37, a copy of the citation shall be sent to the complainant at the earliest time permitted by section 135C.19, subsection 1.

3. No health care facility shall be cited for any violation caused by any practitioner licensed pursuant to chapter 148 if that practitioner is not the licensee of and is not otherwise financially interested in the facility and the licensee or the facility presents evidence that reasonable care and diligence have been exercised in notifying the practitioner of the practitioner's duty to the patients in the facility.

[C77, 79, 81, §135C.40; 81 Acts, ch 61, §1]

84 Acts, ch 1227, §4; 2008 Acts, ch 1088, §89; 2009 Acts, ch 156, §5

Referred to in §135C.19, 135C.36, 135C.41, 135C.46

**135C.40A Issuance of final findings.**

The department shall issue the final findings of an inspection or investigation of a health care facility within ten working days after completion of the on-site inspection or investigation. The final findings shall be served upon the facility personally, by electronic mail, or by certified mail.

2009 Acts, ch 156, §6

Referred to in §135C.46

**135C.41 Licensee's response to citation.**

Within twenty business days after service of a citation under section 135C.40, a facility shall either:

1. If it does not desire to contest the citation:

a. Remit to the department the amount specified by the department pursuant to section 135C.36 as a penalty for each Class I violation cited, and for each Class II violation unless the citation specifically waives the penalty, which funds shall be paid by the department into the state treasury and credited to the general fund; or

b. In the case of a Class II violation for which the penalty has been waived in accordance with the standards prescribed in section 135C.36, subsection 2, or a Class III violation, send to the department a written response acknowledging that the citation has been received and stating that the violation will be corrected within the specific period of time allowed by the citation; or

2. Notify the director that the facility desires to contest the citation and request an informal conference with an independent reviewer pursuant to section 135C.42.

[C77, 79, 81, §135C.41]

2009 Acts, ch 156, §7; 2010 Acts, ch 1069, §16; 2013 Acts, ch 26, §1, 7

Referred to in §135C.42, 135C.46

2013 amendment to subsection 2 takes effect July 1, 2013, and applies to informal conferences requested under chapter 135C on or after January 1, 2014; 2013 Acts, ch 26, §7

Subsection 2 amended

**135C.42 Informal conference on contested citation.**

1. The director shall provide an independent reviewer to hold an informal conference with the facility within ten working days after receipt of a request made under section 135C.41, subsection 2. At the conclusion of the conference the independent reviewer may affirm or may modify or dismiss the citation. The independent reviewer shall state in writing the specific reasons for the affirmation, modification, or dismissal and immediately transmit copies of the statement to the director, and to the facility. If the facility does not desire to further contest an affirmed or modified citation, it shall within five working days after the informal conference, or after receipt of the written explanation of the independent reviewer, as the case may be, comply with section 135C.41, subsection 1.

2. An independent reviewer shall be licensed as an attorney in the state of Iowa and shall not be employed or have been employed by the department in the past eight years or have appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience, or training in long-term care. The department may issue a request for proposals to enter into a contract for the purpose of providing one or more independent reviewers for informal conferences.

3. The department shall hold the informal conference, as required in this section, concurrently with any informal dispute resolution held pursuant to 42 C.F.R. § 488.331 for those health care facilities certified under Medicare or the medical assistance program.

[C77, 79, 81, §135C.42]

2013 Acts, ch 26, §2, 7

Referred to in §135C.7, 135C.38, 135C.41, 135C.46

2013 amendment takes effect July 1, 2013, and applies to informal conferences requested under chapter 135C on or after January 1, 2014; 2013 Acts, ch 26, §7

Section amended

**135C.43 Formal contest — judicial review.**

1. A facility that desires to further contest an affirmed or modified citation for a Class I, Class II, or Class III violation may do so in the manner provided by chapter 17A for contested cases. Notice of intent to formally contest a citation shall be given the department in writing within five days after the informal conference or after receipt of the written explanation of the independent reviewer provided to hold the informal conference, whichever is applicable, in the case of an affirmed or modified citation. A facility which has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A.

2. Hearings on petitions for judicial review brought under this section shall be set for trial

at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. The times for pleadings and for hearings in such actions shall be set by the judge of the court with the object of securing a decision in the matter at the earliest possible time.

[C77, 79, 81, §135C.43]

2009 Acts, ch 156, §8; 2010 Acts, ch 1069, §17; 2013 Acts, ch 26, §3, 7

Referred to in §135C.38, 135C.43A, 135C.46

2013 amendment to subsection 1 takes effect July 1, 2013, and applies to informal conferences requested under chapter 135C on or after January 1, 2014; 2013 Acts, ch 26, §7

Subsection 1 amended

#### **135C.43A Reduction of penalty amount.**

If a facility has been assessed a penalty, does not request a formal hearing pursuant to section 135C.43 or withdraws its request for a formal hearing within thirty days of the date that the penalty was assessed, and the penalty is paid within thirty days of the receipt of notice or service, the amount of the penalty shall be reduced by thirty-five percent. The citation which includes the civil penalty shall include a statement to this effect.

2009 Acts, ch 156, §9

#### **135C.44 Treble fines for repeated violations.**

The penalties authorized by section 135C.36 shall be trebled for a second or subsequent Class I or Class II violation occurring within any twelve-month period if a citation was issued for the same Class I or Class II violation occurring within that period and a penalty was assessed therefor.

[C77, 79, 81, §135C.44]

#### **135C.44A Double fines for intentional violations.**

The penalties authorized by section 135C.36 shall be doubled for each Class I violation when the violation is due to an intentional act by the facility in violation of a provision of this chapter or a rule of the department.

2009 Acts, ch 156, §10

#### **135C.45 Refund of penalty.**

If at any time a contest or appeal of any citation issued a health care facility under this chapter results in an order or determination that a penalty previously paid to or collected by the department must be refunded to the facility, the refund shall be made from any money in the state general fund not otherwise appropriated.

[C77, 79, 81, §135C.45]

#### **135C.45A Notification penalty.**

A person who notifies, or causes to be notified, a health care facility, of the time and date on which a survey or on-site inspection of the facility is scheduled, is subject to an administrative penalty of not less than one thousand dollars and not more than two thousand dollars.

90 Acts, ch 1039, §11

#### **135C.46 Retaliation by facility prohibited.**

1. A facility shall not discriminate or retaliate in any way against a resident or an employee of the facility who has initiated or participated in any proceeding authorized by this chapter. A facility which violates this section is subject to a penalty of not less than two hundred fifty nor more than five thousand dollars, to be assessed and collected by the director in substantially the manner prescribed by sections 135C.40 to 135C.43 and paid into the state treasury to be credited to the general fund, or to immediate revocation of the facility's license.

2. Any attempt to expel from a health care facility a resident by whom or upon whose behalf a complaint has been submitted to the department under section 135C.37, within ninety days after the filing of the complaint or the conclusion of any proceeding resulting from the

complaint, shall raise a rebuttable presumption that the action was taken by the licensee in retaliation for the filing of the complaint.

[C77, 79, 81, §135C.46]

**135C.47** Repealed by 98 Acts, ch 1141, § 3.

**135C.48 Information about complaint procedure.**

The department shall make a continuing effort to inform the general public of the appropriate procedure to be followed by any person who believes that a complaint against a health care facility is justified and should be made under section 135C.37.

[C77, 79, 81, §135C.48]

## CHAPTERS 135D to 135F

RESERVED

## CHAPTER 135G

### SUBACUTE MENTAL HEALTH CARE FACILITIES

Standards for subacute mental health services and for accreditation of community-based subacute mental health services providers; §225C.6

135G.1	Definitions.	135G.8	Provisional license.
135G.2	Purpose.	135G.9	Notice and hearings.
135G.3	Nature of care — seclusion room — admissions.	135G.10	Rules.
135G.4	Licensure.	135G.11	Complaints alleging violations.
135G.5	Application for license.	135G.12	Information confidential.
135G.6	Inspection — conditions for issuance.	135G.13	Judicial review.
135G.7	Denial, suspension, or revocation of license.	135G.14	Penalty.
		135G.15	Injunction.

**135G.1 Definitions.**

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

1. “*Advanced registered nurse practitioner*” means a person currently licensed as a registered nurse under chapter 152 or 152E who is registered with the board of nursing as an advanced registered nurse practitioner.
2. “*Department*” means the department of inspections and appeals.
3. “*Direction*” means authoritative policy or procedural guidance for the accomplishment of a function or an activity.
4. “*Licensee*” means the holder of a license issued to operate a subacute care facility for persons with serious and persistent mental illness.
5. “*Mental health professional*” means the same as defined in section 228.1.
6. “*Mental health services*” means services provided by a mental health professional operating within the scope of the professional’s practice which address mental, emotional, medical, or behavioral problems.
7. “*Physician*” means a person licensed under chapter 148.
8. “*Physician assistant*” means a person licensed to practice under the supervision of a physician as authorized in chapters 147 and 148C.
9. “*Rehabilitative services*” means services to encourage and assist restoration of a resident’s optimum mental and physical capabilities.

10. “Resident” means a person who is eighteen years of age or older and has been determined by a mental health professional to need subacute mental health services.

11. “Subacute care facility for persons with serious and persistent mental illness” or “subacute care facility” means an institution, place, building, or agency with restricted means of egress providing subacute mental health services for a period exceeding twenty-four consecutive hours to persons in need of the services.

12. “Subacute mental health services” means the same as defined in section 225C.6.

13. “Supervision” means direct oversight and inspection of the act of accomplishing a function or activity.

14. “Treatment care plan” means a plan of care and services designed to eliminate the need for acute care by improving the condition of a person with serious and persistent mental illness. Services must be based upon a diagnostic evaluation, which includes an examination of the medical, psychological, social, behavioral, and developmental aspects of the person’s situation, reflecting the need for inpatient care.

2012 Acts, ch 1120, §40

### 135G.2 Purpose.

The purpose of this chapter is to provide for the development, establishment, and enforcement of basic standards for the operation, construction, and maintenance of a subacute care facility which will ensure the safe and adequate diagnosis, evaluation, and treatment of persons with serious and persistent mental illness so that the persons are able to experience recovery and live successfully in the community.

2012 Acts, ch 1120, §41

### 135G.3 Nature of care — seclusion room — admissions.

1. A subacute care facility shall utilize a team of professionals to direct an organized program of diagnostic services, subacute mental health services, and rehabilitative services to meet the needs of residents in accordance with a treatment care plan developed for each resident under the supervision of a mental health professional. The goal of a treatment care plan is to transition residents to a less restrictive environment, including a home-based community setting. Social and rehabilitative services shall also be provided under the direction of a mental health professional.

2. The mental health professional providing supervision of the subacute care facility’s treatment care plans shall evaluate the condition of each resident as medically necessary and shall be available to residents of the facility on an on-call basis at all other times. Additional evaluation and treatment may be provided by a mental health professional. The subacute care facility may employ a seclusion room meeting the conditions described in 42 C.F.R. § 483.364(b) with approval of a licensed psychiatrist or by order of the resident’s physician, a physician assistant, or an advanced registered nurse practitioner.

2012 Acts, ch 1120, §42; 2013 Acts, ch 19, §4, 6, 7

Subsections 1 and 2 amended

2013 amendments to subsections 1 and 2 take effect April 5, 2013, and apply retroactively to July 1, 2012; 2013 Acts, ch 19, §6, 7

### 135G.4 Licensure.

1. A person shall not establish, operate, or maintain a subacute care facility unless the person obtains a license for the subacute care facility under this chapter.

2. An intermediate care facility for persons with mental illness licensed under chapter 135C may convert to a subacute care facility by submitting an application for a license in accordance with section 135G.5 accompanied by written notice to the department that the facility has employed a mental health professional and desires to make the conversion. An intermediate care facility for persons with mental illness applying for a license under this subsection remains subject to subsection 1 until a license is issued.

2012 Acts, ch 1120, §43; 2013 Acts, ch 19, §5 – 7

Subsection 2 amended

2013 amendment to subsection 2 takes effect April 5, 2013, and applies retroactively to July 1, 2012; 2013 Acts, ch 19, §6, 7

**135G.5 Application for license.**

An application for a license under this chapter shall be submitted on a form requesting information required by the department, which may include affirmative evidence of the applicant's ability to comply with the rules for standards adopted pursuant to this chapter. An application for a license shall be accompanied by the required license fee which shall be credited to the general fund of the state. The initial and annual license fee is twenty-five dollars.

2012 Acts, ch 1120, §44  
Referred to in §135G.4

**135G.6 Inspection — conditions for issuance.**

The department shall issue a license to an applicant under this chapter if the following conditions exist:

1. The department has ascertained that the applicant's facilities and staff are adequate to provide the care and services required of a subacute care facility.

2. a. The department of human services has submitted written approval of the application based upon the process used by the department of human services to identify the best qualified providers. The department of human services shall utilize a request for proposals process to identify the best qualified providers, limit the number of subacute care facility beds, and ensure the geographic dispersion of subacute mental health services.

b. The department of human services shall not give approval to an application which would cause the number of publicly funded subacute care facility beds licensed under this chapter to exceed fifty beds.

c. The subacute care facility beds identified by the request for proposals process shall be existing beds which have been awarded a certificate of need pursuant to chapter 135. Such beds shall not be required to obtain an additional certificate of need upon conversion to licensed subacute care facility beds.

2012 Acts, ch 1120, §45

**135G.7 Denial, suspension, or revocation of license.**

The department may deny an application or suspend or revoke a license if the department finds that an applicant or licensee has failed or is unable to comply with this chapter or the rules establishing minimum standards pursuant to this chapter or if any of the following conditions apply:

1. It is shown that a resident is a victim of cruelty or neglect due to the acts or omissions of the licensee.

2. The licensee has permitted, aided, or abetted in the commission of an illegal act in the subacute care facility.

3. An applicant or licensee acted to obtain or to retain a license by fraudulent means, misrepresentation, or submitting false information.

4. The licensee has willfully failed or neglected to maintain a continuing in-service education and training program for persons employed by the subacute care facility.

5. The application involves a person who has failed to operate a subacute care facility in compliance with the provisions of this chapter.

2012 Acts, ch 1120, §46

**135G.8 Provisional license.**

The department may issue a provisional license, effective for not more than one year, to a licensee whose subacute care facility does not meet the requirements of this chapter if, prior to issuance of the license, the applicant submits written plans to achieve compliance with the applicable requirements and the plans are approved by the department. The plans shall specify the deadline for achieving compliance.

2012 Acts, ch 1120, §47

**135G.9 Notice and hearings.**

The procedure governing notice and hearing to deny an application or suspend or revoke a license shall be in accordance with rules adopted by the department pursuant to chapter 17A. A full and complete record shall be kept of the proceedings and of any testimony. The record need not be transcribed unless judicial review is sought. A copy or copies of a transcript may be obtained by an interested party upon payment of the cost of preparing the transcript or copies.

2012 Acts, ch 1120, §48

**135G.10 Rules.**

1. The department of inspections and appeals and the department of human services shall collaborate in establishing standards for licensing of subacute care facilities to achieve all of the following objectives:

- a. Subacute mental health services are provided based on sound, proven clinical practice.
- b. Subacute mental health services are established in a manner that allows the services to be included in the federal medical assistance state plan.

2. It is the intent of the general assembly that subacute mental health services be included in the Medicaid state plan adopted for the implementation of the federal Patient Protection and Affordable Care Act, benchmark plan.

3. The department of inspections and appeals, in consultation with the department of human services and affected professional groups, shall adopt and enforce rules setting out the standards for a subacute care facility and the rights of the residents admitted to a subacute care facility. The department of inspections and appeals and the department of human services shall coordinate the adoption of rules and the enforcement of the rules in order to prevent duplication of effort by the departments and of requirements of the licensee.

2012 Acts, ch 1120, §49

Responsibility of department of human services to adopt standards in coordination with department of inspections and appeals for facility-based and community-based, subacute mental health services; §225C.6

**135G.11 Complaints alleging violations.**

1. A person may request an inspection of a subacute care facility by filing with the department a complaint of an alleged violation of an applicable requirement of this chapter or a rule adopted pursuant to this chapter. The complaint shall state in a reasonably specific manner the basis of the complaint. A statement of the nature of the complaint shall be delivered to the subacute care facility involved at the time of or prior to the inspection.

2. Upon receipt of a complaint made in accordance with subsection 1, the department shall make a preliminary review of the complaint. Unless the department concludes that the complaint is intended to harass a subacute care facility or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the subacute care facility which is the subject of the complaint. The department of inspections and appeals may refer to the department of human services any complaint received by the department of inspections and appeals if the complaint applies to rules adopted by the department of human services. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with a developmental disability or mental illness. In any case, the complainant shall be promptly informed of the result of any action taken by the department in the matter.

3. An inspection made pursuant to a complaint filed under subsection 1 need not be limited to the matter or matters referred to in the complaint; however, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection. Upon arrival at the subacute care facility to be inspected, the inspector shall show identification to the person in charge of the subacute care facility and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department, the complainant or the complainant's representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any time

if the inspector determines that the privacy of a resident of the subacute care facility to be inspected would be violated. The dignity of the resident shall be given first priority by the inspector and others.

2012 Acts, ch 1120, §50

**135G.12 Information confidential.**

1. The department's final findings regarding licensure shall be made available to the public in a readily available form and place. Other information relating to the subacute care facility is confidential and shall not be made available to the public except in proceedings involving licensure, a civil suit involving a resident, or an administrative action involving a resident.

2. The name of a person who files a complaint with the department shall remain confidential and is not subject to discovery, subpoena, or any other means of legal compulsion for release to a person other than an employee of the department or an agent involved in the investigation of the complaint.

3. Information regarding a resident who has received or is receiving care shall not be disclosed directly or indirectly except as authorized under section 217.30.

2012 Acts, ch 1120, §51

**135G.13 Judicial review.**

Judicial review of the action of the department may be sought pursuant to the Iowa administrative procedure Act, chapter 17A. Notwithstanding chapter 17A, a petition for judicial review of the department's actions under this chapter may be filed in the district court of the county in which the related subacute care facility is located or is proposed to be located. The status of the petitioner or the licensee shall be preserved pending final disposition of the judicial review.

2012 Acts, ch 1120, §52

**135G.14 Penalty.**

A person who establishes, operates, or manages a subacute care facility without obtaining a license under this chapter commits a serious misdemeanor. Each day of continuing violation following conviction shall be considered a separate offense.

2012 Acts, ch 1120, §53

**135G.15 Injunction.**

Notwithstanding the existence or pursuit of another remedy, the department may maintain an action for injunction or other process to restrain or prevent the establishment, operation, or management of a subacute care facility without a license.

2012 Acts, ch 1120, §54

## CHAPTER 135H

## PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN

Referred to in §10A.104, 234.7, 235A.15, 282.27, 709.16

Cost-based reimbursement methodology, §249A.31

135H.1	Definitions.	135H.8A	Provisional license.
135H.2	Purpose.	135H.9	Notice and hearings.
135H.3	Nature of care.	135H.10	Rules.
135H.4	Licensure.	135H.11	Complaints alleging violations — confidentiality.
135H.5	Application for license.	135H.12	Inspections upon complaints.
135H.6	Inspection — conditions for issuance.	135H.13	Information confidential.
135H.7	Personnel.	135H.14	Judicial review.
135H.8	Denial, suspension, or revocation of license.	135H.15	Penalty.
		135H.16	Injunction.

**135H.1 Definitions.**

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

1. “*Department*” means the department of inspections and appeals.
2. “*Direction*” means authoritative policy or procedural guidance for the accomplishment of a function or an activity.
3. “*Licensee*” means the holder of a license issued to operate a psychiatric medical institution for children.
4. “*Medical care plan*” means a plan of care and services designed to eliminate the need for inpatient care by improving the condition of a child. Services must be based upon a diagnostic evaluation, which includes an examination of the medical, psychological, social, behavioral, and developmental aspects of the child’s situation, reflecting the need for inpatient care.
5. “*Mental health professional*” means an individual who has all of the following qualifications:
  - a. The individual holds at least a master’s degree in a mental health field, including but not limited to, psychology, counseling and guidance, nursing, and social work, or the individual is a physician.
  - b. The individual holds a current Iowa license if practicing in a field covered by an Iowa licensure law.
  - c. The individual has at least two years of post-degree clinical experience, supervised by another mental health professional, in assessing mental health needs and problems and in providing appropriate mental health services.
6. “*Nursing care*” means services which are provided under the direction of a physician or registered nurse.
7. “*Physician*” means a person licensed under chapter 148.
8. “*Psychiatric medical institution for children*” or “*psychiatric institution*” means an institution providing more than twenty-four hours of continuous care involving long-term psychiatric services to three or more children in residence for expected periods of fourteen or more days for diagnosis and evaluation or for expected periods of ninety days or more for treatment.
9. “*Psychiatric services*” means services provided under the direction of a physician which address mental, emotional, medical, or behavioral problems.
10. “*Rehabilitative services*” means services to encourage and assist restoration of a resident’s optimum mental and physical capabilities.
11. “*Resident*” means a person who is less than twenty-one years of age and has been admitted by a physician to a psychiatric medical institution for children.
12. “*Supervision*” means direct oversight and inspection of the act of accomplishing a function or activity.

89 Acts, ch 283, §2; 94 Acts, ch 1120, §14, 15; 2008 Acts, ch 1088, §90

Referred to in §249A.30A

**135H.2 Purpose.**

The purpose of this chapter is to provide for the development, establishment, and enforcement of basic standards for the operation, construction, and maintenance of a psychiatric medical institution for children which will ensure the safe and adequate diagnosis and evaluation and treatment of the residents.

89 Acts, ch 283, §3

**135H.3 Nature of care.**

1. A psychiatric medical institution for children shall utilize a team of professionals to direct an organized program of diagnostic services, psychiatric services, nursing care, and rehabilitative services to meet the needs of residents in accordance with a medical care plan developed for each resident. The membership of the team of professionals may include but is not limited to an advanced registered nurse practitioner or a physician assistant. Social and rehabilitative services shall be provided under the direction of a qualified mental health professional.

2. If a child is diagnosed with a biologically based mental illness as defined in section 514C.22 and meets the medical assistance program criteria for admission to a psychiatric medical institution for children, the child shall be deemed to meet the acuity criteria for medically necessary inpatient benefits under a group policy, contract, or plan providing for third-party payment or prepayment of health, medical, and surgical coverage benefits issued by a carrier, as defined in section 513B.2, or by an organized delivery system authorized under 1993 Iowa Acts, ch. 158, that is subject to section 514C.22. Such medically necessary benefits shall not be excluded or denied as care that is substantially custodial in nature under section 514C.22, subsection 8, paragraph "b".

89 Acts, ch 283, §4; 2009 Acts, ch 179, §182; 2011 Acts, ch 121, §7; 2011 Acts, ch 131, §151, 153

**135H.4 Licensure.**

A person shall not establish, operate, or maintain a psychiatric medical institution for children unless the person obtains a license for the institution under this chapter and either holds a license under section 237.3, subsection 2, paragraph "a", as a comprehensive residential facility for children or holds a license under section 125.13, if the facility provides substance abuse treatment.

89 Acts, ch 283, §5; 93 Acts, ch 53, §6; 93 Acts, ch 172, §29; 93 Acts, ch 180, §79

**135H.5 Application for license.**

An application for a license under this chapter shall be submitted on a form requesting information required by the department, which may include affirmative evidence of the applicant's ability to comply with the rules for standards adopted pursuant to this chapter. An application for a license shall be accompanied by the required license fee which shall be credited to the general fund of the state. The initial and annual license fee is twenty-five dollars.

89 Acts, ch 283, §6

**135H.6 Inspection — conditions for issuance.**

The department shall issue a license to an applicant under this chapter if all the following conditions exist:

1. The department has ascertained that the applicant's medical facilities and staff are adequate to provide the care and services required of a psychiatric institution.

2. The proposed psychiatric institution is accredited by the joint commission on the accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the council on accreditation of services for families and children, or by any other recognized accrediting organization with comparable standards acceptable under federal regulation.

3. The applicant complies with applicable state rules and standards for a psychiatric

institution adopted by the department in accordance with federal requirements under 42 C.F.R. § 441.150 – 441.156.

4. The applicant has been awarded a certificate of need pursuant to chapter 135, unless exempt as provided in this section.

5. The department of human services has submitted written approval of the application based on the department of human services' determination of need. The department of human services shall identify the location and number of children in the state who require the services of a psychiatric medical institution for children. Approval of an application shall be based upon the location of the proposed psychiatric institution relative to the need for services identified by the department of human services and an analysis of the applicant's ability to provide services and support consistent with requirements under chapter 232, particularly regarding community-based treatment. If the proposed psychiatric institution is not freestanding from a facility licensed under chapter 135B or 135C, approval under this subsection shall not be given unless the department of human services certifies that the proposed psychiatric institution is capable of providing a resident with a living environment similar to the living environment provided by a licensee which is freestanding from a facility licensed under chapter 135B or 135C.

6. The department of human services shall not give approval to an application which would cause the total number of beds licensed under this chapter for services reimbursed by the medical assistance program under chapter 249A to exceed four hundred thirty beds.

7. In addition to the beds authorized under subsection 6, the department of human services may establish not more than thirty beds licensed under this chapter at the state mental health institute at Independence. The beds shall be exempt from the certificate of need requirement under subsection 4.

8. The department of human services may give approval to conversion of beds approved under subsection 6, to beds which are specialized to provide substance abuse treatment. However, the total number of beds approved under subsection 6 and this subsection shall not exceed four hundred thirty. Conversion of beds under this subsection shall not require a revision of the certificate of need issued for the psychiatric institution making the conversion. Beds for children who do not reside in this state and whose service costs are not paid by public funds in this state are not subject to the limitations on the number of beds and certificate of need requirements otherwise applicable under this section.

9. The proposed psychiatric institution is under the direction of an agency which has operated a facility licensed under section 237.3, subsection 2, paragraph "a", as a comprehensive residential facility for children for three years or of an agency which has operated a facility for three years providing psychiatric services exclusively to children or adolescents and the facility meets or exceeds requirements for licensure under section 237.3, subsection 2, paragraph "a", as a comprehensive residential facility for children.

10. A psychiatric institution licensed prior to July 1, 1999, may exceed the number of beds authorized under subsection 6 if the excess beds are used to provide services funded from a source other than the medical assistance program under chapter 249A. Notwithstanding subsections 4, 5, and 6, the provision of services using those excess beds does not require a certificate of need or a review by the department of human services.

11. If a child has an emotional, behavioral, or mental health disorder, the psychiatric institution does not require court proceedings to be initiated or that a child's parent, guardian, or custodian must terminate parental rights over or transfer legal custody of the child for the purpose of obtaining treatment from the psychiatric institution for the child. Relinquishment of a child's custody shall not be a condition of the child receiving services.

89 Acts, ch 283, §7; 90 Acts, ch 1239, §1, 2; 93 Acts, ch 53, §7; 93 Acts, ch 172, §30; 93 Acts, ch 180, §80; 96 Acts, ch 1213, §32; 98 Acts, ch 1218, §66; 99 Acts, ch 51, §1, 2; 99 Acts, ch 98, §1; 2001 Acts, ch 191, §35; 2005 Acts, ch 117, §1; 2011 Acts, ch 121, §8; 2011 Acts, ch 131, §151, 153

Referred to in §226.9B

### **135H.7 Personnel.**

1. A person shall not be allowed to provide services in a psychiatric institution if the

person has a disease which is transmissible to other persons through required contact in the workplace, which presents a significant risk of infecting other persons, which presents a substantial possibility of harming other persons, or for which no reasonable accommodation can eliminate the risk of infecting other persons.

2. a. If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a licensed psychiatric institution, or if a person will reside in a facility utilized by a licensee, and if the person has been convicted of a crime or has a record of founded child abuse, the department of human services and the licensee, for an employee of the licensee, shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department of human services shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department of human services.

b. If the department of human services determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a psychiatric institution licensed under this chapter, or resides in a licensed facility, the department shall notify the program that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

c. In an evaluation, the department of human services and the licensee for an employee of the licensee shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department may permit a person who is evaluated to be licensed, employed, or to reside, or to continue to be licensed, employed, or to reside in a licensed facility, if the person complies with the department's conditions relating to the person's licensure, employment, or residence, which may include completion of additional training. For an employee of a licensee, these conditional requirements shall be developed with the licensee. The department of human services has final authority in determining whether prohibition of the person's licensure, employment, or residence is warranted and in developing any conditional requirements under this paragraph.

3. If the department of human services determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed under this chapter to operate a psychiatric institution and shall not be employed by a psychiatric institution or reside in a facility licensed under this chapter.

4. In addition to the record checks required under subsection 2, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of subsections 2 and 3, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random dependent adult abuse record check conducted under this subsection.

5. Beginning July 1, 1994, a licensee shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

6. On or after July 1, 1994, a licensee shall include the following inquiry in an application for employment:

Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?

**135H.8 Denial, suspension, or revocation of license.**

The department may deny an application or suspend or revoke a license if the department finds that an applicant or licensee has failed or is unable to comply with this chapter or the rules establishing minimum standards pursuant to this chapter or if any of the following conditions apply:

1. It is shown that a resident is a victim of cruelty or neglect due to the acts or omissions of the licensee.
2. The licensee has permitted, aided, or abetted in the commission of an illegal act in the psychiatric institution.
3. An applicant or licensee acted to obtain or to retain a license by fraudulent means, misrepresentation, or submitting false information.
4. The licensee has willfully failed or neglected to maintain a continuing in-service education and training program for persons employed by the psychiatric institution.
5. The application involves a person who has failed to operate a psychiatric institution in compliance with the provisions of this chapter.

89 Acts, ch 283, §9

**135H.8A Provisional license.**

The department may issue a provisional license, effective for not more than one year, to a licensee whose psychiatric institution does not meet the requirements of this chapter, if, prior to issuance of the license, written plans to achieve compliance with the applicable requirements are submitted to and approved by the department. The plans shall specify the deadline for achieving compliance.

95 Acts, ch 51, §2

**135H.9 Notice and hearings.**

The procedure governing notice and hearing to deny an application or suspend or revoke a license shall be in accordance with rules adopted by the department pursuant to chapter 17A. A full and complete record shall be kept of the proceedings and of any testimony. The record need not be transcribed unless judicial review is sought. A copy or copies of a transcript may be obtained by an interested party upon payment of the cost of preparing the transcript or copies.

89 Acts, ch 283, §10

**135H.10 Rules.**

1. The department of inspections and appeals, in consultation with the department of human services and affected professional groups, shall adopt and enforce rules setting out the standards for a psychiatric medical institution for children and the rights of the residents admitted to a psychiatric institution. The department of inspections and appeals and the department of human services shall coordinate the adoption of rules and the enforcement of the rules in order to prevent duplication of effort by the departments and of requirements of the licensee.

2. This chapter shall not be construed as prohibiting the use of funds appropriated for foster care to provide payment to a psychiatric medical institution for children for the financial participation required of a child whose foster care placement is in a psychiatric medical institution for children. In accordance with established policies and procedures for foster care, the department of human services shall act to recover any such payment for financial participation, apply to be named payee for the child's unearned income, and recommend parental liability for the costs of a court-ordered foster care placement in a psychiatric medical institution.

89 Acts, ch 283, §11; 2001 Acts, ch 135, §30; 2012 Acts, ch 1133, §94

**135H.11 Complaints alleging violations — confidentiality.**

A person may request an inspection of a psychiatric medical institution for children by filing with the department a complaint of an alleged violation of an applicable requirement of this chapter or a rule adopted pursuant to this chapter. The complaint shall state in a reasonably

specific manner the basis of the complaint. A statement of the nature of the complaint shall be delivered to the psychiatric institution involved at the time of or prior to the inspection. The name of the person who files a complaint with the department shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved in the investigation of the complaint.

89 Acts, ch 283, §12

Referred to in §135H.12

#### **135H.12 Inspections upon complaints.**

1. Upon receipt of a complaint made in accordance with section 135H.11, the department shall make a preliminary review of the complaint. Unless the department concludes that the complaint is intended to harass a psychiatric institution or a licensee or is without reasonable basis, it shall within twenty working days of receipt of the complaint make or cause to be made an on-site inspection of the psychiatric institution which is the subject of the complaint. The department of inspections and appeals may refer to the department of human services any complaint received by the department if the complaint applies to rules adopted by the department of human services. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with developmental disabilities or mental illness. In any case, the complainant shall be promptly informed of the result of any action taken by the department in the matter.

2. An inspection made pursuant to a complaint filed under section 135H.11 need not be limited to the matter or matters referred to in the complaint; however, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection. Upon arrival at the psychiatric institution to be inspected, the inspector shall show identification to the person in charge of the psychiatric institution and state that an inspection is to be made, before beginning the inspection. Upon request of either the complainant or the department, the complainant or the complainant's representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any time if the inspector determines that the privacy of a resident of the psychiatric institution to be inspected would be violated. The dignity of the resident shall be given first priority by the inspector and others.

89 Acts, ch 283, §13

#### **135H.13 Information confidential.**

1. The department's final findings and the survey findings of the joint commission on the accreditation of health care organizations regarding licensure or program accreditation shall be made available to the public in a readily available form and place. Other information relating to the psychiatric institution is confidential and shall not be made available to the public except in proceedings involving licensure, a civil suit involving a resident, or an administrative action involving a resident.

2. The name of a person who files a complaint with the department shall remain confidential and is not subject to discovery, subpoena, or any other means of legal compulsion for release to a person other than an employee of the department or an agent involved in the investigation of the complaint.

3. Information regarding a resident who has received or is receiving care shall not be disclosed directly or indirectly except as authorized under section 217.30, 232.69, or 237.21.

89 Acts, ch 283, §14

#### **135H.14 Judicial review.**

Judicial review of the action of the department may be sought pursuant to the Iowa administrative procedure Act, chapter 17A. Notwithstanding the Iowa administrative procedure Act, chapter 17A, a petition for judicial review of the department's actions under this chapter may be filed in the district court of the county in which the related psychiatric

medical institution for children is located or is proposed to be located. The status of the petitioner or the licensee shall be preserved pending final disposition of the judicial review.

89 Acts, ch 283, §15; 2003 Acts, ch 44, §114

**135H.15 Penalty.**

A person who establishes, operates, or manages a psychiatric medical institution for children without obtaining a license under this chapter commits a serious misdemeanor. Each day of continuing violation following conviction shall be considered a separate offense.

89 Acts, ch 283, §16

**135H.16 Injunction.**

Notwithstanding the existence or pursuit of another remedy, the department may maintain an action for injunction or other process to restrain or prevent the establishment, operation, or management of a psychiatric medical institution for children without a license.

89 Acts, ch 283, §17

**CHAPTER 135I**

**SWIMMING POOLS AND SPAS**

Referred to in §89.4, 669.14, 670.4

135I.1	Definitions.	135I.4	Powers and duties.
135I.2	Applicability.	135I.5	Penalty.
135I.3	Registration required.	135I.6	Enforcement.

**135I.1 Definitions.**

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

1. “*Department*” means the Iowa department of public health.
2. “*Local board of health*” means a city, county, or district board of health as defined in section 137.102.
3. “*Spa*” means a bathing facility such as a hot tub or whirlpool designed for recreational or therapeutic use.
4. “*Swimming pool*” means an artificial basin and its appurtenances, either constructed or operated for swimming, wading, or diving, and includes a swimming pool, wading pool, waterslide, or associated bathhouse. “*Swimming pool*” does not include a decorative fountain which does not serve primarily as a wading or swimming pool and the drain of which fountain is not connected to any type of suction device for removing or recirculating the water.

5. “*Swimming pool or spa water heater*” means an appliance designed for heating nonpotable water stored at atmospheric pressure, such as water in a swimming pool, spa, hot tub, or for similar uses.

89 Acts, ch 291, §1; 91 Acts, ch 75, §1; 92 Acts, ch 1194, §1; 2001 Acts, ch 58, §5; 2010 Acts, ch 1036, §20

Referred to in §669.14, 670.4

**135I.2 Applicability.**

This chapter applies to all swimming pools and spas owned or operated by local or state government, or commercial interests or private entities including but not limited to facilities operated by cities, counties, public or private school corporations, hotels, motels, camps, apartments, condominiums, and health or country clubs. This chapter does not apply to facilities intended for single family use or to a swimming pool or spa operated by a homeowners’ association representing seventy-two or fewer dwelling units if the association’s bylaws, which also apply to a rental agreement relative to any of the dwelling units, include an exemption from the requirements of this chapter, provide for inspection of the swimming pool or spa by an entity other than the department or local board of health,

and assume any liability associated with operation of the swimming pool or spa. This chapter does not apply to a swimming pool or spa used exclusively for therapy under the direct supervision of qualified medical personnel. To avoid duplication and promote coordination of inspection activities, the department may enter into written agreements with a local board of health to provide for inspection and enforcement in accordance with this chapter.

89 Acts, ch 291, §2; 92 Acts, ch 1194, §2; 92 Acts, ch 1237, §8; 96 Acts, ch 1097, §1; 2001 Acts, ch 58, §6; 2008 Acts, ch 1058, §5

### **135I.3 Registration required.**

A person shall not operate a swimming pool or spa without first having registered with the department. Registration shall be renewed annually.

89 Acts, ch 291, §3

### **135I.4 Powers and duties.**

The department is responsible for registering and regulating the operation of swimming pools, spas, and, notwithstanding chapter 89, swimming pool or spa water heaters. The department shall conduct seminars and training sessions, and disseminate information regarding health practices, safety measures, and operating procedures required under this chapter. The department may:

1. Inspect, at the time of installation and periodically thereafter, all swimming pools and spas for the purpose of detecting and eliminating health or safety hazards.

2. Establish minimum safety and sanitation criteria for the operation and use of swimming pools and spas.

3. Establish minimum qualifications for swimming pool, spa, and waterslide operators and lifeguards. Swimming pools operated by apartments, condominiums, country clubs, neighborhoods, or manufactured home communities or mobile home parks are exempt from requirements regarding lifeguards.

4. Establish and collect fees to defray the cost of administering this chapter. It is the intent of the general assembly that fees collected under this chapter be used to defray the cost of administering this chapter. However, the portion of fees needed to defray the costs of a local board of health in implementing this chapter shall be established by the local board of health. A fee imposed for the inspection of a swimming pool or spa shall not be collected until the inspection has actually been performed.

5. Adopt rules in accordance with chapter 17A for the implementation and enforcement of this chapter and the establishment of fees.

6. Enter into agreements with a local board of health to implement the inspection and enforcement provisions of this chapter. The agreements shall provide that the fees established by the local board of health for inspection and enforcement shall be retained by the local board. However, inspection fees shall not be charged by the department for facilities which are inspected by third-party authorities. Third-party authorities shall be approved by the department. The department shall monitor and certify the inspection and enforcement programs of local boards of health and approved third-party authorities.

89 Acts, ch 291, §4; 92 Acts, ch 1194, §3; 92 Acts, ch 1237, §9; 2001 Acts, ch 153, §16; 2007 Acts, ch 159, §22

### **135I.5 Penalty.**

A person who violates a provision of this chapter commits a simple misdemeanor. Each day upon which a violation occurs constitutes a separate violation.

89 Acts, ch 291, §5

### **135I.6 Enforcement.**

If the department or a local board of health acting pursuant to agreement with the department determines that a provision of this chapter or a rule adopted pursuant to this chapter has been or is being violated, the department may withhold or revoke the registration of a swimming pool or spa, or the department or the local board of health may order that a facility or item of equipment not be used, until the necessary corrective action has been

taken. The department or the local board of health may request the county attorney to bring appropriate legal proceedings to enforce this chapter, including an action to enjoin violations. The attorney general may also institute appropriate legal proceedings at the request of the department. This remedy is in addition to any other legal remedy available to the department or a local board of health.

89 Acts, ch 291, §6; 92 Acts, ch 1194, §4; 92 Acts, ch 1237, §10; 2007 Acts, ch 159, §23

## CHAPTER 135J

### LICENSED HOSPICE PROGRAMS

Referred to in §10A.104, 714H.4

135J.1	Definitions.	135J.5	Denial, suspension, or revocation of licenses.
135J.2	Licenses — fees — criteria.	135J.6	Limitation, expiration, and renewal of licenses.
135J.3	Basic requirements.	135J.7	Rules.
135J.4	Inspection.		

#### 135J.1 Definitions.

For the purposes of this chapter unless otherwise defined:

1. “*Core services*” means physician services, nursing services, medical social services, counseling services, and volunteer services. These core services, as well as others deemed necessary by the hospice in delivering safe and appropriate care to its case load, can be provided through either direct or indirect arrangement by the hospice.

2. “*Department*” means the department of inspections and appeals.

3. “*Hospice patient*” or “*patient*” means a diagnosed terminally ill person with an anticipated life expectancy of six months or less, as certified by the attending physician, who, alone or in conjunction with a unit of care as defined in subsection 8, has voluntarily requested and received admission into the hospice program. If the patient is unable to request admission, a family member may voluntarily request and receive admission on the patient’s behalf.

4. “*Hospice patient’s family*” means the immediate kin of the patient, including a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, child, or stepchild. Additional relatives or individuals with significant personal ties to the hospice patient may be included in the hospice patient’s family.

5. “*Hospice program*” means a centrally coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration providing palliative care and supportive medical and other health services to terminally ill patients and their families. A licensed hospice program shall utilize a medically directed interdisciplinary team and provide care to meet the physical, emotional, social, spiritual, and other special needs which are experienced during the final stages of illness, dying, and bereavement. Hospice care shall be available twenty-four hours a day, seven days a week.

6. “*Interdisciplinary team*” means the hospice patient and the hospice patient’s family, the attending physician, and all of the following individuals trained to serve with a licensed hospice program:

a. A licensed physician pursuant to chapter 148.

b. A licensed registered nurse pursuant to chapter 152.

c. An individual with at least a baccalaureate degree in the field of social work providing medical-social services.

d. Trained hospice volunteers.

e. As deemed appropriate by the hospice, providers of special services including but not limited to a spiritual counselor, a pharmacist, or professionals in the fields of mental health may be included on the interdisciplinary team.

7. “*Palliative care*” means care directed at managing symptoms experienced by the hospice patient, as well as addressing related needs of the patient and family as they experience the stress of the dying process. The intent of palliative care is to enhance the quality of life for the hospice patient and family unit, and is not treatment directed at cure of the terminal illness.

8. “*Unit of care*” means the patient and the patient’s family within a hospice program.

9. “*Volunteer services*” means the services provided by individuals who have successfully completed a training program developed by a licensed hospice program.

84 Acts, ch 1284, §2

C85, §135.90

90 Acts, ch 1204, §66

C91, §135J.1

2005 Acts, ch 3, §32; 2008 Acts, ch 1088, §91; 2009 Acts, ch 133, §196

Referred to in §144C.2, 144D.1, 331.802

### **135J.2 Licenses — fees — criteria.**

A person or governmental unit, acting severally or jointly with any other person may establish, conduct, or maintain a hospice program in this state and receive a license from the department after meeting the requirements of this chapter. The application shall be on a form prescribed by the department and shall require information the department deems necessary. Nothing in this chapter shall prohibit a person or governmental unit from establishing, conducting, or maintaining a hospice program without a license. Each application for license shall be accompanied by a nonrefundable biennial license fee determined by the department.

The hospice program shall meet the criteria pursuant to section 135J.3 before a license is issued. The department of inspections and appeals is responsible to provide the necessary personnel to inspect the hospice program, the home care and inpatient care provided and the hospital or facility used by the hospice to determine if the hospice complies with necessary standards before a license is issued. Hospices that are certified as Medicare hospice providers by the department of inspections and appeals or are accredited as hospices by the joint commission on the accreditation of health care organizations, shall be licensed without inspection by the department of inspections and appeals.

84 Acts, ch 1284, §3

C85, §135.91

86 Acts, ch 1245, §1111; 90 Acts, ch 1204, §66

C91, §135J.2

98 Acts, ch 1100, §17; 2005 Acts, ch 3, §33

### **135J.3 Basic requirements.**

A licensed hospice program shall include:

1. A planned program of hospice care, the medical components of which shall be under the direction of a licensed physician.

2. Centrally administered, coordinated hospice core services provided in home, outpatient, or institutional settings.

3. A mechanism that assures the rights of the patient and family.

4. Palliative care provided to a hospice patient and family under the direction of a licensed physician.

5. An interdisciplinary team which develops, implements, and evaluates the hospice plan of care for the patient and family.

6. Bereavement services.

7. Accessible hospice care twenty-four hours a day, seven days a week in all settings.

8. An ongoing system of quality assurance and utilization review.

84 Acts, ch 1284, §7

C85, §135.95

90 Acts, ch 1204, §66  
C91, §135J.3  
Referred to in §135J.2

#### **135J.4 Inspection.**

The department of inspections and appeals shall make or be responsible for inspections of the hospice program, the home care and the inpatient care provided in the hospice program, and the hospital or facility before a license is issued. The department of inspections and appeals shall inspect the hospice program periodically after initial inspection.

84 Acts, ch 1284, §6  
C85, §135.94  
86 Acts, ch 1245, §1112; 90 Acts, ch 1204, §66  
C91, §135J.4

#### **135J.5 Denial, suspension, or revocation of licenses.**

The department may deny, suspend, or revoke a license if the department determines there is failure of the program to comply with this chapter or the rules adopted under this chapter. The suspension or revocation may be appealed under chapter 17A. The department may reissue a license following a suspension or revocation after the hospice corrects the conditions upon which the suspension or revocation was based.

84 Acts, ch 1284, §4  
C85, §135.92  
90 Acts, ch 1204, §66  
C91, §135J.5  
2005 Acts, ch 3, §34

#### **135J.6 Limitation, expiration, and renewal of licenses.**

Licenses for hospice programs shall be issued only for the premises, person, hospital, or facility named in the application and are not transferable or assignable. A license, unless sooner suspended or revoked, shall expire two years after the date of issuance and shall be renewed biennially upon an application by the licensee. Application for renewal shall be made in writing to the department at least thirty days prior to the expiration of the license. The fee for a license renewal shall be determined by the department. Licensed hospice programs which have allowed their licenses to lapse through failure to make timely application for renewal shall pay an additional fee of twenty-five percent of the biennial license fee.

84 Acts, ch 1284, §5  
C85, §135.93  
85 Acts, ch 67, §17; 89 Acts, ch 122, §1; 90 Acts, ch 1204, §66  
C91, §135J.6

#### **135J.7 Rules.**

Except as otherwise provided in this chapter, the department shall adopt rules pursuant to chapter 17A necessary to implement this chapter, subject to approval of the state board of health. Formulation of the rules shall include consultation with Iowa hospice organization representatives and other persons affected by this chapter.

84 Acts, ch 1284, §8  
C85, §135.96  
87 Acts, ch 8, §3; 90 Acts, ch 1204, §66  
C91, §135J.7  
2005 Acts, ch 3, §35

## CHAPTER 135K

## BACKFLOW PREVENTION ASSEMBLY TESTERS

135K.1	Definitions.	135K.4	Powers and duties.
135K.2	Applicability.	135K.5	Penalty.
135K.3	Registration and approval required.	135K.6	Enforcement.

**135K.1 Definitions.**

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

1. “*Approved course*” means a course covering the testing and repair of backflow prevention assemblies which has been approved by the department.
2. “*Backflow prevention assembly*” means a device or means to prevent backflow into the potable water system.
3. “*Department*” means the Iowa department of public health.
4. “*Registered backflow prevention assembly tester*” means a person who has successfully completed an approved course and has registered with the department.

92 Acts, ch 1204, §1

**135K.2 Applicability.**

This chapter applies to all persons who test or repair backflow prevention assemblies.

92 Acts, ch 1204, §2

**135K.3 Registration and approval required.**

A person shall not test or repair backflow prevention assemblies without first having registered with and having been approved by the department.

92 Acts, ch 1204, §3

**135K.4 Powers and duties.**

The department shall adopt rules in accordance with chapter 17A, which provide for all of the following:

1. The establishment of minimum qualifications for registered backflow prevention assembly testers.
2. The establishment of minimum standards for approved courses.
3. The establishment and collection of fees to defray the cost of administering this chapter.
4. The provision of a listing of registered backflow prevention assembly testers to local health officials.
5. The administration and enforcement of this chapter.

92 Acts, ch 1204, §4

**135K.5 Penalty.**

A person who violates this chapter is guilty of a simple misdemeanor.

92 Acts, ch 1204, §5

**135K.6 Enforcement.**

1. The department shall investigate complaints regarding backflow prevention assembly testers. If the department determines that a provision of this chapter regarding the requirements for a backflow prevention assembly tester has been violated, the department may order a person not to test or repair backflow prevention assemblies or may revoke the registration of a registered backflow prevention assembly tester until the necessary corrective action has been taken.

2. The department shall investigate complaints regarding courses covering the testing and repair of backflow prevention assemblies. If the department determines that a provision of this chapter regarding approved courses has been violated, the department may revoke the approval of a course until the necessary corrective action has been taken.

92 Acts, ch 1204, §6

## CHAPTER 135L

## NOTIFICATION REQUIREMENTS REGARDING PREGNANT MINORS

135L.1	Definitions.	135L.4	Repealed by 97 Acts, ch 203, §19.
135L.2	Prospective minor parents decision-making assistance program established.	135L.5	Repealed by 97 Acts, ch 173, §17.
135L.3	Notification of parent prior to the performance of abortion on a pregnant minor — requirements — criminal penalty.	135L.6	Fraudulent practice.
		135L.7	Immunities.
		135L.8	Adoption of rules — implementation and documents.

**135L.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “*Abortion*” means an abortion as defined in chapter 146.
  2. “*Adult*” means a person eighteen years of age or older.
  3. “*Child-placing agency*” means any agency, public, semipublic, or private, which represents itself as placing children, receiving children for placement, or actually engaging in placement of children and includes the department of human services.
  4. “*Court*” means the juvenile court.
  5. “*Grandparent*” means the parent of an individual who is the parent of the pregnant minor.
  6. “*Medical emergency*” means a condition which, based upon a physician’s judgment, necessitates an abortion to avert the pregnant minor’s death, or for which a delay will create a risk of serious impairment of a major bodily function.
  7. “*Minor*” means a person under eighteen years of age who has not been and is not married.
  8. “*Parent*” means one parent or a legal guardian or custodian of a pregnant minor.
  9. “*Responsible adult*” means an adult, who is not associated with an abortion provider, chosen by a pregnant minor to assist the minor in the decision-making process established in this chapter.
- 96 Acts, ch 1011, §1, 14; 97 Acts, ch 173, §1

**135L.2 Prospective minor parents decision-making assistance program established.**

1. A decision-making assistance program is created to provide assistance to minors in making informed decisions relating to pregnancy. The program shall offer and include all of the following:

a. (1) A video, to be developed by a person selected through a request for proposals process or other contractual agreement, which provides information regarding the various options available to a pregnant minor with regard to the pregnancy, including a decision to continue the pregnancy to term and retain parental rights following the child’s birth, a decision to continue the pregnancy to term and place the child for adoption following the child’s birth, and a decision to terminate the pregnancy through abortion. The video shall provide the information in a manner and language, including but not limited to the use of closed captioning for the hearing-impaired, which could be understood by a minor.

(2) The video shall explain that public and private agencies are available to assist a pregnant minor with any alternative chosen.

(3) The video shall explain that if the pregnant minor decides to continue the pregnancy to term, and to retain parental rights to the child, the father of the child is liable for the support of the child.

(4) The video shall explain that tendering false documents is a fraudulent practice in the fourth degree pursuant to section 135L.6.

b. Written decision-making materials which include all of the following:

(1) Information regarding the options described in the video including information regarding the agencies and programs available to provide assistance to the pregnant minor

in parenting a child; information relating to adoption including but not limited to information regarding child-placing agencies; and information regarding abortion including but not limited to the legal requirements relative to the performance of an abortion on a pregnant minor. The information provided shall include information explaining that if a pregnant minor decides to continue the pregnancy to term and to retain parental rights, the father of the child is liable for the support of the child and that if the pregnant minor seeks public assistance on behalf of the child, the pregnant minor shall, and if the pregnant minor is not otherwise eligible as a public assistance recipient, the pregnant minor may, seek the assistance of the child support recovery unit in establishing the paternity of the child, and in seeking support payments for a reasonable amount of the costs associated with the pregnancy, medical support, and maintenance from the father of the child, or if the father is a minor, from the parents of the minor father. The information shall include a listing of the agencies and programs and the services available from each.

(2) A workbook which is to be used in viewing the video and which includes a questionnaire and exercises to assist a pregnant minor in viewing the video and in considering the options available regarding the minor's pregnancy.

(3) A detachable certification form to be signed by the pregnant minor certifying that the pregnant minor was offered a viewing of the video and the written decision-making materials.

2. a. The video shall be available through the state and local offices of the Iowa department of public health, the department of human services, and the judicial branch and through the office of each licensed physician who performs abortions.

b. The video may be available through the office of any licensed physician who does not perform abortions, upon the request of the physician; through any nonprofit agency serving minors, upon the request of the agency; and through any other person providing services to minors, upon the request of the person.

3. During the initial appointment between a licensed physician from whom a pregnant minor is seeking the performance of an abortion and a pregnant minor, the licensed physician shall offer the viewing of the video and the written decision-making materials to the pregnant minor, and shall obtain the signed and dated certification form from the pregnant minor. A licensed physician shall not perform an abortion on a pregnant minor prior to obtaining the completed certification form from a pregnant minor.

4. A pregnant minor shall be encouraged to select a responsible adult, preferably a parent of the pregnant minor, to accompany the pregnant minor in viewing the video and receiving the decision-making materials.

5. To the extent possible and at the discretion of the pregnant minor, the person responsible for impregnating the pregnant minor shall also be involved in the viewing of the video and in the receipt of written decision-making materials.

6. Following the offering of the viewing of the video and of the written decision-making materials, the pregnant minor shall sign and date the certification form attached to the materials, and shall submit the completed form to the licensed physician. The licensed physician shall also provide a copy of the completed certification form to the pregnant minor.

96 Acts, ch 1011, §2, 14; 96 Acts, ch 1174, §1; 97 Acts, ch 173, §2; 98 Acts, ch 1047, §16

Referred to in §135L.3, 135L.6

### **135L.3 Notification of parent prior to the performance of abortion on a pregnant minor — requirements — criminal penalty.**

1. A licensed physician shall not perform an abortion on a pregnant minor until at least forty-eight hours' prior notification is provided to a parent of the pregnant minor.

2. The licensed physician who will perform the abortion shall provide notification in person or by mailing the notification by restricted certified mail to a parent of the pregnant minor at the usual place of abode of the parent. For the purpose of delivery by restricted certified mail, the time of delivery is deemed to occur at twelve o'clock noon on the next day on which regular mail delivery takes place, subsequent to the mailing.

3. If the pregnant minor objects to the notification of a parent prior to the performance of an abortion on the pregnant minor, the pregnant minor may petition the court to authorize

waiver of the notification requirement pursuant to this section in accordance with the following procedures:

a. The court shall ensure that the pregnant minor is provided with assistance in preparing and filing the petition for waiver of notification and shall ensure that the pregnant minor's identity remains confidential.

b. The pregnant minor may participate in the court proceedings on the pregnant minor's own behalf. The court may appoint a guardian ad litem for the pregnant minor and the court shall appoint a guardian ad litem for the pregnant minor if the pregnant minor is not accompanied by a responsible adult or if the pregnant minor has not viewed the video as provided pursuant to section 135L.2. In appointing a guardian ad litem for the pregnant minor, the court shall consider a person licensed to practice psychology pursuant to chapter 154B, a licensed social worker pursuant to chapter 154C, a licensed marital and family therapist pursuant to chapter 154D, or a licensed mental health counselor pursuant to chapter 154D to serve in the capacity of guardian ad litem. The court shall advise the pregnant minor of the pregnant minor's right to court-appointed legal counsel, and shall, upon the pregnant minor's request, provide the pregnant minor with court-appointed legal counsel, at no cost to the pregnant minor.

c. The court proceedings shall be conducted in a manner which protects the confidentiality of the pregnant minor and notwithstanding section 232.147 or any other provision to the contrary, all court documents pertaining to the proceedings shall remain confidential and shall be sealed. Only the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's legal counsel, and persons whose presence is specifically requested by the pregnant minor, by the pregnant minor's guardian ad litem, or by the pregnant minor's legal counsel may attend the hearing on the petition.

d. Notwithstanding any law or rule to the contrary, the court proceedings under this section shall be given precedence over other pending matters to ensure that the court reaches a decision expeditiously.

e. Upon petition and following an appropriate hearing, the court shall waive the notification requirements if the court determines either of the following:

(1) That the pregnant minor is mature and capable of providing informed consent for the performance of an abortion.

(2) That the pregnant minor is not mature, or does not claim to be mature, but that notification is not in the best interest of the pregnant minor.

f. The court shall issue specific factual findings and legal conclusions, in writing, to support the decision.

g. Upon conclusion of the hearing, the court shall immediately issue a written order which shall be provided immediately to the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's legal counsel, or to any other person designated by the pregnant minor to receive the order.

h. An expedited, confidential appeal shall be available to a pregnant minor for whom the court denies a petition for waiver of notification. An order granting the pregnant minor's application for waiver of notification is not subject to appeal. Access to the appellate courts for the purpose of an appeal under this section shall be provided to a pregnant minor twenty-four hours a day, seven days a week.

i. A pregnant minor who chooses to utilize the waiver of notification procedures under this section shall not be required to pay a fee at any level of the proceedings. Fees charged and court costs taxed in connection with a proceeding under this section are waived.

j. If the court denies the petition for waiver of notification and if the decision is not appealed or all appeals are exhausted, the court shall advise the pregnant minor that, upon the request of the pregnant minor, the court will appoint a licensed marital and family therapist to assist the pregnant minor in addressing any intrafamilial problems. All costs of services provided by a court-appointed licensed marital and family therapist shall be paid by the court through the expenditure of funds appropriated to the judicial branch.

k. Venue for proceedings under this section is in any court in the state.

l. The supreme court shall prescribe rules to ensure that the proceedings under this section are performed in an expeditious and confidential manner. The rules shall require

that the hearing on the petition shall be held and the court shall rule on the petition within forty-eight hours of the filing of the petition. If the court fails to hold the hearing and rule on the petition within forty-eight hours of the filing of the petition and an extension is not requested, the petition is deemed granted and waiver of the notification requirements is deemed authorized. The court shall immediately provide documentation to the pregnant minor and to the pregnant minor's legal counsel if the pregnant minor is represented by legal counsel, demonstrating that the petition is deemed granted and that waiver of the notification requirements is deemed authorized. Resolution of a petition for authorization of waiver of the notification requirement shall be completed within ten calendar days as calculated from the day after the filing of the petition to the day of issuance of any final decision on appeal.

*m.* The requirements of this section regarding notification of a parent of a pregnant minor prior to the performance of an abortion on a pregnant minor do not apply if any of the following applies:

(1) The abortion is authorized in writing by a parent entitled to notification.

(2) (a) The pregnant minor declares, in a written statement submitted to the attending physician, a reason for not notifying a parent and a reason for notifying a grandparent of the pregnant minor in lieu of the notification of a parent. Upon receipt of the written statement from the pregnant minor, the attending physician shall provide notification to a grandparent of the pregnant minor, specified by the pregnant minor, in the manner in which notification is provided to a parent.

(b) The notification form shall be in duplicate and shall include both of the following:

(i) A declaration which informs the grandparent of the pregnant minor that the grandparent of the pregnant minor may be subject to civil action if the grandparent accepts notification.

(ii) A provision that the grandparent of the pregnant minor may refuse acceptance of notification.

(3) The pregnant minor's attending physician certifies in writing that a medical emergency exists which necessitates the immediate performance of an abortion, and places the written certification in the medical file of the pregnant minor.

(4) The pregnant minor declares that the pregnant minor is a victim of child abuse pursuant to section 232.68, the person responsible for the care of the child is a parent of the child, and either the abuse has been reported pursuant to the procedures prescribed in chapter 232, division III, part 2, or a parent of the child is named in a report of founded child abuse. The department of human services shall maintain confidentiality under chapter 232 and shall not release any information in response to a request for public records, discovery procedures, subpoena, or any other means, unless the release of information is expressly authorized by the pregnant minor regarding the pregnant minor's pregnancy and abortion, if the abortion is obtained. A person who knowingly violates the confidentiality provisions of this subparagraph is guilty of a serious misdemeanor.

(5) The pregnant minor declares that the pregnant minor is a victim of sexual abuse as defined in chapter 709 and has reported the sexual abuse to law enforcement.

*n.* A licensed physician who knowingly performs an abortion in violation of this section is guilty of a serious misdemeanor.

*o.* All records and files of a court proceeding maintained under this section shall be destroyed by the clerk of court when one year has elapsed from any of the following, as applicable:

(1) The date that the court issues an order waiving the notification requirements.

(2) The date after which the court denies the petition for waiver of notification and the decision is not appealed.

(3) The date after which the court denies the petition for waiver of notification, the decision is appealed, and all appeals are exhausted.

*p.* A person who knowingly violates the confidentiality requirements of this section relating to court proceedings and documents is guilty of a serious misdemeanor.

96 Acts, ch 1011, §4, 14; 96 Acts, ch 1174, §2; 97 Acts, ch 173, §3 – 11; 98 Acts, ch 1047, §17  
Referred to in §232.5, 602.8102(31)

**135L.4** Repealed by 97 Acts, ch 203, § 19.

**135L.5** Repealed by 97 Acts, ch 173, § 17. See § 135L.3, subsection 3, paragraph m.

**135L.6 Fraudulent practice.**

A person who does any of the following is guilty of a fraudulent practice in the fourth degree pursuant to section 714.12:

1. Knowingly tenders a false original or copy of the signed and dated certification form described in section 135L.2, to be retained by the licensed physician.

2. Knowingly tenders a false original or copy of the notification document mailed to a parent or grandparent of the pregnant minor under this chapter, or a false original or copy of the order waiving notification relative to the performance of an abortion on a pregnant minor.

96 Acts, ch 1011, §7, 14; 96 Acts, ch 1174, §5; 97 Acts, ch 173, §12

Referred to in §135L.2

**135L.7 Immunities.**

1. With the exception of the civil liability which may apply to a grandparent of a pregnant minor who accepts notification under this chapter, a person is immune from any liability, civil or criminal, for any act, omission, or decision made in connection with a good faith effort to comply with the provisions of this chapter.

2. This section shall not be construed to limit civil liability of a person for any act, omission, or decision made in relation to the performance of a medical procedure on a pregnant minor.

96 Acts, ch 1011, §8, 14; 97 Acts, ch 173, §13

**135L.8 Adoption of rules — implementation and documents.**

The Iowa department of public health shall adopt rules to implement the notification procedures pursuant to this chapter including but not limited to rules regarding the documents necessary for notification of a parent or grandparent of a pregnant minor who is designated to receive notification under this chapter.

96 Acts, ch 1011, §9, 14; 97 Acts, ch 173, §14

**CHAPTER 135M**

**PRESCRIPTION DRUG DONATION REPOSITORY**

135M.1	Purpose.	135M.5	Exemption from disciplinary action, civil liability, and criminal prosecution.
135M.2	Definitions.	135M.6	Sample prescription drugs.
135M.3	Prescription drug donation repository program authorized.	135M.7	Resale prohibited.
135M.4	Prescription drug donation repository program requirements.		

**135M.1 Purpose.**

The purpose of this chapter is to improve the health of low-income Iowans and Iowans who have been victims of a state of disaster emergency proclaimed by the governor pursuant to section 29C.6 or a public health disaster as defined in section 135.140, subsection 6, through a prescription drug donation repository that authorizes medical facilities, pharmacies, and the department to redispense prescription drugs and supplies that would otherwise be destroyed.

2005 Acts, ch 97, §1; 2009 Acts, ch 127, §1

**135M.2 Definitions.**

1. “*Anti-rejection drug*” means a prescription drug that suppresses the immune system to prevent or reverse rejection of a transplanted organ.

2. “*Cancer drug*” means a prescription drug that is used to treat any of the following:
  - a. Cancer or the side effects of cancer.
  - b. The side effects of any prescription drug that is used to treat cancer or the side effects of cancer.
3. “*Controlled substance*” means the same as defined in section 155A.3.
4. “*Department*” means the Iowa department of public health.
5. “*Indigent*” means a person with an income that is below two hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.
6. “*Medical facility*” means any of the following:
  - a. A physician’s office.
  - b. A hospital.
  - c. A health clinic.
  - d. A nonprofit health clinic which includes a federally qualified health center as defined in 42 U.S.C. § 1396d(l)(2)(B); a rural health clinic as defined in 42 U.S.C. § 1396d(l)(1); and a nonprofit health clinic that provides medical care to patients who are indigent, uninsured, or underinsured.
  - e. A free clinic as defined in section 135.24.
  - f. A charitable organization as defined in section 135.24.
  - g. A nursing facility as defined in section 135C.1.
7. “*Pharmacy*” means a pharmacy as defined in section 155A.3.
8. “*Prescription drug*” means the same as defined in section 155A.3, and includes cancer drugs and anti-rejection drugs, but does not include controlled substances.
9. “*Supplies*” means the supplies necessary to administer the prescription drugs donated. 2005 Acts, ch 97, §2

### **135M.3 Prescription drug donation repository program authorized.**

1. The department, in cooperation with the board of pharmacy, may establish and maintain a prescription drug donation repository program under which any person may donate prescription drugs and supplies for use by an individual who meets eligibility criteria specified by the department by rule. The department may contract with a third party to implement and administer the program.
2. Donations of prescription drugs and supplies under the program may be made on the premises of a medical facility or pharmacy that elects to participate in the program and meets the requirements established by the department.
3. The medical facility or pharmacy may charge an individual who receives a prescription drug or supplies a handling fee that shall not exceed an amount established by rule by the department.
4.
  - a. A medical facility or pharmacy that receives prescription drugs or supplies may distribute the prescription drugs or supplies to another eligible medical facility or pharmacy for use pursuant to the program.
  - b. The department may receive prescription drugs or supplies directly from the prescription drug donation repository contractor and may distribute such prescription drugs and supplies through persons licensed to dispense prescription drugs and supplies to an eligible individual for use by the individual pursuant to the program. The department may receive and distribute such prescription drugs or supplies under this paragraph during or in preparation for a state of disaster emergency proclaimed by the governor pursuant to section 29C.6 or during or in preparation for a public health disaster as defined in section 135.140, subsection 6.
5. Participation in the program shall be voluntary. 2005 Acts, ch 97, §3; 2007 Acts, ch 10, §22; 2009 Acts, ch 127, §2

### **135M.4 Prescription drug donation repository program requirements.**

1. A prescription drug or supplies may be accepted and dispensed under the prescription drug donation repository program if all of the following conditions are met:
  - a. The prescription drug is in its original sealed and tamper-evident packaging. However,

a prescription drug in a single-unit dose or blister pack with the outside packaging opened may be accepted if the single-unit dose packaging remains intact.

b. The prescription drug bears an expiration date that is more than six months after the date the prescription drug was donated. However, a donated prescription drug bearing an expiration date that is six months or less after the date the prescription drug was donated may be accepted and distributed if the drug is in high demand and can be dispensed for use prior to the drug's expiration date.

c. The prescription drug or supplies are inspected before the prescription drug or supplies are dispensed by a licensed pharmacist employed by or under contract with the medical facility or pharmacy, and the licensed pharmacist determines that the prescription drug or supplies are not adulterated or misbranded.

d. The prescription drug or supplies are prescribed by a health care practitioner for use by an eligible individual and are dispensed by a pharmacist or are dispensed to an eligible individual by the prescribing health care practitioner or the practitioner's authorized agent.

2. A prescription drug or supplies donated under this chapter shall not be resold.

3. a. If a person who donates prescription drugs under this chapter to a medical facility or pharmacy receives a notice from a pharmacy that a prescription drug has been recalled, the person shall inform the medical facility or pharmacy of the recall.

b. If a medical facility or pharmacy receives a recall notification from a person who donated prescription drugs under this chapter, the medical facility or pharmacy shall perform a uniform destruction of all of the recalled prescription drugs in the medical facility or pharmacy.

4. A prescription drug dispensed through the prescription drug donation repository program shall not be eligible for reimbursement under the medical assistance program.

5. The department shall adopt rules establishing all of the following:

a. Requirements for medical facilities and pharmacies to accept and dispense donated prescription drugs and supplies, including all of the following:

(1) Eligibility criteria for participation by medical facilities and pharmacies.

(2) Standards and procedures for accepting, safely storing, and dispensing donated prescription drugs and supplies.

(3) Standards and procedures for inspecting donated prescription drugs to determine if the prescription drugs are in their original sealed and tamper-evident packaging, or if the prescription drugs are in single-unit doses or blister packs and the outside packaging is opened, if the single-unit dose packaging remains intact.

(4) Standards and procedures for inspecting donated prescription drugs and supplies to determine that the prescription drugs and supplies are not adulterated or misbranded.

b. (1) Eligibility criteria for individuals to receive donated prescription drugs and supplies dispensed by medical facilities and pharmacies under the program. The standards shall prioritize dispensing to individuals who are indigent or uninsured, but may permit dispensing to other individuals if an uninsured or indigent individual is unavailable.

(2) Eligibility criteria for individuals to receive donated prescription drugs and supplies dispensed directly by the department through persons licensed to dispense prescription drugs and supplies. The department shall accept and dispense donated prescription drugs and supplies received from the prescription drug donation repository contractor during or in preparation for a state of disaster emergency proclaimed by the governor pursuant to section 29C.6 or during or in preparation for a public health disaster as defined in section 135.140, subsection 6.

c. Necessary forms for administration of the prescription drug donation repository program, including forms for use by individuals who donate, accept, distribute, or dispense the prescription drugs or supplies under the program.

d. A means by which an individual who is eligible to receive donated prescription drugs and supplies may indicate such eligibility.

e. The maximum handling fee that a medical facility or pharmacy may charge for accepting, distributing, or dispensing donated prescription drugs and supplies under the program.

f. A list of prescription drugs that the prescription drug donation repository program will accept.

2005 Acts, ch 97, §4; 2007 Acts, ch 159, §24; 2008 Acts, ch 1058, §6; 2009 Acts, ch 127, §3

#### **135M.5 Exemption from disciplinary action, civil liability, and criminal prosecution.**

1. A drug manufacturer acting reasonably and in good faith, is not subject to criminal prosecution or civil liability for injury, death, or loss to a person or property for matters related to the donation, acceptance, or dispensing of a prescription drug manufactured by the drug manufacturer that is donated under this chapter, including liability for failure to transfer or communicate product or consumer information or the expiration date of the donated prescription drug.

2. Except as provided in subsection 3, a person including the department or the department's employees, agents, or volunteers, but not a drug manufacturer subject to subsection 1, acting reasonably and in good faith, is immune from civil liability and criminal prosecution for injury to or the death of an individual to whom a donated prescription drug is dispensed under this chapter and shall be exempt from disciplinary action related to the person's acts or omissions related to the donation, acceptance, distribution, or dispensing of a donated prescription drug under this chapter.

3. The immunity and exemption provided in subsection 2 do not extend to any of the following:

a. The donation, acceptance, distribution, or dispensing of a donated prescription drug under this chapter by a person if the person's acts or omissions are not performed reasonably and in good faith.

b. To acts or omissions outside the scope of the program.

2005 Acts, ch 97, §5; 2009 Acts, ch 127, §4

#### **135M.6 Sample prescription drugs.**

This chapter shall not be construed to restrict the use of samples by a physician or other person legally authorized to prescribe drugs under state and federal law during the course of the physician's or other person's duties at a medical facility or pharmacy.

2005 Acts, ch 97, §6; 2005 Acts, ch 179, §119

#### **135M.7 Resale prohibited.**

This chapter shall not be construed to authorize the resale of prescription drugs by any person.

2005 Acts, ch 97, §7

## CHAPTER 135N

### HEMOPHILIA ADVISORY COMMITTEE

Repealed by 2013 Acts, ch 129, §58

## CHAPTER 135O

### BOARDING HOMES

Referred to in §10A.104, 16.185

135O.1	Definitions.	135O.3	Response to allegations.
135O.2	Required registration and reporting — rules — penalty.	135O.4	Public disclosure of findings.

**1350.1 Definitions.**

For the purposes of this chapter unless the context otherwise requires:

1. “*Boarding home*” means a premises used by its owner or lessee for the purpose of letting rooms for rental to three or more persons not related within the third degree of consanguinity to the owner or lessee where supervision or assistance with activities of daily living is provided to such persons. A boarding home does not include a facility, home, or program otherwise subject to licensure or regulation by the department of human services, department of inspections and appeals, or department of public health.
2. “*Department*” means the department of inspections and appeals.
3. “*Premises*” means the same as defined in section 562A.6.  
2009 Acts, ch 136, §3

**1350.2 Required registration and reporting — rules — penalty.**

1. The owner or lessee of a boarding home in this state shall register with and submit occupancy reports to the department. The content of the required occupancy reports shall include but is not limited to the number of individuals living in the boarding home and the supervision or assistance with activities of daily living being provided to the individuals.
2. The department of inspections and appeals shall adopt rules to administer this chapter in consultation with the departments of human services and public safety.
3. *a.* The owner or lessee of a boarding home who fails to register with the department or to timely submit occupancy reports required by this section and rules adopted pursuant to this chapter is subject to a civil penalty of not more than five hundred dollars.  
*b.* The department may reduce, alter, or waive a penalty under paragraph “*a*” upon the owner’s or lessee’s showing of good faith compliance with the department’s request to immediately cease and desist from conduct in violation of this chapter.  
2009 Acts, ch 136, §4

**1350.3 Response to allegations.**

1. If the department or other state agency receives an allegation of a violation of this chapter by a boarding home or an allegation regarding the care or safety of an individual living in a boarding home, a coordinated, interagency approach shall be used to respond to the allegation.
2. *a.* The interagency approach may involve a multidisciplinary team consisting of employees of the department of inspections and appeals, the department of human services, the state fire marshal, and the division of criminal investigation of the department of public safety, or other local, state, and federal agencies.  
*b.* The multidisciplinary team may consult with local, state, and federal law enforcement agencies, first responders, health and human services professionals, and governmental and nongovernmental advocacy organizations, and other appropriate persons.
3. The name of a person who files an allegation shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees or the members of a multidisciplinary team involved in the investigation of the allegation.
4. If the department or a multidisciplinary team has probable cause to believe that a boarding home is in violation of this chapter or licensing or other regulatory requirements of the department of human services, department of inspections and appeals, or department of public health, or that dependent adult abuse of any individual living in a boarding home has occurred, and upon producing proper identification, is denied entry to the boarding home or access to any individual living in the boarding home for the purpose of making an inspection or conducting an investigation, the department or multidisciplinary team may, with the assistance of the county attorney of the county in which the boarding home is located, apply to the district court for an order requiring the owner or lessee to permit entry to the boarding home and access to the individuals living in the boarding home.  
2009 Acts, ch 136, §5

**1350.4 Public disclosure of findings.**

Following an inspection or investigation of a boarding home under this chapter by the department or a multidisciplinary team, the final findings with respect to compliance by the boarding home shall be made available to the public. Other information relating to a boarding home obtained by the department or a multidisciplinary team which does not constitute the findings from an inspection or investigation of the boarding home shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a boarding home registration under this chapter. The information made available to the public pursuant to this section shall not include information which is kept confidential under section 22.7.

2009 Acts, ch 136, §6

**CHAPTER 136****STATE BOARD OF HEALTH**

Referred to in §125.2

136.1	Composition of board.	136.6	Repealed by 71 Acts, ch 84, §99.
136.2	Appointment.	136.7	Chairperson — staff assistance.
136.3	Duties.	136.8	Supplies.
136.4	Questions submitted.	136.9	Compensation and expenses.
136.5	Meetings.	136.10	Publication of proceedings.

**136.1 Composition of board.**

1. The state board of health shall consist of the following members:
  - a. Two members learned in health-related disciplines.
  - b. Three members who have direct experience with public health.
  - c. Two members who have direct experience with substance abuse treatment or prevention.
  - d. Four members representing the general public.
2. At least one of such members shall be licensed in the practice of medicine and surgery or osteopathic medicine and surgery under chapter 148.  
 [S13, §2564-a; C24, 27, 31, 35, 39, §2218; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.1]  
 86 Acts, ch 1245, §1119; 2005 Acts, ch 175, §78; 2010 Acts, ch 1090, §1; 2011 Acts, ch 25, §17

Referred to in §135.154, 135.157

**136.2 Appointment.**

All members of the state board of health shall be appointed by the governor to three-year staggered terms which shall expire on June 30.

The governor shall appoint annually successors to the three board members whose terms expire that year. A vacancy occurring on the board shall be filled by the governor for the unexpired term of the vacancy.

[C24, 27, 31, 35, 39, §2219; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.2]  
 89 Acts, ch 83, §27

**136.3 Duties.**

The state board of health shall provide a forum for the development of public health policy in the state of Iowa and shall have the following powers and duties:

1. Consider and study legislation and administration concerning public health.
2. Advise the department on any issue related to the promotion and protection of the health of Iowans including but not limited to:
  - a. Prevention of epidemics and the spread of disease, including communicable and

infectious diseases such as zoonotic diseases, quarantine and isolation, sexually transmitted diseases, and antitoxins and vaccines.

- b. Protection against environmental hazards.
  - c. Prevention of injuries.
  - d. Promotion of healthy behaviors.
  - e. Preparing for, responding to, and recovering from public health emergencies and disasters.
3. Establish policies governing the performance of the department in the discharge of any duties imposed on it by law.
  4. Provide guidance to the director in the discharge of the director's duties.
  5. Adopt and implement the Iowa public health standards.
  6. Assure that the department complies with Iowa Code, administrative rules, and the Iowa public health standards. For this purpose the board shall have access at any time to all documents and records of the department.
  7. Assure that the department prepares and distributes an annual report.
  8. Advise or make recommendations to the director of public health, governor, and general assembly relative to public health and advocate for state and local public health to comply with the Iowa public health standards.
  9. Offer consultation to the governor in the appointment of the director of the department.
  10. Adopt, promulgate, amend, and repeal rules and regulations consistent with law for the protection of the public health and prevention of substance abuse, and for the guidance of the department. All rules adopted by the department are subject to approval by the board.
  11. Act by committee, or by a majority of the board.
  12. Keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the department.
  13. Perform those duties authorized pursuant to chapter 125. The board may appoint a substance abuse and gambling treatment program committee to approve or deny applications for licensure received from substance abuse programs pursuant to chapter 125 and gambling treatment programs pursuant to chapter 135 and to perform any other function authorized by chapter 125 or 135 and delegated to the committee.
  14. Perform those duties authorized pursuant to sections 135.156 and 135.159 and other provisions of law.

[C97, §2565; C24, 27, 31, 35, 39, §2220; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.3] 86 Acts, ch 1245, §1120; 2001 Acts, ch 184, §8; 2002 Acts, ch 1050, §19; 2005 Acts, ch 175, §79, 80; 2008 Acts, ch 1188, §27, 47, 53, 66; 2010 Acts, ch 1090, §2; 2011 Acts, ch 129, §80, 82

#### **136.4 Questions submitted.**

The department may lay before the board, or any committee thereof, at any regular or special meeting, any matter upon which it desires the advice or opinion of such body or committee.

[C24, 27, 31, 35, 39, §2221; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.4]

#### **136.5 Meetings.**

The board shall meet at least six times per year and as may be deemed necessary by the chairperson of the board or the director of the department. The department shall give each board member adequate notice of all meetings. A majority of the members of the board shall constitute a quorum.

[C97, §2564; S13, §2564; C24, 27, 31, 35, 39, §2222; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.5]  
2010 Acts, ch 1090, §3

#### **136.6 Repealed by 71 Acts, ch 84, § 99.**

**136.7 Chairperson — staff assistance.**

The board shall annually in July elect a chairperson, who shall serve for a period of one year. The department shall furnish staff from the regular employees of the department to record the minutes of the meetings of the board.

[C97, §2564; S13, §2564; C24, 27, 31, 35, 39, §2224; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.7]

2010 Acts, ch 1090, §4

**136.8 Supplies.**

The department shall furnish the board of health with all articles and supplies necessary to enable the board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained and the same shall be considered and accounted for as if obtained for the use of the department.

[S13, §2564; C24, 27, 31, 35, 39, §2225; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.8]

2010 Acts, ch 1090, §5

**136.9 Compensation and expenses.**

The members of the board shall be reimbursed for actual expenses for each day employed in the discharge of their duties. All expense moneys paid to the members shall be paid from funds appropriated to the state department of public health. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C97, §2574; S13, §2564, 2574; C24, 27, 31, 35, 39, §2226; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.9]

86 Acts, ch 1245, §1121

**136.10 Publication of proceedings.**

Upon request of the board the department shall incorporate the proceedings of the board, or any part of the proceedings, in its annual report to the governor, and those proceedings shall then be published as a part of the official report of the department.

[C24, 27, 31, 35, 39, §2227; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §136.10]

91 Acts, ch 258, §30

## CHAPTER 136A

### CENTER FOR CONGENITAL AND INHERITED DISORDERS

Referred to in §135.11

136A.1	Purpose.	136A.5A	Newborn critical congenital heart disease screening.
136A.2	Definitions.		
136A.3	Establishment of center for congenital and inherited disorders — duties.	136A.6	Central registry.
		136A.7	Confidentiality.
136A.4	Genetic health services.	136A.8	Rules.
136A.5	Newborn metabolic screening.	136A.9	Cooperation of other agencies.

**136A.1 Purpose.**

To reduce and avoid adverse health conditions of inhabitants of the state, the Iowa department of public health shall initiate, conduct, and supervise screening and health care programs in order to detect and predict congenital or inherited disorders. The department shall assist in the translation and integration of genetic and genomic advances into public health services to improve health outcomes throughout the life span of the inhabitants of the state.

2004 Acts, ch 1031, §2, 12

**136A.2 Definitions.**

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

1. “*Attending health care provider*” means a licensed physician, nurse practitioner, certified nurse midwife, or physician assistant.
2. “*Congenital disorder*” means an abnormality existing prior to or at birth, including a stillbirth, that adversely affects the health and development of a fetus, newborn, child, or adult, including a structural malformation or a genetic, chromosomal, inherited, or biochemical disorder.
3. “*Department*” means the Iowa department of public health.
4. “*Disorder*” means a congenital or inherited disorder.
5. “*Genetics*” means the study of inheritance and how genes contribute to health conditions and the potential for disease.
6. “*Genomics*” means the functions and interactions of all human genes and their variation within human populations, including their interaction with environmental factors, and their contribution to health.
7. “*Inherited disorder*” means a condition caused by an abnormal change in a gene or genes passed from a parent or parents to their child. Onset of the disorder may be prior to or at birth, during childhood, or in adulthood.
8. “*Stillbirth*” means an unintended fetal death occurring after a gestation period of twenty completed weeks, or an unintended fetal death of a fetus with a weight of three hundred fifty or more grams.

2004 Acts, ch 1031, §3, 12

Referred to in §144.31A

**136A.3 Establishment of center for congenital and inherited disorders — duties.**

A center for congenital and inherited disorders is established within the department. The center shall do all of the following:

1. Initiate, conduct, and supervise statewide screening programs for congenital and inherited disorders amenable to population screening.
2. Initiate, conduct, and supervise statewide health care programs to aid in the early detection, treatment, prevention, education, and provision of supportive care related to congenital and inherited disorders.
3. Develop specifications for and designate a central laboratory in which tests conducted pursuant to the screening programs provided for in subsection 1 will be performed.
4. Gather, evaluate, and maintain information related to causes, severity, prevention, and methods of treatment for congenital and inherited disorders in conjunction with a central registry, screening programs, genetic health care programs, and ongoing scientific investigations and surveys.
5. Perform surveillance and monitoring of congenital and inherited disorders to determine the occurrence and trends of the disorders, to conduct thorough and complete epidemiological surveys, to assist in the planning for and provision of services to children with congenital and inherited disorders and their families, and to identify environmental and genetic risk factors for congenital and inherited disorders.
6. Provide information related to severity, causes, prevention, and methods of treatment for congenital and inherited disorders to the public, medical and scientific communities, and health science disciplines.
7. Implement public education programs, continuing education programs for health practitioners, and education programs for trainees of the health science disciplines related to genetics, congenital disorders, and inheritable disorders.
8. Participate in policy development to assure the appropriate use and confidentiality of genetic information and technologies to improve health and prevent disease.
9. Collaborate with state and local health agencies and other public and private organizations to provide education, intervention, and treatment for congenital and inherited disorders and to integrate genetics and genomics advances into public health activities and policies.

2004 Acts, ch 1031, §4, 12

**136A.4 Genetic health services.**

The center may initiate, conduct, and supervise genetic health services for the inhabitants of the state, including the provision of regional genetic consultation clinics, comprehensive neuromuscular health care outreach clinics, and other outreach services and clinics as established by rule.

2004 Acts, ch 1031, §5, 12

**136A.5 Newborn metabolic screening.**

1. All newborns born in this state shall be screened for congenital and inherited disorders in accordance with rules adopted by the department.

2. An attending health care provider shall ensure that every newborn under the provider's care is screened for congenital and inherited disorders in accordance with rules adopted by the department.

3. This section does not apply if a parent objects to the screening. If a parent objects to the screening of a newborn, the attending health care provider shall document the refusal in the newborn's medical record and shall obtain a written refusal from the parent and report the refusal to the department as provided by rule of the department.

2004 Acts, ch 1031, §6, 12; 2005 Acts, ch 19, §33

Referred to in §136A.5A

**136A.5A Newborn critical congenital heart disease screening.**

1. Each newborn born in this state shall receive a critical congenital heart disease screening by pulse oximetry or other means as determined by rule, in conjunction with the metabolic screening required pursuant to section 136A.5.

2. An attending health care provider shall ensure that every newborn under the provider's care receives the critical congenital heart disease screening.

3. This section does not apply if a parent objects to the screening. If a parent objects to the screening of a newborn, the attending health care provider shall document the refusal in the newborn's medical record and shall obtain a written refusal from the parent and report the refusal to the department.

4. Notwithstanding any provision to the contrary, the results of each newborn's critical congenital heart disease screening shall only be reported in a manner consistent with the reporting of the results of metabolic screenings pursuant to section 136A.5 if funding is available for implementation of the reporting requirement.

5. This section shall be administered in accordance with rules adopted pursuant to section 136A.8.

2013 Acts, ch 140, §91

NEW section

**136A.6 Central registry.**

The center for congenital and inherited disorders shall maintain a central registry, or shall establish an agreement with a designated contractor to maintain a central registry, to compile, evaluate, retain, and disseminate information on the occurrence, prevalence, causes, treatment, and prevention of congenital disorders. Congenital disorders shall be considered reportable conditions in accordance with rules adopted by the department and shall be abstracted and maintained by the registry.

2004 Acts, ch 1031, §7, 12

Referred to in §144.13A

**136A.7 Confidentiality.**

The center for congenital and inherited disorders and the department shall maintain the confidentiality of any identifying information collected, used, or maintained pursuant to this chapter in accordance with section 22.7, subsection 2.

2004 Acts, ch 1031, §8, 12

**136A.8 Rules.**

The center for congenital and inherited disorders, with assistance provided by the Iowa department of public health, shall adopt rules pursuant to chapter 17A to administer this chapter.

2004 Acts, ch 1031, §9, 12

Referred to in §136A.5A

**136A.9 Cooperation of other agencies.**

All state, district, county, and city health or welfare agencies shall cooperate and participate in the administration of this chapter.

2004 Acts, ch 1031, §10, 12

**CHAPTER 136B**

**RADON TESTING**

136B.1	Radon testing and abatement program.	136B.3	Testing and reporting of radon level.
136B.2	Radon testing information — disclosure.	136B.4	Fees — rules.
		136B.5	Penalty for violation.

**136B.1 Radon testing and abatement program.**

1. As used in this chapter, unless the context otherwise requires, “*department*” means the Iowa department of public health.

2. The department shall establish programs and adopt rules for the certification of persons who test for the presence of radon gas and radon progeny in buildings, the credentialing of persons abating the level of radon in buildings, and standards for radon abatement systems.

3. Following the establishment of the certification and credentialing programs by the department, a person who is not certified, as appropriate, shall not test for the presence of radon gas and radon progeny, and a person who is not credentialed, as required, shall not perform abatement measures. This section does not apply to a person performing the testing or abatement on a building which the person owns, or to a person performing testing or abatement without compensation.

4. For the purposes of this section, radon abatement systems shall be classified as mechanical ventilation systems.

88 Acts, ch 1237, §1; 89 Acts, ch 224, §1; 2004 Acts, ch 1168, §4

Referred to in §136B.2, 136B.3, 136B.4

**136B.2 Radon testing information — disclosure.**

1. *a.* A person certified or credentialed pursuant to section 136B.1 shall, within thirty days of the provision of any radon testing services or abatement measures or at the request of the department prior to testing or abatement, disclose to the department the address or location of the building, the name of the owner of the building where the services or measures were or will be provided, and the results of any tests or abatement measures performed.

*b.* A person shall not disclose to any other person, except to the department, the address or owner of a nonpublic building that the person tested for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality. Any test results disclosed shall be results of a test performed within the five years prior to the date of the disclosure.

2. *a.* Notwithstanding the requirements of this section, disclosure to any person of the results of a test performed on a nonpublic building for the presence of radon gas and radon progeny is not required if the results do not exceed the currently established United States environmental protection agency action guidelines.

*b.* A person who tests a nonpublic building which the person owns is not required to

disclose to any person the results of a test for the presence of radon gas or progeny if the test is performed by the person who owns the nonpublic building.

88 Acts, ch 1237, §2; 89 Acts, ch 224, §2; 2009 Acts, ch 41, §48

### 136B.3 Testing and reporting of radon level.

The department or its duly authorized agents shall from time to time perform inspections and testing of the premises of a property to determine the level at which it is contaminated with radon gas or radon progeny as a spot-check of the validity of measurements or the adequacy of abatement measures performed by persons certified or credentialed under section 136B.1. Following testing the department shall provide the owner of the property with a written report of its results including the concentration of radon gas or radon progeny contamination present, an interpretation of the results, and recommendation of appropriate action. A person certified or credentialed under section 136B.1 shall also be advised of the department's results, discrepancies revealed by the spot-check, actions required of the person, and actions the department intends to take with respect to the person's continued certification or credentialing.

88 Acts, ch 1237, §3; 89 Acts, ch 224, §3; 2004 Acts, ch 1168, §5  
Referred to in §136B.4

### 136B.4 Fees — rules.

The department shall establish a fee schedule to defray the costs of the certification and credentialing programs established pursuant to section 136B.1 and the testing conducted and the written reports provided pursuant to section 136B.3.

The department shall adopt rules, pursuant to chapter 17A, to implement this chapter.  
88 Acts, ch 1237, §4; 89 Acts, ch 224, §4

### 136B.5 Penalty for violation.

A person who violates a provision of this chapter is guilty of a serious misdemeanor.  
88 Acts, ch 1237, §5; 99 Acts, ch 96, §12

## CHAPTER 136C

### RADIATION MACHINES AND RADIOACTIVE MATERIALS

Referred to in §135.11

136C.1	Definitions.	136C.11	Federal-state agreements.
136C.2	Applicability.	136C.12	Conflicting laws.
136C.3	Duties of department.	136C.13	Emergencies.
136C.4	Penalties.	136C.14	Qualified operators — credentials available upon request.
136C.5	Enforcement.	136C.15	Radiation machines used for mammography — registration standards and requirements — application for authority — inspection.
136C.6	Reserved.		
136C.7	Acceptance of funds.		
136C.8	Inspections.		
136C.9	Registration and license requirements.		
136C.10	Fees.		

### 136C.1 Definitions.

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

1. “*Decommissioning*” means final operational activities at a site to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care.
2. “*Department*” means the Iowa department of public health.
3. “*Director*” means the director of public health or the director’s designee.
4. “*Licensed professional*” means a person licensed or otherwise authorized by law to

practice medicine, osteopathic medicine, podiatry, chiropractic, dentistry, dental hygiene, or veterinary medicine.

5. “*Radiation*” means energy forms capable of causing ionization including alpha particles, beta particles, gamma rays, X rays, neutrons, high-speed protons, and other atomic particles, but does not include sound or radio waves, or visible light, or infrared or ultraviolet light.

6. “*Radiation machine*” means a device capable of producing radiation except those that produce radiation solely from radioactive material.

7. “*Radioactive material*” means a solid, liquid, or gaseous material that emits radiation spontaneously including accelerator-produced and naturally occurring material, and byproduct, source, and special nuclear material as defined in the Atomic Energy Act of 1954 as amended to July 1, 1984.

[C79, 81, §136C.1]

84 Acts, ch 1286, §10; 2009 Acts, ch 133, §37

Referred to in §455B.315

### **136C.2 Applicability.**

This chapter applies to radiation machines and radioactive material located in this state. The provisions of this chapter do not supersede or duplicate the authority and programs of any other agency of the state or the United States government. To avoid duplication and promote coordination of radiation protection activities, the department may enter into agreements pursuant to chapter 28E with other state and federal agencies, or with private organizations or individuals, to administer this chapter.

[C79, 81, §136C.2]

84 Acts, ch 1286, §11

### **136C.3 Duties of department.**

The department is designated the state radiation control agency and is responsible for regulating the installation and use of radiation machines and the use of radioactive materials in this state as provided in this chapter. The department shall:

1. Establish minimum criteria and safety standards for the installation, operation, and use of radiation machines and radioactive materials.

2. Establish minimum training standards including continuing education requirements, and administer examinations and disciplinary procedures for operators of radiation machines and users of radioactive materials. A state of Iowa license to practice medicine, osteopathic medicine, chiropractic, podiatry, dentistry, dental hygiene, or veterinary medicine, or licensure as a physician assistant pursuant to chapter 148C, or certification by the dental board in dental radiography, or by the board of podiatry in podiatric radiography, or enrollment in a program or course of study approved by the Iowa department of public health which includes the application of radiation to humans satisfies the minimum training standards for operation of radiation machines only.

3. Develop programs for evaluation and control of hazards associated with the use of sources of radiation with due regard for compatibility of a proposed program with federal programs regulating byproduct, source, and special nuclear materials and considering consistency of a proposed program with federal programs for regulation of radiation machines.

4. Adopt, publish, and amend rules in accordance with chapter 17A as necessary for the implementation and enforcement of this chapter. The rules may provide for the licensing and control of radioactive materials with due regard for compatibility with federal regulatory programs.

5. Issue orders as necessary in connection with licensing and registration of radiation machines and radioactive materials and the operators or users thereof.

6. Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation.

7. Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation.

8. Collect and disseminate information relating to control of sources of radiation. The department shall maintain the following information on file:

a. License applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations.

b. A list of persons possessing sources of radiation requiring registration under this chapter and any administrative or judicial action involving each person.

c. Departmental rules relating to regulation of sources of radiation, existing or pending, and related actions.

9. Adopt rules requiring the keeping of such records with respect to activities under licenses and registration certificates issued pursuant to this chapter as the department determines necessary to effect the purposes of this chapter.

10. Adopt rules specifying the minimum training and performance standards for an individual using a radiation machine for mammography, and other rules necessary to implement section 136C.15. The rules shall complement federal requirements applicable to similar radiation machinery and shall not be less stringent than those federal requirements.

[C79, 81, §136C.3]

84 Acts, ch 1286, §1; 86 Acts, ch 1217, §1; 88 Acts, ch 1225, §1; 90 Acts, ch 1233, §6; 92 Acts, ch 1054, §1; 92 Acts, ch 1163, §36; 99 Acts, ch 141, §12; 2007 Acts, ch 10, §23; 2007 Acts, ch 218, §195; 2009 Acts, ch 133, §38; 2010 Acts, ch 1031, §397; 2012 Acts, ch 1113, §25

Referred to in §136C.5, 136C.10

#### **136C.4 Penalties.**

1. It is unlawful to operate or use radiation machines or radioactive material in violation of this chapter or of any rule adopted pursuant to this chapter. Persons convicted of violating a provision of this chapter are guilty of a serious misdemeanor.

2. In addition to criminal penalties, the department may impose a civil penalty not to exceed one thousand dollars on a person who violates a provision of this chapter or a rule or order issued under this chapter, or a term, condition, or limitation of a license or registration certificate issued under this chapter, or who commits a violation for which a license or registration certificate may be revoked under rules issued pursuant to this chapter. Each day of continuing violation constitutes a separate offense in computing the civil penalty.

3. The department shall notify a person of the intent to impose a civil penalty against the person. The notice shall be by registered or certified mail to the person's last known address and shall state the date, facts, the nature of the act or omission leading to the charge, the specific statute, rule, or license or registration provision involved, and the amount of the penalty the department proposes to impose. The notice shall advise the person that upon failure to pay the civil penalty, the penalty may be collected by civil action. The person shall have the opportunity to respond in writing, within a reasonable time as the department shall establish by rule, why the civil penalty should not be imposed.

4. The department may compromise, mitigate, or remit a civil penalty imposed under this section. A person upon whom a civil penalty is imposed may appeal the action pursuant to chapter 17A. The department shall remit moneys collected from civil penalties to the treasurer of state who shall deposit the moneys in the general fund of the state.

[C79, 81, §136C.4]

84 Acts, ch 1286, §12; 2002 Acts, ch 1108, §10

#### **136C.5 Enforcement.**

1. Upon determination by the department that this chapter or any rule adopted pursuant to this chapter has been or is being violated, the department may order that the radiation machine or radioactive material not be used until the necessary corrective action has been taken. If the use of the radiation machine or radioactive material continues in violation of the order of the department, the department may request the county attorney or the attorney general to make an application in the name of the state to the district court of the county in which the violations may have occurred for an order to enjoin the violations or practices.

2. The department may impound or order the impounding of radioactive material in the possession of a person who is not equipped to observe or fails to observe a provision of this chapter or of a rule adopted under this chapter.

3. The department may enter at reasonable times any private or public property to determine whether there is a violation of a provision of this chapter or of a rule issued under this chapter. However, the department must have the consent of the federal government before entering an area under the jurisdiction of the federal government.

4. The department may inspect records required to be kept under section 136C.3, subsection 9. Upon request of the department a person shall submit the records to the department for inspection.

[C79, 81, §136C.5]

84 Acts, ch 1286, §13

Referred to in §331.756(29)

**136C.6** Reserved.

**136C.7 Acceptance of funds.**

The department may accept from any source loans, grants, gifts, or other funds to be used for programs authorized by this chapter.

84 Acts, ch 1286, §2

**136C.8 Inspections.**

The department may inspect radiation machines and radioactive materials located in this state, for the purpose of detecting, abating, or eliminating excessive radiation exposure hazards. The inspection shall include but shall not be limited to an evaluation of the radiation machine or radioactive material as well as the immediate environment to ensure that in using the machines or materials all unnecessary hazards for patients, personnel, and other persons who may be exposed to radiation produced by the machine or materials are avoided. All defects and deficiencies noted by the inspector shall be fully disclosed and discussed with the responsible persons at the time of inspection. The department shall establish rules prescribing operating procedures for radiation machines and radioactive materials which ensure minimum radiation exposure to patients, personnel, and other persons in the immediate environment.

84 Acts, ch 1286, §3; 2012 Acts, ch 1113, §26

**136C.9 Registration and license requirements.**

1. The department shall establish by rule a system for the registration of the possession of radiation machines and for the licensing of radioactive materials in the state. The rules may provide for the issuance of the following licenses:

a. General licenses which do not require the filing of an application or the issuance of a document but do permit designated persons to transfer, acquire, own, possess, or use quantities of or equipment using radioactive materials.

b. Specific licenses issued upon application to a person named in the license to use, manufacture, produce, transfer, receive, acquire, or possess quantities of or equipment using radioactive material. Applicants requesting radioactive materials in quantities of concern, as identified by the United States nuclear regulatory commission, shall submit fingerprints to the United States nuclear regulatory commission for a background check of all individuals authorized for unescorted access to such material.

2. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements when the department finds that the exemption of the source of radiation, use, or users will not pose a significant risk to the health and safety of the public. The rules may provide for recognition of other state or federal licenses as the department may allow, subject to registration requirements as the department may prescribe.

3. A person shall not use, manufacture, produce, distribute, sell, transport, transfer,

install, repair, receive, acquire, own, or possess any radioactive material without a license from the department as provided in this chapter.

84 Acts, ch 1286, §4; 2008 Acts, ch 1058, §7

#### **136C.10 Fees.**

1. *a.* The department shall establish and collect fees for the licensing and amendment of licenses for radioactive materials, the registration of radiation machines, the periodic inspection of radiation machines and radioactive materials, and the implementation of section 136C.3, subsection 2. Fees shall be in amounts sufficient to defray the cost of administering this chapter. The license fee may include the cost of environmental surveillance activities to assess the radiological impact of activities conducted by licensees.

*b.* When a registrant or licensee fails to pay the applicable fee the department may suspend or revoke the registration or license or may issue an appropriate order. Fees for the license, amendment of a license, and inspection of radioactive material shall not exceed the fees prescribed by the United States nuclear regulatory commission.

2. The department may establish and collect a fee related to transporting radioactive material if the fee is used for a purpose related to transporting radioactive material, including enforcement and planning, developing, and maintaining a capability for emergency response. The fees shall be established by rules adopted pursuant to chapter 17A.

3. The department may establish and collect fees from persons providing mammography services to assure compliance with applicable rules and the federal Mammography Quality Standards Act of 1992, Pub. L. No. 102-539, as amended. Fees shall be in an amount determined by the department by rule and all fees collected shall be used to support the department's mammography program.

4. Fees collected pursuant to this section shall be retained by the department, shall be considered repayment receipts as defined in section 8.2, and shall be used for the purposes described in this section, including but not limited to the addition of full-time equivalent positions for program services and investigations. Notwithstanding section 8.33, moneys retained by the department pursuant to this subsection are not subject to reversion to the general fund of the state.

84 Acts, ch 1286, §5; 86 Acts, ch 1217, §2; 2004 Acts, ch 1167, §3; 2005 Acts, ch 175, §81; 2006 Acts, ch 1155, §1, 15

Referred to in §136C.15

#### **136C.11 Federal-state agreements.**

1. The governor, on behalf of the state, may enter into an agreement with the United States nuclear regulatory commission pursuant to section 274b of the Atomic Energy Act of 1954, as amended to July 1, 1984, providing for the discontinuation of certain federal licensing and related regulatory authority over byproduct, source, and special nuclear material and the assumption of regulatory authority over these materials by the state.

2. A person who, on the effective date of an agreement made under subsection 1, possesses a license issued by the United States nuclear regulatory commission for radioactive material that comes under the agreement is considered to possess the license required under this chapter. The license shall expire either ninety days after receipt from the department of a notice of expiration of the license, or on the date of expiration specified in the license issued by the nuclear regulatory commission, whichever is earlier.

84 Acts, ch 1286, §6

#### **136C.12 Conflicting laws.**

This chapter does not preempt ordinances, resolutions, or rules of a local government or of a state agency relating to radioactive material that are consistent with this chapter. This chapter does not give the department the authority to regulate a facility for the disposal of low-level radioactive waste as defined in article II of section 457B.1.

84 Acts, ch 1286, §7

**136C.13 Emergencies.**

If the department finds that an emergency exists involving radioactive material or radiation machines that requires immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order stating that an emergency exists and requiring that action be taken as necessary to meet the emergency. An emergency order shall be effective immediately. A person to whom the order is directed shall comply with the order immediately, but on application to the department shall be afforded a hearing within ten days of the date application is made. The emergency order may be continued, modified, or revoked within thirty days after the hearing, based on the evidence presented at the hearing.

84 Acts, ch 1286, §8

**136C.14 Qualified operators — credentials available upon request.**

1. A person, other than a licensed professional, shall not operate a radiation machine or use radioactive materials for medical treatment or diagnostic purposes unless that person has completed a course of instruction approved by the department or has otherwise met the minimum training requirement established by the department.

2. A person, other than a licensed professional, who operates a radiation machine or uses radioactive materials for medical treatment or diagnostic purposes shall make available upon request the credentials which indicate that person's qualification to operate the machine or use the materials. A person who owns or controls the machine or materials shall not employ a person to operate the machine or use the materials for medical treatment or diagnostic purposes except as provided in this section.

84 Acts, ch 1286, §9; 85 Acts, ch 195, §17; 2012 Acts, ch 1113, §27

**136C.15 Radiation machines used for mammography — registration standards and requirements — application for authority — inspection.**

1. A person shall not use a radiation machine to perform mammography unless the radiation machine is registered with the department pursuant to the department's rules and is specifically authorized for use for mammography as provided in this section.

2. The department shall authorize a radiation machine for use for mammography if the radiation machine meets all of the following:

a. The radiation machine meets the criteria for a mammography accreditation program approved by the United States food and drug administration. The department shall make copies of those criteria available to the public and may by rule adopt modified criteria. The department may accept an evaluation report issued by such an approved accreditation program as evidence that a radiation machine meets those criteria. If at any time the department determines that it will not accept any evaluation reports issued by such an approved accreditation program as evidence that a radiation machine meets those criteria, the department shall promptly notify each person who has registered a radiation machine under this paragraph.

b. The radiation machine, the film or other image receptor used in the radiation machine, and the facility where the radiation machine is used meet the requirements set forth in department rules for radiation machines.

c. The radiation machine is specifically designed to perform mammography.

d. The radiation machine is used in a facility that does all of the following:

(1) At least annually has a qualified radiation physicist provide on-site consultation to the facility, including, but not limited to, a complete evaluation of the entire mammography system to ensure compliance with this section and the rules adopted pursuant to this section.

(2) Maintains for at least seven years, records of the consultation required in subparagraph (1) and the findings of the consultation.

e. The radiation machine is used according to the department rules on patient radiation exposure and radiation dose levels.

f. The radiation machine is operated only by an individual who can demonstrate to the department that the individual is specifically trained in mammography and meets the

standards established in this section, or an individual who is a physician or an osteopathic physician.

3. The department may issue a nonrenewable temporary authorization for a radiation machine for use for mammography if additional time is needed to allow submission of evidence satisfactory to the department that the radiation machine meets the standards set forth in subsection 2 for approval for mammography. A temporary authorization granted under this subsection shall be effective for no more than twelve months. The department may withdraw a temporary authorization prior to its expiration if the radiation machine does not meet one or more of the standards set forth in subsection 2.

4. To obtain authorization from the department to use a radiation machine for mammography, the person who owns or leases the radiation machine or an authorized agent of the person shall apply to the department for mammography authorization on an application form provided by the department and shall provide all of the information required by the department as specified on the application form. A person who owns or leases more than one radiation machine used for mammography shall obtain authorization for each radiation machine. The department shall process and respond to an application within thirty days after the date of receipt of the application. Upon determining to grant mammography authorization for a radiation machine, the department shall issue a certificate of registration specifying the mammography authorization. A mammography authorization is effective for three years.

5. The department shall annually inspect each authorized radiation machine and may inspect the radiation machine more frequently. The department shall make reasonable efforts to coordinate the inspections under this section with the department's other inspections of the facility in which the radiation machine is located.

6. After each satisfactory inspection by the department, the department shall issue a written proof of inspection or a similar document identifying the facility and radiation machine inspected and providing a record of the date the radiation machine was inspected.

7. The department may withdraw the mammography authorization for a radiation machine if it does not meet one or more of the standards set forth in subsection 2.

8. The department shall provide an opportunity for a hearing in connection with a denial or withdrawal of mammography authorization.

9. Upon a finding that a deficiency in a radiation machine used for mammography or a violation of this section or the rules adopted pursuant to this section seriously affects the health, safety, and welfare of individuals upon whom the radiation machine is used for mammography, the department may issue an emergency order summarily withdrawing the mammography authorization of the radiation machine. The department shall incorporate its findings in the order and shall provide an opportunity for a hearing within five working days after issuance of the order. The order shall be effective during the proceedings.

10. If the department withdraws the mammography authorization of a radiation machine, the radiation machine shall not be used for mammography. An application for reinstatement of a mammography authorization shall be filed and processed in the same manner as an application for mammography authorization under subsection 4, except that the department shall not issue a reinstated certificate of registration specifying the mammography authorization until the department inspects the radiation machine and determines that it meets the standards set forth in subsection 2. The department shall conduct an inspection required under this subsection no later than sixty days after receiving a proper application for reinstatement of a mammography authorization.

11. The department shall establish fees pursuant to section 136C.10 for the application for authorization and the inspection related to a radiation machine used for mammography.

92 Acts, ch 1054, §2; 93 Acts, ch 139, §4; 2008 Acts, ch 1058, §8, 9

Referred to in §136C.3

## CHAPTER 136D

### TANNING FACILITIES

136D.1	Short title.	136D.6	Permits.
136D.2	Definitions.	136D.7	Duties of the department.
136D.3	Application of chapter.	136D.8	Inspections — violations — prohibited acts — injunctions.
136D.4	Warning signs — written warning statements.	136D.9	Penalties.
136D.5	Reserved.		

#### 136D.1 Short title.

This chapter may be cited as the “*Tanning Facility Regulation Act*.”  
90 Acts, ch 1220, §1

#### 136D.2 Definitions.

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

1. “*Department*” means the Iowa department of public health.
2. “*Director*” means the director of public health, or the director’s designee.
3. “*Phototherapy device*” means a piece of equipment that emits ultraviolet radiation and that is used by a health care professional in the treatment of disease.
4. “*Tanning device*” means any equipment that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and that is used for tanning of human skin, such as tanning booths or tanning beds.
5. “*Tanning facility*” means a location, place, area, structure, or business, or a part thereof, which provides access to a tanning device for compensation. “*Tanning facility*” may include but is not limited to a tanning salon, health club, apartment, and condominium.

90 Acts, ch 1220, §2; 2012 Acts, ch 1113, §28

#### 136D.3 Application of chapter.

1. This chapter does not apply to a phototherapy device used by or under the supervision of a licensed physician trained in the use of phototherapy devices. A tanning device used by a tanning facility must comply with all applicable federal laws and regulations.

2. This chapter shall not supersede or duplicate the authority and programs of any other agency of the state or the United States. To avoid duplication and promote coordination of radiation protection activities, the department may enter into written agreements with other state or federal agencies, with local boards of public health, or with private organizations or individuals, to administer this chapter.

90 Acts, ch 1220, §3; 2008 Acts, ch 1058, §10

#### 136D.4 Warning signs — written warning statements.

1. A tanning facility shall post the following warning signs that describe the hazards associated with the use of tanning devices:

a. A warning sign in a conspicuous location readily visible to persons entering the establishment. The signs shall comply with rules adopted by the department.

b. A warning sign for each tanning device, in a conspicuous location readily visible to a person preparing to use the device. The sign shall comply with rules adopted by the department.

2. A tanning facility shall provide each customer with a written warning statement that complies with rules adopted by the department.

90 Acts, ch 1220, §4

#### 136D.5 Reserved.

#### 136D.6 Permits.

1. A person shall not operate a tanning facility without a current and valid permit to operate the facility, issued by the department.

2. The permit shall be displayed in an open public area of the tanning facility.
  3. Permits shall be renewed annually upon acceptance of an application provided by the department and upon receipt of a permit fee.
  4. The department may revoke, cancel, or suspend a permit to operate a tanning facility based upon criteria adopted by rule of the department.
- 90 Acts, ch 1220, §5

#### **136D.7 Duties of the department.**

The department shall do all of the following:

1. Establish requirements for the operation of tanning facilities, including but not limited to, proper sanitation of tanning devices, provisions of proper equipment, the presence of knowledgeable operators during operating hours, and the use of accurate timers and temperature controls.
  2. Adopt rules, in accordance with chapter 17A, as necessary for the implementation and enforcement of this chapter, including but not limited to rules relating to the operation and use of tanning devices, rules regarding the warning signs required to be posted by a tanning facility, and rules prescribing the criteria for revocation, cancellation, or suspension of a tanning facility permit.
  3. Establish and collect fees to defray the costs of administering the program established in this chapter. Fees collected shall be deposited in the general fund of the state.
- 90 Acts, ch 1220, §6

#### **136D.8 Inspections — violations — prohibited acts — injunctions.**

1. The director or an authorized agent shall have access at all reasonable times to any tanning facility to inspect the facility to determine if this chapter is being violated.
  2. A tanning facility shall not claim, or distribute promotional materials that claim, that using a tanning device is safe or free from risk.
    3. *a.* If the director finds that a person has violated, or is violating or threatening to violate this chapter and that the violation creates an immediate threat to the health and safety of the public, the director may petition the district court for a temporary restraining order to restrain the violation or threat of violation.
    - b.* If a person has violated, or is violating or threatening to violate this chapter, the director may petition the district court for an injunction to prohibit the person from continuing the violation or threat of violation.
    - c.* On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter, the district court shall grant any injunctive relief warranted by the facts.
- 90 Acts, ch 1220, §7; 2012 Acts, ch 1113, §29

#### **136D.9 Penalties.**

1. The department may impose a civil penalty not to exceed one thousand dollars on a person who violates a provision of this chapter, a rule adopted or order issued under this chapter, or a term, condition, or limitation of a registration certificate issued pursuant to this chapter, or who commits a violation for which a registration certificate may be revoked under rules issued pursuant to this chapter. Each day of continuing violation constitutes a separate offense in computing the civil penalty. However, the maximum civil penalty for a continuing violation shall not exceed five thousand dollars.
  2. The department shall notify a person of the intent to impose a civil penalty against the person. The department shall establish the notification process to include an opportunity for the person to respond in writing, within a reasonable time as the department shall establish by rule, regarding reasons why the civil penalty should not be imposed.
  3. The department may compromise, mitigate, or refund a civil penalty imposed under this section. A person upon whom a civil penalty is imposed may appeal the action pursuant to chapter 17A. The department shall remit moneys collected from civil penalties to the treasurer of the state who shall deposit the moneys in the general fund of the state.
- 2012 Acts, ch 1113, §30

## CHAPTER 137

## LOCAL BOARDS OF HEALTH

Referred to in §346A.1

Former chapter 137 repealed by 2010 Acts, ch 1036, §22

137.101	Title and purpose.	137.109	Organizational structure of district board.
137.102	Definitions.	137.110	District personnel.
137.103	Local boards of health — jurisdiction.	137.111	District treasurer and auditor.
137.104	Local boards of health — powers and duties.	137.112	District public health fund — budget.
137.105	Local boards of health — membership and meetings.	137.113	Adding to district.
137.106	District boards of health — request to form.	137.114	Withdrawal from district.
137.107	Request reviewed by state department.	137.115	Dissolution of county boards.
137.108	Initial appointment of district board of health.	137.116	Emergency request for funds.
		137.117	Penalties — criminal and civil.
		137.118	Individual choice of treatment.
		137.119	Adoption of rules.

**137.101 Title and purpose.**

This chapter shall be known and may be cited as the “*Local Public Health Governance Act*”. The purpose of this chapter is to define the structure, powers, and duties of local boards of health. This chapter also provides an optional process for counties to merge to form a district board of health in order to increase efficiencies and enhance the delivery and availability of public health services.

2010 Acts, ch 1036, §1

**137.102 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “*City board*” means a city board of health in existence prior to July 1, 2010.
2. “*City health department*” refers to the personnel and property under the jurisdiction of a city board in existence prior to July 1, 2010.
3. “*Council*” means a city council.
4. “*County board*” means a county board of health.
5. “*County health department*” refers to the personnel and property under the jurisdiction of a county board.
6. “*Director*” means the director of public health.
7. “*District*” means any two or more geographically contiguous counties.
8. “*District board*” means a board of health representing at least two geographically contiguous counties formed with approval of the state department in accordance with this chapter, or any district board of health in existence prior to July 1, 2010.
9. “*District health department*” refers to the personnel and property under the jurisdiction of a district board.
10. “*Iowa public health standards*” means Iowa public health standards as defined in section 135A.2.
11. “*Local board of health*” means a city, county, or district board of health.
12. “*Officers*” means a local board of health chairperson, vice chairperson, and secretary, and other officers which may be named at the discretion of the local board of health.
13. “*State board*” means the state board of health.
14. “*State department*” means the Iowa department of public health.

2010 Acts, ch 1036, §2

Referred to in §1351.1

**137.103 Local boards of health — jurisdiction.**

1. A city board shall have jurisdiction over public health matters within the city.
2. A county board shall have jurisdiction over public health matters within the county.

3. A district board shall have jurisdiction over public health matters within the district.  
2010 Acts, ch 1036, §3

**137.104 Local boards of health — powers and duties.**

Local boards of health shall have the following powers and duties:

1. A local board of health shall:

a. Enforce state health laws and the rules and lawful orders of the state department.

b. Make and enforce such reasonable rules and regulations not inconsistent with law, the rules of the state board, or the Iowa public health standards as may be necessary for the protection and improvement of the public health.

(1) Rules of a city board shall become effective upon approval by the council and publication in a newspaper having general circulation in the city.

(2) Rules of a county board shall become effective upon approval by the county board of supervisors by a motion or resolution as defined in section 331.101, subsection 13, and publication in a newspaper having general circulation in the county.

(3) Rules of a district board shall become effective upon approval by the district board and publication in a newspaper having general circulation in the district.

(4) Before approving any rule or regulation the local board of health shall hold a public hearing on the proposed rule. Any citizen may appear and be heard at the public hearing. A notice of the public hearing, stating the time and place and the general nature of the proposed rule or regulation shall be published in a newspaper having general circulation as provided in section 331.305 in the area served by the local board of health.

c. Employ persons as necessary for the efficient discharge of its duties. Employment practices shall meet the requirements of chapter 8A, subchapter IV, or any civil service provision adopted under chapter 400.

d. Provide the names of all local board of health members and officers to the state department.

e. Provide minutes of local board of health meetings and reports of the local board of health's operations and activities to the state department as may be required by the director, by rule, or by contract.

2. A local board of health may:

a. Provide such population-based and personal health services as may be deemed necessary for the promotion and protection of the health of the public and charge reasonable fees for personal health services. A person shall not be denied necessary services within the limits of available resources because of inability to pay the cost of such services.

b. Provide such environmental health services as may be deemed necessary for the protection and improvement of the public health and issue licenses and permits and charge reasonable fees in relation to the construction or operation of nonpublic water supplies or private sewage disposal systems.

c. Engage in joint operations and contract with colleges and universities, the state department, other public, private, and nonprofit agencies, and individuals or form a district health department to provide personal and population-based public health services.

d. By written agreement with the council of any city within its jurisdiction, enforce appropriate ordinances of the city relating to public health.

2010 Acts, ch 1036, §4

Referred to in §137.115

**137.105 Local boards of health — membership and meetings.**

1. *Membership, terms, compensation, and vacancies.*

a. All members of a city board shall be appointed by the council.

b. All members of a county board shall be appointed by the county board of supervisors.

c. All members of a district board shall be appointed by the county board of supervisors from each county represented by the district. Each county board of supervisors shall appoint at least one but no more than three members to the district board, and each county board of supervisors shall appoint the same number of members to the district board. There shall be

no more than one board of supervisors member from any participating county on the district board.

d. Local boards of health shall consist of at least five members. At least one member shall be licensed as a physician under chapter 148.

e. A local board of health member shall serve for a term of three years. A member is eligible for reappointment.

f. A local board of health member shall serve without compensation, but may be reimbursed for necessary expenses in accordance with rules established by the state board or the applicable jurisdiction.

g. A local board of health member vacancy due to death, resignation, or other cause shall be filled as soon as possible after the vacancy exists for the unexpired term of the original appointment.

2. *Meetings.* A majority of the members of a local board of health shall be considered a quorum and an affirmative vote of the majority of the members present is necessary for action taken by a local board of health. The majority shall not include any member who has a conflict of interest and a statement by the member that a conflict of interest exists shall be conclusive for this purpose.

2010 Acts, ch 1036, §5

Referred to in §137.106, 137.108, 331.321

#### **137.106 District boards of health — request to form.**

The county boards of any two or more geographically contiguous counties may at any time submit a request to form a district board to the state department. The formation request shall be in writing, shall be executed by the county boards of supervisors and the county boards of health for each county comprising the proposed district board, and shall include but not be limited to the following required elements:

1. A written narrative that explains how the formation of a district board will increase organizational capacity and capability to provide population-based and personal public health services compared with operating as individual county boards.

2. The composition of the district board, including the number of members each county shall appoint pursuant to section 137.105 and the total number of members on the district board.

3. Proof of approval by all county boards of supervisors and county boards of health involved in the request to form a district board and of the elements included in the formation plan.

4. The service delivery plan.

5. The budget and fiscal plan for the proposed district board. The budget plan shall include an estimate of proposed expenditures and revenues and an allocation of the revenue responsibilities of each of the counties participating in the proposed district board.

6. A table of organization.

7. A personnel system description, including identification of the district treasurer and district auditor and a section which addresses the employment issues contained in section 137.110.

8. The location of the district board offices and workforce throughout the jurisdiction.

9. An inventory of the property and equipment in the custody of each county board and a description as to whether such property and equipment shall remain in the custody of the county or shall be transferred to the district board to become property of the district board.

10. A timeline for the adoption of district board rules and regulations.

11. Other criteria as established by rule of the state department.

2010 Acts, ch 1036, §6

Referred to in §137.107, 137.110, 137.113, 137.114, 137.115

#### **137.107 Request reviewed by state department.**

The state department shall review requests submitted pursuant to section 137.106. The state department, upon finding that all required elements are present, shall present findings

to the state board. The state board may approve the formation of a district board and if the formation is approved, shall notify the county boards from whom the request was received.

2010 Acts, ch 1036, §7

Referred to in §137.113, 137.114

#### **137.108 Initial appointment of district board of health.**

Upon receipt of notice of approval as a district board, district board members shall be appointed as specified in section 137.105.

2010 Acts, ch 1036, §8

#### **137.109 Organizational structure of district board.**

A district board is a governing body for purposes of chapter 670 and a district health department is a municipality for purposes of chapter 670. All meetings of a district board shall comply with the requirements of chapter 21 and all records of a district board and a district health department shall be maintained in accordance with chapter 22.

2010 Acts, ch 1036, §9

#### **137.110 District personnel.**

1. A district board may employ persons as necessary for the efficient discharge of its duties. A district board shall have all the duties and powers in employing such persons as a county board of supervisors is granted pursuant to section 331.324, with the exception of the authority to provide for support of the civil service commission for deputy sheriffs as specified in section 331.324, subsection 1, paragraph "k". A district board may employ persons who were employed at the time of the formation of the district board by the counties represented by the district board, or may employ persons who were not employed by such counties. The county boards involved shall specify in the request submitted pursuant to section 137.106 whether the individual counties or the district board will be responsible for payment of unemployment compensation for any county employees employed by the county board at the time of formation of the district board but not employed by the district board following formation.

2. If the district board employs persons who were employed by the counties represented by the district board at the time of formation of the district board, the district board shall recognize the term of service of the former county employees for purposes of all employee benefits offered by the district board to such employees and such employees shall not forfeit accrued vacation, accrued sick leave, or longevity by becoming district board employees.

3. Persons who were covered by county employee life insurance, accident insurance, and health insurance plans prior to becoming district board employees pursuant to this chapter shall be permitted to apply prior to becoming district board employees for life, accident, and health insurance plans that are available to district board employees so that those persons do not suffer a lapse of insurance coverage as a result of becoming district board employees.

4. The district board may employ or contract with legal counsel to enforce this chapter and district board rules, represent and defend the district board and its officers and employees, provide legal advice to the district board, and perform any other legal duties required by law or assigned by the district board. The district board may employ or contract with the county attorney of a county within its jurisdiction.

2010 Acts, ch 1036, §10

Referred to in §137.106

#### **137.111 District treasurer and auditor.**

Upon establishment of a district board, the district board shall designate a treasurer of a county within its jurisdiction to serve as treasurer of the district health department, and shall designate the auditor of the same county to serve as auditor of the district health department. The treasurer's and the auditor's official bonds shall extend to cover their respective duties performed on behalf of the district health department. A county treasurer shall not serve in the capacity of district health department treasurer without consent from the county and agreement from the treasurer to perform this function, and a county auditor shall not serve

in the capacity of district health department auditor without consent from the county and agreement from the auditor to perform this function.

2010 Acts, ch 1036, §11

**137.112 District public health fund — budget.**

1. The district treasurer shall establish a district public health fund from which disbursements may be made in the manner specified for disbursements by law for the disbursement of county funds.

2. All moneys received by a district board or district health department for local public health purposes from federal appropriations, state appropriations, local appropriations, fees, gifts, grants, bequests, or other sources shall be deposited in the district public health fund. Expenditures shall be made from the fund on order of the district board for the purpose of carrying out its duties. No more than twenty percent of the unexpended balance remaining in the fund at the end of each fiscal year shall be maintained in the district public health fund. The remainder of the unexpended balance shall revert to the general funds of the member counties in the manner determined by the district board.

3. The district board shall adopt and certify an annual budget in accordance with section 24.17 relating to certification of budgets and section 24.27 relating to protesting budgets.

4. This section does not apply to any district board of health or district health department in existence prior to July 1, 2010.

2010 Acts, ch 1036, §12; 2012 Acts, ch 1113, §17, 20, 21

Subsection 4 takes effect May 2, 2012, and applies retroactively to July 1, 2010; 2012 Acts, ch 1113, §20, 21

**137.113 Adding to district.**

A county may be added to an existing district board by submission and approval of a request, as specified in sections 137.106 and 137.107.

2010 Acts, ch 1036, §13

**137.114 Withdrawal from district.**

A county may withdraw from an existing district board upon submission of a request for withdrawal to and approval by the state department. The request shall include a plan to reform its county board or join a different district board, information specified in section 137.106, and approval of the request by the district board and, at the recommendation of the state department, the state board. Any county choosing to withdraw from the district board shall commit to the continuity of services in its county by reestablishing its county board or joining a different district board. The remaining counties in the district shall submit an application including the information specified in section 137.106 to the state department for review as provided in section 137.107.

2010 Acts, ch 1036, §14

**137.115 Dissolution of county boards.**

Upon appointment of a district board, the county boards involved shall be dissolved and their powers and duties specified in section 137.104 transferred to the district board. All property and equipment in the custody of the county board shall either remain the property of the county or shall become the property of the district board, as so provided in the district board formation request submitted pursuant to section 137.106.

2010 Acts, ch 1036, §15

**137.116 Emergency request for funds.**

A local board of health may, during a public health disaster as defined in section 135.140 or in preparation for or response to such disaster, request additional appropriations which may upon approval of the director be allotted from the funds reserved for that purpose to the extent that funds are appropriated and available. Upon termination of the disaster response, the local board of health shall report its expenditures of emergency funds to the director.

2010 Acts, ch 1036, §16

**137.117 Penalties — criminal and civil.**

1. Any person who violates any provision of this chapter or the rules of a local board of health or any lawful order of the board, its officers, or authorized agents is guilty of a simple misdemeanor. Each additional day of neglect or failure to comply with such provision, rule, or lawful order after notice of violation by the local board of health shall constitute a separate offense.

2. A local board of health may impose a civil penalty not to exceed seven hundred fifty dollars for each violation of this chapter or the rules of the local board of health or any lawful order of the board, its officers, or authorized agents. If the violation is a repeat offense, a civil penalty not to exceed one thousand dollars may be imposed. The local board of health shall impose and enforce such penalties in the manner provided in section 331.307 for county infractions.

2010 Acts, ch 1036, §17

**137.118 Individual choice of treatment.**

Nothing in this chapter shall be construed to impede, limit, or restrict the right of free choice by an individual to the health care or treatment that the individual may select.

2010 Acts, ch 1036, §18

**137.119 Adoption of rules.**

The state board of health shall adopt rules to implement this chapter. The department is vested with discretionary authority to interpret the provisions of this chapter.

2010 Acts, ch 1036, §19

**CHAPTER 137A**

**FOOD ESTABLISHMENTS**

Repealed effective January 1, 1999; validity of licenses issued prior to that date; 98 Acts, ch 1162, §29, 30; see chapter 137F

**CHAPTER 137B**

**FOOD SERVICE SANITATION CODE**

Repealed effective January 1, 1999; validity of licenses issued prior to that date; 98 Acts, ch 1162, §29, 30; see chapter 137F

**CHAPTER 137C**

**HOTEL SANITATION CODE**

Referred to in §10A.104, 137E.3A, 331.382

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## GENERAL PROVISIONS

### 137C.1 Title.

This chapter shall be known as the Iowa hotel sanitation code.

[C79, 81, §170B.1]

90 Acts, ch 1204, §66

C91, §137C.1

### 137C.2 Definitions.

For purposes of the Iowa hotel sanitation code, unless a different meaning is clearly indicated by the context:

1. “*Bed and breakfast inn*” means a hotel which has nine or fewer guest rooms.
2. “*Director*” means the director of the department of inspections and appeals or the director’s designee.
3. “*Department*” means the department of inspections and appeals.
4. “*Guest room*” shall mean any bedroom or other sleeping quarters for transient guests in a hotel.
5. “*Hotel*” shall mean any building or structure, equipped, used, advertised as, or held out to the public to be an inn, hotel, motel, motor inn, or place where sleeping accommodations are furnished transient guests for hire.
6. “*Local board of health*” means a county, city, or district board of health.
7. “*Municipal corporation*” means a political subdivision of this state.
8. “*Regulatory authority*” means the department or a local board of health that has entered into an agreement with the director pursuant to section 137C.6 for authority to enforce the Iowa hotel sanitation code in its jurisdiction.

[S13, §2514-h; C24, 27, 31, 35, 39, §2808; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.1; C79, 81, §170B.2]

86 Acts, ch 1245, §541; 87 Acts, ch 202, §2; 90 Acts, ch 1204, §66

C91, §137C.2

2004 Acts, ch 1026, §3

**137C.3 through 137C.5** Reserved.

## LICENSES AND INSPECTIONS

**137C.6 Authority to enforce.**

1. The director shall regulate, license, and inspect hotels and enforce the Iowa hotel sanitation code in Iowa. Municipal corporations shall not regulate, license, inspect, or collect license fees from hotels except as provided for in the Iowa hotel sanitation code.

2. If a municipal corporation wants its local board of health to license, inspect, and otherwise enforce the Iowa hotel sanitation code within its jurisdiction, the municipal corporation may enter into an agreement to do so with the director. The director may enter into the agreement if the director finds that the local board of health has adequate resources to perform the required functions. A municipal corporation may only enter into an agreement to enforce the Iowa hotel sanitation code if it also agrees to enforce the rules setting minimum standards to protect consumers from foodborne illness adopted pursuant to section 137F.2.

3. A local board of health that is responsible for enforcing the Iowa hotel sanitation code within its jurisdiction pursuant to an agreement shall make an annual report to the director providing the following information:

a. The total number of hotel licenses granted or renewed during the year.  
 b. The number of hotel licenses granted or renewed during the year broken down into the following categories:

- (1) Hotels containing fifteen guest rooms or less.
  - (2) Hotels containing more than fifteen but less than thirty-one guest rooms.
  - (3) Hotels containing more than thirty but less than seventy-six guest rooms.
  - (4) Hotels containing more than seventy-five but less than one hundred fifty guest rooms.
  - (5) Hotels containing one hundred fifty or more guest rooms.
- c. The amount of money collected in license fees during the year.  
 d. Other information the director requests.

4. The director shall monitor local boards of health to determine if they are enforcing the Iowa hotel sanitation code within their respective jurisdictions. If the director determines that the Iowa hotel sanitation code is enforced by a local board of health, such enforcement shall be accepted in lieu of enforcement by the department in that jurisdiction. If the director determines that the Iowa hotel sanitation code is not enforced by a local board of health, the director may rescind the agreement after reasonable notice and an opportunity for a hearing. If the agreement is rescinded, the director shall assume responsibility for enforcement in the jurisdiction involved.

[C79, 81, §170B.3]

83 Acts, ch 101, §30; 86 Acts, ch 1245, §542, 543; 90 Acts, ch 1204, §66

C91, §137C.6

98 Acts, ch 1162, §3, 30; 2007 Acts, ch 215, §207

Referred to in §137C.2, 137E.3

**137C.7 License required.**

No person shall open or operate a hotel until a license has been obtained from the regulatory authority and until the hotel has been inspected by the regulatory authority. Each license shall expire one year from date of issue. A license is renewable. All licenses issued under the Iowa hotel sanitation code that are not renewed by the licensee on or before the expiration date shall be subject to a penalty of ten percent of the license fee if the license is renewed at a later date. A license is not transferable.

[S13, §2527-1; C24, 27, 31, 35, 39, §2809; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.2; C79, 81, §170B.4]

90 Acts, ch 1204, §66

C91, §137C.7

2002 Acts, ch 1119, §132

**137C.8 Application for license.**

Every application for a license under the Iowa hotel sanitation code shall be made upon a blank furnished by the regulatory authority and shall contain the items required by the department as to ownership, management, location, buildings, equipment, rates, and other data concerning the hotel for which a license is desired. An application for a license to operate an existing hotel shall be made at least thirty days before the expiration of the existing license.

[C79, 81, §170B.5]

90 Acts, ch 1204, §66

C91, §137C.8

**137C.9 License fees.**

1. Either the department or the municipal corporation shall collect the following annual license fees:

a. For a hotel containing fifteen guest rooms or less, twenty-seven dollars.

b. For a hotel containing more than fifteen but less than thirty-one guest rooms, forty dollars and fifty cents.

c. For a hotel containing more than thirty but less than seventy-six guest rooms, fifty-four dollars.

d. For a hotel containing more than seventy-five but less than one hundred fifty guest rooms, fifty-seven dollars and fifty cents.

e. For a hotel containing one hundred fifty or more guest rooms, one hundred one dollars and twenty-five cents.

2. Fees collected by the department shall be deposited in the general fund of the state. Fees collected by a municipal corporation shall be retained by it and for its use.

[S13, §2527-l; C24, 27, 31, 35, 39, §2812; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.5; C79, 81, §170B.6]

90 Acts, ch 1204, §66

C91, §137C.9

2007 Acts, ch 215, §208

Referred to in §137E.3A

**137C.10 Suspension or revocation of licenses.**

A regulatory authority may suspend or revoke a license issued to a person under the Iowa hotel sanitation code if any of the following occurs:

1. The person's hotel does not conform to a provision of the Iowa hotel sanitation code or a rule adopted pursuant to this chapter.

2. The person violates a provision of the Iowa hotel sanitation code or a rule adopted pursuant to this chapter.

3. The person conducts an activity constituting a criminal offense in the hotel and is convicted of a serious misdemeanor or a more serious offense as a result.

[C79, 81, §170B.7]

90 Acts, ch 1204, §36, 66

C91, §137C.10

91 Acts, ch 107, §9

**137C.11 Biennial inspections.**

The regulatory authority shall inspect each hotel in the state at least once biennially. The inspector may enter the hotel at any reasonable hour to make the inspection. The management shall afford free access to every part of the premises and render all aid and assistance necessary to enable the inspector to make a thorough and complete inspection.

[S13, §2514-q, 2527-m, 2528-d5; C24, 27, 31, 35, 39, §2851; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.46; C79, 81, §170B.14]

90 Acts, ch 1204, §66

C91, §137C.11

91 Acts, ch 268, §430

**137C.12 Inspection upon complaint.**

Upon receipt of a verified complaint signed by a guest of a hotel and stating facts indicating the place is in an insanitary condition, the regulatory authority shall conduct an inspection.

[SS15, §2514-s; C24, 27, 31, 35, 39, §2852; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.47; C79, 81, §170B.15]

90 Acts, ch 1204, §39, 66

C91, §137C.12

**137C.13 through 137C.15** Reserved.

## HEALTH AND SAFETY REQUIREMENTS

**137C.16 Plumbing.**

A hotel shall have an adequately designed plumbing system conforming to at least the minimum requirements of the state plumbing code. The plumbing system shall have a connection to a municipal water and sewerage system or to a benefited water district or sanitary sewerage district whenever such facilities become available.

A hotel beyond the reach of a central water or sewerage system shall be served by on-site facilities which meet the technical requirements of the local board of health and the department of natural resources.

[S13, §2514-m, 2527-a; C24, 27, 31, 35, 39, §2814, 2815; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.9, 170.10; C79, 81, §170B.9; 82 Acts, ch 1199, §92, 96]

90 Acts, ch 1204, §38, 66

C91, §137C.16

**137C.17 Toilet and lavatory facilities.**

A hotel shall provide toilet and lavatory facilities in accordance with rules adopted pursuant to this chapter.

[S13, §2527-e; C24, 27, 31, 35, 39, §2821, 2822; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.16, 170.17; C79, 81, §170B.8]

90 Acts, ch 1204, §37, 66

C91, §137C.17

**137C.18 Fire safety.**

Violation of a fire safety rule adopted pursuant to section 100.35 and applicable to hotels, occurring on the premises of a hotel, is a violation of this chapter.

[S13, §2514-j, -k, -l; SS15, §2514-i, -n, -o; C24, 27, 31, 35, 39, §2843 – 2850; C46, 50, 54, 58, §170.38 – 170.45; C62, 66, 71, 73, 75, 77, §170.38; C79, 81, §170B.13; 82 Acts, ch 1157, §6]

90 Acts, ch 1204, §66

C91, §137C.18

**137C.19** Repealed by 2000 Acts, ch 1066, § 52.

**137C.20 through 137C.22** Reserved.

## RATES

**137C.23 Posting room rates.**

A complete list of rooms by number together with the number of the floor and the rate per day per person for each room shall be kept continuously and conspicuously posted on the wall near the office in the lobby of a hotel in such a way as to be accessible to the public without request to the management. The rate per day per person for each room shall also be

posted in the same manner in each room. No amount greater than the one posted shall be charged.

[C24, 27, 31, 35, 39, §2841; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.36; C79, 81, §170B.11] 90 Acts, ch 1204, §66

C91, §137C.23

Referred to in §137C.24

#### **137C.24 Rate increases.**

The rates posted under section 137C.23 shall not be increased until sixty days' notice of the proposed increase has been given to the regulatory authority.

[C24, 27, 31, 35, 39, §2842; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.37; C79, 81, §170B.12] 90 Acts, ch 1204, §66

C91, §137C.24

## RIGHTS AND OBLIGATIONS

#### **137C.25 Right of hotel operator to deny services.**

1. A person operating a hotel has the right to refuse or deny the use of a room, accommodations, facilities, or other privileges of the hotel to any of the following:

a. An individual unwilling or unable to pay for the room, accommodations, facilities, or other privileges of the hotel.

b. An individual who is visibly publicly intoxicated or under the influence of alcohol or some other illegal drug, or who is disorderly so as to create a public nuisance.

c. An individual the hotel operator reasonably believes is seeking to use a room, accommodations, facilities, or other privileges of the hotel for an unlawful purpose.

d. An individual the hotel operator reasonably believes is bringing in anything which may create an unreasonable danger or risk to other persons, including but not limited to firearms or explosives.

e. An individual whose use of the room, accommodations, facilities, or other privileges of the hotel would result in a violation of the maximum capacity of such hotel.

2. A hotel operator who reasonably refuses or denies the use of a room, accommodations, facilities, or other privileges of the hotel pursuant to this section is not subject to any civil or criminal action or any fine or other penalty, unless the refusal or denial is a violation of state or federal law.

94 Acts, ch 1032, §1

Referred to in §137C.25D

#### **137C.25A Right to require financial guarantee.**

The hotel operator has the right to require a person seeking the use of a room, accommodations, facilities, or other privileges of the hotel to demonstrate the ability to pay for such use by cash, credit card, or approved check. The hotel operator may require the parent or guardian of a minor to do all of the following:

1. Accept in writing the liability for the cost of the room, accommodations, facilities, or other privileges of the hotel used by the minor, and for the cost of any damages to the room, furnishings in the room, or other facilities of the hotel caused by the minor while the minor is using the room, accommodations, facilities, or other privileges of the hotel.

2. Provide the hotel operator with one of the following:

a. The authority to charge any amount due for the cost of the room, accommodations, facilities, or other privileges of the hotel used by the minor, and for the cost of any damages to the room, furnishings in the room, or other facilities of the hotel caused by the minor while the minor is using the room, accommodations, facilities, or other privileges of the hotel to a credit card as defined in section 537.1301, subsection 17.

b. An advance cash payment sufficient to cover the cost of the room, accommodations, facilities, or other privileges of the hotel used by the minor, and a reasonable amount as a deposit toward the cost of any damages to the room, furnishings in the room, or other

facilities of the hotel caused by the minor while the minor is using the room, accommodations, facilities, or other privileges of the hotel. A cash deposit for any damages required by the hotel operator shall be refunded to the extent not used to cover the cost of any such damages as determined by the hotel operator following an inspection of the room, accommodations, or facilities of the hotel used by the minor at the end of the minor's stay.

94 Acts, ch 1032, §2  
Referred to in §137C.25D

#### **137C.25B Restitution.**

In addition to any other applicable penalties, a court may order a person to pay restitution for any damages caused by such person which are suffered by the owner or operator of the hotel. Damages for which restitution may be ordered, in addition to physical damages, may include the loss of revenue resulting from the hotel being unable to rent or lease the room, accommodation, or facility during any time of repair, and restitution to any other individual who is injured or whose property is damaged as a result of the violation. The parent or guardian of a minor shall be liable to the owner or operator for the acts of the minor which result in damage to the room, accommodation, or facility, and for restitution to any other individual who is injured or whose property is damaged as a result of such acts.

94 Acts, ch 1032, §3  
Referred to in §137C.25D

#### **137C.25C Right to eject.**

An owner or operator of a hotel may eject a person from the hotel for any of the following reasons:

1. Nonpayment of charges incurred by the individual renting or leasing a room, accommodations, or facilities of the hotel when the charges are due and owing.
2. The individual renting or leasing a room, accommodations, or facilities of the hotel is visibly intoxicated, or is disorderly so as to create a public nuisance.
3. The owner or operator reasonably believes that the individual is using the premises for an unlawful purpose including, but not limited to, the unlawful use or possession of controlled substances or the use of the premises for the consumption of alcohol by an individual in violation of section 123.47.
4. The owner or operator reasonably believes that the individual has brought anything into the hotel which may create an unreasonable danger or risk to other persons, including but not limited to firearms or explosives.
5. The individual is in violation of any federal, state, or local laws or regulations relating to the hotel.
6. The individual is in violation of any rule of the hotel which is posted as provided in section 137C.25D.

94 Acts, ch 1032, §4; 97 Acts, ch 126, §8  
Referred to in §137C.25D

#### **137C.25D Posting rules by owner or operator.**

An owner or operator of a hotel shall post a copy of sections 137C.25 through 137C.25C, in addition to any rules established by the owner or operator of the hotel, in a conspicuous place at or near the guest registration desk and in each room of the hotel.

94 Acts, ch 1032, §5  
Referred to in §137C.25C

#### **137C.25E Documentation and registration requirements.**

A hotel shall keep and maintain for a period of three years, a guest register which shall show the name, residence, date of arrival, and date of departure of each individual renting or leasing a room, accommodations, or facilities of the hotel.

Each individual renting or leasing a room, accommodations, or facilities of the hotel shall register, and may be required by the owner or operator of the hotel to show proof of identity by producing a valid driver's license, or other identification satisfactory to the owner or operator. The identification shall have a photograph of the individual and include the name

and residence of the individual. If the individual is a minor, the owner or operator may also require a parent or guardian of the minor to register.

The guest register may be kept and maintained by recording, copying, or reproducing the register by any photographic, photostatic, microfilm, microcard, miniature photographic, electronic imaging, electronic data processing, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original.

94 Acts, ch 1032, §6

**137C.26 and 137C.27** Reserved.

## ENFORCEMENT

### **137C.28 Penalty.**

A person who violates a provision of the Iowa hotel sanitation code shall be guilty of a simple misdemeanor. Each day upon which a violation occurs constitutes a separate violation.

[C79, 81, §170B.16]

90 Acts, ch 1204, §66

C91, §137C.28

Referred to in §137C.35

### **137C.29 Injunction.**

A person conducting a hotel in violation of a provision of the Iowa hotel sanitation code may be restrained by injunction from operating that hotel. If an imminent health hazard exists, the hotel, or as much of the hotel as is necessary, must cease operation. Operation shall not be resumed until authorized by the regulatory authority.

[S13, §2514-x; C24, 27, 31, 35, 39, §2855; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §170.50; C79, 81, §170B.17]

90 Acts, ch 1204, §66

C91, §137C.29

### **137C.30 Duty of county attorney.**

The county attorney in each county shall assist in the enforcement of the Iowa hotel sanitation code.

[C79, 81, §170B.18]

90 Acts, ch 1204, §66

C91, §137C.30

Referred to in §331.756(32)

### **137C.31 Conflicts with state building code.**

Provisions of the Iowa hotel sanitation code in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

[C79, 81, §170B.19]

90 Acts, ch 1204, §66

C91, §137C.31

2004 Acts, ch 1086, §38

**137C.32 through 137C.34** Reserved.

EXEMPTION — APPLICABILITY

**137C.35 Bed and breakfast homes and inns.**

This chapter does not apply to bed and breakfast homes as defined in section 137F.1. However, a bed and breakfast home shall have a smoke detector in proper working order in each sleeping room and a fire extinguisher in proper working order on each floor. A bed and breakfast home which does not receive its drinking water from a public water supply shall have its drinking water tested at least annually by the state hygienic laboratory or the local board of health. A violation of this section is punishable as provided in section 137C.28.

A bed and breakfast inn is subject to regulation, licensing, and inspection under this chapter, but separate toilet and lavatory facilities shall not be required for each guest room. Additionally, a bed and breakfast inn is exempt from fire safety rules adopted pursuant to section 100.35 and applicable to hotels, but is subject to fire safety rules which the state fire marshal shall specifically adopt for bed and breakfast inns.

- 86 Acts, ch 1041, §3
- C87, §170B.20
- 87 Acts, ch 202, §3
- CS87, §170B.21
- 88 Acts, ch 1060, §1; 90 Acts, ch 1204, §66
- C91, §137C.35
- 98 Acts, ch 1162, §4, 30; 99 Acts, ch 32, §1

CHAPTER 137D

HOME FOOD ESTABLISHMENTS

Referred to in §10A.104, 137F.1, 137F.3A

137D.1	Definitions.	137D.6	Conflicts with state building code.
137D.2	Licenses and inspections.	137D.7	Reserved.
137D.3	Penalty.	137D.8	Suspension or revocation of licenses.
137D.4	Injunction.		
137D.5	Duty of county attorney.	137D.9	Repealed by 99 Acts, ch 208, §41.

**137D.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “Food” means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or sale in whole or in part for human consumption.
2. “Department” means the department of inspections and appeals.
3. “Home food establishment” means a business on the premises of a residence in which prepared food is created for sale or resale, for consumption off the premises, if the business has gross annual sales of prepared food of less than twenty thousand dollars. However, a home food establishment does not include a residence in which food is prepared to be used or sold by churches, fraternal societies, charitable organizations, or civic organizations.
4. “Prepared food” means soft pies, bakery products with a custard or cream filling, or any other potentially hazardous baked goods. “Prepared food” does not mean nonhazardous baked goods, including but not limited to breads, fruit pies, cakes, or other nonhazardous pastries.

- 88 Acts, ch 1220, §7
- C89, §170C.1
- C91, §137D.1

**137D.2 Licenses and inspections.**

1. A person shall not open or operate a home food establishment until a license has been

obtained from the department of inspections and appeals. The department shall collect a fee of thirty-three dollars and seventy-five cents for a license. After collection, the fees shall be deposited in the general fund of the state. A license shall expire one year from date of issue. A license is renewable.

2. A person shall not sell or distribute from a home food establishment if the home food establishment is unlicensed, the license of the home food establishment is suspended, or the food fails to meet standards adopted for such food by the department.

3. An application for a license under this chapter shall be made upon a form furnished by the department and shall contain the items required by it according to rules adopted by the department.

4. The department shall regulate, license, and inspect home food establishments according to standards adopted by rule.

5. The department shall provide for the periodic inspection of a home food establishment. The inspector may enter the home food establishment at any reasonable hour to make the inspection. The department shall inspect only those areas related to preparing food for sale.

6. The department shall regulate and inspect food prepared at a home food establishment according to standards adopted by rule. The inspection may occur at any place where the prepared food is created, transported, or stored for sale or resale.

88 Acts, ch 1220, §8

C89, §170C.2

C91, §137D.2

2007 Acts, ch 215, §209

### **137D.3 Penalty.**

A person who violates a provision of this chapter, including a standard adopted by departmental rule, relating to home food establishments or prepared foods created in a home food establishment, is guilty of a simple misdemeanor. Each day that the violation continues constitutes a separate offense.

88 Acts, ch 1220, §9

C89, §170C.3

C91, §137D.3

### **137D.4 Injunction.**

A person operating a home food establishment or selling prepared foods created at a home food establishment in violation of a provision of this chapter may be restrained by injunction from further operating that home food establishment. If an imminent health hazard exists, the home food establishment must cease operation. Operation shall not be resumed until authorized by the department.

88 Acts, ch 1220, §10

C89, §170C.4

C91, §137D.4

### **137D.5 Duty of county attorney.**

The county attorney in each county shall assist in the enforcement of this chapter.

88 Acts, ch 1220, §11

C89, §170C.5

C91, §137D.5

### **137D.6 Conflicts with state building code.**

Provisions of this chapter, including standards for home food establishments adopted by the department, in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

88 Acts, ch 1220, §12

C89, §170C.6

C91, §137D.6  
 2004 Acts, ch 1086, §39

**137D.7** Reserved.

**137D.8 Suspension or revocation of licenses.**

The department may suspend or revoke a license issued to a person under this chapter if any of the following occurs:

1. The person’s home food establishment does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.
2. The person violates a provision of this chapter or a rule adopted pursuant to this chapter.
3. The person conducts an activity constituting a criminal offense in the home food establishment and is convicted of a serious misdemeanor or a more serious offense as a result.

91 Acts, ch 107, §10

**137D.9** Repealed by 99 Acts, ch 208, § 41.

**CHAPTER 137E**

**FOOD AND BEVERAGE VENDING MACHINES**

Repealed effective January 1, 1999; validity of licenses issued prior to that date; 98 Acts, ch 1162, §29, 30; see chapter 137F

**CHAPTER 137F**

**FOOD ESTABLISHMENTS AND FOOD PROCESSING PLANTS**

Referred to in §10A.104, 172A.6, 331.382

137F.1	Definitions.	137F.9	Operation without inspection prohibited.
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137F.3	Authority to enforce.	137F.11	Inspection upon complaint.
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137F.6	License fees.	137F.14	Toilets and lavatories.
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		137F.17	Penalty.
		137F.18	Injunction.
		137F.19	Duty of county or city attorney.

**137F.1 Definitions.**

For the purpose of this chapter:

1. “*Bed and breakfast home*” means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel, or motel, does not require reservations, and serves food only to overnight guests.
2. “*Commissary*” means a food establishment used for preparing, fabricating,

packaging, and storage of food or food products for distribution and sale through the food establishment's own food establishment outlets.

3. "Department" means the department of inspections and appeals.

4. "Director" means the director of the department of inspections and appeals.

5. "Farmers market" means a marketplace which seasonally operates principally as a common market for Iowa-produced farm products on a retail basis for off-the-premises consumption.

6. "Food" means a raw, cooked, or processed edible substance, ice, a beverage, an ingredient used or intended for use or sale in whole or in part for human consumption, or chewing gum.

7. "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption and includes a food service operation in a salvage or distressed food operation, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school, or the Iowa juvenile home. "Food establishment" does not include the following:

a. A food processing plant.

b. An establishment that offers only prepackaged foods that are nonpotentially hazardous.

c. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.

d. Premises which are a home food establishment pursuant to chapter 137D.

e. Premises where a person operates a farmers market, if potentially hazardous food is not sold or distributed from the premises.

f. Premises of a residence in which food that is nonpotentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food.

g. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.

h. A private home that receives catered or home-delivered food.

i. Child care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.

j. Supply vehicles, vending machine locations, or boardinghouses for permanent guests.

k. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to section 189A.3.

l. Premises covered by a current class "A" beer permit as provided in chapter 123.

m. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.

8. "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include any of the following:

a. A premises covered by a class "A" beer permit as provided in chapter 123.

b. A premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.

c. A premises covered by a class "A" wine permit or a class "B" wine permit as provided in chapter 123.

9. "Mobile food unit" means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

10. "Municipal corporation" means a political subdivision of this state.

11. "Perishable food" means potentially hazardous food.

12. "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of clostridium botulinum. "Potentially hazardous food" includes an animal food that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures. "Potentially hazardous food" does not include the following:

- a. An air-cooled hard-boiled egg with shell intact.
- b. A food with a water activity value of 0.85 or less.
- c. A food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at twenty-four degrees Centigrade or seventy-five degrees Fahrenheit.
- d. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

13. “*Pushcart*” means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

14. “*Regulatory authority*” means the department or a municipal corporation that has entered into an agreement with the director pursuant to section 137F.3 for authority to enforce this chapter in its jurisdiction.

15. “*Temporary food establishment*” means a food establishment that operates for a period of no more than fourteen consecutive days in conjunction with a single event or celebration.

16. “*Vending machine*” means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

17. “*Vending machine location*” means the physical site where a vending machine is installed and operated, including the storage and servicing areas on the premises that are used in conjunction with the vending machine.

98 Acts, ch 1162, §6, 30; 99 Acts, ch 192, §33; 99 Acts, ch 208, §28; 2001 Acts, ch 81, §1, 2; 2002 Acts, ch 1149, §1, 3; 2003 Acts, ch 44, §37; 2006 Acts, ch 1032, §4; 2007 Acts, ch 215, §210, 211; 2012 Acts, ch 1064, §1, 3

Referred to in §100.35, 137C.35, 189A.3, 190C.1

### **137F.2 Adoption by rule.**

The department shall, in accordance with chapter 17A, adopt rules setting minimum standards for entities covered under this chapter to protect consumers from foodborne illness. In so doing, the department may adopt by reference, with or without amendment, the United States food and drug administration food code, which shall be specified by title and edition, date of publication, or similar information. The rules and standards shall be formulated in consultation with municipal corporations under agreement with the department, affected state agencies, and industry, professional, and consumer groups.

98 Acts, ch 1162, §7, 30; 99 Acts, ch 208, §29 – 32; 2001 Acts, ch 81, §3; 2007 Acts, ch 215, §212

Referred to in §137C.6, 137F.3, 331.756(32)

### **137F.3 Authority to enforce.**

1. The director shall regulate, license, and inspect food establishments and food processing plants and enforce this chapter pursuant to rules adopted by the department in accordance with chapter 17A. Municipal corporations shall not regulate, license, inspect, or collect license fees from food establishments and food processing plants, except as provided in this section.

2. A municipal corporation may enter into an agreement with the director to provide that the municipal corporation shall license, inspect, and otherwise enforce this chapter within its jurisdiction. The director may enter into the agreement if the director finds that the municipal corporation has adequate resources to perform the required functions. A municipal corporation may only enter into an agreement to enforce the rules setting minimum standards to protect consumers from foodborne illness adopted pursuant to section 137F.2 if it also agrees to enforce the Iowa hotel sanitation code pursuant to section 137C.6. However, the department shall license and inspect all food processing plants which manufacture, package, or label food products. A municipal corporation may license and inspect, as authorized by this section, food processing plants whose operations are limited to the storage of food products.

3. If the director enters into an agreement with a municipal corporation as provided by this section, the director shall provide that the inspection practices of a municipal corporation are spot-checked on a regular basis.

4. A municipal corporation that is responsible for enforcing this chapter within its jurisdiction pursuant to an agreement shall make an annual report to the director providing the following information:

a. The total number of licenses granted or renewed by the municipal corporation under this chapter during the year.

b. The number of licenses granted or renewed by the municipal corporation under this chapter during the year in each of the following categories:

- (1) Food establishments.
- (2) Food processing plants.
- (3) Mobile food units and pushcarts.
- (4) Temporary food establishments.
- (5) Vending machines.

c. The amount of money collected in license fees during the year.

d. The amount expended to perform the functions required under the agreement, submitted on a form prescribed by the department.

e. Other information the director requests.

5. The director shall monitor municipal corporations which have entered into an agreement pursuant to this section to determine if they are enforcing this chapter within their respective jurisdictions. If the director determines that this chapter is not enforced by a municipal corporation, the director may rescind the agreement after reasonable notice and an opportunity for a hearing. If the agreement is rescinded, the director shall assume responsibility for enforcement in the jurisdiction involved.

6. The inspection staff of a municipal corporation that has entered into an agreement with the director to enforce this chapter shall be required by the department to apply the current rules setting minimum standards to protect consumers from foodborne illness adopted pursuant to section 137F.2 to ensure consistency in application of the rules. A municipal corporation's failure to comply may result in the department rescinding the agreement with the municipal corporation, after reasonable notice and an opportunity for a hearing.

98 Acts, ch 1162, §8, 30; 2007 Acts, ch 215, §213

Referred to in §137F.1

### **137F.3A Municipal corporation inspections — contingent appropriation.**

1. a. The department of inspections and appeals may employ additional full-time equivalent positions to enforce the provisions of this chapter and chapters 137C and 137D, with the approval of the department of management, if either of the following apply:

(1) A municipal corporation operating pursuant to a chapter 28E agreement with the department of inspections and appeals to enforce the chapters either fails to renew the agreement effective after April 1, 2007, or discontinues, after April 1, 2007, enforcement activities in one or more jurisdictions during the agreement time frame.

(2) The department of inspections and appeals cancels an agreement after April 1, 2007, due to noncompliance with the terms of the agreement.

b. Before approval may be given, the director of the department of management must have determined that the expenses exceed the funds budgeted by the general assembly for food inspections to the department of inspections and appeals. The department of inspections and appeals may hire no more than one full-time equivalent position for each six hundred inspections required pursuant to this chapter and chapters 137C and 137D.

2. Notwithstanding chapter 137D, and sections 137C.9 and 137F.6, if the conditions described in this section are met, fees imposed pursuant to that chapter and those sections shall be retained by and are appropriated to the department of inspections and appeals each fiscal year to provide for salaries, support, maintenance, and miscellaneous purposes associated with the additional inspections. The appropriation made in this subsection is not

applicable in a fiscal year for which the general assembly enacts an appropriation made for the purposes described in this subsection.

2006 Acts, ch 1185, §46, 53; 2007 Acts, ch 215, §214, 221; 2009 Acts, ch 133, §39

For fiscal years beginning July 1, 2011, through July 1, 2014, department of inspections and appeals to retain license fees generated as a result of actions under this section occurring during the fiscal period beginning July 1, 2009, and ending June 30, 2015, for the purpose of enforcing chapters 137C, 137D, and 137F; 2011 Acts, ch 127, §15, 73, 89; 2012 Acts, ch 1131, §17; 2013 Acts, ch 135, §15, 43

Section not amended; footnote revised

#### **137F.4 License required.**

A person shall not operate a food establishment or food processing plant to provide goods or services to the general public, or open a food establishment to the general public, until the appropriate license has been obtained from the regulatory authority. Sale of products at wholesale to outlets not owned by a commissary owner requires a food processing plant license. A license shall expire one year from the date of issue. A license is renewable. All licenses issued under this chapter that are not renewed by the licensee on or before the expiration date shall be subject to a penalty of ten percent per month of the license fee if the license is renewed at a later date.

98 Acts, ch 1162, §9, 30

#### **137F.5 Application for license.**

An application form prescribed by the department for a license under this chapter shall be obtained from the department or from a municipal corporation which is a regulatory authority. A completed application shall be submitted to the appropriate regulatory authority.

The dominant form of business shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and of a food processing plant.

The regulatory authority where the unit is domiciled shall issue a license for a mobile food unit.

An application for renewal of a license shall be made at least thirty days before the expiration of the existing license.

98 Acts, ch 1162, §10, 30

#### **137F.6 License fees.**

1. The regulatory authority shall collect the following annual license fees:
  - a. For a mobile food unit or pushcart, twenty-seven dollars.
  - b. For a temporary food establishment per fixed location, thirty-three dollars and fifty cents.
  - c. For a vending machine, twenty dollars for the first machine and five dollars for each additional machine.
  - d. For a food establishment which prepares or serves food for individual portion service intended for consumption on-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:
    - (1) Annual gross sales of under fifty thousand dollars, sixty-seven dollars and fifty cents.
    - (2) Annual gross sales of at least fifty thousand dollars but less than one hundred thousand dollars, one hundred fourteen dollars and fifty cents.
    - (3) Annual gross sales of at least one hundred thousand dollars but less than two hundred fifty thousand dollars, two hundred thirty-six dollars and twenty-five cents.
    - (4) Annual gross sales of two hundred fifty thousand dollars but less than five hundred thousand dollars, two hundred seventy-five dollars.
    - (5) Annual gross sales of five hundred thousand dollars or more, three hundred three dollars and seventy-five cents.
  - e. For a food establishment which sells food or food products to consumer customers intended for preparation or consumption off-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:
    - (1) Annual gross sales of under ten thousand dollars, forty dollars and fifty cents.
    - (2) Annual gross sales of at least ten thousand dollars but less than two hundred fifty thousand dollars, one hundred one dollars and twenty-five cents.

(3) Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred thousand dollars, one hundred fifty-five dollars and twenty-five cents.

(4) Annual gross sales of at least five hundred thousand dollars but less than seven hundred fifty thousand dollars, two hundred two dollars and fifty cents.

(5) Annual gross sales of seven hundred fifty thousand dollars or more, three hundred three dollars and seventy-five cents.

f. For a food processing plant, the annual license fee shall correspond to the annual gross food and beverage sales of the food processing plant, as follows:

(1) Annual gross sales of under fifty thousand dollars, sixty-seven dollars and fifty cents.

(2) Annual gross sales of at least fifty thousand dollars but less than two hundred fifty thousand dollars, one hundred thirty-five dollars.

(3) Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred thousand dollars, two hundred two dollars and fifty cents.

(4) Annual gross sales of five hundred thousand dollars or more, three hundred thirty-seven dollars and fifty cents.

g. For a farmers market where potentially hazardous food is sold or distributed, one annual license fee of one hundred dollars for each vendor on a countywide basis.

h. For a food establishment covered by paragraphs “d” and “e”, the license fees assessed shall be an amount not to exceed seventy-five percent of the total fees applicable under both paragraphs.

2. If an establishment licensed under subsection 1, paragraph “d” or “e”, has had a person in charge for the entire previous twelve-month period who holds an active certified food protection manager certificate from a program approved by the conference on food protection and the establishment has not been issued a critical violation during the previous twelve-month period, the establishment’s license fee for the current renewal period shall be reduced by fifty dollars.

3. Fees collected by the department shall be deposited in the general fund of the state. Fees collected by a municipal corporation shall be retained by the municipal corporation for regulation of food establishments and food processing plants licensed under this chapter.

4. Each vending machine licensed under this chapter shall bear a readily visible identification tag or decal provided by the licensee, containing the licensee’s business address and phone number, and a company license number assigned by the regulatory authority.

98 Acts, ch 1162, §11, 30; 2002 Acts, ch 1149, §2, 3; 2003 Acts, ch 108, §128, 132; 2007 Acts, ch 215, §215; 2009 Acts, ch 133, §40; 2012 Acts, ch 1064, §2, 3

Referred to in §137E.3A

### **137E.7 Suspension or revocation of licenses.**

1. The regulatory authority may suspend or revoke a license issued to a person under this chapter pursuant to rules adopted by the department if any of the following occurs:

a. The person’s food establishment or food processing plant does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.

b. The person conducts an activity constituting a criminal offense in the food establishment or food processing plant and is convicted of a serious misdemeanor or a more serious offense as a result.

2. A licensee may appeal a suspension or revocation in accordance with rules adopted by the department.

98 Acts, ch 1162, §12, 30; 2009 Acts, ch 41, §263

### **137E.8 Farmers markets.**

A vendor who offers a product for sale at a farmers market shall have the sole responsibility to obtain and maintain any license required to sell or distribute the product.

98 Acts, ch 1162, §13, 30

**137F.9 Operation without inspection prohibited.**

A person shall not open or operate a food establishment or food processing plant until an inspection has been made and a license has been issued by the regulatory authority. Inspections shall be conducted according to standards adopted by rule of the department pursuant to chapter 17A.

A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

98 Acts, ch 1162, §14, 30

**137F.10 Regular inspections.**

The appropriate regulatory authority shall provide for the inspection of each food establishment and food processing plant in this state in accordance with this chapter and with rules adopted pursuant to this chapter in accordance with chapter 17A. A regulatory authority may enter a food establishment or food processing plant at any reasonable hour to conduct an inspection. The manager or person in charge of the food establishment or food processing plant shall afford free access to every part of the premises and render all aid and assistance necessary to enable the regulatory authority to make a thorough and complete inspection. As part of the inspection process, the regulatory authority shall provide an explanation of the violation or violations cited and provide guidance as to actions for correction and elimination of the violation or violations.

98 Acts, ch 1162, §15, 30; 2007 Acts, ch 215, §216

**137F.11 Inspection upon complaint.**

Upon receipt of a complaint by a customer of a food establishment or food processing plant stating facts indicating the premises are in an unsanitary condition, the regulatory authority may conduct an inspection.

98 Acts, ch 1162, §16, 30

**137F.11A Posting of inspection reports.**

An establishment inspected under this chapter shall post the most recent routine inspection report, along with any current complaint or reinspection reports, in a location at the establishment that is readily visible to the public.

2007 Acts, ch 215, §217

**137F.12 Plumbing.**

A food establishment or food processing plant shall have an adequately designed plumbing system conforming to at least the minimum requirements of the state plumbing code, or local plumbing code, whichever is more stringent. The plumbing system shall have a connection to a municipal water and sewer system or to a benefited water district or sanitary district if such facilities are available.

98 Acts, ch 1162, §17, 30

**137F.13 Water and waste treatment.**

If a food establishment or food processing plant is served by privately owned water or waste treatment facilities, those facilities shall meet the technical requirements of the local board of health and the department of natural resources.

98 Acts, ch 1162, §18, 30

**137F.14 Toilets and lavatories.**

A food establishment or food processing plant shall provide toilet and lavatory facilities in accordance with rules adopted by the department pursuant to this chapter in accordance with chapter 17A.

98 Acts, ch 1162, §19, 30

**137F.15 Fire safety.**

A violation of a fire safety rule adopted pursuant to section 100.35 and applicable to food establishments or food processing plants which occurs on the premises of a food establishment or food processing plant is a violation of this chapter.

98 Acts, ch 1162, §20, 30

**137F.16 Conflicts with state building code.**

Provisions of this chapter in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

98 Acts, ch 1162, §21, 30; 2004 Acts, ch 1086, §40

**137F.17 Penalty.**

A person who violates this chapter or rules adopted pursuant to this chapter shall be subject to a civil penalty of one hundred dollars for each violation.

98 Acts, ch 1162, §22, 30

**137F.18 Injunction.**

A person opening or operating a food establishment or food processing plant in violation of this chapter may be enjoined from further operation of the establishment or plant. If an imminent health hazard exists, the establishment or plant must cease operation. Operation shall not be resumed until authorized by the regulatory authority.

98 Acts, ch 1162, §23, 30

**137F.19 Duty of county or city attorney.**

The county attorney in each county or city attorney in each city shall assist in the enforcement of this chapter.

98 Acts, ch 1162, §24, 30

Referred to in §331.756(32)

## CHAPTER 138

### MIGRANT LABOR CAMPS

138.1	Definitions.	138.11	Access to camp for inspection.
138.2	Permit required.	138.12	Variations permitted.
138.3	Written application.	138.13	Conditions for permit.
138.4	Permit not assignable.	138.14	Communicable diseases reported.
138.5	Revocation or suspension of permit.	138.15	Notice of intent to construct or alter a camp.
138.6	Notice of intention.	138.16	Cleanliness and repair required.
138.7	Appeal to director.	138.17	Rental charges or wage deductions.
138.8	Place — evidence — record.		
138.9	Liberal rules to prevail.	138.18	Rules promulgated.
138.10	Judicial review.	138.19	Penalties.

**138.1 Definitions.**

When used in this chapter unless the context otherwise requires:

1. “*Camp operator*” means the person who has been granted a permit, in accordance with the provisions of this chapter, to operate a migrant labor camp, or portion thereof.
2. “*Chemical toilet*” means a nonwater carriage toilet facility where human waste is collected in a container charged with a chemical solution for the purpose of disinfecting and deodorizing such waste.
3. “*Communicable disease*” means any of those diseases regulated by state or local communicable disease laws, ordinances, or regulations.
4. “*Department*” means the Iowa department of public health.

5. “*Director*” means the director of public health or the director’s designee.

6. “*Garbage*” means all putrescible animal or vegetable wastes resulting from the handling, preparation, cooking, or consumption of food at a migrant labor camp.

7. “*Migrant*” means any individual who customarily and repeatedly travels from state to state for the purpose of obtaining seasonal employment in agriculture, including the spouse and children of such individuals, whether or not authorized by law to engage in such employment.

8. “*Migrant labor camp*” means one or more buildings, structures, shelters, tents, trailers, or vehicles or any other structure or a combination thereof together with the land appertaining thereto, established, operated, or maintained as living quarters for seven or more migrants or two or more shelters. A camp shall include such land or quarters separate from one another if the migrants housed therein work at any time for the same person and the total number of migrants in all such camps is seven or more. Such separate camps shall constitute a portion of a migrant labor camp.

9. “*Person*” means an individual, group of individuals, firm, association, partnership, or corporation.

10. “*Privy*” means a portable or fixed sanitary facility used for excretion in a shelter separate and apart from any building and without water-borne disposal.

11. “*Refuse*” means all putrescible and nonputrescible solid waste except human body wastes, including garbage, rubbish, and ashes.

12. “*Service building*” means any building provided for the common use, welfare, and comfort of persons occupying or using the migrant labor camp.

13. “*Shelter*” means any conventional or unconventional building of one or more rooms, or any tent, trailer, railroad car, or any other enclosure or structure used for sleeping or living purposes.

14. “*Toilet room*” means an enclosure containing one or more toilet facilities or water closet facilities.

15. “*Urinal*” means a sanitary fixture or structure installed for the purpose of urination.

16. “*Water closet*” means a sanitary fixture, within a toilet room, used for excretion and equipped with a bowl and device for flushing the bowl contents into a disposal system.

[C71, 73, 75, 77, 79, 81, §138.1]

### **138.2 Permit required.**

No person shall establish, maintain, or operate a migrant labor camp, or portion thereof, directly or indirectly, until the person has obtained a permit to operate such camp from the department and unless the permit is in full force and effect and is posted and remains posted in the camp, or portion thereof, to which it applies at all times during the maintenance and operation of such camp.

[C71, 73, 75, 77, 79, 81, §138.2]

### **138.3 Written application.**

Written application to operate a migrant labor camp, or portion thereof, shall be made to the department upon forms approved by the department at least sixty days prior to the first day of the intended operation of such camp. The application shall state the name and address of the person requesting a permit; and name and address of the owner of the camp, or portion thereof; approximate number of persons to be lodged in such camp; approximate period during which the migrant labor camp, or portion thereof, is to be operated; the location of such camp, or portion thereof; and any other information required by the department. A separate application shall be submitted for each camp, or portion thereof, and a separate permit shall be issued annually for each such camp, or portion thereof.

[C71, 73, 75, 77, 79, 81, §138.3]

### **138.4 Permit not assignable.**

If the department finds, after investigation, that the migrant labor camp, or portion thereof, conforms to the minimum standards required by this chapter, it shall issue a permit for operation of such camp, or portion thereof. A permit shall not be assignable or transferable.

It shall expire one year after the date of issuance, or upon a change of operator of the camp or upon revocation.

[C71, 73, 75, 77, 79, 81, §138.4]

**138.5 Revocation or suspension of permit.**

If the holder of any permit under the provisions of this chapter fails to maintain and operate a migrant labor camp in accordance with the provisions of this chapter and the rules of the department relating thereto, the director shall revoke or suspend the permit for the operation and maintenance of such camp.

[C71, 73, 75, 77, 79, 81, §138.5]

**138.6 Notice of intention.**

The director shall serve written notice upon the holder of the permit, by restricted certified mail, return receipt requested, specifying the manner in which the holder of the permit has failed to comply with the provisions of this chapter or any rules of the department and shall fix a reasonable time within which the objectionable condition or conditions must be removed or corrected. If the holder of the permit fails to remove or correct such objectionable condition or conditions within the time fixed by the director, the director shall revoke or suspend such permit. However, if the objectionable condition or conditions endanger the health, safety, or welfare of any inhabitants of a migrant labor camp, the director shall immediately suspend or revoke such permit.

[C71, 73, 75, 77, 79, 81, §138.6]

**138.7 Appeal to director.**

When any person applying for a permit to operate a migrant labor camp is denied a permit, or when a permit is suspended or revoked, such person may appeal such denial, suspension, or revocation to the director. The director, after reasonable notice to all interested parties, shall hold a hearing upon such denial, suspension, or revocation. At the hearing all parties involved shall be entitled to be present and represented by counsel and to present such evidence as they desire as to why a permit should, or should not, be issued, suspended, or revoked. The director shall render a decision within thirty days after the termination of the hearing, and a copy of the decision shall be sent by restricted certified mail, return receipt requested, to all parties given notice of the appeal and hearing. Notice of appeal shall be sent in writing to the department by restricted certified mail, return receipt requested, by the aggrieved party. In the event such appeal is taken from a notice of suspension or revocation, such appeal shall be made prior to the date set for such suspension or revocation.

[C71, 73, 75, 77, 79, 81, §138.7]

**138.8 Place — evidence — record.**

The hearing shall be conducted at the office of the department or at such other place convenient for the aggrieved party or for the attendance of witnesses and receipt of evidence. The director, when requested in writing by any party to the appeal, shall compel by subpoena the attendance and testimony of witnesses and the production of books, papers, and documents. All testimony and evidence shall be received under oath administered by the director. In the event any party fails to attend who has been properly served with a subpoena, application shall be made to the district court in the county where such hearing is to be held, to enforce the subpoena issued by the director. The director shall cause a record of the proceedings at the hearing to be kept and shall provide any interested party to the hearing a transcript of the evidence presented, upon payment of the cost thereof. The hearing may be continued from time to time at the discretion of the director.

[C71, 73, 75, 77, 79, 81, §138.8]

**138.9 Liberal rules to prevail.**

Technical errors in the proceeding or failure to observe the technical rules of evidence shall not constitute grounds for reversal of any decision unless it shall appear to the reviewing court

that such error or failure materially affects the rights of any party and results in substantial injustice to any interested party.

[C71, 73, 75, 77, 79, 81, §138.9]

#### **138.10 Judicial review.**

Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county wherein the license was to be issued or wherein such license is to be revoked or suspended, and such a petition for judicial review shall not operate to stay any order or final determination of the director unless the district court finds upon hearing after reasonable notice to all interested parties, that substantial damage would result to the appealing party unless such order or final determination was stayed and such a stay would not endanger the health, safety, or welfare of any inhabitants of a migrant labor camp.

[C71, 73, 75, 77, 79, 81, §138.10]

2003 Acts, ch 44, §114

#### **138.11 Access to camp for inspection.**

The director may enter and inspect migrant labor camps at any reasonable time and may question persons, and investigate facts, conditions, practices, or any other matters as are necessary or appropriate to determine compliance with the provisions of this chapter and any rules made pursuant to this chapter, or in the formulation of any additional rules. The director may, to the extent appropriate, utilize the services of any other state department or agency or any local agency for assistance in inspections and investigations.

[C71, 73, 75, 77, 79, 81, §138.11]

#### **138.12 Variations permitted.**

1. The director may grant written permission to individual camp operators to vary from the provisions of this chapter or the rules of the department when the extent of the variation is clearly specified and it is demonstrated to the director's satisfaction that:

a. Such variation is necessary to obtain a beneficial use of an existing facility.

b. The variation is necessary to prevent a substantial difficulty or unnecessary hardship.

c. Appropriate alternative measures have been taken to protect the health, safety, and welfare of any inhabitants of a migrant labor camp and assure that the purpose of the provisions for which variation is sought will be observed.

2. Written application for such variations shall be filed with the director and local board of health serving the area in which the migrant labor camp is situated. No such variation shall be effective until granted in writing by the director.

[C71, 73, 75, 77, 79, 81, §138.12]

2009 Acts, ch 41, §263

#### **138.13 Conditions for permit.**

To be eligible for a permit, a migrant labor camp, or portion thereof, shall meet each and all of the following requirements:

1. *Site.*

a. Sites for migrant labor camps shall be adequately drained. Such sites shall not be subject to periodic flooding, nor located within two hundred feet of swamps, pools, sinkholes, or other quiescent surface collections of water unless the water surfaces can be subjected to mosquito and pest control measures. Sites shall be located so that drainage from and through the camp will not endanger any domestic or public water supply. Sites shall be graded, ditched, and rendered free from depressions in which water may collect and become a nuisance.

b. Sites shall be adequate in size to prevent overcrowding of necessary structures and to minimize the hazards of fire. Housing shall not be subject to, or in proximity to, conditions that create or are likely to create offensive odors, flies, noise, traffic, or attract rats or other rodents, or any other similar conditions.

c. The grounds and open areas surrounding the shelters, buildings, or structures, shall be maintained in a clean and sanitary condition free from rubbish, debris, wastepaper, garbage, and other refuse.

d. All camps shall provide space for recreation, commensurate with size of the camp and type of occupancy.

e. Whenever a camp is permanently closed or closed for the season, all garbage, manure, and other refuse shall be collected and disposed of to prevent a nuisance. All abandoned privy pits shall be filled with earth and the grounds and buildings left in a clean and sanitary condition. If privy buildings remain, then such buildings shall be locked or otherwise secured to prevent entrance.

2. *Shelter.*

a. Shelters shall be structurally sound and shall provide protection to the occupants.

b. At least one-half of the floor area in each living unit shall have a minimum ceiling height of seven feet. No floor space shall be counted toward minimum requirements where the ceiling height is less than five feet.

c. Sleeping facilities shall be provided for each person. Such facilities shall consist of comfortable beds, cots, or bunks, provided with clean mattresses.

d. Any bedding provided by the camp operator shall be clean and sanitary.

e. Triple deck bunks shall not be allowed.

f. The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk shall be a minimum of twenty-seven inches. The distance from the top of the upper mattress to the ceiling shall be a minimum of thirty-six inches.

g. Beds used for double occupancy may be provided only in family accommodations.

h. Floors of buildings used as living quarters or shelters shall be constructed of wood, asphalt, concrete, or other comparable material. Wooden floors shall be of smooth and tight construction and shall be elevated not less than one foot above the ground level at all points to prevent dampness and to permit free circulation of air beneath. Floors shall be kept in good repair.

i. Nothing in this chapter shall prohibit banking with earth or other suitable material around the outside walls of shelters and other structures in areas subject to extremely low temperatures.

j. Living quarters of shelters shall be provided with windows and doors which shall be in total area not less than one-tenth of the floor area. At least one-half of each window shall be constructed so that it can be opened for purposes of ventilation.

k. Exterior openings shall be effectively screened with sixteen mesh material. Screen doors shall be equipped with self-closing devices.

l. In a room where people cook, live, and sleep, a minimum of sixty square feet per occupant shall be provided. Sanitary facilities shall be provided for storing and preparing food.

m. When a camp is operated during a season requiring artificial heating, living quarters with a minimum of one hundred square feet per occupant shall be provided and such living quarters or shelters shall, also, be provided with properly installed heating equipment of adequate capacity to maintain a room temperature of at least 70 degrees Fahrenheit. A stove or other source of heat shall be installed and vented in a manner to avoid both a fire hazard and a concentration of fumes or gas within such living quarters and shelters. In a room with wooden or combustible flooring, there shall be a concrete slab, metal sheet, or other fire-resistant material, on the floor under each stove, extending at least eighteen inches beyond the perimeter of the base of the stove. Any wall or ceiling not having a fire-resistant surface, within twenty-four inches of a stove or stovepipe, shall be protected by a metal sheet or other fire-resistant material. Heating appliances, other than electrical, shall be provided with a stovepipe or vent connected to the appliance and discharging to the outside air or chimney. The vent or chimney shall extend above the peak of the roof. Stovepipes shall be insulated with fire-resistant material where they pass through walls, ceilings, or floors.

3. *Water supply.*

a. An adequate and convenient water supply, approved by the department, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes.

b. Each water supply shall be inspected at the time of occupancy of the camp and as frequently thereafter as is necessary to insure its continued suitability.

c. Distribution lines shall be capable of supplying water at normal operating pressures to all fixtures for simultaneous operation. Water outlets shall be distributed throughout the camp in such a manner that no shelter or living quarter is more than one hundred feet from a yard hydrant if water is not piped to the shelters.

d. A cold water tap shall be available within one hundred feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities shall be provided for overflow and spillage.

e. Common drinking cups shall not be allowed or permitted.

f. Wells or springs used as sources of water supply shall have tight covers and be constructed and located to preclude pollution by seepage from cesspools, privies, sewers, sewage treatment works, stables or manure piles, or surface drainage. The water from such sources shall be obtained by free gravity flow or by an approved metal pump securely mounted on a concrete slab covering the well or spring. If the pump is adjacent to the well or spring, it shall be located and connected to prevent any pollution of such water supply.

4. *Toilet facilities.*

a. Approved toilet facilities adequate for the capacity of the camp shall be provided.

b. Each toilet facility shall be located so as to be accessible to the inhabitants of the camp without any individual passing through any sleeping room. Toilet rooms shall have a window not less than six square feet in area opening directly to the outside or shall otherwise be satisfactorily ventilated. All outside openings shall be screened with sixteen mesh material. No water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes.

c. A toilet room shall be located within two hundred feet of each sleeping room. No privy existing on May 23, 1969, shall be nearer than fifty feet from any sleeping room, dining room, lunch area, or kitchen. No privy constructed after May 23, 1969, shall be nearer than one hundred feet from any sleeping room, dining room, lunch area, or kitchen.

d. Separate facilities shall be provided for men and women and such facilities shall be clearly marked by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols, when men and women, not members of the same immediate family, are housed in the same camp.

e. Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one unit for each fifteen persons, with a minimum of two units for any shared facility.

f. Urinals, constructed of nonabsorbent materials, may be substituted for men's toilet seats on the basis of one urinal or twenty-four inches of trough-type urinal for one toilet seat up to a maximum of one-third of the required toilet seats.

g. Each toilet room or facility shall be lighted naturally, or artificially, by a safe type of lighting at all hours of the day and night.

h. An adequate supply of toilet paper shall be provided in each privy, water closet, or chemical toilet compartment.

i. Toilet seats, privies, and toilet rooms or facilities shall be kept in a sanitary condition and cleaned daily.

j. Each privy shall have a pit initially at least five feet deep.

k. Privy pits shall be constructed and maintained so that flies cannot gain access to the human waste.

l. A privy pit shall not be filled with human waste to a point nearer than one foot from the surface of the ground; the human waste in the pit shall then be covered with earth, ashes, lime, or other similar material.

m. Seat openings in privies shall be covered with tight-fitting, hinged lids.

5. *Sewage disposal facilities.*

a. In camps where public sewers are available, all sewer lines and floor drains from buildings and shelters shall be connected to the sewers.

b. All human waste, sewage, or liquid waste from camps not discharged into public sewers

shall be disposed of in accordance with the provisions of this chapter or the rules of the department.

6. *Laundry, handwashing, and bathing facilities.*

a. Laundry, handwashing, and bathing facilities shall be provided as follows:

(1) One handwash basin for each immediate family shelter or dwelling for every fifteen individuals or fraction thereof in shared facilities.

(2) One shower head for every fifteen or fraction thereof individuals. Separate facilities for men and women shall be provided in shared facilities.

(3) One laundry tray or tub for every twenty-five persons or fraction thereof.

(4) One slop sink in each building used for laundry, handwashing, or bathing.

b. Floors shall be of smooth finish but not of slippery materials and they shall be impervious to moisture. Floor drains shall be provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning. Junctions of the curbing and the floor shall be covered. Walls and partitions of shower rooms shall be smooth and impervious to moisture to the height of splash.

c. A supply of hot and cold running water conforming to the provisions of this chapter or the rules and regulations of the department shall be provided for bathing and laundry purposes.

d. Every service building used during periods requiring artificial heating shall be provided with equipment capable of maintaining a room temperature of at least 70 degrees Fahrenheit.

e. Facilities for drying clothes shall be provided.

f. Service buildings shall be kept clean.

g. Waste water shall be disposed of so as not to form pools on the ground nor create a nuisance, nor pollute any drinking water supply. Toilet drainage shall be carried through a covered drain into a covered septic tank that conforms to standards established by the department.

7. *Lighting.*

a. All housing sites, quarters, and shelters shall be provided with electric service.

b. Each habitable room and common use rooms, and areas including, but not limited to, laundry rooms, toilets, privies, hallways, and stairways shall contain adequate ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet shall be provided in each individual living room.

c. Adequate lighting shall be provided for the yard area and pathways to common use facilities.

d. All wiring and lighting fixtures shall be installed and maintained in a safe condition.

e. Where electric service is not available, gas lighting will be acceptable. Hallways and stairways to upper floors shall be lighted at night. Electric lighting shall be provided in all camps or additions to camps constructed after May 23, 1969.

8. *Refuse disposal.*

a. Durable, fly-tight, clean containers in good condition of a minimum capacity of twenty gallons, shall be provided adjacent to each housing unit or shelter for the storage of garbage and other refuse. Such containers shall be provided in a minimum ratio of one per fifteen persons or fraction thereof.

b. Provisions shall be made for collection of refuse at least twice a week, or more often if necessary.

c. The disposal of refuse shall be in accordance with state and local laws.

9. *Construction and operation of kitchens, dining halls, and feeding facilities.*

a. Every camp shall be provided with adequate gas stoves or electrical stoves for cooking.

b. Utensils in which food is prepared or kept, or from which food is to be eaten, and implements used in the preparation and eating of food shall be kept in a clean, unbroken, and sanitary condition.

c. Adequate refrigeration for perishable foods, cooked or raw, shall be provided in every kitchen or wherever food is prepared. Tables, benches, or chairs shall be provided.

d. Cooking of meals by an immediate family unit within its assigned living quarters may be permitted, provided that safe and adequate areas are available, but a separate kitchen in each shelter is desirable.

e. In camps where cooking facilities are used in common, stoves, in ratio of one stove to ten persons or one stove to two immediate families or fraction thereof, shall be provided in a central kitchen room or building separate and distinct from sleeping quarters and toilet facilities. Floors, walls, ceilings, tables and shelves of kitchens, dining rooms, refrigerators and food storage rooms shall be constructed so that they can always be maintained in a clean and sanitary condition. Exterior wall openings of all rooms shall be screened and rendered fly-tight at all times during the period that the camp is in operation. Screen doors shall be self-closing and installed to open outward from the area to be protected.

f. In camps where meals are furnished by the operator, manager, or concessionaire, the requirements of the department shall be met.

g. No person with any communicable or venereal disease shall be employed or permitted to work at preparation, cooking, serving, or other handling of food, foodstuffs, or other materials, in any kitchen or dining room operated in connection with a camp or regularly used by persons living in a camp.

10. *Insect and rodent control.*

a. Effective measures shall be taken to control rats, mice, flies, mosquitoes; bedbugs, and all other insects, rodents, and parasites within the camp premises.

b. Pesticides and pest control equipment shall be stored and used in a safe manner.

11. *Safety and fire prevention.*

a. No flammable or volatile liquids or materials shall be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

b. First aid facilities shall be provided and readily accessible for use at all times. Such facilities shall be equivalent to the sixteen unit first aid kit recommended by the American Red Cross, and provided in a ratio of one per fifty persons or fraction thereof.

c. Buildings and structures of a camp shall be maintained and used in accordance with state and local law relative to fire prevention.

d. Units of approved fire-extinguisher equipment shall be located so that a person will not have to travel more than one hundred feet from any point to reach the nearest unit, and at least one unit shall be provided for each one thousand square feet of floor space or fraction thereof.

e. Appliances of the type, number, and size indicated below shall constitute one unit of fire-extinguisher equipment:

(1) *Soda and acid.* One appliance of two and one-half gallon capacity, or two appliances of one and one-half gallon capacity in each appliance.

(2) *Foam.* One appliance of two and one-half gallon capacity, or two appliances of one and one-half gallon capacity in each appliance.

(3) *Water type.* One stored pressure appliance of two and one-half gallon capacity, or two pump-type appliances of five gallon capacity.

f. Fire fighting equipment shall be maintained in good operating condition so that it may be used instantly when the need arises.

g. Adult occupants shall be properly instructed in fire prevention and in the proper use of equipment.

h. Agricultural pesticides and toxic chemicals shall not be stored in the housing area.

[C71, 73, 75, 77, 79, 81, §138.13]

2013 Acts, ch 30, §35, 36

Subsection 2, paragraph m amended

Subsection 6, paragraph d amended

**138.14 Communicable diseases reported.**

The camp operator shall report immediately to the local board of health the name and address of any individual in the camp known to have or suspected of having a communicable disease. Whenever there shall occur in any camp, or portion thereof, a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, the camp operator shall report immediately the existence of the condition to the local board of health and the director.

[C71, 73, 75, 77, 79, 81, §138.14]

**138.15 Notice of intent to construct or alter a camp.**

Any person who is planning to construct, reconstruct, or enlarge a camp or any portion thereof, or facility of a camp, or to convert a property for use or occupancy as a camp, shall give notice in writing of the person's intent to do so to the director at least fifteen days prior to the date of the commencement of any major construction, reconstruction, enlargement, or conversion. The notice shall give the name of the city, village, and county in which the property is located; the location of the property within that area; a brief description of the proposed major construction, reconstruction, enlargement, or conversion; the name and mailing address of the person giving such notice; and the person's telephone number. The director, upon receipt of such notice, shall promptly send to such person by ordinary mail a copy of this chapter and all rules of the department applicable to migrant labor camps.

[C71, 73, 75, 77, 79, 81, §138.15]

**138.16 Cleanliness and repair required.**

Every migrant or inhabitant of a migrant labor camp shall use the sanitary and other facilities provided and shall keep that part of the living quarters or shelter which the migrant's or inhabitant's immediate family occupies and controls as well as the premises immediately adjacent thereto in a clean condition comparable to normal domestic standards. Every camp operator or permit holder shall be responsible for the providing of and proper maintenance and repair of the premises, all shelters, structures, facilities, and service buildings of the camp, or portion thereof, for which the camp operator or permit holder was issued a permit as well as proper garbage and refuse collection, privy openings and closings, maintenance of water supply, pest and rodent control, toilet facilities, sewage disposal, laundry, handwashing and bathing facilities, lighting, operation of common kitchens, dining halls, and feeding facilities, and safety and fire prevention.

[C71, 73, 75, 77, 79, 81, §138.16]

**138.17 Rental charges or wage deductions.**

A rental charge or deduction from any wages due a migrant shall not be made by any camp operator or person for providing any of the facilities required by this chapter unless such migrant is fully informed of all such rental charges or deductions to be made prior to the time the migrant contracts for employment as an agricultural or migrant worker.

[C71, 73, 75, 77, 79, 81, §138.17]

**138.18 Rules promulgated.**

The director shall make such rules necessary for carrying out the purposes and provisions of this chapter, subject to the requirements of chapter 17A.

[C71, 73, 75, 77, 79, 81, §138.18]

**138.19 Penalties.**

Any person failing to comply with any provision of this chapter, or with any rule or order issued pursuant to the provisions of this chapter, or interfering with, impeding, or obstructing in any manner, the director, department, or any of its employees in the performance of official duties pursuant to this chapter, shall be guilty of a simple misdemeanor. If any person further fails to comply with any provisions of this chapter, or with any rule or order issued pursuant to the provisions of this chapter, the director shall enforce such provision, rule, or order by filing an action for injunction against such person in the district court in the county wherein such violation or violations occur.

[C71, 73, 75, 77, 79, 81, §138.19]

## CHAPTER 139

### COMMUNICABLE AND REPORTABLE DISEASES AND POISONINGS

## CHAPTER 139A

## COMMUNICABLE AND INFECTIOUS DISEASES AND POISONINGS

Referred to in §135.11, 135.144

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## SUBCHAPTER II

## CONTROL OF SEXUALLY TRANSMITTED DISEASES AND INFECTIONS

## SUBCHAPTER I

## GENERAL PROVISIONS

**139A.1 Title.**

This chapter shall be known as the “*Communicable and Infectious Disease Reporting and Control Act*”.

2000 Acts, ch 1066, §1

**139A.2 Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. “*Area quarantine*” means prohibiting ingress and egress to and from a building or buildings, structure or structures, or other definable physical location, or portion thereof, to prevent or contain the spread of a suspected or confirmed quarantinable disease or to prevent or contain exposure to a suspected or known chemical, biological, radioactive, or other hazardous or toxic agent.

2. “*Business*” means and includes every trade, occupation, or profession.

3. “*Care provider*” means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual’s official duties, for compensation or in a voluntary capacity, who is a health care provider,

emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. “Care provider” also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

4. “Communicable disease” means any disease spread from person to person or animal to person.

5. “Contagious or infectious disease” means hepatitis in any form, meningococcal disease, AIDS or HIV as defined in section 141A.1, tuberculosis, and any other disease determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

6. “Department” means the Iowa department of public health.

7. “Designated officer” means a person who is designated by a department, agency, division, or service organization to act as an infection control liaison officer.

8. “Exposure” means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious bodily fluids.

9. “Exposure-prone procedure” means a procedure performed by a health care provider which presents a recognized risk of percutaneous injury to the health care provider and if such an injury occurs, the health care provider’s blood is likely to contact a patient’s body cavity, subcutaneous tissues, or mucous membranes, or an exposure-prone procedure as defined by the centers for disease control and prevention of the United States department of health and human services.

10. “HBV” means hepatitis B virus.

11. “Health care facility” means a health care facility as defined in section 135C.1, an ambulatory surgical center, or a clinic.

12. “Health care provider” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, optometry, or as a physician assistant, dental hygienist, or acupuncturist.

13. “HIV” means HIV as defined in section 141A.1.

14. “Hospital” means hospital as defined in section 135B.1.

15. “Isolation” means the separation of persons or animals presumably or actually infected with a communicable disease or who are disease carriers for the usual period of communicability of that disease in such places, marked by placards if necessary, and under such conditions as will prevent the direct or indirect conveyance of the infectious agent or contagion to susceptible persons.

16. “Local board” means the local board of health.

17. “Local department” means the local health department.

18. “Placard” means a warning sign to be erected and displayed on the periphery of a quarantine area, forbidding entry to or exit from the area.

19. “Public health disaster” means public health disaster as defined in section 135.140.

20. “Quarantinable disease” means any communicable disease designated by rule adopted by the department as requiring quarantine or isolation to prevent its spread.

21. “Quarantine” means the limitation of freedom of movement of persons or animals that have been exposed to a quarantinable disease within specified limits marked by placards for a period of time equal to the longest usual incubation period of the disease in such manner as to prevent the spread of a quarantinable disease which affects people.

22. “Reportable disease” means any disease designated by rule adopted by the department requiring its occurrence to be reported to an appropriate authority.

23. “Sexually transmitted disease or infection” means a disease or infection as identified by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

24. “Significant exposure” means a situation in which there is a risk of contracting disease through exposure to a person’s infectious bodily fluids in a manner capable of transmitting an infectious agent as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

25. “Terminal cleaning” means cleaning procedures defined in the isolation guidelines issued by the centers for disease control and prevention of the United States department of health and human services.

2000 Acts, ch 1066, §2; 2001 Acts, ch 24, §29; 2001 Acts, ch 157, §1 – 3; 2003 Acts, ch 33, §9, 11; 2004 Acts, ch 1168, §6; 2006 Acts, ch 1079, §2; 2008 Acts, ch 1088, §141; 2011 Acts, ch 63, §18, 19

Referred to in §135.144, 141A.9, 356.48

### **139A.3 Reports to department — immunity — confidentiality — investigations.**

1. The health care provider or public, private, or hospital clinical laboratory attending a person infected with a reportable disease shall immediately report the case to the department. However, when a case occurs within the jurisdiction of a local health department, the report shall be made to the local department and to the department. A health care provider or public, private, or hospital clinical laboratory who files such a report which identifies a person infected with a reportable disease shall assist in the investigation by the department, a local board, or a local department. The department shall publish and distribute instructions concerning the method of reporting. Reports shall be made in accordance with rules adopted by the department and shall require inclusion of all the following information:

- a. The patient’s name.
- b. The patient’s address.
- c. The patient’s date of birth.
- d. The sex of the patient.
- e. The race and ethnicity of the patient.
- f. The patient’s marital status.
- g. The patient’s telephone number.
- h. The name and address of the laboratory.
- i. The date the test was found to be positive and the collection date.
- j. The name of the health care provider who performed the test.
- k. If the patient is female, whether the patient is pregnant.

2. a. Any person who, acting reasonably and in good faith, files a report, releases information, or otherwise cooperates with an investigation under this chapter is immune from any liability, civil or criminal, which might otherwise be incurred or imposed for such action.

b. A report or other information provided to or maintained by the department, a local board, or a local department, which identifies a person infected with or exposed to a reportable or other disease or health condition, is confidential and shall not be accessible to the public.

c. Notwithstanding paragraph “b”, information contained in the report may be reported in public health records in a manner which prevents the identification of any person or business named in the report. If information contained in the report concerns a business, information disclosing the identity of the business may be released to the public when the state epidemiologist or the director of public health determines such a release of information necessary for the protection of the health of the public.

3. A health care provider or public, private, or hospital clinical laboratory shall provide the department, local board, or local department with all information reasonably necessary to conduct an investigation pursuant to this chapter upon request of the department, local board, or local department. The department may also subpoena records, reports, and any other evidence necessary to conduct an investigation pursuant to this chapter from other persons, facilities, and entities pursuant to rules adopted by the department.

2000 Acts, ch 1066, §3; 2006 Acts, ch 1079, §3, 4

Referred to in §135A.7, 139A.19

### **139A.3A Investigation and control.**

When the department receives a report under this chapter or acts on other reliable information that a person is infected with a disease, illness, or health condition that may be a potential cause of a public health disaster, the department shall identify all individuals

reasonably believed to have been exposed to the disease, illness, or health condition and shall investigate all such cases for sources of infection and ensure that such cases are subject to proper control measures. Any hospital, health care provider, or other person may provide information, interviews, reports, statements, memoranda, records, or other data related to the condition and treatment of any individual, if not otherwise prohibited by the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, to the department to be used for the limited purpose of determining whether a public health disaster exists.

2003 Acts, ch 33, §10, 11

#### **139A.4 Type and length of isolation or quarantine.**

1. The type and length of isolation or quarantine imposed for a specific communicable disease shall be in accordance with rules adopted by the department.

2. The department and the local boards may impose and enforce isolation and quarantine restrictions.

3. The department shall adopt rules governing terminal cleaning.

4. The department and local boards may impose and enforce area quarantine restrictions according to rules adopted by the department. Area quarantine shall be imposed by the least restrictive means necessary to prevent or contain the spread of the suspected or confirmed quarantinable disease or suspected or known hazardous or toxic agent.

2000 Acts, ch 1066, §4; 2006 Acts, ch 1079, §5

#### **139A.5 Isolation or quarantine signs erected.**

When isolation or a quarantine is established, appropriate placards prescribed by the department shall be erected to mark the boundaries of the place of isolation or quarantine.

2000 Acts, ch 1066, §5

#### **139A.6 Communicable diseases.**

If a person, whether or not a resident, is infected with a communicable disease dangerous to the public health, the local board shall issue orders in regard to the care of the person as necessary to protect the public health. The orders shall be executed by the designated officer as the local board directs or provides by rules.

2000 Acts, ch 1066, §6

#### **139A.7 Diseased persons moving — record forwarded.**

If a person known to be suffering from a communicable disease dangerous to the public health moves from the jurisdiction of a local board into the jurisdiction of another local board, the local board from whose jurisdiction the person moves shall notify the local board into whose jurisdiction the person is moving.

2000 Acts, ch 1066, §7

#### **139A.8 Immunization of children.**

1. A parent or legal guardian shall assure that the person's minor children residing in the state are adequately immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, rubella, and varicella, according to recommendations provided by the department subject to the provisions of subsections 3 and 4.

2. a. A person shall not be enrolled in any licensed child care center or elementary or secondary school in Iowa without evidence of adequate immunizations against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, rubella, and varicella.

b. Evidence of adequate immunization against haemophilus influenza B and invasive pneumococcal disease shall be required prior to enrollment in any licensed child care center.

c. Evidence of hepatitis type B immunization shall be required of a child born on or after July 1, 1994, prior to enrollment in school in kindergarten or in a grade.

d. Immunizations shall be provided according to recommendations provided by the department subject to the provisions of subsections 3 and 4.

3. Subject to the provision of subsection 4, the state board of health may modify or delete any of the immunizations in subsection 2.

4. *a.* Immunization is not required for a person's enrollment in any elementary or secondary school or licensed child care center if either of the following applies:

(1) The applicant, or if the applicant is a minor, the applicant's parent or legal guardian, submits to the admitting official a statement signed by a physician, advanced registered nurse practitioner, or physician assistant who is licensed by the board of medicine, board of nursing, or board of physician assistants that the immunizations required would be injurious to the health and well-being of the applicant or any member of the applicant's family.

(2) The applicant, or if the applicant is a minor, the applicant's parent or legal guardian, submits an affidavit signed by the applicant, or if the applicant is a minor, the applicant's parent or legal guardian, stating that the immunization conflicts with the tenets and practices of a recognized religious denomination of which the applicant is an adherent or member.

*b.* The exemptions under this subsection do not apply in times of emergency or epidemic as determined by the state board of health and as declared by the director of public health.

5. A person may be provisionally enrolled in an elementary or secondary school or licensed child care center if the person has begun the required immunizations and if the person continues to receive the necessary immunizations as rapidly as is medically feasible. The department shall adopt rules relating to the provisional admission of persons to an elementary or secondary school or licensed child care center.

6. The local board shall furnish the department, within sixty days after the first official day of school, evidence that each person enrolled in any elementary or secondary school has been immunized as required in this section subject to subsection 4. The department shall adopt rules pursuant to chapter 17A relating to the reporting of evidence of immunization.

7. Local boards shall provide the required immunizations to children in areas where no local provision of these services exists.

8. The department, in consultation with the director of the department of education, shall adopt rules for the implementation of this section and shall provide those rules to local school boards and local boards.

2000 Acts, ch 1066, §8; 2003 Acts, ch 78, §1 – 3; 2007 Acts, ch 10, §24; 2007 Acts, ch 11, §1; 2009 Acts, ch 41, §263

Referred to in §239B.12, 299.4

#### **139A.8A Vaccine shortage — department order — immunity.**

1. In the event of a shortage of a vaccine, or in the event a vaccine shortage is imminent, the department may issue an order controlling, restricting, or otherwise regulating the distribution and administration of the vaccine. The order may designate groups of persons which shall receive priority in administration of the vaccine and may prohibit vaccination of persons who are not included in a priority designation. The order shall include an effective date, which may be amended or rescinded only through a written order of the department. The order shall be applicable to health care providers, hospitals, clinics, pharmacies, health care facilities, local boards of health, public health agencies, and other persons or entities that distribute or administer vaccines.

2. A health care provider, hospital, clinic, pharmacy, health care facility, local board of health, public health agency, or other person or entity that distributes or administers vaccines shall not be civilly liable in any action based on a failure or refusal to distribute or administer a vaccine to any person if the failure or refusal to distribute or administer the vaccine was consistent with a department order issued pursuant to this section.

3. The department shall adopt rules to administer this section.

2005 Acts, ch 89, §10

#### **139A.9 Forcible removal — isolation — quarantine.**

The forcible removal and isolation or quarantine of any infected person shall be accomplished according to the rules and regulations of the local board or the rules of the state board of health.

2000 Acts, ch 1066, §9

**139A.10 Fees for removing.**

The officers designated shall receive reasonable compensation for their services as determined by the local board. The amount determined shall be certified and paid in the same manner as other expenses incurred under this chapter.

2000 Acts, ch 1066, §10; 2002 Acts, ch 1119, §133

**139A.11 Services and supplies — isolation — quarantine.**

If the person under isolation or quarantine or the person liable for the support of the person, in the opinion of the local board, is financially unable to secure proper care, provisions, or medical attendance, the local board shall furnish supplies and services during the period of isolation or quarantine and may delegate the duty, by rules, to one of its designated officers.

2000 Acts, ch 1066, §11

**139A.12 County liability for care, provisions, and medical attendance.**

The local board shall provide proper care, provisions, and medical attendance for any person removed and isolated or quarantined in a separate house or hospital for detention and treatment, and the care, provisions, and medical attendance shall be paid for by the county in which the infected person has a legal settlement, if the patient or legal guardian is unable to pay.

2000 Acts, ch 1066, §12

**139A.13 Rights of isolated or quarantined persons.**

Any person removed and isolated or quarantined in a separate house or hospital may, at the person's own expense, employ the health care provider of the person's choice, and may provide such supplies and commodities as the person may require.

2000 Acts, ch 1066, §13

**139A.13A Employment protection.**

1. An employer shall not discharge an employee, or take or fail to take action regarding an employee's promotion or proposed promotion, or take action to reduce an employee's wages or benefits for actual time worked, due to the compliance of an employee with a quarantine or isolation order or voluntary confinement request issued by the department, a local board, or the centers for disease control and prevention of the United States department of health and human services.

2. An employee whose employer violates this section may petition the court for imposition of a cease and desist order against the person's employer and for reinstatement to the person's previous position of employment. This section does not create a private cause of action for relief of money damages.

2006 Acts, ch 1184, §85; 2007 Acts, ch 159, §25

**139A.14 Services or supplies — authorization.**

All services or supplies furnished to persons under this chapter must be authorized by the local board or an officer of the local board, and a written order designating the person employed to furnish such services or supplies, issued before the services or supplies are furnished, shall be attached to the bill when presented for audit and payment.

2000 Acts, ch 1066, §14

**139A.15 Filing of bills.**

All bills incurred under this chapter in establishing, maintaining, and terminating isolation and quarantine, in providing a necessary house or hospital for isolation or quarantine, and in making terminal cleanings, shall be filed with the local board. The local board at its next regular meeting or special meeting called for this purpose shall examine and audit the bills and, if found correct, approve and certify the bills to the county board of supervisors for payment.

2000 Acts, ch 1066, §15

**139A.16 Allowing claims.**

All bills for supplies furnished and services rendered for persons removed and isolated or quarantined in a separate house or hospital, or for persons financially unable to provide their own sustenance and care during isolation or quarantine, shall be allowed and paid for only on a basis of the local market price for such provisions, services, and supplies in the locality furnished. A bill for the terminal cleaning of premises or effects shall not be allowed, unless the infected person or those liable for the person's support are financially unable to pay.

2000 Acts, ch 1066, §16

**139A.17 Approval and payment of claims.**

The board of supervisors is not bound by the action of the local board in approving the bills, but shall pay the bills for a reasonable amount and within a reasonable time.

2000 Acts, ch 1066, §17

**139A.18 Reimbursement from county.**

If any person receives services or supplies under this chapter who does not have a legal settlement in the county in which the bills were incurred and paid, the amount paid shall be certified to the board of supervisors of the county in which the person claims settlement or owns property, and the board of supervisors of that county shall reimburse the county from which the claim is certified, in the full amount originally paid.

2000 Acts, ch 1066, §18

Referred to in §252.24

See §252.24

**139A.19 Care provider notification.**

1. *a.* Notwithstanding any provision of this chapter to the contrary, if a care provider sustains a significant exposure from an individual while rendering health care services or other services, the individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider of the results of the test, upon submission of a significant exposure report by the care provider to the hospital, clinic, other health facility, or other person specified in this section to whom the individual is delivered by the care provider as determined by rule.

*b.* The hospital, clinic, or other health facility in which the significant exposure occurred or other person specified in this section to whom the individual is delivered shall conduct the test. If the individual is delivered by the care provider to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered by the care provider to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. The sample and test results shall only be identified by a number.

*c.* A hospital, clinic, or other health facility, institutions administered by the department of corrections, and jails shall have written policies and procedures for notification of a care provider under this section. The policies and procedures shall include designation of a representative of the care provider to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall inform the hospital, clinic, or other health facility, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, clinic, or other health facility, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

*d.* Notwithstanding any other provision of law to the contrary, a care provider may transmit cautions regarding contagious or infectious disease information, with the exception of AIDS or HIV pursuant to section 80.9B, in the course of the care provider's duties over the police radio broadcasting system under chapter 693 or any other radio-based communications system if the information transmitted does not personally identify an individual.

2. a. If the test results are positive, the hospital, clinic, other health facility, or other person performing the test shall notify the subject of the test and make any required reports to the department pursuant to sections 139A.3 and 141A.6. The report to the department shall include the name of the individual tested.

b. If the individual tested is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, other health facility, or other person conducting the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider.

c. The notification to the care provider shall be provided as soon as is reasonably possible following determination that the subject of the test has a contagious or infectious disease. The notification shall not include the name of the individual tested for the contagious or infectious disease unless the individual consents. If the care provider who sustained a significant exposure determines the identity of the individual diagnosed or confirmed as having a contagious or infectious disease, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual diagnosed with or confirmed as having a contagious or infectious disease.

3. This section does not preclude a hospital, clinic, other health facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a patient's name, unless the patient consents.

4. A hospital, clinic, other health facility, or health care provider, or other person participating in good faith in complying with provisions authorized or required under this section is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

5. A hospital's, clinic's, other health facility's, or health care provider's duty to notify under this section is not continuing but is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to the individual who was the source of the significant exposure.

6. Notwithstanding subsection 5, the hospital, clinic, or other health facility may provide a procedure for notifying the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health facility, the individual who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information regarding the source individual's contagious or infectious disease status to the exposed care provider.

7. A hospital, clinic, other health facility, health care provider, or other person who is authorized to perform a test under this section who performs the test in compliance with this section or who fails to perform the test authorized under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

8. A hospital, clinic, other health facility, health care provider, or other person who is authorized to perform a test under this section has no duty to perform the test authorized.

9. The department shall adopt rules pursuant to chapter 17A to administer this section. The department may determine by rule the contagious or infectious diseases for which testing is reasonable and appropriate and which may be administered under this section.

10. The employer of a care provider who sustained a significant exposure under this section shall pay the costs of testing for the individual who is the source of the significant exposure and of the testing of the care provider, if the significant exposure was sustained during the course of employment. However, the department shall assist an individual who is the source of the significant exposure in finding resources to pay for the costs of the testing

and shall assist a care provider who renders direct aid without compensation in finding resources to pay for the cost of the test.

2000 Acts, ch 1066, §19; 2001 Acts, ch 157, §4; 2011 Acts, ch 63, §20; 2011 Acts, ch 131, §54, 158

#### **139A.20 Exposing to communicable disease.**

A person who knowingly exposes another to a communicable disease or who knowingly subjects another to a child or other legally incapacitated person who has contracted a communicable disease, with the intent that another person contract the communicable disease, shall be liable for all resulting damages and shall be punished as provided in this chapter.

2000 Acts, ch 1066, §20

#### **139A.21 Reportable poisonings and illnesses.**

1. If the results of an examination by a public, private, or hospital clinical laboratory of a specimen from a person in Iowa yield evidence of or are reactive for a reportable poisoning or a reportable illness from a toxic agent, including methemoglobinemia, the results shall be reported to the department on forms prescribed by the department. If the laboratory is located in Iowa, the person in charge of the laboratory shall report the results. If the laboratory is not in Iowa, the health care provider submitting the specimen shall report the results.

2. The health care provider attending a person infected with a reportable poisoning or a reportable illness from a toxic agent, including methemoglobinemia, shall immediately report the case to the department. The department shall publish and distribute instructions concerning the method of reporting. Reports shall be made in accordance with rules adopted by the department.

3. A person in charge of a poison control information center shall report to the department cases of reportable poisoning, including methemoglobinemia, about which inquiries have been received.

4. The department shall adopt rules designating reportable poisonings, including methemoglobinemia, and illnesses which must be reported under this section.

5. The department shall establish and maintain a central registry to collect and store data reported pursuant to this section.

6. The department shall timely provide copies of all reports of pesticide poisonings or illnesses received pursuant to this section to the secretary of agriculture who shall timely forward these reports and any reports of pesticide poisonings or illnesses received pursuant to section 206.14 to the registrant of a pesticide which is the subject of any reports.

2000 Acts, ch 1066, §21; 2009 Acts, ch 41, §49; 2012 Acts, ch 1095, §130

Referred to in §135.11, 455E.11

#### **139A.22 Prevention of transmission of HIV or HBV to patients.**

1. A hospital shall adopt procedures requiring the establishment of protocols applicable on a case-by-case basis to a health care provider determined to be infected with HIV or HBV who ordinarily performs exposure-prone procedures as determined by an expert review panel, within the hospital setting. The protocols established shall be in accordance with the recommendations issued by the centers for disease control and prevention of the United States department of health and human services. The expert review panel may be an established committee of the hospital. The procedures may provide for referral of the health care provider to the expert review panel established by the department pursuant to subsection 3 for establishment of the protocols. The procedures shall require reporting noncompliance with the protocols by a health care provider to the licensing board with jurisdiction over the relevant health care providers.

2. A health care facility shall adopt procedures in accordance with recommendations issued by the centers for disease control and prevention of the United States department of health and human services, applicable to a health care provider determined to be infected with HIV or HBV who ordinarily performs or assists with exposure-prone procedures within

the health care facility. The procedures shall require referral of the health care provider to the expert review panel established by the department pursuant to subsection 3.

3. The department shall establish an expert review panel to determine on a case-by-case basis under what circumstances, if any, a health care provider determined to be infected with HIV or HBV practicing outside the hospital setting or referred to the panel by a hospital or health care facility may perform exposure-prone procedures. If a health care provider determined to be infected with HIV or HBV does not comply with the determination of the expert review panel, the panel shall report the noncompliance to the licensing board with jurisdiction over the health care provider. A determination of an expert review panel pursuant to this section is a final agency action appealable pursuant to section 17A.19.

4. The health care provider determined to be infected with HIV or HBV, who works in a hospital setting, may elect either the expert review panel established by the hospital or the expert review panel established by the department for the purpose of making a determination of the circumstances under which the health care provider may perform exposure-prone procedures.

5. A health care provider determined to be infected with HIV or HBV shall not perform an exposure-prone procedure except as approved by the expert review panel established by the department pursuant to subsection 3, or in compliance with the protocol established by the hospital pursuant to subsection 1 or the procedures established by the health care facility pursuant to subsection 2.

6. The board of medicine, the board of physician assistants, the board of podiatry, the board of nursing, the dental board, and the board of optometry shall require that licensees comply with the recommendations issued by the centers for disease control and prevention of the United States department of health and human services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, with the recommendations of the expert review panel established pursuant to subsection 3, with hospital protocols established pursuant to subsection 1, and with health care facility procedures established pursuant to subsection 2, as applicable.

7. Information relating to the HIV status of a health care provider is confidential and subject to the provisions of section 141A.9. A person who intentionally or recklessly makes an unauthorized disclosure of such information is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this section. Proceedings maintained under this section shall provide for the anonymity of the health care provider and all documentation shall be maintained in a confidential manner. Information relating to the HBV status of a health care provider is confidential and shall not be accessible to the public. Information regulated by this section, however, may be disclosed to members of the expert review panel established by the department or a panel established by hospital protocol under this section. The information may also be disclosed to the appropriate licensing board by filing a report as required by this section. The licensing board shall consider the report a complaint subject to the confidentiality provisions of section 272C.6. A licensee, upon the filing of a formal charge or notice of hearing by the licensing board based on such a complaint, may seek a protective order from the board.

8. The expert review panel established by the department and individual members of the panel shall be immune from any liability, civil or criminal, for reasonable actions taken in the good faith performance of functions authorized or required by this section. A hospital, an expert review panel established by the hospital, and individual members of the panel shall be immune from any liability, civil or criminal, for reasonable actions taken in the good faith performance of functions authorized or required by this section. Complaints, investigations, reports, deliberations, and findings of the hospital and its panel with respect to a named health care provider suspected, alleged, or found to be in violation of the protocol required

by this section constitute peer review records under section 147.135, and are subject to the specific confidentiality requirements and limitations of that section.

2000 Acts, ch 1066, §22; 2001 Acts, ch 24, §30; 2007 Acts, ch 10, §25; 2007 Acts, ch 218, §196

Referred to in §139A.23  
See §139A.23

#### **139A.23 Contingent repeal.**

If the provisions of Pub. L. No. 102-141 relating to requirements for prevention of transmission of HIV or HBV to patients in the performance of exposure-prone procedures are repealed, section 139A.22 is repealed.

2000 Acts, ch 1066, §23

#### **139A.24 Blood donation or sale — penalty.**

A person suffering from a communicable disease dangerous to the public health who knowingly gives false information regarding the person's infected state on a blood plasma sale application to blood plasma-taking personnel commits a serious misdemeanor.

2000 Acts, ch 1066, §24

#### **139A.25 Penalties.**

1. Unless otherwise provided in this chapter, a person who knowingly violates any provision of this chapter, or of the rules of the department or a local board, or any lawful order, written or oral, of the department or board, or of their officers or authorized agents, is guilty of a simple misdemeanor.

2. Notwithstanding subsection 1, an individual who repeatedly fails to file any mandatory report specified in this chapter is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time that the department determines that the individual has failed to file a required report. The department shall inform the individual in the notification that the individual may provide information to the department to explain or dispute the failure to report.

3. Notwithstanding subsection 1, a public, private, or hospital clinical laboratory that repeatedly fails to file a mandatory report specified in this chapter is subject to a civil penalty of not more than one thousand dollars per occurrence. The department shall not impose the penalty under this subsection without prior written notice and opportunity for hearing.

2000 Acts, ch 1066, §25  
Referred to in §139A.40

#### **139A.26 Meningococcal disease vaccination information for postsecondary students.**

1. Each institution of higher education that has an on-campus residence hall or dormitory shall provide vaccination information on meningococcal disease to each student enrolled in the institution. The vaccination information shall be contained on student health forms provided to each student by the institution, which forms shall include space for the student to indicate whether or not the student has received the vaccination against meningococcal disease. The vaccination information about meningococcal disease shall include any recommendations issued by the national centers for disease control and prevention regarding the disease. Vaccination information obtained under this section that is in the possession of an institution of higher education pursuant to this section shall not be considered a public record. Data obtained under this section shall be submitted annually to the department in a manner prescribed by the department and such that no individual person can be identified.

2. This section shall not be construed to require any institution of higher education to provide the vaccination against meningococcal disease to students.

3. This section shall not apply if the national centers for disease control and prevention no longer recommend the meningococcal disease vaccine.

4. This section does not create a private right of action.

5. The department shall adopt rules for administration of this section. The department shall review the requirements of this section at least every five years, and shall submit

its recommendations for modification to, or continuation of, this section based upon new information about the disease or vaccination against the disease in a report that shall be submitted to the general assembly no later than January 15, 2010, with subsequent reports developed and submitted by January 15 at least every fifth year thereafter.

2004 Acts, ch 1023, §1

**139A.27 through 139A.29** Reserved.

## SUBCHAPTER II

### CONTROL OF SEXUALLY TRANSMITTED DISEASES AND INFECTIONS

Referred to in §135.11

#### **139A.30 Confidential reports.**

Reports to the department which include the identity of persons infected with a sexually transmitted disease or infection, and all such related information, records, and reports concerning the person, shall be confidential and shall not be accessible to the public. However, such reports, information, and records shall be confidential only to the extent necessary to prevent identification of persons named in such reports, information, and records; the other parts of such reports, information, and records shall be public records. The preceding sentence shall prevail over any inconsistent provision of this subchapter.

2000 Acts, ch 1066, §26; 2002 Acts, ch 1119, §134

Referred to in §232.69

#### **139A.31 Report to department.**

Immediately after the first examination or treatment of any person infected with any sexually transmitted disease or infection, the health care provider who performed the examination or treatment shall transmit to the department a report stating the name of the infected person, the address of the infected person, the infected person's date of birth, the sex of the infected person, the race and ethnicity of the infected person, the infected person's marital status, the infected person's telephone number, if the infected person is female, whether the infected person is pregnant, the name and address of the laboratory that performed the test, the date the test was found to be positive and the collection date, and the name of the health care provider who performed the test. However, when a case occurs within the jurisdiction of a local health department, the report shall be made directly to the local health department which shall immediately forward the information to the department. Reports shall be made in accordance with rules adopted by the department. Reports shall be confidential. Any person filing a report of a sexually transmitted disease or infection who is acting reasonably and in good faith is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of such report.

2000 Acts, ch 1066, §27

#### **139A.32 Examination results from laboratory — report.**

A person in charge of a public, private, or hospital clinical laboratory shall report to the department, on forms prescribed by the department, results obtained in the examination of all specimens which yield evidence of or are reactive for those diseases defined as sexually transmitted diseases or infections, and listed in the Iowa administrative code. The report shall state the name of the infected person from whom the specimen was obtained, the address of the infected person, the infected person's date of birth, the sex of the infected person, the race and ethnicity of the infected person, the infected person's marital status, the infected person's telephone number, if the infected person is female, whether the infected person is pregnant, the name and address of the laboratory that performed the test, the laboratory results, the test employed, the date the test was found to be positive and the collection date, the name

of the health care provider who performed the test, and the name and address of the person submitting the specimen.

2000 Acts, ch 1066, §28

#### **139A.33 Partner notification program.**

1. The department shall maintain a partner notification program for persons known to have tested positive for a reportable sexually transmitted disease or infection.

2. In administering the program, the department shall provide for all of the following:

a. A person who voluntarily participates in the program shall receive post-test counseling during which time the person shall be encouraged to refer for counseling and testing any person with whom the person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment.

3. The department may delegate its partner notification duties under this section to local health authorities or a physician or other health care provider, as provided by rules adopted by the department.

4. In making contact with sexual or drug equipment-sharing partners, the department or its designee shall not disclose the identity of the person who provided the names of the persons to be contacted and shall protect the confidentiality of the persons contacted.

5. a. This section shall not be interpreted as creating a duty to warn third parties of the danger of exposure to a sexually transmitted disease or infection through contact with a person who tests positive for a sexually transmitted disease.

b. This section shall not be interpreted to require the department to provide partner notification services to all persons who have tested positive for a sexually transmitted disease or infection.

2000 Acts, ch 1066, §29; 2011 Acts, ch 63, §21

#### **139A.34 Examination of persons suspected.**

The local board shall cause an examination to be made of every person reasonably suspected, on the basis of epidemiological investigation, of having any sexually transmitted disease or infection in the infectious stages to ascertain if such person is infected and, if infected, to cause such person to be treated. A person who is under the care and treatment of a health care provider for the suspected condition shall not be subjected to such examination. If a person suspected of having a sexually transmitted disease or infection refuses to submit to an examination voluntarily, application may be made by the local board to the district court for an order compelling the person to submit to examination and, if infected, to treatment. The person shall be treated until certified as no longer infectious to the local board or to the department. If treatment is ordered by the district court, the attending health care provider shall certify that the person is no longer infectious.

2000 Acts, ch 1066, §30

#### **139A.35 Minors.**

A minor shall have the legal capacity to act and give consent to provision of medical care or services to the minor for the prevention, diagnosis, or treatment of a sexually transmitted disease or infection by a hospital, clinic, or health care provider. Such medical care or services shall be provided by or under the supervision of a physician licensed to practice medicine and surgery or osteopathic medicine and surgery, a physician assistant, or an advanced registered nurse practitioner. Consent shall not be subject to later disaffirmance by reason of such minority. The consent of another person, including but not limited to the consent of a spouse, parent, custodian, or guardian, shall not be necessary.

2000 Acts, ch 1066, §31; 2008 Acts, ch 1058, §11; 2008 Acts, ch 1088, §141

**139A.36 Certificate not to be issued.**

A certificate of freedom from sexually transmitted disease or infection shall not be issued to any person by any official health agency.

2000 Acts, ch 1066, §32

**139A.37 Pregnant women.**

The department shall adopt rules which incorporate the prenatal guidelines established by the centers for disease control and prevention of the United States department of health and human services as the state guidelines for prenatal testing and care relative to infectious disease.

2000 Acts, ch 1066, §33

**139A.38 Medical treatment of newly born.**

A physician attending the birth of a child shall cause to be instilled into the eyes of the newly born infant a prophylactic solution approved by the department. This section shall not be construed to require treatment of the infant's eyes with a prophylactic solution if the infant's parent or legal guardian states that such treatment conflicts with the tenets and practices of a recognized religious denomination of which the parent or legal guardian is an adherent or member.

2000 Acts, ch 1066, §34

**139A.39 Religious exceptions.**

A provision of this chapter shall not be construed to require or compel any person to take or follow a course of medical treatment prescribed by law or a health care provider if the person is an adherent or member of a church or religious denomination and in accordance with the tenets or principles of the person's church or religious denomination the person opposes the specific course of medical treatment. However, such person while in an infectious stage of disease shall be subject to isolation and such other measures appropriate for the prevention of the spread of the disease to other persons.

2000 Acts, ch 1066, §35

**139A.40 Filing false reports.**

A person who knowingly makes a false statement in any of the reports required by this subchapter concerning persons infected with any sexually transmitted disease or infection, or who discloses the identity of such person, except as authorized by this subchapter, shall be punished as provided in section 139A.25.

2000 Acts, ch 1066, §36

**139A.41 Chlamydia and gonorrhea treatment.**

Notwithstanding any other provision of law to the contrary, a physician, physician assistant, or advanced registered nurse practitioner who diagnoses a sexually transmitted chlamydia or gonorrhea infection in an individual patient may prescribe, dispense, furnish, or otherwise provide prescription oral antibiotic drugs to that patient's sexual partner or partners without examination of that patient's partner or partners. If the infected individual patient is unwilling or unable to deliver such prescription drugs to a sexual partner or partners, a physician, physician assistant, or advanced registered nurse practitioner may dispense, furnish, or otherwise provide the prescription drugs to the department or local disease prevention investigation staff for delivery to the partner or partners.

2008 Acts, ch 1058, §12

## CHAPTER 139B

### EMERGENCY CARE PROVIDERS — EXPOSURE TO DISEASE

## CHAPTER 139C

## EXPOSURE-PRONE PROCEDURES

Repealed by 2000 Acts, ch 1066, §51; see chapter 139A

## CHAPTER 140

## VENEREAL DISEASE CONTROL

Repealed by 2000 Acts, ch 1066, §51; see chapter 139A

## CHAPTER 141

## ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

Repealed by 99 Acts, ch 181, §22; see chapter 141A

## CHAPTER 141A

## ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

Referred to in §80.9B, 321.186, 904.515

141A.1	Definitions.	141A.7	Test results — counseling — application for services.
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**141A.1 Definitions.**

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

1. “AIDS” means acquired immune deficiency syndrome as defined by the centers for disease control and prevention of the United States department of health and human services.
2. “AIDS-related conditions” means any condition resulting from human immunodeficiency virus infection that meets the definition of AIDS as established by the centers for disease control and prevention of the United States department of health and human services.
3. “Blinded epidemiological studies” means studies in which specimens which were collected for other purposes are selected according to established criteria, are permanently stripped of personal identifiers, and are then tested.
4. “Blood bank” means a facility for the collection, processing, or storage of human blood or blood derivatives, including blood plasma, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.
5. “Care provider” means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual’s official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. “Care provider” also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

6. “*Department*” means the Iowa department of public health.

7. “*Exposure*” means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious bodily fluids.

8. “*Good faith*” means objectively reasonable and not in violation of clearly established statutory rights or other rights of a person which a reasonable person would know or should have known.

9. “*Health care provider*” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, or optometry, or as a physician assistant, dental hygienist, or acupuncturist.

10. “*Health facility*” means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant center and procurement agency, or other health care institution.

11. “*HIV*” means the human immunodeficiency virus identified as the causative agent of AIDS.

12. “*HIV-related condition*” means any condition resulting from human immunodeficiency virus infection.

13. “*HIV-related test*” means a diagnostic test conducted by a laboratory approved pursuant to the federal Clinical Laboratory Improvement Amendments for determining the presence of HIV or antibodies to HIV.

14. “*Infectious bodily fluids*” means bodily fluids capable of transmitting HIV as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

15. “*Legal guardian*” means a person appointed by a court pursuant to chapter 633 or an attorney in fact as defined in section 144B.1. In the case of a minor, “*legal guardian*” also means a parent or other person responsible for the care of the minor.

16. “*Nonblinded epidemiological studies*” means studies in which specimens are collected for the express purpose of testing for HIV infection and persons included in the nonblinded study are selected according to established criteria.

17. “*Release of test results*” means a written authorization for disclosure of HIV-related test results which is signed and dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

18. “*Sample*” means a human specimen obtained for the purpose of conducting an HIV-related test.

19. “*Significant exposure*” means a situation in which there is a risk of contracting HIV through exposure to a person’s infectious bodily fluids in a manner capable of transmitting HIV as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

99 Acts, ch 181, §5; 2001 Acts, ch 157, §5, 6; 2007 Acts, ch 70, §1, 2; 2008 Acts, ch 1088, §92; 2011 Acts, ch 63, §22, 23

Referred to in §139A.2, 279.50, 411.1

#### **141A.2 Lead agency.**

1. The department is designated as the lead agency in the coordination and implementation of the Iowa comprehensive HIV plan.

2. The department shall adopt rules pursuant to chapter 17A to implement and enforce this chapter. The rules may include procedures for taking appropriate action with regard to health facilities or health care providers which violate this chapter or the rules adopted pursuant to this chapter.

3. The department shall adopt rules pursuant to chapter 17A which require that if a health care provider attending a person prior to the person’s death determines that the person suffered from or was suspected of suffering from a contagious or infectious disease, the health care provider shall place with the remains written notification of the condition for the information of any person handling the body of the deceased person subsequent to the person’s death. For purposes of this subsection, “*contagious or infectious disease*” means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease including AIDS or HIV infection, determined to be life-threatening to a person exposed to the disease

as established by rules adopted by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

4. The department shall provide consultation services to all care providers, including paramedics, ambulance personnel, physicians, nurses, hospital personnel, first responders, peace officers, and fire fighters, who provide care services to a person, and to all persons who attend dead bodies regarding standard precautions to prevent the transmission of contagious and infectious diseases.

5. The department shall coordinate efforts with local health officers to investigate sources of HIV infection and use every appropriate means to prevent the spread of HIV.

6. The department, with the approval of the state board of health, may conduct epidemiological blinded and nonblinded studies to determine the incidence and prevalence of HIV infection. Initiation of any new epidemiological studies shall be contingent upon the receipt of funding sufficient to cover all the costs associated with the studies. The informed consent, reporting, and counseling requirements of this chapter shall not apply to blinded studies.

99 Acts, ch 181, §6; 2007 Acts, ch 70, §3; 2011 Acts, ch 63, §24

Referred to in §356.48

### **141A.3 Duties of the department.**

1. All federal and state moneys appropriated to the department for HIV-related activities shall be utilized and distributed in a manner consistent with the guidelines established by the United States department of health and human services.

2. The department shall do all of the following:

a. Provide consultation services to agencies and organizations regarding appropriate policies for testing, education, confidentiality, and infection control.

b. Provide health information to the public regarding HIV, including information about how HIV is transmitted and how transmittal can be prevented. The department shall prepare and distribute information regarding HIV transmission and prevention.

c. Provide consultation services concerning HIV infection in the workplace.

d. Implement HIV education risk-reduction programs for specific populations at high risk for infection.

e. Provide an informational brochure for patients who provide samples for purposes of performing an HIV test which, at a minimum, shall include a summary of the patient's rights and responsibilities under the law.

f. In cooperation with the department of education, recommend evidence-based, medically accurate HIV prevention curricula for use at the discretion of secondary and middle schools.

99 Acts, ch 181, §7; 2007 Acts, ch 70, §4; 2011 Acts, ch 63, §25

### **141A.4 Testing and education.**

1. HIV testing and education shall be offered to persons who are at risk for HIV infection including all of the following:

a. Males who have had sexual relations with other males.

b. All persons testing positive for a sexually transmitted disease.

c. All persons having a history of injecting drug abuse.

d. Male and female sex workers and those who trade sex for drugs, money, or favors.

e. Sexual partners of HIV-infected persons.

f. Persons whose sexual partners are identified in paragraphs "a" through "e".

2. a. All pregnant women shall be tested for HIV infection as part of the routine panel of prenatal tests.

b. A pregnant woman shall be notified that HIV screening is recommended for all prenatal patients and that the pregnant woman will receive an HIV test as part of the routine panel of prenatal tests unless the pregnant woman objects to the test.

c. If a pregnant woman objects to and declines the test, the decision shall be documented in the pregnant woman's medical record.

d. Information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of HIV to a fetus shall be made available to all pregnant women.

99 Acts, ch 181, §8; 2007 Acts, ch 70, §5; 2011 Acts, ch 63, §26

#### **141A.5 Partner notification program — HIV.**

1. The department shall maintain a partner notification program for persons known to have tested positive for HIV infection.

2. In administering the program, the department shall provide for the following:

a. A person who tests positive for HIV infection shall receive post-test counseling, during which time the person shall be encouraged to refer for counseling and HIV testing any person with whom the person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment.

c. (1) Devise a procedure, as a part of the partner notification program, to provide for the notification of an identifiable third party who is a sexual partner of or who shares drug injecting equipment with a person who has tested positive for HIV, by the department or a physician, when all of the following situations exist:

(a) A physician for the infected person is of the good faith opinion that the nature of the continuing contact poses an imminent danger of HIV transmission to the third party.

(b) When the physician believes in good faith that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

(2) Notwithstanding subsection 3, the department or a physician may reveal the identity of a person who has tested positive for HIV infection pursuant to this subsection only to the extent necessary to protect a third party from the direct threat of transmission. This subsection shall not be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with a person who tests positive for HIV infection.

(3) The department shall adopt rules pursuant to chapter 17A to implement this paragraph "c". The rules shall provide a detailed procedure by which the department or a physician may directly notify an endangered third party.

3. In making contact the department shall not disclose the identity of the person who provided the names of the persons to be contacted and shall protect the confidentiality of persons contacted.

4. The department may delegate its partner notification duties under this section to local health authorities unless the local authority refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

5. In addition to the provisions for partner notification provided under this section and notwithstanding any provision to the contrary, a county medical examiner or deputy medical examiner performing official duties pursuant to sections 331.801 through 331.805 or the state medical examiner or deputy medical examiner performing official duties pursuant to chapter 691, who determines through an investigation that a deceased person was infected with HIV, may notify directly, or request that the department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

99 Acts, ch 181, §9; 2007 Acts, ch 70, §6; 2011 Acts, ch 63, §27

Referred to in §141A.9, 141A.11

#### **141A.6 HIV-related conditions — consent, testing, and reporting — penalty.**

1. Prior to undergoing a voluntary HIV-related test, information shall be available to the subject of the test concerning testing and any means of obtaining additional information regarding HIV transmission and risk reduction. If an individual signs a general consent form for the performance of medical tests or procedures, the signing of an additional consent form for the specific purpose of consenting to an HIV-related test is not required during the time in which the general consent form is in effect. If an individual has not signed a general consent

form for the performance of medical tests and procedures or the consent form is no longer in effect, a health care provider shall obtain oral or written consent prior to performing an HIV-related test. If an individual is unable to provide consent, the individual's legal guardian may provide consent. If the individual's legal guardian cannot be located or is unavailable, a health care provider may authorize the test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

2. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology or immediately after the initial examination or treatment of an individual infected with HIV, the physician or other health care provider at whose request the test was performed or who performed the initial examination or treatment shall make a report to the department on a form provided by the department.

3. Within seven days of diagnosing a person as having AIDS or an AIDS-related condition, the diagnosing physician shall make a report to the department on a form provided by the department.

4. Within seven days of the death of a person with HIV infection, the attending physician shall make a report to the department on a form provided by the department.

5. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the director of a blood bank shall make a report to the department on a form provided by the department.

6. Within seven days of the receipt of a test result that is indicative of HIV, the director of a clinical laboratory shall make a report to the department on a form provided by the department.

7. The forms provided by the department shall require inclusion of all of the following information:

- a. The name of the patient.
- b. The address of the patient.
- c. The patient's date of birth.
- d. The gender of the patient.
- e. The race and ethnicity of the patient.
- f. The patient's marital status.
- g. The patient's telephone number.
- h. If an HIV-related test was performed, the name and address of the laboratory or blood bank.
- i. If an HIV-related test was performed, the date the test was found to be positive and the collection date.
- j. If an HIV-related test was performed, the name of the physician or health care provider who performed the test.
- k. If the patient is female, whether the patient is pregnant.

8. An individual who repeatedly fails to file the report required under this section is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time the department determines that the individual has failed to file a required report. The department shall inform the individual in the notification that the individual may provide information to the department to explain or dispute the failure to report.

9. A public, private, or hospital clinical laboratory that repeatedly fails to make the report required under this section is subject to a civil penalty of not more than one thousand dollars per occurrence. The department shall not impose the penalty under this subsection without prior written notice and opportunity for hearing.

99 Acts, ch 181, §10; 2000 Acts, ch 1066, §39; 2000 Acts, ch 1140, §26; 2007 Acts, ch 70, §7; 2011 Acts, ch 63, §28

Referred to in §139A.19, 141A.7

#### **141A.7 Test results — counseling — application for services.**

1. At any time that the subject of an HIV-related test is informed of confirmed positive test results, counseling concerning the emotional and physical health effects shall be initiated.

Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning additional counseling. If the legal guardian of the subject of the test provides consent to the test pursuant to section 141A.6, the provisions of this subsection shall apply to the legal guardian.

2. Notwithstanding subsection 1, the provisions of this section do not apply to any of the following:

a. The performance by a health care provider or health facility of an HIV-related test when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the revised uniform anatomical gift Act as provided in chapter 142C, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.

b. A person engaged in the business of insurance who is subject to section 505.16.

c. The performance by a health care provider or health facility of an HIV-related test when the subject of the test is deceased and a documented significant exposure has occurred.

d. The performance by a health care provider or health facility of an HIV-related test when the subject of the test is unable to provide consent and the health care provider or health care facility provides consent for the patient pursuant to section 141A.6.

3. A person may apply for voluntary treatment, contraceptive services, or screening or treatment for HIV infection and other sexually transmitted diseases directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic. Notwithstanding any other provision of law, however, a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the need for family support and assists in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or centers for disease control and prevention guidelines from informing the legal guardian is exempt from the notification requirement. The minor shall give written consent to these procedures and to receive the services, screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority.

99 Acts, ch 181, §11; 2003 Acts, ch 108, §35; 2007 Acts, ch 44, §25; 2007 Acts, ch 70, §8  
Referred to in §141A.9, 915.43

**141A.8 Care provider notification.** Repealed by 2011 Acts, ch 63, § 32.

**141A.9 Confidentiality of information.**

1. Any information, including reports and records, obtained, submitted, and maintained pursuant to this chapter is strictly confidential medical information. The information shall not be released, shared with an agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or by any other means except as provided in this chapter. A person shall not be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to persons entitled to that information under this chapter.

2. HIV-related test results shall be made available for release to the following individuals or under the following circumstances:

a. To the subject of the test or the subject's legal guardian subject to the provisions of section 141A.7, subsection 3, when applicable.

b. To any person who secures a written release of test results executed by the subject of the test or the subject's legal guardian.

c. To an authorized agent or employee of a health facility or health care provider, if the health facility or health care provider ordered or participated in the testing or is otherwise authorized to obtain the test results, the agent or employee provides patient care or handles or processes samples, and the agent or employee has a medical need to know such information.

d. To a health care provider providing care to the subject of the test when knowledge of the test results is necessary to provide care or treatment.

e. To the department in accordance with reporting requirements for an HIV-related condition.

f. To a health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person with respect to medical information regarding that person, or semen provided prior to July 1, 1988, for the purpose of artificial insemination.

g. To a person allowed access to an HIV-related test result by a court order which is issued in compliance with the following provisions:

(1) A court has found that the person seeking the test results has demonstrated a compelling need for the test results which need cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure due to its deterrent effect on future testing or due to its effect in leading to discrimination.

(2) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.

(3) Before granting an order, the court shall provide the person whose test results are in question with notice and a reasonable opportunity to participate in the proceedings if the person is not already a party.

(4) Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(5) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may gain access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

h. To an employer, if the test is authorized to be required under any other provision of law.

i. Pursuant to sections 915.42 and 915.43, to a convicted or alleged sexual assault offender; the physician or other health care provider who orders the test of a convicted or alleged offender; the victim; the parent, guardian, or custodian of the victim if the victim is a minor; the physician of the victim if requested by the victim; the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results; the victim's spouse; persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault; members of the victim's family within the third degree of consanguinity; and the county attorney who may use the results as evidence in the prosecution of sexual assault under chapter 915, subchapter V, or prosecution of the offense of criminal transmission of HIV under chapter 709C. For the purposes of this paragraph, "victim" means victim as defined in section 915.40.

j. To employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the department of human services, and employees of city and county jails, if the employees have direct supervision over inmates of those facilities or institutions in the exercise of the duties prescribed pursuant to section 80.9B.

3. Release may be made of medical or epidemiological information for research or statistical purposes in a manner such that no individual person can be identified.

4. Release may be made of medical or epidemiological information to the extent necessary to enforce the provisions of this chapter and related rules concerning the treatment, control, and investigation of HIV infection by public health officials.

5. Release may be made of medical or epidemiological information to medical personnel to the extent necessary to protect the health or life of the named party.

6. Release may be made of test results concerning a patient pursuant to procedures established under section 141A.5, subsection 2, paragraph "c".

7. Medical information secured pursuant to subsection 1 may be shared between employees of the department who shall use the information collected only for the purposes

of carrying out their official duties in preventing the spread of the disease or the spread of other reportable diseases as defined in section 139A.2.

8. Medical information secured pursuant to subsection 1 may be shared with other state or federal agencies, with employees or agents of the department, or with local units of government that have a need for the information in the performance of their duties related to HIV prevention, disease surveillance, or care of persons with HIV, only as necessary to administer the program for which the information is collected or to administer a program within the other agency. Confidential information transferred to other persons or entities under this subsection shall continue to maintain its confidential status and shall not be rereleased by the receiving person or entity.

99 Acts, ch 181, §13; 2000 Acts, ch 1066, §40; 2007 Acts, ch 70, §10; 2008 Acts, ch 1031, §103; 2008 Acts, ch 1032, §25; 2011 Acts, ch 63, §29, 30; 2012 Acts, ch 1113, §23

Referred to in §139A.22, 505.16, 915.43

**141A.10 Immunities.**

1. A person making a report in good faith pursuant to this chapter is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

2. A health care provider attending a person who tests positive for HIV infection has no duty to disclose to or to warn third parties of the dangers of exposure to HIV infection through contact with that person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of that person.

99 Acts, ch 181, §14; 2011 Acts, ch 63, §31

**141A.11 Remedies.**

1. A person aggrieved by a violation of this chapter shall have a right of civil action for damages in district court.

2. A care provider who intentionally or recklessly makes an unauthorized disclosure under this chapter is subject to a civil penalty of one thousand dollars.

3. A person who violates a confidentiality requirement of section 141A.5 is guilty of an aggravated misdemeanor.

4. A civil action under this chapter is barred unless the action is commenced within two years after the cause of action accrues.

5. The attorney general may maintain a civil action to enforce this chapter.

6. This chapter does not limit the rights of the subject of an HIV-related test to recover damages or other relief under any other applicable law.

7. This chapter shall not be construed to impose civil liability or criminal sanctions for disclosure of HIV-related test results in accordance with any reporting requirement for a diagnosed case of AIDS or a related condition by the department or the centers for disease control and prevention of the United States department of health and human services.

99 Acts, ch 181, §15; 2006 Acts, ch 1010, §53

**CHAPTER 142**

**DEAD BODIES FOR SCIENTIFIC PURPOSES**

Referred to in §135.11, 331.804

142.1	Delivery of bodies.	142.8	Purpose for which body used.
142.2	Furnished to physicians.	142.9	Failure to deliver dead body.
142.3	Notification of department.	142.10	Use without proper record.
142.4	Surrender to relatives.	142.11	Penalties.
142.5	Disposition after dissection.	142.12	Repealed by 69 Acts, ch 137, §11.
142.6	Record of receipt.	142.13	Burial in private cemetery lot.
142.7	Record and bodies.		

**142.1 Delivery of bodies.**

The body of every person dying in a public asylum, hospital, county care facility, penitentiary, or reformatory in this state, or found dead within the state, or which is to be buried at public expense in this state, except those buried under the provisions of chapter 144C or 249, and which is suitable for scientific purposes, shall be delivered to the medical college of the state university, or some osteopathic or chiropractic college or school located in this state, which has been approved under the law regulating the practice of osteopathic medicine or chiropractic; but no such body shall be delivered to any such college or school if the deceased person expressed a desire during the person's last illness that the person's body should be buried or cremated, nor if such is the desire of the person's relatives. Such bodies shall be equitably distributed among said colleges and schools according to their needs for teaching anatomy in accordance with such rules as may be adopted by the Iowa department of public health. The expense of transporting said bodies to such college or school shall be paid by the college or school receiving the same. If the deceased person has not expressed a desire during the person's last illness that the person's body should be buried or cremated and no person authorized to control the deceased person's remains under section 144C.5 requests the person's body for burial or cremation, and if a friend objects to the use of the deceased person's body for scientific purposes, said deceased person's body shall be forthwith delivered to such friend for burial or cremation at no expense to the state or county. Unless such friend provides for burial and burial expenses within five days, the body shall be used for scientific purposes under this chapter.

[C73, §4018; C97, §4946; S13, §4946-b; C24, 27, 31, 35, 39, §2351; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.1]

2008 Acts, ch 1051, §1, 22; 2009 Acts, ch 133, §41

Referred to in §142.2, 142.3, 156.2, 252.27

Approval of medical, osteopathic, and chiropractic colleges, see §148.3, 151.4

**142.2 Furnished to physicians.**

When there are more dead bodies available for use under section 142.1 than are desired by said colleges or schools, the same may be delivered to physicians in the state for scientific study under such rules as may be adopted by the Iowa department of public health.

[S13, §4946-b; C24, 27, 31, 35, 39, §2352; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.2]

Referred to in §142.3, 156.2

**142.3 Notification of department.**

Every county medical examiner, funeral director or embalmer, and the managing officer of every public asylum, hospital, county care facility, penitentiary, or reformatory, as soon as any dead body shall come into the person's custody which may be used for scientific purposes as provided in sections 142.1 and 142.2, shall at once notify the nearest relative or friend of the deceased, if known, and the Iowa department of public health, and hold such body unburied for forty-eight hours. Upon receipt of notification, the department shall issue verbal or written instructions relative to the disposition to be made of said body. Complete jurisdiction over said bodies is vested exclusively in the Iowa department of public health. No autopsy or post mortem, except as are legally ordered by county medical examiners, shall be performed on any of said bodies prior to their delivery to the medical schools.

[S13, §4946-c; C24, 27, 31, 35, 39, §2353; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.3]

2013 Acts, ch 90, §28

Section amended

**142.4 Surrender to relatives.**

When any dead body which has been delivered under this chapter for scientific purposes is subsequently claimed by any relative, it shall be at once surrendered to such relative for burial without public expense; and all bodies received under this chapter shall be held for a period of thirty days before being used. Unless such person claiming the body for burial pays the costs that have been incurred in the care and transportation of the body within thirty days

after claiming it, all rights thereto shall cease and the body may then be used as if no claim had been made.

This section shall not apply to bodies given under authority of the revised uniform anatomical gift Act as provided in chapter 142C.

[C73, §4018; C97, §4946; S13, §4946-c, -d; C24, 27, 31, 35, 39, §2354; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.4]

2003 Acts, ch 108, §36; 2007 Acts, ch 44, §26

#### **142.5 Disposition after dissection.**

The remains of every body received for scientific purposes under this chapter shall be decently buried or cremated after it has been used for said purposes, and a failure to do so shall be a simple misdemeanor.

[C73, §4019; C97, §4947; C24, 27, 31, 35, 39, §2355; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.5]

Referred to in §156.2

#### **142.6 Record of receipt.**

Any college, school, or physician receiving the dead body of any human being for scientific purposes shall keep a record showing:

1. The name of the person from whom, and the time and place, such body was received.
2. The description of the receptacle in which the body was received, including the shipping direction attached to the same.
3. The description of the body, including the length, weight, and sex, apparent age at time of death, color of hair and beard, if any, and all marks or scars which might be used to identify the same.
4. The condition of the body and whether mutilated so as to prevent identification.

[C97, §4948; C24, 27, 31, 35, 39, §2356; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.6]

Referred to in §142.7, 142.10

#### **142.7 Record and bodies.**

The record required by section 142.6 and the dead body of every human being received under this chapter shall be subject to inspection by any peace officer, or relative of the deceased.

[C97, §4948, 4949; C24, 27, 31, 35, 39, §2357; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.7]

#### **142.8 Purpose for which body used.**

The dead bodies delivered under this chapter shall be used only within the limits of this state for the purpose of scientific, medical, and surgical study, and no person shall remove the same beyond the limits of this state or in any manner traffic therein. Any person who shall violate this section shall be guilty of a serious misdemeanor.

This section shall not apply to bodies given under authority of the revised uniform anatomical gift Act as provided in chapter 142C.

[C73, §4020; C97, §4950; C24, 27, 31, 35, 39, §2358; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.8]

2003 Acts, ch 108, §37; 2007 Acts, ch 44, §27

#### **142.9 Failure to deliver dead body.**

Any person having the custody of the dead body of any human being which is required to be delivered for scientific purposes by this chapter, who shall fail to notify the Iowa department of public health of the existence of such body, or fail to deliver the same in accordance with the instructions of the department, shall be guilty of a simple misdemeanor.

[S13, §4946-e; C24, 27, 31, 35, 39, §2359; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.9]

**142.10 Use without proper record.**

Any physician or member of the instructional staff of any college or school who uses, or permits others under the physician’s or member’s charge to use the dead body of a human being for the purpose of medical or surgical study without the record required in section 142.6 having been made, or who shall refuse to allow any peace officer or relative of the deceased to inspect said record or body, shall be guilty of a serious misdemeanor.

[C97, §4949; C24, 27, 31, 35, 39, §2360; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.10]

**142.11 Penalties.**

Any person who shall receive or deliver any dead body of a human being knowing that any of the provisions of this chapter have been violated, shall be guilty of an aggravated misdemeanor.

[S13, §4946-e; C24, 27, 31, 35, 39, §2361; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §142.11]

**142.12** Repealed by 69 Acts, ch 137, § 11.

**142.13 Burial in private cemetery lot.**

In the event such deceased person, whose body has been used for scientific purposes as provided herein, shall own or have the right of burial in a private or family cemetery lot in the state of Iowa, that such deceased person’s body shall be buried in such lot.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §142.13]

**CHAPTER 142A**

**TOBACCO USE PREVENTION AND CONTROL**

Referred to in §135.11

142A.1	Tobacco use prevention and control partnership — purpose and intent.	142A.6	Comprehensive tobacco use prevention and control initiative established — purpose — results.
142A.2	Definitions.	142A.7	Initiative components.
142A.3	Tobacco use prevention and control — division — commission — created.	142A.8	Community partnerships.
		142A.9	Youth program.
142A.4	Commission duties.	142A.10	Funding of programs delivered through community partnerships.
142A.5	Director and administrator duties.	142A.11	Application for services — minors.

**142A.1 Tobacco use prevention and control partnership — purpose and intent.**

1. The purpose of this chapter is to establish a comprehensive partnership among the general assembly, the executive branch, communities, and the people of Iowa in addressing the prevalence of tobacco use in the state.

2. It is the intent of the general assembly that the comprehensive tobacco use prevention and control initiative established in this chapter will specifically address reduction of tobacco use by youth and pregnant women and enhancement of the capacity of youth to make healthy choices. The initiative shall allow extensive involvement of youth in attaining these results.

3. It is also the intent of the general assembly that the comprehensive tobacco use prevention and control initiative will foster a social and legal climate in which tobacco use becomes undesirable and unacceptable, in which role models and those who influence youth promote healthy social norms and demonstrate behavior that counteracts the glamorization of tobacco use, and in which tobacco becomes less accessible to youth. The intent of the

general assembly shall be accomplished by engaging all who are affected by the use of tobacco in the state, including smokers and nonsmokers, youth, and adults.

2000 Acts, ch 1192, §1, 17; 2011 Acts, ch 63, §1

Referred to in §142A.4, 142A.6

### **142A.2 Definitions.**

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

1. “*Administrator*” means the administrator of the division of tobacco use prevention and control.
  2. “*Commission*” means the commission on tobacco use prevention and control established in this chapter.
  3. “*Community partnership*” means a public agency or nonprofit organization implementing the tobacco use prevention and control initiative in a local area in accordance with this chapter.
  4. “*Department*” means the Iowa department of public health.
  5. “*Director*” means the director of public health.
  6. “*Division*” means the division of tobacco use prevention and control of the Iowa department of public health, established pursuant to this chapter.
  7. “*Initiative*” means the comprehensive tobacco use prevention and control initiative established in this chapter.
  8. “*Manufacturer*” means manufacturer as defined in section 453A.1.
  9. “*Pregnant woman*” means a female of any age who is pregnant.
  10. “*School-age youth*” means a person attending school in kindergarten through grade twelve.
  11. “*Tobacco*” means both cigarettes and tobacco products as defined in section 453A.1.
  12. “*Youth*” means a person who is five through twenty-four years of age.
- 2000 Acts, ch 1192, §2, 17; 2011 Acts, ch 63, §2

### **142A.3 Tobacco use prevention and control — division — commission — created.**

1. The department shall establish, as a separate and distinct division within the department, a division of tobacco use prevention and control. The division shall develop, implement, and administer the initiative established in this chapter and shall perform other duties as directed by this chapter or as assigned by the director of public health.
2. A commission on tobacco use prevention and control is established to develop policy, provide direction for the initiative, and perform all other duties related to the initiative and other tobacco use prevention and control activities as directed by this chapter or referred to the commission by the director of public health.
3. The membership of the commission shall include the following voting members who shall serve three-year, staggered terms:
  - a. Members, at least one of whom is a member of a racial minority, to be appointed by the governor, subject to confirmation by the senate pursuant to sections 2.32 and 69.19, and consisting of the following:
    - (1) Three members who are active with nonprofit health organizations that emphasize tobacco use prevention or who are active as health services providers, at the local level.
    - (2) Three members who are active with health promotion activities at the local level in youth education, nonprofit services, or other activities relating to tobacco use prevention and control.
    - b. Three voting members, to be selected by the participants in the annual statewide youth summit of the initiative’s youth program, who shall not be subject to section 69.16 or 69.16A. However, the selection process shall provide for diversity among the members and at least one of the youth members shall be a female.
  4. The commission shall also include the following ex officio, nonvoting members:
    - a. Four members of the general assembly, with not more than one member from each chamber being from the same political party. The majority leader of the senate and the minority leader of the senate shall each appoint one of the senate members. The majority

leader of the house of representatives and the minority leader of the house of representatives shall each appoint one of the house members.

b. The presiding officer of the statewide youth executive body, selected by the delegates to the statewide youth summit.

5. In addition to the members of the commission, the following agencies, organizations, and persons shall each assign a single liaison to the commission to provide assistance to the commission in the discharge of the commission's duties:

- a. The department of education.
- b. The drug policy coordinator.
- c. The department of justice, office of the attorney general.
- d. The department of human services.

6. Citizen members shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Citizen members shall be paid a per diem as specified in section 7E.6. Legislative members are eligible for per diem and expenses as provided in section 2.10.

7. A member of the commission who is convicted of a crime relating to tobacco, alcohol, or controlled substances is subject to removal from the commission.

8. A vacancy on the commission other than for the youth members shall be filled in the same manner as the original appointment for the balance of the unexpired term. A youth member vacancy shall be filled by the presiding officer of the statewide executive body as selected by the delegates to the statewide youth summit.

9. The commission shall elect a chairperson from among its voting members and may select other officers from among its voting members, as determined necessary by the commission. The commission shall meet regularly as determined by the commission, upon the call of the chairperson, or upon the call of a majority of the voting members.

10. The commission may designate an advisory council. The commission shall determine the membership and representation of the advisory council and members of the council shall serve at the pleasure of the commission. The advisory council may include representatives of health care provider groups, parent groups, antitobacco advocacy programs and organizations, research and evaluation experts, and youth organizers.

2000 Acts, ch 1192, §3, 17; 2004 Acts, ch 1176, §6; 2009 Acts, ch 133, §42; 2010 Acts, ch 1061, §30; 2011 Acts, ch 63, §3, 4; 2012 Acts, ch 1021, §46

#### **142A.4 Commission duties.**

The commission shall do all of the following:

1. Develop and implement the comprehensive tobacco use prevention and control initiative as provided in this chapter.

2. Provide a forum for the discussion, development, and recommendation of public policy alternatives in the field of tobacco use prevention and control.

3. Develop an educational component of the initiative. Educational efforts provided through the school system shall be developed in conjunction with the department of education.

4. Develop a plan for implementation of the initiative in accordance with the purpose and intent specified in section 142A.1.

5. Provide for technical assistance, training, and other support under the initiative.

6. Take actions to develop and implement a statewide system for the initiative programs that are delivered through community partnerships.

7. Manage and coordinate the provision of funding and other moneys available to the initiative by combining all or portions of appropriations or other revenues as authorized by law.

8. Assist with the linkage of the initiative with child welfare and juvenile justice decategorization projects, education programming, early childhood Iowa areas, and other programs and services directed to youth at the state and community level.

9. a. Coordinate and respond to any requests from a community partnership relating to any of the following:

- (1) Removal of barriers to community partnership efforts.

(2) Pooling and redirecting of existing federal, state, or other public or private funds available for purposes that are consistent with the initiative.

(3) Seeking of federal waivers to assist community partnership efforts.

b. In coordinating and responding to the requests, the commission shall work with state agencies, the governor, and the general assembly as necessary to address requests deemed appropriate by the commission.

10. Adopt rules pursuant to chapter 17A as necessary for the designation, governance, and oversight of the initiative and the implementation of this chapter. The commission shall provide for community partnership and youth program input in the rules adoption process. The rules shall include but are not limited to all of the following:

a. Performance indicators for initiative programs, community partnerships, and the services provided under the auspices of community partnerships. The performance indicators shall be developed with input from communities.

b. Minimum standards to further the provision of equal access to services.

11. Monitor and evaluate the effectiveness of performance measures utilized under the initiative.

12. Submit a report to the governor and the general assembly on a periodic basis, during the initial year of operation, and on an annual basis thereafter, regarding the initiative, including demonstrated progress based on performance indicators. The commission shall report more frequently if requested by the joint appropriations subcommittee that makes recommendations concerning the commission's budget. Beginning July 1, 2005, the commission shall also perform a comprehensive review of the initiative and shall submit a report of its findings to the governor and the general assembly on or before December 15, 2005.

13. Represented by the chairperson of the commission, annually appear before the joint appropriations subcommittee that makes recommendations concerning the commission's budget to report on budget expenditures and division operations relative to the prior fiscal year and the current fiscal year.

14. Advise the director in evaluating potential candidates for the position of administrator, consult with the director in the hiring of the administrator, and review and advise the director on the performance of the administrator in the discharge of the administrator's duties.

15. Prioritize funding needs and the allocation of moneys appropriated and other resources available for the programs and activities of the initiative.

16. Review fiscal needs of the initiative and make recommendations to the director in the development of budget requests.

17. Solicit and accept any gift of money or property, including any grant of money, services, or property from the federal government, the state, a political subdivision, or a private source that is consistent with the goals of the initiative. The commission shall adopt rules prohibiting the acceptance of gifts from a manufacturer of tobacco products.

18. Advise and make recommendations to the governor, the general assembly, the director, and the administrator, relative to tobacco use, treatment, intervention, prevention, control, and education programs in the state.

19. Evaluate the work of the division and the department relating to the initiative. For this purpose, the commission shall have access to any relevant department records and documents, and other information reasonably obtainable by the department.

20. Develop the structure for the statewide youth summit to be held annually.

21. Approve the content of any materials distributed by the youth program pursuant to section 142A.9, prior to distribution of the materials.

2000 Acts, ch 1192, §4, 17; 2004 Acts, ch 1176, §7; 2005 Acts, ch 179, §57; 2009 Acts, ch 41, §263; 2010 Acts, ch 1031, §293; 2011 Acts, ch 63, §5

Referred to in §142A.5

#### **142A.5 Director and administrator duties.**

1. The director shall do all of the following:

a. Establish and maintain the division of tobacco use prevention and control.

b. Employ a separate division administrator, in accordance with the requirements of

section 142A.4, subsection 14, in a full-time equivalent position whose sole responsibility and duty shall be the administration and oversight of the division. The division administrator shall report to and shall serve at the pleasure of the director. The administrator shall be exempt from the merit system provisions of chapter 8A, subchapter IV.

c. Coordinate all tobacco use prevention and control programs and activities under the purview of the department.

d. Receive and review budget recommendations from the commission. The director shall consider these recommendations in developing the budget request for the department.

2. The administrator shall do all of the following:

a. Implement the initiative, coordinate the activities of the commission and the initiative, and coordinate other tobacco use prevention and control activities as assigned by the director.

b. Monitor and evaluate the effectiveness of performance measures.

c. Provide staff and administrative support to the commission.

d. Administer contracts entered into under this chapter.

e. Coordinate and cooperate with other tobacco use prevention and control programs within and outside of the state.

f. Provide necessary information to the commission to assist the commission in making its annual report to the joint appropriations subcommittee pursuant to section 142A.4, subsection 13, and in fulfilling other commission duties pursuant to section 142A.4.

2000 Acts, ch 1192, §5, 17; 2003 Acts, ch 145, §190; 2004 Acts, ch 1176, §8, 9; 2011 Acts, ch 63, §6, 7

**142A.6 Comprehensive tobacco use prevention and control initiative established — purpose — results.**

1. A comprehensive tobacco use prevention and control initiative is established. The division shall implement the initiative as provided in this chapter.

2. The purpose of the initiative is to attain the following results:

a. Reduction of tobacco use by youth.

b. Strong, active youth involvement in activities to prevent youth tobacco use and to promote cessation of youth tobacco use.

c. Enhanced capacity of youth to make healthy choices.

d. Reduction of tobacco use by pregnant women.

3. Success in achieving the initiative's desired results may be demonstrated by a minimum of the following:

a. Data demonstrating consistent progress in reducing the prevalence of tobacco use among youth and adults.

b. Survey results indicating widespread support among youth for the initiative's tobacco use prevention and control activities; for programs that enhance the ability of youth to make healthy choices including those related to use of tobacco, alcohol, and other substances; and for the media, marketing, and communications efforts supporting the initiative's desired results. Any survey conducted may also include an assessment of the effectiveness of tobacco use prevention and control activities in affecting other unhealthy youth behaviors including sexual activity and violent behavior.

4. The division shall implement the initiative in a manner that ensures that youth are extensively involved in the decision making for the programs implemented under the initiative. The initiative shall also involve parents, schools, and community members in activities to achieve the results desired for the initiative. The division shall encourage collaboration at the state and local levels to maximize available resources and to provide flexibility to support community efforts.

5. Procurement of goods and services necessary to implement the initiative is subject to approval of the commission. Notwithstanding chapter 8A, subchapter III, or any other provision of law to the contrary, such procurement may be accomplished by the commission under its own competitive bidding process which shall provide for consideration of such factors as price, bidder competence, and expediency in procurement.

6. In order to promote the tobacco use prevention and control partnership established in section 142A.1, the following persons shall comply with the following, as applicable:

a. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away cigarettes or tobacco products.

b. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not provide free articles, products, commodities, gifts, or concessions in any exchange for the purchase of cigarettes or tobacco products.

c. The prohibitions in this section do not apply to transactions between manufacturers, distributors, wholesalers, or retailers.

d. For the purpose of this subsection, manufacturer, distributor, wholesaler, retailer, and distributing agent mean as defined in section 453A.1.

2000 Acts, ch 1192, §6, 17; 2003 Acts, ch 145, §191; 2011 Acts, ch 63, §8, 9

See also §453A.39

#### **142A.7 Initiative components.**

1. The initiative shall include but is not limited to all of the following:

a. Youth programs, designed to achieve the initiative's desired results, that are directed by youth participants for youth.

b. A media, marketing, and communications program to achieve the initiative's desired results. Advertising shall not include the name, voice, or likeness of any elected or appointed public official or of any candidate for elective office.

c. Independent evaluation of each component of the statewide initiative.

d. Ongoing statewide assessment of data, review of indicators used in assessing the effectiveness of the initiative, and evaluation of the initiative, its programs, and its marketing strategy. The initial baseline used to measure the effectiveness of the initiative shall be developed using existing, available indicators. Following development of the initial baseline, indicators of the effectiveness of the initiative shall be reviewed on at least an annual basis to ensure that the indicators used most accurately provide for measurement of such effectiveness. Primary emphasis in data assessment shall be on data relating to tobacco usage and may include data demonstrating the prevalence of tobacco use among youth and pregnant women, and the prevalence of the use of alcohol and other substances among youth. Sources of data considered shall include but are not limited to the centers for disease control and prevention of the United States department of health and human services and the Iowa youth tobacco survey, and may include the Iowa youth risk survey conducted by the department or the youth risk behavior survey.

e. A tobacco use prevention and control education program.

2. Administrative costs associated with each program of the initiative and program provider shall be established at a reasonable level consistent with effective management practices.

3. Requests for information or for proposals shall emphasize that performance measures are required for any contract or allocation of funding under the initiative.

2000 Acts, ch 1192, §7, 17; 2011 Acts, ch 63, §10

#### **142A.8 Community partnerships.**

1. A community partnership is a public agency or nonprofit organization operating in a local area under contract with the department to implement the initiative in that local area utilizing broad community involvement. The community partnership or its designee shall act as the fiscal agent for moneys administered by the community partnership.

2. A community partnership area shall encompass a county or multicounty area, school district or multischool district area, economic development enterprise zone that meets the requirements of an urban or rural enterprise community under Tit. XIII of the federal Omnibus Budget Reconciliation Act of 1993, or early childhood Iowa area, in accordance with criteria adopted by the commission for appropriate population levels and size of geographic areas.

3. The commission shall adopt rules pursuant to chapter 17A providing procedures for the initial designation of community partnership areas and for subsequent changes to the initially designated areas.

4. The requirements for contracts entered into by a community partnership and the department shall include but are not limited to all of the following:

- a. Administrative functions.
- b. Fiscal provisions.
- c. Community and youth involvement in program and administrative decisions.
- d. Evaluation of the program.

2000 Acts, ch 1192, §8, 17; 2010 Acts, ch 1031, §294; 2010 Acts, ch 1061, §180; 2011 Acts, ch 63, §11

#### **142A.9 Youth program.**

1. A youth program component shall be implemented in each community partnership area to achieve the purposes of the initiative.

2. The youth program shall include but is not limited to all of the following:

a. A structure for program participants to interact with other participating youth within the community partnership area and in other areas of the state.

b. A structure for formal youth involvement in youth program governance at the community partnership area level and in a statewide youth summit or summits consisting of participation by representatives of the community partnership area level.

c. A structure for participation in a statewide executive body consisting of participants selected by the delegates to the statewide youth summit of the youth program.

d. Youth activities that are character-based and focused on rewarding appropriate values, behavior, and healthy choices by participants.

3. To the greatest extent possible, the youth program shall be directed by youth for youth participants. State and local administrators associated with the initiative shall consult with and utilize the youth program participants in the media, marketing, and communications program; education efforts; and other aspects of the initiative including evaluation and collaboration.

2000 Acts, ch 1192, §9, 17; 2011 Acts, ch 63, §12

Referred to in §142A.4

#### **142A.10 Funding of programs delivered through community partnerships.**

1. The commission shall develop and implement a statewide system for the initiative programs that are delivered through community partnerships.

2. The system shall provide for equitable allocation of funding for initiative programs among the state's community partnership areas, based upon school-age population and other criteria established by the commission.

3. The specific programs, distribution provisions, and other provisions approved by the commission for expenditure of the maximum allocation amount established for a community partnership area shall be outlined in the written contract with the community partnership.

4. Any allocation received by a community partnership shall be matched with local funding, in-kind services, office support, or other tangible support or offset of costs.

2000 Acts, ch 1192, §10, 17

#### **142A.11 Application for services — minors.**

A minor who is twelve years of age or older shall have the legal capacity to act and give consent to the provision of tobacco cessation coaching services pursuant to a tobacco cessation telephone and internet-based program approved by the department. Consent shall not be subject to later disaffirmance by reason of such minority. The consent of another person, including but not limited to the consent of a spouse, parent, custodian, or guardian, shall not be necessary.

2013 Acts, ch 81, §5

NEW section

## CHAPTER 142B

## SMOKING PROHIBITIONS

Repealed by 2008 Acts, ch 1084, §16; see chapter 142D

## CHAPTER 142C

## REVISED UNIFORM ANATOMICAL GIFT ACT

Referred to in §141A.7, 142.4, 142.8, 144C.6, 144C.10, 321.178, 321.178A, 321.189

142C.1	Short title.	142C.9	Coordination of procurement and use.
142C.2	Definitions.	142C.10	Sale or purchase of parts prohibited — penalty.
142C.3	Persons who may make — manner of making — amending or revoking — refusal to make anatomical gift before donor's death — preclusive effect.	142C.10A	Other prohibited acts — penalty.
142C.4	Who may make anatomical gift of decedent's body or part — amending or revoking gift.	142C.11	Immunity.
142C.4A	Cooperation between medical examiner and organ procurement organization — facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.	142C.12	Service but not a sale.
142C.5	Persons who may receive anatomical gifts and purposes for which anatomical gifts may be made.	142C.12A	Law governing validity, choice of law, presumption of validity.
142C.5A	Search and notification.	142C.12B	Effect of anatomical gift on advance health care directive.
142C.6	Delivery of document of gift not required — right to examine.	142C.13	Transitional provisions.
142C.7	Confidential information.	142C.14	Uniformity of application and construction.
142C.8	Rights and duties of procurement organizations and donors.	142C.14A	Electronic signatures.
		142C.15	Anatomical gift public awareness and transplantation fund — established — uses of fund.
		142C.16	Anatomical gift public awareness advisory committee — established — duties. Repealed by 2010 Acts, ch 1031, § 399.
		142C.17	Annual donation and compliance report.
		142C.18	Iowa donor registry.

**142C.1 Short title.**

This chapter shall be known and may be cited as the “*Revised Uniform Anatomical Gift Act*”.

95 Acts, ch 39, §1; 2007 Acts, ch 44, §1

**142C.2 Definitions.**

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

1. “*Adult*” means an individual who is eighteen years of age or older.
2. “*Agent*” means an individual who meets any of the following conditions:
  - a. Is authorized to make health care decisions on the principal's behalf by a durable power of attorney for health care pursuant to chapter 144B.
  - b. Is expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.
3. “*Anatomical gift*” or “*gift*” means a donation of all or part of the human body effective after the donor's death, for the purposes of transplantation, therapy, research, or education.
4. “*Decedent*” means a deceased individual whose body or part is or may be the source of an anatomical gift and includes a stillborn infant.
5. “*Disinterested witness*” means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or

refuses to make an anatomical gift, or any other adult who exhibited special care and concern for the individual. “*Disinterested witness*” does not include a person who may receive an anatomical gift pursuant to section 142C.5.

6. “*Document of gift*” means a donor card or other record used to make an anatomical gift, including a statement or symbol on a driver’s license or identification card, or an entry in a donor registry.

7. “*Donor*” means an individual whose body or part is the subject of an anatomical gift.

8. “*Donor registry*” means a database that contains records of anatomical gifts and amendments of anatomical gifts.

9. “*Driver’s license*” means a license or permit issued by the state department of transportation to operate a vehicle, whether or not conditions are attached to the license or permit.

10. “*Eye bank*” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

11. “*Forensic pathologist*” means a pathologist who is further certified in the subspecialty of forensic pathology by the American board of pathology.

12. “*Guardian*” means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual, but does not include a guardian ad litem.

13. “*Hospital*” means a hospital licensed under chapter 135B, or a hospital licensed, accredited, or approved under federal law or the laws of any other state, and includes a hospital operated by the federal government, a state, or a political subdivision of a state, although not required to be licensed under state laws.

14. “*Identification card*” means a nonoperator’s identification card issued by the state department of transportation pursuant to section 321.190.

15. “*Iowa donor network*” means the nonprofit organization certified by the centers for Medicare and Medicaid services of the United States department of health and human services as the single organ procurement agency serving the state and which also serves as the tissue recovery agency for the state.

16. “*Iowa donor registry*” means the Iowa donor registry administered by the Iowa donor network.

17. “*Know*” means to have actual knowledge.

18. “*Medical examiner*” means an individual who is appointed as a medical examiner pursuant to section 331.801 or 691.5.

19. “*Minor*” means an individual who is less than eighteen years of age.

20. “*Organ procurement organization*” means a person designated by the United States secretary of health and human services as an organ procurement organization.

21. “*Parent*” means a parent whose parental rights have not been terminated.

22. “*Part*” means an organ, an eye, or tissue of a human being, but does not include the whole body of a human being.

23. “*Pathologist*” means a licensed physician who is certified in anatomic or clinical pathology by the American board of pathology.

24. “*Person*” means person as defined in section 4.1.

25. “*Physician*” means an individual authorized to practice medicine and surgery or osteopathic medicine and surgery under the laws of any state.

26. “*Procurement organization*” means an eye bank, organ procurement organization, or tissue bank.

27. “*Prospective donor*” means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education, but does not include an individual who has made a refusal.

28. “*Reasonably available*” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

29. “*Recipient*” means an individual into whose body a decedent’s part has been transplanted or is intended for transplant.

30. “*Record*” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

31. “*Refusal*” means a record created pursuant to section 142C.3 that expressly states an individual’s intent to prohibit other persons from making an anatomical gift of the individual’s body or part.

32. “*Sign*” means to do any of the following with the present intent to authenticate or adopt a record:

a. Execute or adopt a tangible symbol.

b. Attach to or logically associate with the record an electronic symbol, sound, or process.

33. “*State*” means any state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

34. “*Technician*” means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law and includes an enucleator.

35. “*Tissue*” means a portion of the human body other than an organ or an eye, but does not include blood unless the blood is donated for the purpose of research or education.

36. “*Tissue bank*” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

37. “*Transplant hospital*” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

95 Acts, ch 39, §2; 2001 Acts, ch 74, §3; 2002 Acts, ch 1064, §1, 2; 2007 Acts, ch 44, §2; 2009 Acts, ch 133, §43

Referred to in §423.3

### **142C.3 Persons who may make — manner of making — amending or revoking — refusal to make anatomical gift before donor’s death — preclusive effect.**

1. *Who may make.* Subject to subsection 5, an anatomical gift of a donor’s body or part may be made during the life of the donor for the purposes of transplantation, therapy, research, or education in the manner prescribed in subsection 2 by any of the following:

a. The donor if the donor is any of the following:

(1) An adult.

(2) A minor, if the minor is emancipated.

(3) A minor, if the minor is authorized under state law to apply for a driver’s license or identification card because the minor is at least 14 years of age, and the minor authorizes a statement or symbol indicating an anatomical gift on a driver’s license, identification card, or donor registry entry with the signed approval of a parent or guardian.

b. An agent of the donor, unless the durable power of attorney for health care or other record prohibits the agent from making the anatomical gift.

c. A parent of the donor, if the donor is an unemancipated minor.

d. The guardian of the donor.

2. *Manner of making.*

a. A donor may make an anatomical gift by any of the following means:

(1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor’s driver’s license or identification card.

(2) In a will.

(3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness.

(4) As provided in paragraph “b”.

b. (1) A donor or other person authorized to make an anatomical gift under subsection 1 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on the donor registry.

(2) If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall meet all of the following requirements:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or other person.

(b) State that the record has been signed and witnessed as provided in subparagraph division (a).

c. Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated shall not invalidate the gift.

d. An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

3. *Amending or revoking gift before donor's death.*

a. Subject to subsection 5, a donor or other person authorized to make an anatomical gift under subsection 1 may amend or revoke an anatomical gift by any of the following means:

(1) A record signed by any of the following:

(a) The donor.

(b) The other person authorized to make an anatomical gift.

(c) Subject to paragraph "b", another individual acting at the direction of the donor or the other authorized person if the donor or other person is physically unable to sign the record.

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

b. A record signed pursuant to paragraph "a", subparagraph (1), subparagraph division (c), shall comply with all of the following:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other authorized person.

(2) State that the record has been signed and witnessed as provided in subparagraph (1).

c. Subject to subsection 5, a donor or other person authorized to make an anatomical gift under subsection 1 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

d. A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

e. A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in paragraph "a".

4. *Refusal to make.*

a. An individual may refuse to make an anatomical gift of the individual's body or part by any of the following means:

(1) A record signed by any of the following:

(a) The individual.

(b) Subject to paragraph "b", another individual acting at the direction of the individual if the individual is physically unable to sign the record.

(2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death.

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

b. A record signed pursuant to paragraph "a", subparagraph (1), subparagraph division (b), shall comply with all of the following:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual.

(2) State that the record has been signed and witnessed as provided in subparagraph (1).

c. An individual who has made a refusal may amend or revoke the refusal in accordance with any of the following:

(1) In the manner provided in paragraph "a" for making a refusal.

(2) By subsequently making an anatomical gift pursuant to subsection 2 that is inconsistent with the refusal.

(3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

d. Except as otherwise provided in subsection 5, paragraph “h”, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual’s unrevoked refusal to make an anatomical gift of the individual’s body or part prohibits all other persons from making an anatomical gift of the individual’s body or part.

5. *Preclusive effect.*

a. *Donor gift or amendment — subsequent actions by others prohibited.* Except as otherwise provided in paragraph “g”, and subject to paragraph “f”, in the absence of a contrary indication by the donor, a person other than the donor is prohibited from making, amending, or revoking an anatomical gift of a donor’s body or part if the donor made an anatomical gift of the donor’s body or part under subsection 2 or an amendment to an anatomical gift of the donor’s body or part under subsection 3.

b. *Donor revocation not a refusal.* A donor’s revocation of an anatomical gift of the donor’s body or part under subsection 3 is not a refusal and does not prohibit another person specified in subsection 1 or section 142C.4 from making an anatomical gift of the donor’s body or part under subsection 2 or section 142C.4.

c. *Gift on amendment by another — subsequent actions by others prohibited.* If a person other than the donor makes an unrevoked anatomical gift of the donor’s body or part under subsection 2, or an amendment to an anatomical gift of the donor’s body or part under subsection 3, another person may not make, amend, or revoke the gift of the donor’s body or part under section 142C.4.

d. *Revocation by another not prohibitive of other gift.* A revocation of an anatomical gift of a donor’s body or part under subsection 3 by a person other than the donor does not prohibit another person from making an anatomical gift of the body or part under subsection 2 or section 142C.4.

e. *Gift of part not prohibitive of gift of another part.* In the absence of a contrary indication by the donor or other person authorized to make an anatomical gift under subsection 1, an anatomical gift of a part is neither a refusal to donate another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another authorized person.

f. *Gift for one purpose not prohibitive of another purpose.* In the absence of a contrary indication by the donor or other person authorized to make an anatomical gift under subsection 1, an anatomical gift of a part for one or more of the purposes specified in subsection 1 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under subsection 2 or section 142C.4.

g. *Unemancipated minor gift — parent revocation.* If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor’s body or part.

h. *Unemancipated minor refusal — parent revocation or amendment.* If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor’s refusal.

95 Acts, ch 39, §3; 2002 Acts, ch 1064, §3, 4; 2007 Acts, ch 44, §3; 2009 Acts, ch 41, §263

Referred to in §142C.2, 142C.4, 142C.5, 142C.18

#### **142C.4 Who may make anatomical gift of decedent’s body or part — amending or revoking gift.**

1. Subject to subsection 2, and unless prohibited by section 142C.3, subsection 4 or 5, an anatomical gift of a decedent’s body or part for purposes of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed.

a. An agent of the decedent at the time of death who could have made an anatomical gift under section 142C.3, subsection 1, immediately before the decedent’s death.

b. The spouse of the decedent.

- c. Adult children of the decedent.
  - d. Parents of the decedent.
  - e. Adult siblings of the decedent.
  - f. Adult grandchildren of the decedent.
  - g. Grandparents of the decedent.
  - h. An adult who exhibited special care and concern for the decedent.
  - i. Any persons who were acting as guardians of the decedent at the time of death.
  - j. Any other person having the authority to dispose of the decedent's body.
2. a. If there is more than one member of a class listed in subsection 1, paragraph "a", "c", "d", "e", "f", "g", or "i", entitled to make an anatomical gift, an anatomical gift may be made by one member of the class unless that member or a person to whom the gift may pass under section 142C.5 knows of an objection by another member of the class. If an objection is known, the gift shall be made only by a majority of the members of the class who are reasonably available.
- b. A person shall not make an anatomical gift if, at the time of the death of the decedent, a person in a prior class under subsection 1 is reasonably available to make or to object to the making of an anatomical gift.
3. A person authorized to make an anatomical gift under subsection 1 may make an anatomical gift by a document of gift signed by the person making the gift or by the person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the recipient of the oral communication.
4. Subject to subsection 5, an anatomical gift by a person authorized under subsection 1 may be amended or revoked orally or in a record by any member of the prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under subsection 1 may be:
- a. Amended only if a majority of the reasonably available members agree to the amending of the gift.
  - b. Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.
5. A revocation under subsection 4 is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.
- 95 Acts, ch 39, §4; 2002 Acts, ch 1064, §5; 2007 Acts, ch 44, §4  
Referred to in §142C.3, 142C.5, 142C.8, 142C.11, 142C.12B

**142C.4A Cooperation between medical examiner and organ procurement organization — facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.**

1. A medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover organs for the purpose of transplantation when the recovery of organs does not interfere with a death investigation.
2. If a medical examiner receives notice from a procurement organization that an organ might be or was made available with respect to a decedent whose body is under the jurisdiction of the medical examiner and a postmortem examination will be performed, unless the medical examiner denies recovery in accordance with this section, the medical examiner or designee shall conduct a postmortem examination of the body or the organ in a manner and within a period compatible with its preservation for the purposes of the gift. Every reasonable effort shall be made to accomplish the mutual goals of organ donation and a thorough death investigation.
3. An organ shall not be removed from the body of a decedent under the jurisdiction of a medical examiner for transplantation unless the organ is the subject of an anatomical gift. This subsection does not preclude a medical examiner from performing a medicolegal investigation pursuant to subsection 5 upon the body or organs of a decedent under the jurisdiction of the medical examiner.
4. Upon request of an organ procurement organization, a medical examiner shall release

to the organ procurement organization the name and contact information of a decedent whose body is under the jurisdiction of the medical examiner. If the decedent's organs are medically suitable for transplantation, the pathologist or medical examiner shall release to the organ procurement organization the postmortem examination results, limited to cause and manner of death and any evidence of infection or other disease process, which might preclude safe transplantation of recovered organs. The organ procurement organization may make a subsequent disclosure of the postmortem examination results only if relevant to transplantation.

5. The medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, X rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner, which the medical examiner determines may be relevant to the investigation.

6. A person who has any information requested by a medical examiner pursuant to subsection 5 shall provide that information as expeditiously as possible to allow the medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of organs for the purpose of transplantation.

7. If an anatomical gift has been or might be made of an organ of a decedent whose body is under the jurisdiction of the medical examiner and a postmortem examination is not required, or the medical examiner determines that a postmortem examination is required but that the recovery of the organ that is the subject of an anatomical gift will not interfere with the examination, the medical examiner and organ procurement organization shall cooperate in the timely removal of the organ from the decedent for the purpose of transplantation.

8. *a.* If an anatomical gift of an organ from a decedent under the jurisdiction of the medical examiner has been or might be made, but the pathologist or medical examiner initially believes that the recovery of the organ could interfere with the postmortem investigation into the decedent's cause or manner of death, the pathologist or medical examiner shall consult with the organ procurement organization or physician or technician designated by the organ procurement organization about the proposed recovery.

*b.* Ancillary clinical tests such as a magnetic resonance imaging (MRI), a computed tomography (CT) scan, or skeletal survey may be required by the pathologist prior to determination of suitability of organ procurement. These tests shall be performed and interpreted by the appropriate physician at the pathologist's request, and reported in a timely fashion. All expenses for such tests shall be the responsibility of the organ procurement organization regardless of outcome.

*c.* After consultation pursuant to paragraph "a" and any preliminary investigation pursuant to paragraph "b", the pathologist or medical examiner may allow recovery, depending on the nature of the case and the availability of a pathologist to view the body prior to recovery.

9. If the manner of death may be homicide or has the potential for litigation, the organ recovery shall be approved by the forensic pathologist, and the forensic pathologist may examine the body prior to organ recovery and document by diagrams and photographs all visible injuries.

10. *a.* If the medical examiner or designee allows recovery of an organ under subsection 7, 8, or 9, the organ procurement organization, upon request, shall cause the physician or technician who removes the organ to provide the medical examiner with a record describing the condition of the organ, a biopsy, a photograph, and any other information and observations that would assist in the postmortem examination.

*b.* Arrangements for the examination of bodies of such decedents shall be coordinated between the organ procurement organization and the state medical examiner.

*c.* If applicable, and whenever possible, the forensic pathologist who examined the decedent's body prior to recovery of the organ shall perform the autopsy. If the forensic pathologist is unable to accommodate examination of the body due to scheduling or staffing, the request for organ donation may be denied.

11. If a medical examiner or designee is required to be present at a removal procedure under subsection 9, upon request, the organ procurement organization requesting the

recovery of the organ shall reimburse the medical examiner or designee for the additional costs incurred in complying with subsection 9.

12. A physician or technician who removes an organ at the direction of the organ procurement organization may be called to testify about findings from the surgical recovery of organs at no cost to taxpayers if the decedent is under the jurisdiction of the medical examiner.

13. *a.* The medical examiner or pathologist with jurisdiction over the body of a decedent has discretion to grant or deny permission for organ or tissue recovery.

*b.* If the recovery of organs or tissues may hinder the determination of cause or manner of death or if evidence may be destroyed by the recovery, permission may be denied.

*c.* The medical examiner or a pathologist performing state autopsies shall work closely with procurement organizations in an effort to balance the needs of the public and the decedent's next of kin.

96 Acts, ch 1048, §1; 2007 Acts, ch 44, §5

### **142C.5 Persons who may receive anatomical gifts and purposes for which anatomical gifts may be made.**

1. An anatomical gift may be made to the following persons named in a document of gift:

*a.* A hospital, accredited medical or osteopathic medical school, dental school, college, or university, organ procurement organization, or other appropriate person for research or education.

*b.* An eye bank or tissue bank.

*c.* Subject to subsection 2, an individual designated by the person making the anatomical gift if the individual is the recipient of the part.

2. If an anatomical gift to an individual under subsection 1, paragraph "c", cannot be transplanted into the individual, the part passes in accordance with subsection 7 in the absence of an express, contrary indication by the person making the anatomical gift.

3. If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection 1 but identifies the purpose for which an anatomical gift may be used, the following rules apply:

*a.* If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

*b.* If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

*c.* If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

*d.* If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

4. For the purpose of subsection 3, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

5. If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection 1 and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection 7.

6. If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor", or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection 7.

7. For the purposes of subsections 2, 5, and 6, the following rules shall apply:

*a.* If the part is an eye, the gift passes to the appropriate eye bank.

*b.* If the part is tissue, the gift passes to the appropriate tissue bank.

*c.* If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

8. An anatomical gift of an organ for transplantation or therapy, other than an anatomical

gift under subsection 1, paragraph “c”, passes to the organ procurement organization as custodian of the organ.

9. If an anatomical gift does not pass pursuant to subsections 1 through 8, or the decedent’s body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

10. A person shall not accept an anatomical gift if the person knows that the gift was not effectively made under section 142C.3, subsection 2, or section 142C.4, or if the person knows that the decedent made a refusal under section 142C.3, subsection 4, that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

11. Except as otherwise provided in subsection 1, paragraph “c”, nothing in this chapter shall affect the allocation of organs for transplantation or therapy.

95 Acts, ch 39, §5; 2007 Acts, ch 44, §6

Referred to in §142C.2, 142C.4, 142C.6, 142C.8

#### **142C.5A Search and notification.**

1. The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

a. A law enforcement officer, fire fighter, paramedic, or other emergency rescuer finding the individual.

b. If no other source of the information is immediately available, a hospital, as soon as practical after the individual’s arrival at the hospital.

2. If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection 1, paragraph “a”, and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall deliver the document of gift or refusal to the hospital.

3. A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

2007 Acts, ch 44, §7

#### **142C.6 Delivery of document of gift not required — right to examine.**

1. A document of gift does not require delivery during the donor’s lifetime to be effective.

2. Upon or after an individual’s death, a person in possession of the document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or the refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to whom the gift could pass under section 142C.5.

95 Acts, ch 39, §6; 2002 Acts, ch 1064, §6; 2003 Acts, ch 108, §38; 2007 Acts, ch 44, §8

#### **142C.7 Confidential information.**

A hospital, licensed or certified health care professional pursuant to chapter 148, 148C, or 152, or medical examiner may release patient information to a procurement organization as part of a referral or retrospective review of the patient as a potential donor. Any information regarding a patient, including the patient’s identity, however, constitutes confidential medical information and under any other circumstances is prohibited from disclosure without the written consent of the patient or the patient’s legal representative.

95 Acts, ch 39, §7; 96 Acts, ch 1048, §2; 2002 Acts, ch 1064, §7; 2007 Acts, ch 44, §9; 2008 Acts, ch 1088, §93

#### **142C.8 Rights and duties of procurement organizations and donors.**

1. When a hospital refers an individual at or near death to a procurement organization, the procurement organization shall make a reasonable search of the records of the state department of transportation and any donor registry that the hospital knows exists for the

geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

2. A procurement organization shall be allowed reasonable access to information in the records of the state department of transportation to ascertain whether an individual at or near death is a donor.

3. When a hospital refers an individual at or near death to a procurement organization, the procurement organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part shall not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

4. Unless prohibited by law other than this chapter, at any time after a donor's death, the person to whom a part passes under section 142C.5 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

5. Unless prohibited by law other than this chapter, an examination under subsection 3 or 4 may include an examination of all medical and dental records of the donor or prospective donor.

6. Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

7. Upon referral by a hospital under subsection 1, a procurement organization shall make a reasonable search for any person listed in section 142C.4 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, the procurement organization shall promptly advise the other person of all relevant information.

8. Subject to section 142C.5, subsection 9, the rights of a person to whom a part passes under section 142C.5 are superior to the rights of all other persons with respect to the part.

9. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person who accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of the remains in a funeral service. If the gift is of a part, the person to whom the part passes under section 142C.5, upon the death of the donor and prior to embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

10. The physician, physician assistant, or advanced registered nurse practitioner who attends the decedent at death and the physician, physician assistant, or advanced registered nurse practitioner who determines the time of death shall not participate in the procedures for removing or transplanting a part from the decedent.

11. A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

95 Acts, ch 39, §8; 2007 Acts, ch 44, §10; 2011 Acts, ch 26, §1

#### **142C.9 Coordination of procurement and use.**

Each hospital in the state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

95 Acts, ch 39, §9; 2007 Acts, ch 44, §11

#### **142C.10 Sale or purchase of parts prohibited — penalty.**

1. A person shall not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy if removal of the part is intended to occur after the death of the decedent.

2. Valuable consideration does not include reasonable payment for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

3. A person who violates this section commits a class “C” felony.  
95 Acts, ch 39, §10; 2007 Acts, ch 44, §12

#### **142C.10A Other prohibited acts — penalty.**

A person who, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal, commits a class “C” felony.

2007 Acts, ch 44, §13

#### **142C.11 Immunity.**

1. A person who complies with this chapter in good faith or with the applicable anatomical gift law of another state, or who attempts in good faith to comply, is immune from liability in any civil action, criminal prosecution, or administrative proceeding.

2. An individual who makes an anatomical gift pursuant to this chapter and the individual’s estate are not liable for any injury or damages that may result from the making or the use of the anatomical gift, if the gift is made in good faith.

3. In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in section 142C.4, subsection 1, paragraph “b”, “c”, “d”, “e”, “f”, “g”, or “h”, relating to the individual’s relationship to the donor or prospective donor unless the person knows that the representation is untrue.

95 Acts, ch 39, §11; 2002 Acts, ch 1064, §8; 2007 Acts, ch 44, §14

#### **142C.12 Service but not a sale.**

The procurement, removal, preservation, processing, storage, distribution, or use of parts for the purpose of injecting, transfusing, or transplanting any of the parts into the human body is, for all purposes, the rendition of a service by every person participating in the act, and whether or not any remuneration is paid, is not a sale of the part for any purposes. However, any person that renders such service warrants only under this section that due care has been exercised and that acceptable professional standards of care in providing such service according to the state of the medical arts have been followed. Strict liability, in tort, shall not be applicable to the rendition of such services.

95 Acts, ch 39, §12

#### **142C.12A Law governing validity, choice of law, presumption of validity.**

1. A document of gift is valid if executed in accordance with any of the following:

- a. This chapter.
- b. The laws of the state or country where the document of gift was executed.
- c. The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

2. If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

3. A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

2007 Acts, ch 44, §15

#### **142C.12B Effect of anatomical gift on advance health care directive.**

1. As used in this section:

a. “*Advance health care directive*” means a durable power of attorney for health care pursuant to chapter 144B or a record signed or authorized by a prospective donor containing the prospective donor’s direction concerning a health care decision for the prospective donor.

b. “*Declaration*” means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

c. “*Health care decision*” means any decision regarding the health care of the prospective donor.

2. a. If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor’s attending physician and prospective donor shall confer to resolve the conflict.

b. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor’s declaration or directive or, if no agent exists or the agent is not reasonably available, another person, authorized by law other than this chapter to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The agent or other person shall resolve the conflict consistent with the desires of the donor as expressed in a declaration executed in accordance with chapter 144A, or a durable power of attorney for health care executed in accordance with chapter 144B, or as otherwise known, or if not known, consistent with the donor’s best interest.

c. The conflict shall be resolved as expeditiously as possible.

d. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 142C.4. Prior to resolution of the conflict, measures necessary to ensure the medical suitability of the part shall not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

2007 Acts, ch 44, §16

#### **142C.13 Transitional provisions.**

This chapter applies to an anatomical gift, or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

95 Acts, ch 39, §13; 95 Acts, ch 209, §20; 2007 Acts, ch 44, §17

#### **142C.14 Uniformity of application and construction.**

This chapter shall be applied and construed with consideration given to the need to promote uniformity of the law with respect to anatomical gifts among states which enact this law.

95 Acts, ch 39, §14; 2007 Acts, ch 44, §18

#### **142C.14A Electronic signatures.**

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or authorize electronic delivery of any of the notices described in § 103(b) of that Act, 15 U.S.C. § 7003(b).

2007 Acts, ch 44, §19

#### **142C.15 Anatomical gift public awareness and transplantation fund — established — uses of fund.**

1. An anatomical gift public awareness and transplantation fund is created as a separate fund in the state treasury under the control of the Iowa department of public health. The fund shall consist of moneys remitted by the county treasurer of a county or by the department of transportation which were collected through the payment of a contribution made by an applicant for registration of a motor vehicle pursuant to section 321.44A and any other contributions to the fund.

2. The moneys collected under this section and deposited in the fund are appropriated to the Iowa department of public health for the purposes specified in this section. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose.

3. The treasurer of state shall act as custodian of the fund and shall disburse amounts contained in the fund as directed by the department. The treasurer of state may invest the moneys deposited in the fund. The income from any investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to

reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes of this section.

4. The Iowa department of public health may use not more than five percent of the moneys in the fund for administrative costs. The remaining moneys in the fund may be expended through grants to any of the following persons, subject to the following conditions:

a. Not more than twenty percent of the moneys in the fund annually may be expended in the form of grants to state agencies or to nonprofit legal entities with an interest in anatomical gift public awareness and transplantation to conduct public awareness projects. Moneys remaining that were not requested and awarded for public awareness projects may be used to support the Iowa donor registry. Grants shall be made based upon the submission of a grant application.

b. Not more than thirty percent of the moneys in the fund annually may be expended in the form of grants to hospitals for reimbursement for costs directly related to the development of in-hospital anatomical gift public awareness projects, anatomical gift referral protocols, and associated administrative expenses. As a condition of receiving a grant, a hospital shall demonstrate, through documentation, that the hospital, during the previous calendar year, properly complied with in-hospital anatomical gift request protocols for all deaths occurring in the hospital at a percentage rate which places the hospital in the upper fifty percent of all protocol compliance rates for hospitals submitting documentation for cost reimbursement under this section.

c. Not more than fifty percent of the moneys in the fund annually may be expended in the form of grants to transplant recipients, transplant candidates, living organ donors, or to legal representatives on behalf of transplant recipients, transplant candidates, or living organ donors. Transplant recipients, transplant candidates, living organ donors, or the legal representatives of transplant recipients, transplant candidates, or living organ donors shall submit grant applications with supporting documentation provided by a hospital that performs transplants, verifying that the person by or for whom the application is submitted requires a transplant or is a living organ donor and specifying the amount of the costs associated with the following, if funds are not available from any other third-party payor:

- (1) The costs of the organ transplantation procedure.
- (2) The costs of post-transplantation drug or other therapy.
- (3) Other transplantation costs including but not limited to food, lodging, and transportation.

96 Acts, ch 1076, §1; 98 Acts, ch 1015, §1; 2000 Acts, ch 1052, §1; 2003 Acts, ch 32, §2; 2005 Acts, ch 89, §11; 2006 Acts, ch 1030, §14; 2007 Acts, ch 44, §20

Referred to in §142C.17, 321.44A

**142C.16 Anatomical gift public awareness advisory committee — established — duties.** Repealed by 2010 Acts, ch 1031, § 399.

**142C.17 Annual donation and compliance report.**

The Iowa department of public health, in conjunction with any statewide organ procurement organization in Iowa, shall prepare and submit a report to the general assembly on or before January 1 each year regarding organ donation rates and voluntary compliance efforts with hospital organ and tissue donation protocols by physicians, hospitals, and other health systems organizations. The report shall contain the following:

1. An evaluation of organ procurement efforts in the state, including statistics regarding organ and tissue donation activity as of September 30 of the preceding year.
2. Efforts by any statewide organ procurement organization in Iowa, and related parties, to increase organ and tissue donation and consent rates.
3. Voluntary compliance efforts with hospital organ and tissue donation protocols by physicians, hospitals, and health systems organizations and the results of those efforts.
4. Annual contribution levels to the anatomical gift public awareness and transplantation fund created in section 142C.15, and any distributions made from the fund.
5. Efforts and ideas for increasing public awareness of the option of organ and tissue donation.

6. Additional information deemed relevant by the department in assessing the status and progress of organ and tissue donation efforts in the state.  
 98 Acts, ch 1015, §2

**142C.18 Iowa donor registry.**

1. The director of public health shall contract with and recognize the Iowa donor registry for the purpose of indicating on the donor registry all relevant information regarding a donor’s making or amending of an anatomical gift.
2. The state department of transportation shall cooperate with a person that administers the Iowa donor registry for the purpose of transferring to the donor registry all relevant information regarding a donor’s making of an anatomical gift.
3. The Iowa donor registry shall do all of the following:
  - a. Allow a donor or other person authorized under section 142C.3 to include on the donor registry a statement or symbol that the donor has made or amended an anatomical gift.
  - b. Be accessible to a procurement organization to allow the procurement organization to obtain relevant information on the donor registry to determine, at or near the death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.
  - c. Be accessible for purposes of paragraphs “a” and “b” seven days a week on a twenty-four-hour per day basis.
  - d. Provide a centralized, automated system to compile donation information received by the state department of transportation, county treasurers, and the Iowa donor network.
  - e. Provide educational materials regarding the making, amending, or revoking of an anatomical gift or a refusal to make an anatomical gift.
4. Personally identifiable information on the donor registry about a donor or prospective donor shall not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near the death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

2000 Acts, ch 1052, §2; 2007 Acts, ch 44, §24

**CHAPTER 142D**

**SMOKEFREE AIR ACT**

142D.1	Title — findings — purpose.	142D.6	Notice of nonsmoking requirements — posting of signs.
142D.2	Definitions.		
142D.3	Prohibition of smoking — public places, places of employment, and outdoor areas.	142D.7	Nonretaliation — nonwaiver of rights.
142D.4	Areas where smoking not regulated.	142D.8	Enforcement.
142D.5	Declaration of area as nonsmoking.	142D.9	Civil penalties.

**142D.1 Title — findings — purpose.**

1. This chapter shall be known and may be cited as the “*Smokefree Air Act*”.
2. The general assembly finds that environmental tobacco smoke causes and exacerbates disease in nonsmoking adults and children. These findings are sufficient to warrant measures that regulate smoking in public places, places of employment, and outdoor areas in order to protect the public health and the health of employees.
3. The purpose of this chapter is to reduce the level of exposure by the general public and employees to environmental tobacco smoke in order to improve the public health of Iowans.  
 2008 Acts, ch 1084, §1

**142D.2 Definitions.**

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

1. “*Bar*” means an establishment where one may purchase alcoholic beverages, as defined in section 123.3, for consumption on the premises and in which the serving of food is only incidental to the consumption of those beverages.

2. “*Business*” means a sole proprietorship, partnership, joint venture, corporation, association, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

3. “*Common area*” means a reception area, waiting room, lobby, hallway, restroom, elevator, stairway or stairwell, the common use area of a multiunit residential property, or other area to which the public is invited or in which the public is permitted.

4. “*Employee*” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or a person who provides services to an employer on a voluntary basis.

5. “*Employer*” means a person including a sole proprietorship, partnership, joint venture, corporation, association, or other business entity whether for-profit or not-for-profit, including state government and its political subdivisions, that employs the services of one or more individuals as employees.

6. “*Enclosed area*” means all space between a floor and ceiling that is contained on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.

7. “*Farm tractor*” means farm tractor as defined in section 321.1.

8. “*Farm truck*” means a single-unit truck, truck-tractor, tractor, semitrailer, or trailer used by a farmer to transport agricultural, horticultural, dairy, or other farm products, including livestock, produced or finished by the farmer, or to transport any other personal property owned by the farmer, from the farm to market, and to transport property and supplies to the farm of the farmer.

9. a. “*Farmer*” means any of the following:

(1) A person who files schedule F as part of the person’s annual form 1040 or form 1041 filing with the United States internal revenue service, or an employee of such person while the employee is actively engaged in farming.

(2) A person who holds an equity position in or who is employed by a business association holding agricultural land where the business association is any of the following:

(a) A family farm corporation, authorized farm corporation, family farm limited partnership, limited partnership, family farm limited liability company, authorized limited liability company, family trust, or authorized trust, as provided in chapter 9H.

(b) A limited liability partnership as defined in section 486A.101.

(3) A natural person related to the person actively engaged in farming as provided in subparagraph (1) or (2) when the person is actively engaged in farming. The natural person must be related as spouse, parent, grandparent, lineal ascendant of a grandparent or a grandparent’s spouse, other lineal descendant of a grandparent or a grandparent’s spouse, or a person acting in a fiduciary capacity for persons so related.

b. For purposes of this subsection, “*actively engaged in farming*” means participating in physical labor on a regular, continuous, and substantial basis, or making day-to-day management decisions, where such participation or decision making is directly related to raising and harvesting crops for feed, food, seed, or fiber, or to the care and feeding of livestock.

10. “*Health care provider location*” means an office or institution providing care or treatment of disease, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to a hospital as defined in section 135B.1, a long-term care facility, an adult day services program as defined in section 231D.1, clinics, laboratories, and the locations of professionals regulated pursuant to Title IV, subtitle 3, and includes all enclosed areas of the location including waiting rooms, hallways, other common areas, private rooms, semiprivate rooms, and wards within the location.

11. “*Implement of husbandry*” means implement of husbandry as defined in section 321.1.

12. “*Long-term care facility*” means a health care facility as defined in section 135C.1, an elder group home as defined in section 231B.1, or an assisted living program as defined in section 231C.2.

13. “*Place of employment*” means an area under the control of an employer and includes all areas that an employee frequents during the course of employment or volunteering, including but not limited to work areas, private offices, conference and meeting rooms, classrooms, auditoriums, employee lounges and cafeterias, hallways, medical facilities, restrooms, elevators, stairways and stairwells, and vehicles owned, leased, or provided by the employer unless otherwise provided under this chapter. “*Place of employment*” does not include a private residence, unless the private residence is used as a child care facility, a child care home, or as a health care provider location.

14. “*Political subdivision*” means a city, county, township, or school district.

15. “*Private club*” means an organization, whether or not incorporated, that is the owner, lessee, or occupant of a location used exclusively for club purposes at all times and that meets all of the following criteria:

a. Is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain.

b. Sells alcoholic beverages only as incidental to its operation.

c. Is managed by a board of directors, executive committee, or similar body chosen by the members.

d. Has established bylaws or another document to govern its activities.

e. Has been granted an exemption from the payment of federal income tax as a club pursuant to 26 U.S.C. § 501.

16. “*Public place*” means an enclosed area to which the public is invited or in which the public is permitted, including common areas, and including but not limited to all of the following:

a. Financial institutions.

b. Restaurants.

c. Bars.

d. Public and private educational facilities.

e. Health care provider locations.

f. Hotels and motels.

g. Laundromats.

h. Public transportation facilities and conveyances under the authority of the state or its political subdivisions, including buses and taxicabs, and including the ticketing, boarding, and waiting areas of these facilities.

i. Aquariums, galleries, libraries, and museums.

j. Retail food production and marketing establishments.

k. Retail service establishments.

l. Retail stores.

m. Shopping malls.

n. Entertainment venues including but not limited to theaters; concert halls; auditoriums and other facilities primarily used for exhibiting motion pictures, stage performances, lectures, musical recitals, and other similar performances; bingo facilities; and indoor arenas including sports arenas.

o. Polling places.

p. Convention facilities and meeting rooms.

q. Public buildings and vehicles owned, leased, or operated by or under the control of the state government or its political subdivisions and including the entirety of the private residence of any state employee any portion of which is open to the public.

r. Service lines.

s. Private clubs only when being used for a function to which the general public is invited.

t. Private residences only when used as a child care facility, a child care home, or health care provider location.

u. Child care facilities and child care homes.

v. Gambling structures, excursion gambling boats, and racetrack enclosures.

17. “*Restaurant*” means eating establishments, including private and public school cafeterias, which offer food to the public, guests, or employees, including the kitchen and catering facilities in which food is prepared on the premises for serving elsewhere, and including a bar area within a restaurant.

18. “*Retail tobacco store*” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is incidental to the sale of tobacco products.

19. “*Service line*” means an indoor line in which one or more individuals are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

20. “*Shopping mall*” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

21. “*Smoking*” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other tobacco product in any manner or in any form. “*Smoking*” does not include smoking that is associated with a recognized religious ceremony, ritual, or activity, including but not limited to burning of incense.

22. “*Sports arena*” means a sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

2008 Acts, ch 1084, §2

Referred to in §237A.3B

### **142D.3 Prohibition of smoking — public places, places of employment, and outdoor areas.**

1. Smoking is prohibited and a person shall not smoke in any of the following:

a. Public places.

b. All enclosed areas within places of employment including but not limited to work areas, private offices, conference and meeting rooms, classrooms, auditoriums, employee lounges and cafeterias, hallways, medical facilities, restrooms, elevators, stairways and stairwells, and vehicles owned, leased, or provided by the employer unless otherwise provided under this chapter.

2. In addition to the prohibitions specified in subsection 1, smoking is prohibited and a person shall not smoke in or on any of the following outdoor areas:

a. The seating areas of outdoor sports arenas, stadiums, amphitheaters, and other entertainment venues where members of the general public assemble to witness entertainment events.

b. Outdoor seating or serving areas of restaurants.

c. Public transit stations, platforms, and shelters under the authority of the state or its political subdivisions.

d. School grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a public or private educational facility, including inside any vehicle located on such school grounds.

e. The grounds of any public buildings owned, leased, or operated by or under the control of the state government or its political subdivisions, including the grounds of a private residence of any state employee any portion of which is open to the public with the following exceptions:

(1) This paragraph shall not apply to the Iowa state fairgrounds, or fairgrounds as defined in section 174.1.

(2) This paragraph shall not apply to institutions administered by the department of corrections, except that smoking on the grounds shall be limited to designated smoking areas.

(3) This paragraph shall not apply to facilities of the Iowa national guard as defined in

section 29A.1, except that smoking on the grounds shall be limited to designated smoking areas.

2008 Acts, ch 1084, §3  
Referred to in §142D.4, 142D.5

#### **142D.4 Areas where smoking not regulated.**

Notwithstanding any provision of this chapter to the contrary, the following areas are exempt from the prohibitions of section 142D.3:

1. Private residences, unless used as a child care facility, child care home, or a health care provider location.
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that not more than twenty percent of the rooms of a hotel or motel rented to guests are designated as smoking rooms, all smoking rooms on the same floor are contiguous, and smoke from smoking rooms does not infiltrate into areas in which smoking is otherwise prohibited under this chapter. The status of smoking and nonsmoking rooms shall not be changed, except to provide additional nonsmoking rooms.
3. Retail tobacco stores, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under this chapter.
4. Private and semiprivate rooms in long-term care facilities, occupied by one or more individuals, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under this chapter.
5. Private clubs that have no employees, except when being used for a function to which the general public is invited, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under this chapter. This exemption shall not apply to any entity that is established for the purpose of avoiding compliance with this chapter.
6. Outdoor areas that are places of employment except those areas where smoking is prohibited pursuant to section 142D.3, subsection 2.
7. Limousines under private hire; vehicles owned, leased, or provided by a private employer that are for the sole use of the driver and are not used by more than one person in the course of employment either as a driver or passenger; privately owned vehicles not otherwise defined as a place of employment or public place; and cabs of motor trucks or truck tractors if no nonsmoking employees are present.
8. An enclosed area within a place of employment or public place that provides a smoking cessation program or a medical or scientific research or therapy program, if smoking is an integral part of the program.
9. Farm tractors, farm trucks, and implements of husbandry when being used for their intended purposes.
10. Only the gaming floor of a premises licensed pursuant to chapter 99F exclusive of any bar or restaurant located within the gaming floor which is an enclosed area and subject to the prohibitions of section 142D.3.

11. The Iowa veterans home.

2008 Acts, ch 1084, §4

#### **142D.5 Declaration of area as nonsmoking.**

1. Notwithstanding any provision of this chapter to the contrary, an owner, operator, manager, or other person having custody or control of an area otherwise exempt from the prohibitions of section 142D.3 may declare the entire area as a nonsmoking place.

2. Smoking shall be prohibited in any location of an area declared a nonsmoking place under this section if a sign is posted conforming to the provisions of section 142D.6.

2008 Acts, ch 1084, §5  
Referred to in §142D.6, 142D.8, 142D.9

#### **142D.6 Notice of nonsmoking requirements — posting of signs.**

1. Notice of the provisions of this chapter shall be provided to all applicants for a business

license in this state, to all law enforcement agencies, and to any business required to be registered with the office of the secretary of state.

2. All employers subject to the prohibitions of this chapter shall communicate to all existing employees and to all prospective employees upon application for employment the smoking prohibitions prescribed in this chapter.

3. The owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to section 142D.5, or outdoor area where smoking is prohibited under this chapter shall clearly and conspicuously post in and at every entrance to the public place, place of employment, area declared a nonsmoking place pursuant to section 142D.5, or outdoor area, “no smoking” signs or the international “no smoking” symbol. Additionally, a “no smoking” sign or the international “no smoking” symbol shall be placed in every vehicle that constitutes a public place, place of employment, or area declared a nonsmoking place pursuant to section 142D.5 under this chapter, visible from the exterior of the vehicle. All signs shall contain the telephone number for reporting complaints and the internet site of the department of public health. The owner, operator, manager, or other person having custody or control of the public place, place of employment, area declared a nonsmoking place pursuant to section 142D.5, or outdoor area may use the sample signs provided on the department of public health’s internet site, or may use another sign if the contents of the sign comply with the requirements of this subsection.

4. The owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to section 142D.5, or outdoor area where smoking is prohibited under this chapter shall remove all ashtrays from these locations.

2008 Acts, ch 1084, §6  
Referred to in §142D.5

#### **142D.7 Nonretaliation — nonwaiver of rights.**

1. A person or employer shall not discharge, refuse to employ, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded under this chapter, registers a complaint, or attempts to prosecute a violation of this chapter.

2. An employee who works in a location where an employer allows smoking does not waive or surrender any legal rights the employee may have against the employer or any other person.

2008 Acts, ch 1084, §7

#### **142D.8 Enforcement.**

1. This chapter shall be enforced by the department of public health or the department’s designee. The department of public health shall adopt rules to administer this chapter, including rules regarding enforcement. The department of public health shall provide information regarding the provisions of this chapter and related compliance issues to employers, owners, operators, managers, and other persons having custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to section 142D.5, or outdoor area where smoking is prohibited, and the general public via the department’s internet site. The internet site shall include sample signage and the telephone number for reporting complaints. Judicial magistrates shall hear and determine violations of this chapter.

2. If a public place is subject to any state or political subdivision inspection process or is under contract with the state or a political subdivision, the person performing the inspection shall assess compliance with the requirements of this chapter and shall report any violations to the department of public health or the department’s designee.

3. An owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to section 142D.5, or outdoor area regulated under this chapter shall inform persons violating this chapter of the provisions of this chapter.

4. An employee or private citizen may bring a legal action to enforce this chapter. Any

person may register a complaint under this chapter by filing a complaint with the department of public health or the department's designee.

5. In addition to the remedies provided in this section, the department of public health or the department's designee or any other person aggrieved by the failure of the owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to section 142D.5, or outdoor area regulated by this chapter to comply with this chapter may seek injunctive relief to enforce this chapter.

2008 Acts, ch 1084, §8

#### **142D.9 Civil penalties.**

1. A person who smokes in an area where smoking is prohibited pursuant to this chapter shall pay a civil penalty pursuant to section 805.8C, subsection 3, paragraph "a", for each violation.

2. A person who owns, operates, manages, or otherwise has custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to section 142D.5, or outdoor area regulated under this chapter and who fails to comply with this chapter shall pay a civil penalty as follows:

a. For a first violation, a monetary penalty not to exceed one hundred dollars.

b. For a second violation within one year, a monetary penalty not to exceed two hundred dollars.

c. For each violation in excess of a second violation within one year, a monetary penalty not to exceed five hundred dollars for each additional violation.

3. An employer who discharges or in any manner discriminates against an employee because the employee has made a complaint or has provided information or instituted a legal action under this chapter shall pay a civil penalty of not less than two thousand dollars and not more than ten thousand dollars for each violation.

4. In addition to the penalties established in this section, violation of this chapter by a person who owns, operates, manages, or who otherwise has custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to section 142D.5, or outdoor area regulated under this chapter may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

5. Violation of this chapter constitutes a public nuisance which may be abated by the department of public health or the department's designee by restraining order, preliminary or permanent injunction, or other means provided by law, and the entity abating the public nuisance may take action to recover the costs of such abatement.

6. Each day on which a violation of this chapter occurs is considered a separate and distinct violation.

7. Civil penalties paid pursuant to this chapter shall be deposited in the general fund of the state, unless a local authority as designated by the department in administrative rules is involved in the enforcement, in which case the civil penalties paid shall be deposited in the general fund of the respective city or county.

2008 Acts, ch 1084, §9

Referred to in §331.427, 805.8C(3a)

Nuisances in general, chapter 657

## **CHAPTER 143**

### **PUBLIC HEALTH NURSES**

143.1 Authority to employ.

143.2 Cooperation.

143.3 Duties.

#### **143.1 Authority to employ.**

Any local board of health, area education agency board, or the school board of any school district may employ public health nurses at periods each year and in numbers as deemed

advisable. The council of any city, or the school board of any school district, or any of them acting in cooperation, may contract with any nonprofit nurses' association for public health nursing service. The compensation and expenses shall be paid out of the general fund of the political subdivision employing nurses.

[C24, 27, 31, 35, 39, §2362; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §143.1; 81 Acts, ch 117, §1018]

**143.2 Cooperation.**

The said boards may cooperate in the employment of public health nurses and may apportion the expenses therefor to the various political subdivisions represented by said authorities.

[C24, 27, 31, 35, 39, §2363; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §143.2]

**143.3 Duties.**

The authorities employing any public health nurses shall prescribe their duties which in a general way shall be for the promotion and conservation of the public health.

[C24, 27, 31, 35, 39, §2364; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §143.3]

CHAPTER 144

VITAL STATISTICS

Referred to in §135.11, 156.9, 331.601, 331.611, 331.802, 331.803

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### 144.1 Definitions.

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

1. “*Board*” means the state board of health.
2. “*Book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.
3. “*Court of competent jurisdiction*” when used to refer to inspection of an original certificate of birth based upon an adoption means the court where the adoption was ordered.
4. “*Dead body*” means a lifeless human body or parts or bones of a body, if, from the state of the body, parts, or bones, it may reasonably be concluded that death recently occurred.
5. “*Department*” means the Iowa department of public health.
6. “*Division*” means a division, within the department, for records and statistics.
7. “*Fetal death*” means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy. Death is indicated by the fact that after expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. In determining a fetal death, heartbeats shall be distinguished from transient cardiac contractions, and respirations shall be distinguished from fleeting respiratory efforts or gasps.
8. “*Filing*” means the presentation of a certificate, report, or other record, provided for in this chapter, of a birth, death, fetal death, adoption, marriage, dissolution, or annulment for registration by the division.
9. “*Final disposition*” means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.
10. “*Institution*” means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care to two or more unrelated individuals, or to which persons are committed by law.
11. “*Live birth*” means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. In determining a live birth, heartbeats shall be distinguished from transient cardiac contractions, and respirations shall be distinguished from fleeting respiratory efforts or gasps.
12. “*Registration*” means the process by which vital statistic records are completed, filed, and incorporated by the division in the division’s official records.
13. “*State registrar*” means the state registrar of vital statistics.
14. “*System of vital statistics*” includes the registration, collection, preservation, amendment, and certification of vital statistics records, and activities and records related thereto including the data processing, analysis, and publication of statistical data derived from such records.
15. “*Vital statistics*” means records of births, deaths, fetal deaths, adoptions, marriages, dissolutions, annulments, and data related thereto.

[C24, 27, 31, 35, 39, §2317, 2384; C46, 50, 54, 58, 62, 66, §141.1, 144.1; C71, 73, 75, 77, 79, 81, §144.1]

83 Acts, ch 101, §21; 97 Acts, ch 159, §7; 99 Acts, ch 141, §14, 15; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

Referred to in §252A.2

**144.2 Division of records and statistics.**

There is established in the department a division for records and statistics which shall install, maintain, and operate the system of vital statistics throughout the state. No system for the registration of births, deaths, fetal deaths, adoptions, marriages, dissolutions, and annulments, shall be maintained in the state or any of its political subdivisions other than the one provided for in this chapter. Suitable quarters shall be provided for the division by the executive council at the seat of government. The quarters shall be properly equipped for the permanent and safe preservation of all official records made and returned under this chapter.

[C24, 27, 31, 35, 39, §2388, 2432; C46, 50, 54, 58, 62, 66, §144.3, 144.49; C71, 73, 75, 77, 79, 81, §144.2]

83 Acts, ch 101, §22

**144.3 Rules adopted.**

The department may adopt, amend, and repeal rules for the purpose of carrying out the provisions of this chapter, in accordance with chapter 17A.

[C71, 73, 75, 77, 79, 81, §144.3]

**144.4 Registrar.**

The director of public health shall be the state registrar of vital statistics and shall carry out the provisions of this chapter.

[C24, 27, 31, 35, 39, §2387; C46, 50, 54, 58, 62, 66, §144.2; C71, 73, 75, 77, 79, 81, §144.4]

**144.5 Duties of registrar.**

The state registrar shall:

1. Administer and enforce this chapter and the rules issued hereunder, and issue instructions for the efficient administration of the statewide system of vital statistics and the division for records and statistics.

2. Direct and supervise the statewide system of vital statistics and the division for records and statistics and be custodian of its records.

3. Direct, supervise, and control the activities of clerks of the district court and county recorders related to the operation of the vital statistics system and provide registrars with necessary postage.

4. Prescribe, print, and distribute the forms required by this chapter and prescribe any other means for transmission of data, as necessary to accomplish complete, accurate reporting.

5. Prepare and publish annual reports of vital statistics of this state and other reports as may be required.

6. Delegate functions and duties vested in the state registrar to officers, to employees of the department, to the clerks of the district court, and to the county registrars as the state registrar deems necessary or expedient.

7. Provide, by rules, for appropriate morbidity reporting.

[C24, 27, 31, 35, 39, §2393; C46, 50, 54, 58, 62, 66, §144.8; C71, 73, 75, 77, 79, 81, §144.5; 81 Acts, ch 64, §1]

88 Acts, ch 1158, §33; 95 Acts, ch 124, §1, 2, 26; 97 Acts, ch 159, §8

**144.6 through 144.8** Repealed by 88 Acts, ch 1158, § 102.

**144.9 County recorder as registrar.**

The county recorder is the county registrar and with respect to the county shall:

1. Administer and enforce this chapter and the rules issued by the department.

2. Record and transmit the certificates, reports, or other returns filed with the county registrar to the state registrar at least semimonthly, or more frequently when directed by the state registrar.

[C46, 50, 54, 58, 62, 66, §144.4, 144.10; C71, 73, 75, 77, 79, 81, §144.9]

88 Acts, ch 1158, §34; 95 Acts, ch 124, §3, 26

**144.10** Repealed by 88 Acts, ch 1158, § 102.

**144.11 Public access to records.**

The county registrar shall allow public access to public records under the custody of the county registrar during normal business hours for county offices in the county.

95 Acts, ch 124, §4, 26

**144.12 Forms uniform.**

In order to promote and maintain uniformity in the system of vital statistics, the forms of certificates, reports, and other returns shall include as a minimum the items recommended by the federal agency responsible for national vital statistics, subject to approval and modification by the department. Forms shall be furnished by the department. The forms or other recording methods used to register records required under this chapter shall be prescribed by the department.

[C71, 73, 75, 77, 79, 81, §144.12]

88 Acts, ch 1158, §35; 97 Acts, ch 159, §9

Referred to in §595.15

**144.12A Declaration of paternity registry.**

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

a. “*Child*” means a person under eighteen years of age for whom paternity has not been established.

b. “*Court*” means the juvenile court.

c. “*Father*” means the male, biological parent of a child.

d. “*Putative father*” means a man who is alleged to be or who claims to be the biological father of a child born to a woman to whom the man is not married at the time of the birth of the child.

e. “*Registrant*” means a person who has registered pursuant to this section and who claims to be the father of a child.

f. “*Registrar*” means the state registrar of vital statistics.

g. “*Registry*” means the declaration of paternity registry established in this section.

2. a. The registrar shall establish a declaration of paternity registry to record the name, address, social security number, and any other identifying information required by rule of the department of a putative father who wishes to register under this section prior to the birth of a child and no later than the date of the filing of the petition for termination of parental rights.

b. The declaration does not constitute an affidavit of paternity filed pursuant to section 252A.3 and declarations filed shall be maintained by the registrar in a registry distinct from the registry used to maintain affidavits of paternity filed pursuant to section 252A.3. A declaration of paternity filed with the registry may be used as evidence of paternity in an action to establish paternity or to determine a support obligation with respect to the putative father.

c. Failure or refusal to file a declaration of paternity shall not be used as evidence to avoid a legally established obligation of financial support for a child.

3. A person who files a declaration of paternity with the registrar shall include in the declaration all of the following:

a. The person’s name, current address, social security number, and any other identifying information requested by the department. If the person filing the declaration of paternity changes the person’s address, the person shall notify the registrar of the new address in a manner prescribed by the department.

b. The name, last known address, and social security number, if known, of the mother of the child, or any other identifying information requested by the department.

c. The name of the child, if known, and the date and location of the birth of the child, if known.

d. The registrar shall accept a declaration of paternity filed in accordance with this section.

e. The registrar shall forward a copy of the declaration to the mother as notification that the person has registered with the registry.

f. The registrar shall accept and immediately register, upon receipt, a declaration of paternity without a fee and without the signature of the biological mother. The registrar may charge a reasonable fee as established by rule of the department for processing searches of the registry.

4. The department shall, upon request, provide the name, address, social security number, and any other identifying information of a registrant to the biological mother of the child; a court; the department of human services; the attorney of any party to an adoption, termination of parental rights, or establishment of paternity or support action; or to the child support recovery unit for an action to establish paternity or support. The information shall not be divulged to any other person and shall be considered a confidential record as to any other person, except upon order of the court for good cause shown. If the registry has not received a declaration of paternity, the department shall provide a written statement to that effect to the person making the inquiry.

5. a. Information provided to the registry may be revoked by the registrant by submission of a written statement signed and acknowledged by the registrant before a notary public as provided in chapter 9B.

b. The statement shall include a declaration that to the best of the registrant's knowledge, the registrant is not the father of the named child or that paternity of the true father has been established.

c. Revocation nullifies the registration and the information provided by the registrant shall be expunged.

d. Revocation is effective only following the birth of the child.

6. The department shall adopt rules necessary to implement and administer this section. The rules shall include establishment of sites throughout the state for local distribution of declaration of paternity registration forms.

94 Acts, ch 1174, §2; 95 Acts, ch 67, §12; 2012 Acts, ch 1050, §36, 60

Referred to in §22.7, 233.2, 252K.201, 600A.6, 600A.7

#### **144.13 Birth certificates.**

1. Certificates of births shall be filed as follows:

a. A certificate of birth for each live birth which occurs in this state shall be filed as directed by the state registrar within seven days after the birth and shall be registered by the county registrar if it has been completed and filed in accordance with this chapter.

b. When a birth occurs in an institution or en route to an institution, the person in charge of the institution or the person's designated representative, shall obtain the personal data, prepare the certificate, and file the certificate as directed by the state registrar. The physician in attendance or the person in charge of the institution or the person's designee shall certify to the facts of birth either by signature or as otherwise authorized by rule and provide the medical information required by the certificate within seven days after the birth.

c. When a birth occurs outside an institution and not en route to an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth.

(2) Any other person in attendance at or immediately after the birth.

(3) The father or the mother.

(4) The person in charge of the premises where the birth occurred. The state registrar shall establish by rule the evidence required to establish the facts of birth.

d. The state registrar may share information from birth certificates for the sole purpose of identifying those children in need of immunizations.

e. If an affidavit of paternity is obtained directly from the county registrar and is filed pursuant to section 252A.3A the county registrar shall forward the original affidavit to the state registrar.

2. If the mother was married at the time of conception, birth, or at any time during the period between conception and birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a

court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered by the department.

3. If the mother was not married at the time of conception, birth, and at any time during the period between conception and birth, the name of the father shall not be entered on the certificate of birth, unless a determination of paternity has been made pursuant to section 252A.3, in which case the name of the father as established shall be entered by the department. If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

4. The division shall make all of the following available to the child support recovery unit, upon request:

a. A copy of a child's birth certificate.

b. The social security numbers of the mother and the father.

c. A copy of the affidavit of paternity if filed pursuant to section 252A.3A and any subsequent rescission form which rescinds the affidavit.

d. Information, other than information for medical and health use only, identified on a child's birth certificate or on an affidavit of paternity filed pursuant to section 252A.3A. The information may be provided as mutually agreed upon by the division and the child support recovery unit, including by automated exchange.

[C24, 27, 31, 35, 39, §2397, 2398, 2399, 2400, 2401; C46, 50, 54, 58, 62, 66, §144.12 – 144.16; C71, 73, 75, 77, 79, 81, §144.13]

88 Acts, ch 1158, §36; 90 Acts, ch 1052, §1; 92 Acts, ch 1097, §2; 93 Acts, ch 79, §9; 93 Acts, ch 116, §1; 94 Acts, ch 1171, §2, 3; 95 Acts, ch 94, §1; 97 Acts, ch 159, §10 – 12; 97 Acts, ch 175, §223 – 225; 99 Acts, ch 141, §16

Referred to in §144.13A, 233.2, 252A.3A, 331.611

#### **144.13A Fees — use of funds.**

1. The state registrar shall charge the parent a fee for the registration of a certificate of birth as follows:

a. Beginning July 1, 2003, and ending June 30, 2005, a fee of fifteen dollars.

b. Beginning July 1, 2005, a fee of twenty dollars.

2. The state registrar shall charge the parent a separate fee established under section 144.46 for a certified copy of the certificate. The certified copy shall be mailed to the parent by the state registrar. The mailing of a certified copy of the certificate to a biological parent shall not be precluded by the execution of a release of custody under chapter 600A, and, upon request, a biological parent shall be provided with a certified copy of the certificate unless the parental rights of the biological parent are terminated.

3. If the person responsible for the filing of the certificate of birth under section 144.13 is not the parent, the person is entitled to collect the fee from the parent. The fee shall be remitted to the state registrar. If the expenses of the birth are reimbursed under the medical assistance program established by chapter 249A or if the parent is indigent and unable to pay the expenses of the birth and no other means of payment is available to the parent, the registration fee and certified copy fee are waived. If the person responsible for the filing of the certificate is not the parent, the person is discharged from the duty to collect and remit the fee under this section if the person has made a good faith effort to collect the fee from the parent.

4. The fees collected by the state registrar shall be remitted to the treasurer of state for deposit in the general fund of the state.

a. Ten dollars of each registration fee is appropriated and shall be used for primary and secondary child abuse prevention programs pursuant to section 235A.1, and ten dollars of each registration fee is appropriated and shall be used for the center for congenital and inherited disorders central registry established pursuant to section 136A.6. Notwithstanding section 8.33, moneys appropriated in this paragraph that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year, and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this paragraph.

b. It is the intent of the general assembly that the funds generated from the fees as established under section 144.46 for the mailing of the certified copy of the birth certificate be appropriated and used to support the distribution of the automatic birth certificate and the implementation of the electronic birth certificate system.

85 Acts, ch 173, §1; 87 Acts, ch 233, §428; 88 Acts, ch 1158, §37; 91 Acts, ch 243, §1; 92 Acts, ch 1097, §3; 95 Acts, ch 124, §5, 26; 99 Acts, ch 96, §13; 99 Acts, ch 141, §17; 2003 Acts, ch 103, §1; 2004 Acts, ch 1031, §12; 2004 Acts, ch 1156, §1; 2004 Acts, ch 1171, §1, 2; 2005 Acts, ch 167, §45, 66; 2005 Acts, ch 175, §82, 129; 2006 Acts, ch 1155, §2, 15

Referred to in §232.2, 331.611, 600A.9

#### **144.13B Waiver of fees — military service.**

Notwithstanding any provision of this chapter to the contrary, the certified copy fees for a birth certificate or death certificate of a service member who died while performing military duty, as defined in section 29A.1, subsection 3, 8, or 12, shall be waived for a period of one year from the date of death for a family member of the deceased service member.

2010 Acts, ch 1170, §2; 2011 Acts, ch 47, §7; 2012 Acts, ch 1072, §32

Referred to in §331.611

#### **144.14 Foundlings.**

1. A person who assumes the custody of a living infant of unknown parentage shall report on a form and in the manner prescribed by the state registrar within five days to the county registrar of the county in which the child was found, the following information:

- a. The date and place the child was found.
- b. The sex, color or race, and approximate age of the child.
- c. The name and address of the person or institution which has assumed custody of the child.
- d. The name given to the child by the custodian.
- e. Other data required by the state registrar.

2. The place where the child was found shall be entered as the place of birth and the date of birth shall be determined by approximation. A report registered under this section shall constitute the certificate of birth for the infant.

3. If the child is identified and a certificate of birth is found or obtained, any report registered under this section shall be sealed and filed and may be opened only by order of a court of competent jurisdiction or as provided by regulation.

[C71, 73, 75, 77, 79, 81, §144.14]

88 Acts, ch 1158, §38; 2009 Acts, ch 133, §44

Referred to in §233.2, 331.611

#### **144.15 Delayed registrations of birth.**

When the birth of a person born in this state has not been registered, a certificate may be filed in accordance with regulations. The certificate shall be registered subject to evidentiary requirements prescribed to substantiate the alleged facts of birth. Certificates of birth registered one year or more after the date of occurrence shall be marked “delayed” and shall show on their face the date of the delayed registration. A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate. A delayed certificate of birth shall not be registered for a deceased person.

When an applicant does not submit the substantiating evidence required for delayed registration or when the state registrar finds reason to question the validity or adequacy of the evidence, the state registrar shall not register the delayed certificate and shall advise the applicant of the reasons for this action. The registration official shall advise the applicant of the applicant’s right of appeal to the district court pursuant to sections 144.17 and 144.18, which sections shall be applicable to such appeal notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A.

The department may by regulation provide for the dismissal of an application which is not actively prosecuted.

[C71, 73, 75, 77, 79, 81, §144.15]

97 Acts, ch 159, §13; 2003 Acts, ch 44, §114

Referred to in §144.17, 144.25, 331.611

#### **144.16 Delayed registration of death or marriage.**

When a death or marriage occurring in this state has not been registered, a certificate may be filed in accordance with regulations. Such certificate shall be registered subject to evidentiary requirements prescribed to substantiate the alleged facts of death or marriage. Certificates of death and marriage registered one year or more after the date of occurrence shall be marked “delayed” and shall show on their face the date of the delayed registration.

[C71, 73, 75, 77, 79, 81, §144.16]

Referred to in §331.611

#### **144.17 Petition to establish certificate.**

1. If a delayed certificate of birth is rejected under the provisions of section 144.15, a petition may be filed with the district court for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

2. *a.* The petition shall be made on a form prescribed and furnished by the state registrar and shall allege:

(1) That the person for whom a delayed certificate of birth is sought was born in this state.

(2) That no record of birth of that person can be found in the office of the state or county custodian of birth records.

(3) That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with section 144.15.

(4) That the state registrar has refused to register a delayed certificate of birth.

(5) Such other allegations as may be required.

*b.* The petition shall be accompanied by a statement of the registration official made in accordance with section 144.15 and all documentary evidence which was submitted to the registration official in support of such registration. The petition shall be verified by the petitioner.

[C71, 73, 75, 77, 79, 81, §144.17]

88 Acts, ch 1158, §39; 2009 Acts, ch 41, §193

Referred to in §144.15, 144.25, 331.611

#### **144.18 Court hearing.**

The court shall fix a time and place for hearing the petition and shall give the registration official who refused to register the petitioner’s delayed certificate of birth at least ten days’ notice of such hearing. If both persons to be named as parents are not a party to the petition, such person or persons, if living, shall also be given at least ten days’ notice of the hearing. The court shall prescribe the manner of such notice. Such official, or the official’s authorized representative, may appear and testify in the proceeding.

If the court from the evidence presented finds that the person for whom a delayed certificate of birth is sought was born in this state, it shall make findings as the case may require and shall issue an order on a form prescribed and furnished by the state registrar to establish a record of birth. The order shall include the birth data to be registered, a description of the evidence presented, and the date of the court’s action.

The clerks of the district court shall forward each order to the state registrar not later than the tenth day of the calendar month following the month in which it was entered. The order shall be registered by the state registrar and shall constitute the record of birth, from which copies may be issued in accordance with sections 144.42 to 144.46, inclusive.

[C71, 73, 75, 77, 79, 81, §144.18]

Referred to in §144.15, 144.25, 331.611

**144.19 Adoption certificate.**

For each adoption decreed by any court in this state, the court shall require the preparation of a certificate of adoption on a form prescribed and furnished by the state registrar. The certificate shall include a report of the facts necessary to locate and identify the certificate of birth of the person adopted, provide information necessary to establish a new certificate of birth of the person adopted, identify the order of adoption, and be certified by the clerk of the court. A fee established by the department by rule based on average administrative cost shall be collected for the preparation of a certificate of adoption. Fees collected under this section shall be deposited in the general fund of the state.

[C46, 50, 54, 58, 62, 66, §144.44; C71, 73, 75, 77, 79, 81, §144.19; 81 Acts, ch 64, §4]  
Referred to in §144.23, 600.13

**144.20 Information.**

Information in the possession of the petitioner necessary to prepare the adoption report shall be furnished with the petition for adoption by each petitioner for adoption or the petitioner's attorney. The social agency, welfare agency, or other person concerned shall supply the court with such additional information in their possession as necessary to complete the certificate. The provision of such information shall be submitted to the court prior to the issuance of a final decree in the matter by the court, unless found by the court to be unavailable after diligent inquiry.

[C71, 73, 75, 77, 79, 81, §144.20]

**144.21 Amended record.**

Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a certificate, which shall include facts necessary to identify the original adoption report, and facts in the adoption decree necessary to properly amend the birth record.

[C46, 50, 54, 58, 62, 66, §144.44; C71, 73, 75, 77, 79, 81, §144.21]

**144.22 Clerk to report to state registrar.**

Not later than the tenth day of each calendar month, the clerk of the court shall forward to the state registrar certificates of adoption, or amendment or annulment of adoption, entered in the preceding month, together with such related reports as the state registrar requires. The state registrar, upon receipt from a court of a certificate of adoption, or amendment or annulment of adoption, for a person born outside this state shall forward the certificate to the appropriate registration authority in the state of birth.

[C46, 50, 54, 58, 62, 66, §144.44; C71, 73, 75, 77, 79, 81, §144.22]

**144.23 State registrar to issue new certificate.**

The state registrar shall establish a new certificate of birth for a person born in this state, when the state registrar receives the following:

1. An adoption report as provided in section 144.19, or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth.

2. A request that a new certificate be established and evidence proving that the person for whom the new certificate is requested has been legitimated, or that a court of competent jurisdiction has determined the paternity of the person.

3. A notarized affidavit by a licensed physician and surgeon or osteopathic physician and surgeon stating that by reason of surgery or other treatment by the licensee, the sex designation of the person has been changed. The state registrar may make a further investigation or require further information necessary to determine whether a sex change has occurred.

[C24, 27, 31, 35, 39, §2406; C46, 50, 54, 58, 62, 66, §144.21, 144.44; C71, 73, 75, 77, 79, 81, §144.23]

2002 Acts, ch 1040, §1, 5; 2005 Acts, ch 89, §12

Referred to in §600.13

**144.24 Substituting new for original birth certificates — inspection.**

If a new certificate of birth is established, the actual place and date of birth shall be shown on the certificate. The certificate shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity, legitimation, or sex change shall not be subject to inspection except under order of a court of competent jurisdiction, including but not limited to an order issued pursuant to section 600.16A, or as provided by administrative rule for statistical or administrative purposes only. However, the state registrar shall, upon the application of an adult adopted person, a biological parent, an adoptive parent, or the legal representative of the adult adopted person, the biological parent, or the adoptive parent, inspect the original certificate and the evidence of adoption and reveal to the applicant the date of the adoption and the name and address of the court which issued the adoption decree.

[C24, 27, 31, 35, 39, §2406; C46, 50, 54, 58, 62, 66, §144.21, 144.44; C71, 73, 75, 77, 79, 81, §144.24]

91 Acts, ch 243, §2; 99 Acts, ch 141, §18

**144.25 No previous certificate — procedure.**

If no certificate of birth is on file for the person for whom a new certificate is to be established, a delayed certificate of birth shall be filed with the state registrar as provided in section 144.15, or sections 144.17 and 144.18, before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed certificate shall not be required.

When a new certificate of birth is established by the state registrar, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this state shall be sealed from inspection or forwarded to the state registrar of vital statistics, as the state registrar shall direct.

[C71, 73, 75, 77, 79, 81, §144.25]

**144.25A Certificate of birth — foreign and international adoptions.**

The department shall adopt rules pursuant to chapter 17A to establish a procedure for the issuance of a certificate of birth for children adopted pursuant to section 600.15.

2002 Acts, ch 1040, §2, 5

**144.26 Death certificate.**

1. *a.* A death certificate for each death which occurs in this state shall be filed as directed by the state registrar within three days after the death and prior to final disposition, and shall be registered by the county registrar if it has been completed and filed in accordance with this chapter. A death certificate shall include the social security number, if provided, of the deceased person. All information including the certifying physician's, physician assistant's, or advanced registered nurse practitioner's name shall be typewritten.

*b.* A physician assistant or an advanced registered nurse practitioner authorized to sign a death certificate shall be licensed in this state and shall have been in charge of the deceased patient's care.

2. All information included on a death certificate may be provided as mutually agreed upon by the division and the child support recovery unit, including by automated exchange.

3. *a.* The county in which a dead body is found is the county of death. If death occurs in a moving conveyance, the county in which the dead body is first removed from the conveyance is the county of death.

*b.* If a decedent died outside of the county of the decedent's residence, the state registrar shall send a copy of the decedent's death certificate and any amendments to the county registrar of the county of the decedent's residence. The county registrar shall record a death certificate received pursuant to this paragraph in the same records in which the death certificate of a decedent who died within the county is recorded. The state registrar may provide the county registrars with electronic access to vital records in lieu of the requirements of this paragraph.

4. *a.* The department shall establish by rule procedures for making a finding of

presumption of death when no body can be found. The department shall also provide by rule the responsibility for completing and signing the medical certification of cause of death in such circumstances. The presumptive death certificate shall be in a form prescribed by the state registrar and filed in the county where the death was presumed to occur.

b. The division shall provide for the correction, substitution, or removal of a presumptive death certificate when the body of the person is later found, additional facts are discovered, or the person is discovered to be alive.

5. Upon the activation of an electronic death record system, each person with a duty related to death certificates shall participate in the electronic death record system. A person with a duty related to a death certificate includes but is not limited to a physician as defined in section 135.1, a physician assistant, an advanced registered nurse practitioner, a funeral director, and a county recorder.

[SS15, §587-b; C24, 27, 31, 35, 39, §2319; C46, 50, 54, 58, 62, 66, §141.3; C71, 73, 75, 77, 79, 81, S81, §144.26; 81 Acts, ch 64, §5]

88 Acts, ch 1158, §40; 97 Acts, ch 159, §14; 97 Acts, ch 175, §226; 2002 Acts, ch 1108, §11; 2011 Acts, ch 26, §2; 2012 Acts, ch 1069, §1, 3; 2013 Acts, ch 140, §17

Referred to in §144.35, 331.611, 633.520  
NEW subsection 5

#### **144.27 Funeral director's duty.**

The funeral director who first assumes custody of a dead body shall file the death certificate, obtain the personal data from the next of kin or the best qualified person or source available and obtain the medical certification of cause of death from the person responsible for completing the certification. When a person other than a funeral director assumes custody of a dead body, the person shall be responsible for carrying out the provisions of this section.

[C24, 27, 31, 35, 39, §2321; C46, 50, 54, 58, 62, 66, §141.5; C71, 73, 75, 77, 79, 81, §144.27]  
97 Acts, ch 159, §15

Referred to in §331.611

#### **144.28 Medical certification.**

1. a. For the purposes of this section, “*nonnatural cause of death*” means the death is a direct or indirect result of physical, chemical, thermal, or electrical trauma, or drug or alcohol intoxication or other poisoning.

b. Unless there is a nonnatural cause of death, the medical certification shall be completed and signed by the physician, physician assistant, or advanced registered nurse practitioner in charge of the patient's care for the illness or condition which resulted in death within seventy-two hours after receipt of the death certificate from the funeral director or individual who initially assumes custody of the body.

c. If there is a nonnatural cause of death, the county or state medical examiner shall be notified and shall conduct an inquiry.

d. If the decedent was an infant or child and the cause of death is not known, a medical examiner's inquiry shall be conducted and an autopsy performed as necessary to exclude a nonnatural cause of death.

e. If upon inquiry into a death, the county or state medical examiner determines that a preexisting natural disease or condition was the likely cause of death and that the death does not affect the public interest as described in section 331.802, subsection 3, the medical examiner may elect to defer to the physician, physician assistant, or advanced registered nurse practitioner in charge of the patient's preexisting condition the certification of the cause of death.

f. When an inquiry is required by the county or state medical examiner, the medical examiner shall investigate the cause and manner of death and shall complete and sign the medical certification within seventy-two hours after determination of the cause and manner of death.

2. The person completing the medical certification of cause of death shall attest to its accuracy either by signature or by an electronic process approved by rule.

[C24, 27, 31, 35, 39, §2320; C46, 50, 54, 58, 62, 66, §141.4(18); C71, 73, 75, 77, 79, 81, §144.28]

97 Acts, ch 159, §16; 2002 Acts, ch 1098, §2; 2007 Acts, ch 159, §26; 2008 Acts, ch 1058, §13; 2011 Acts, ch 26, §3

Referred to in §144.35, 331.611

#### **144.29 Fetal deaths.**

A fetal death certificate for each fetal death which occurs in this state after a gestation period of twenty completed weeks or greater, or for a fetus with a weight of three hundred fifty grams or more shall be filed as directed by the state registrar within three days after delivery and prior to final disposition of the fetus. The certificate shall be registered if it has been completed and filed in accordance with this chapter.

The county in which a dead fetus is found is the county of death. The certificate shall be filed within three days after the fetus is found. If a fetal death occurs in a moving conveyance, the county in which the fetus is first removed from the conveyance is the county of death.

[C24, 27, 31, 35, 39, §2405; C46, 50, 54, 58, 62, 66, §144.20; C71, 73, 75, 77, 79, 81, §144.29]

88 Acts, ch 1158, §41; 97 Acts, ch 159, §17

Referred to in §144.35, 331.611

#### **144.29A Termination of pregnancy reporting.**

1. A health care provider who initially identifies and diagnoses a spontaneous termination of pregnancy or who induces a termination of pregnancy shall file with the department a report for each termination within thirty days of the occurrence. The health care provider shall make a good faith effort to obtain all of the following information that is available with respect to each termination:

- a. The confidential health care provider code as assigned by the department.
- b. The report tracking number.
- c. The maternal health services region of the Iowa department of public health, as designated as of July 1, 1997, in which the patient resides.
- d. The race of the patient.
- e. The age of the patient.
- f. The marital status of the patient.
- g. The educational level of the patient.
- h. The number of previous pregnancies, live births, and spontaneous or induced terminations of pregnancies.
- i. The month and year in which the termination occurred.
- j. The number of weeks since the patient's last menstrual period and a clinical estimate of gestation.

k. The method used for an induced termination, including whether mifepristone was used.

2. It is the intent of the general assembly that the information shall be collected, reproduced, released, and disclosed in a manner specified by rule of the department, adopted pursuant to chapter 17A, which ensures the anonymity of the patient who experiences a termination of pregnancy, the health care provider who identifies and diagnoses or induces a termination of pregnancy, and the hospital, clinic, or other health facility in which a termination of pregnancy is identified and diagnosed or induced. The department may share information with federal public health officials for the purposes of securing federal funding or conducting public health research. However, in sharing the information, the department shall not relinquish control of the information, and any agreement entered into by the department with federal public health officials to share information shall prohibit the use, reproduction, release, or disclosure of the information by federal public health officials in a manner which violates this section. The department shall publish, annually, a demographic summary of the information obtained pursuant to this section, except that the department shall not reproduce, release, or disclose any information obtained pursuant to

this section which reveals the identity of any patient, health care provider, hospital, clinic, or other health facility, and shall ensure anonymity in the following ways:

a. The department may use information concerning the report tracking number or concerning the identity of a reporting health care provider, hospital, clinic, or other health facility only for purposes of information collection. The department shall not reproduce, release, or disclose this information for any purpose other than for use in annually publishing the demographic summary under this section.

b. The department shall enter the information, from any report of termination submitted, within thirty days of receipt of the report, and shall immediately destroy the report following entry of the information. However, entry of the information from a report shall not include any health care provider, hospital, clinic, or other health facility identification information including, but not limited to, the confidential health care provider code, as assigned by the department.

c. To protect confidentiality, the department shall limit release of information to release in an aggregate form which prevents identification of any individual patient, health care provider, hospital, clinic, or other health facility. For the purposes of this paragraph, “*aggregate form*” means a compilation of the information received by the department on termination of pregnancies for each information item listed, with the exceptions of the report tracking number, the health care provider code, and any set of information for which the amount is so small that the confidentiality of any person to whom the information relates may be compromised. The department shall establish a methodology to provide a statistically verifiable basis for any determination of the correct amount at which information may be released so that the confidentiality of any person is not compromised.

3. Except as specified in subsection 2, reports, information, and records submitted and maintained pursuant to this section are strictly confidential and shall not be released or made public upon subpoena, search warrant, discovery proceedings, or by any other means.

4. The department shall assign a code to any health care provider who may be required to report a termination under this section. An application procedure shall not be required for assignment of a code to a health care provider.

5. A health care provider shall assign a report tracking number which enables the health care provider to access the patient’s medical information without identifying the patient.

6. To ensure proper performance of the reporting requirements under this section, it is preferred that a health care provider who practices within a hospital, clinic, or other health facility authorize one staff person to fulfill the reporting requirements.

7. For the purposes of this section:

a. “*Health care provider*” means an individual licensed under chapter 148, 148C, 148D, or 152, or any individual who provides medical services under the authorization of the licensee.

b. “*Inducing a termination of pregnancy*” means the use of any means to terminate the pregnancy of a woman known to be pregnant with the intent other than to produce a live birth or to remove a dead fetus.

c. “*Spontaneous termination of pregnancy*” means the occurrence of an unintended termination of pregnancy at any time during the period from conception to twenty weeks gestation and which is not a spontaneous termination of pregnancy at any time during the period from twenty weeks or greater which is reported to the department as a fetal death under this chapter.

97 Acts, ch 172, §1; 2003 Acts, ch 42, §1; 2008 Acts, ch 1088, §94; 2013 Acts, ch 90, §29

Referred to in §144.52, 331.611

Subsections 7 – 9 amended and redesignated as subsection 7, unnumbered paragraph 1 and paragraphs a – c

#### **144.30 Funeral director’s duty — fetal death certificate.**

The funeral director who first assumes custody of a fetus shall file the fetal death certificate. In the absence of such a person, the physician or other person in attendance at or after the delivery shall file the certificate of fetal death. The person filing the certificate shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification of cause of death from the person responsible for completing

the certification. When a person other than a funeral director assumes custody of a fetus, the person shall be responsible for carrying out the provisions of this section.

[C71, 73, 75, 77, 79, 81, §144.30]

97 Acts, ch 159, §18

Referred to in §144.31A, 331.611

#### **144.31 Medical certification — fetal death.**

1. The medical certification for a fetal death shall be completed within seventy-two hours after delivery by the physician in attendance at or after delivery except when inquiry is required by the county medical examiner.

2. When a fetal death occurs without medical attendance upon the mother at or after delivery or when inquiry is required by the county medical examiner, the medical examiner shall investigate the cause of fetal death and shall complete the medical certification within seventy-two hours after taking charge of the case. The person completing the medical certification of cause of fetal death shall attest to its accuracy either by signature or as authorized by rule.

[C24, 27, 31, 35, 39, §2322, 2323, 2405; C46, 50, 54, 58, 62, 66, §141.6, 141.7, 144.20; C71, 73, 75, 77, 79, 81, §144.31]

97 Acts, ch 159, §19; 2010 Acts, ch 1163, §1

Referred to in §144.35, 331.611

#### **144.31A Certificate of birth resulting in stillbirth.**

1. As used in this section:

a. “*Certificate of birth resulting in stillbirth*” means a document issued based upon a properly filed fetal death certificate to record the birth of a stillborn fetus.

b. “*Stillbirth*” means stillbirth as defined in section 136A.2.

2. After each fetal death that occurs in the state which is also a stillbirth, the person required to file the fetal death certificate pursuant to section 144.30 shall advise any parent named on the fetal death certificate that the parent may request the preparation of a certificate of birth resulting in stillbirth following registration of a fetal death certificate.

3. The department may prescribe by rules adopted pursuant to chapter 17A the form and content of a request and the process for requesting a certificate of birth resulting in stillbirth.

4. The department shall prescribe by rules adopted pursuant to chapter 17A the form and content of and the fee for the preparation of a certificate of birth resulting in stillbirth.

a. At a minimum, the rules shall require that the certificate of birth resulting in stillbirth contain all of the following:

(1) The date of the stillbirth.

(2) The county in which the stillbirth occurred.

(3) A first name, middle name, last name, no name, or combination of these as requested by the parent.

(4) The state file number of the corresponding fetal death certificate.

(5) The statement: “This certificate is not proof of live birth.”

b. The fees collected shall be remitted to the treasurer of state for deposit in the general fund of the state and the vital records fund in accordance with section 144.46.

5. Only a parent named on the fetal death certificate may request a certificate of birth resulting in stillbirth. A certificate of birth resulting in stillbirth may be requested and issued at any time regardless of the date on which the fetal death certificate was issued.

6. A certificate of birth resulting in stillbirth is not required to be filed or registered.

7. A certificate of birth resulting in stillbirth shall not be used to establish, bring, or support a civil cause of action seeking damages against any person for bodily injury, personal injury, or wrongful death for a stillbirth.

2012 Acts, ch 1022, §1, 2

Referred to in §331.611

#### **144.32 Burial transit permit.**

1. If a person other than a funeral director, medical examiner, or emergency medical service assumes custody of a dead body or fetus, the person shall secure a burial transit

permit. To be valid, the burial transit permit must be issued by the county medical examiner, a funeral director, or the state registrar. The permit shall be obtained prior to the removal of the body or fetus from the place of death and the permit shall accompany the body or fetus to the place of final disposition.

2. To transfer a dead body or fetus outside of this state, the funeral director who first assumes custody of the dead body or fetus shall obtain a burial transit permit prior to the transfer. The permit shall accompany the dead body or fetus to the place of final disposition.

3. A dead body or fetus brought into this state for final disposition shall be accompanied by a burial transit permit under the law of the state in which the death occurred.

4. A burial transit permit shall not be issued to a person other than a funeral director when the cause of death is or is suspected to be a communicable disease as defined by rule of the department.

93 Acts, ch 139, §5; 97 Acts, ch 159, §20; 2012 Acts, ch 1069, §2

Referred to in §156.2, 331.611, 331.804, 5231.309

#### **144.33 Bodies brought into state.**

A burial transit permit issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

[C24, 27, 31, 35, 39, §2324; C46, 50, 54, 58, 62, 66, §141.18; C71, 73, 75, 77, 79, 81, §144.33]

Referred to in §331.611

#### **144.34 Disinterment — permit.**

Disinterment of a dead body or fetus shall be allowed for the purpose of autopsy or reburial only, and then only if accomplished by a funeral director. A permit for such disinterment and, thereafter, reinterment shall be issued by the state registrar according to rules adopted pursuant to chapter 17A or when ordered by the district court of the county in which such body is buried. The state registrar, without a court order, shall not issue a permit without the consent of the person authorized to control the decedent's remains under section 144C.5. Disinterment for the purpose of reburial may be allowed by court order only upon a showing of substantial benefit to the public. Disinterment for the purpose of autopsy or reburial by court order shall be allowed only when reasonable cause is shown that someone is criminally or civilly responsible for such death, after hearing, upon reasonable notice prescribed by the court to the person authorized to control the decedent's remains under section 144C.5. Due consideration shall be given to the public health, the dead, and the feelings of relatives.

[C24, 27, 31, 35, 39, §2337, 2338; C46, 50, 54, 58, 62, 66, §141.21, 141.22; C71, 73, 75, 77, 79, 81, §144.34]

2008 Acts, ch 1051, §2, 22

Referred to in §144.52, 331.611, 5231.309, 5231.402

#### **144.35 Extensions of time by rules.**

The department may, by regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this chapter, provide for extension of the periods prescribed in sections 144.26, 144.28, 144.29, and 144.31, for filing of death certificates, fetal death certificates, and medical certifications of cause of death in cases in which compliance with the applicable prescribed period would result in undue hardship.

[C24, 27, 31, 35, 39, §2318; C46, 50, 54, 58, 62, 66, §141.2(2); C71, 73, 75, 77, 79, 81, §144.35]

91 Acts, ch 116, §2

Referred to in §331.611

#### **144.36 Marriage certificate filed — prohibited information.**

1. A certificate recording each marriage performed in this state shall be filed with the state registrar. The county registrar shall prepare the certificate on the form furnished by the state registrar upon the basis of information obtained from the parties to be married, who shall attest to the information by their signatures. The county registrar in each county shall keep a record book for marriages. The form of marriage record books shall be uniform throughout the state. A properly indexed permanent record of marriage certificates upon

microfilm, electronic computer, or data processing equipment may be kept in lieu of marriage record books.

2. Every person who performs a marriage shall certify the fact of marriage and return the certificate to the county registrar within fifteen days after the ceremony. The certificate shall be signed by the witnesses to the ceremony and the person performing the ceremony.

3. The certificate of marriage shall not contain information concerning the race of the married persons, previous marriages of the married persons, or the educational level of the married persons.

4. The county registrar shall record and forward to the state registrar on or before the tenth day of each calendar month the original certificates of marriages filed with the county registrar during the preceding calendar month and the fees collected by the county registrar on behalf of the state for applications for a license to marry in accordance with section 331.605, subsection 1, paragraph “g”.

[C24, 27, 31, 35, 39, §2421, 2422, 2425; C46, 50, 54, 58, 62, 66, §144.36, 144.37, 144.40; C71, 73, 75, 77, 79, 81, §144.36]

83 Acts, ch 186, §10048, 10201; 85 Acts, ch 195, §18; 95 Acts, ch 124, §6, 26; 99 Acts, ch 114, §6; 2010 Acts, ch 1061, §163

Referred to in §331.611, 595.16A  
See also §595.13 for certificate

#### **144.37 Dissolution and annulment records.**

For each dissolution or annulment of marriage granted by any court in this state, a record shall be prepared by the clerk of court or by the petitioner or the petitioner’s legal representative if directed by the clerk and filed by the clerk of court with the state registrar. The information necessary to prepare the report shall be furnished with the petition, to the clerk of court by the petitioner or the petitioner’s legal representative, on forms supplied by the state registrar.

The clerk of the district court in each county shall keep a record book for dissolutions. The form of dissolution record books shall be uniform throughout the state. A properly indexed record of dissolutions upon microfilm, electronic computer, or data processing equipment may be kept in lieu of dissolution record books.

On or before the tenth day of each calendar month, the clerk of court shall forward to the state registrar the record of each dissolution and annulment granted during the preceding calendar month and related reports required by regulations issued under this chapter.

[C24, 27, 31, 35, 39, §2421, 2423, 2425; C46, 50, 54, 58, 62, 66, §144.36, 144.38, 144.40; C71, 73, 75, 77, 79, 81, §144.37; 81 Acts, ch 64, §6; 82 Acts, ch 1100, §1]

83 Acts, ch 101, §23; 83 Acts, ch 186, §10049, 10201; 85 Acts, ch 195, §19

#### **144.38 Amendment of official record.**

To protect the integrity and accuracy of vital statistics records, a certificate or record registered under this chapter may be amended only in accordance with this chapter and regulations adopted hereunder. A certificate that is amended under this section shall be marked “amended” except as provided in section 144.40. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The department shall prescribe by regulation the conditions under which additions or minor corrections shall be made to birth certificates within one year after the date of birth without the certificate being marked “amended”.

[C24, 27, 31, 35, 39, §2402, 2404; C46, 50, 54, 58, 62, 66, §144.17, 144.19, 144.44, 144.45; C71, 73, 75, 77, 79, 81, §144.38]

Referred to in §144.41

#### **144.39 Change of name.**

Upon receipt of a certified copy of a court order from a court of competent jurisdiction or certificate of the clerk of court pursuant to chapter 674 changing the name of a person born in this state, the state registrar shall amend the certificate of birth to reflect the new name. A fee established by the department by rule based on average administrative cost shall be

collected to amend the certificate of birth to reflect a new name. Fees collected under this section shall be deposited in the general fund of the state.

[C71, 73, 75, 77, 79, 81, §144.39; 81 Acts, ch 64, §7]

2009 Acts, ch 56, §1

Referred to in §144.41

#### **144.40 Paternity of children — birth certificates.**

Upon request and receipt of an affidavit of paternity completed and filed pursuant to section 252A.3A, or a certified copy or notification by the clerk of court of a court or administrative order establishing paternity, the state registrar shall establish a new certificate of birth to show paternity if paternity is not shown on the birth certificate. Upon written request of the parents on the affidavit of paternity, the surname of the child may be changed on the certificate to that of the father. The certificate shall not be marked “amended”. The original certificate and supporting documentation shall be maintained in a sealed file; however, a photocopy of the paternity affidavit filed pursuant to section 252A.3A and clearly labeled as a copy may be provided to a parent named on the affidavit of paternity.

[C24, 27, 31, 35, 39, §2406; C46, 50, 54, 58, 62, 66, §144.21; C71, 73, 75, 77, 79, 81, §144.40; 81 Acts, ch 64, §8]

93 Acts, ch 79, §10; 94 Acts, ch 1171, §4; 2005 Acts, ch 89, §13

Referred to in §144.38, 144.41

#### **144.41 Amending local records.**

When a certificate is amended under sections 144.38 to 144.40 the state registrar shall report the amendment to the custodian of any permanent local records and such records shall be amended accordingly.

[C71, 73, 75, 77, 79, 81, §144.41]

#### **144.42 Reproduction of original records.**

To preserve original documents, the state registrar may prepare typewritten, photographic, or other reproductions of original records and files in the state registrar’s office. Such reproductions when certified by the state registrar shall be accepted as the original record.

[C71, 73, 75, 77, 79, 81, §144.42; 81 Acts, ch 64, §9]

Referred to in §144.18

#### **144.43 Vital records closed to inspection — exceptions.**

1. To protect the integrity of vital statistics records, to ensure their proper use, and to ensure the efficient and proper administration of the vital statistics system kept by the state registrar, access to vital statistics records kept by the state registrar shall be limited to the state registrar and the state registrar’s employees, and then only for administrative purposes.

2. *a.* It shall be unlawful for the state registrar to permit inspection of, or to disclose information contained in vital statistics records, or to copy or permit to be copied all or part of any such record except as authorized by regulation.

*b.* However, the following vital statistics records may be inspected and copied as of right under chapter 22 when they are in the custody of a county registrar or when they are in the custody of the state archivist and are at least seventy-five years old:

- (1) A record of birth.
- (2) A record of marriage.
- (3) A record of divorce, dissolution of marriage, or annulment of marriage.
- (4) A record of death if that death was not a fetal death.

3. A public record shall not be withheld from the public because it is combined with data processing software. The state registrar shall not implement any electronic data processing system for the storage, manipulation, or retrieval of vital records that would impair a county registrar’s ability to permit the examination of a public record and the copying of a public record, as established by rule. If it is necessary to separate a public record from data processing software in order to permit the examination of the public record, the county

registrar shall periodically generate a written log available for public inspection which contains the public record.

[C46, 50, 54, 58, 62, 66, §144.45; C71, 73, 75, 77, 79, 81, S81, §144.43; 81 Acts, ch 64, §10; 82 Acts, ch 1100, §2]

88 Acts, ch 1158, §43; 90 Acts, ch 1025, §1; 94 Acts, ch 1171, §5; 97 Acts, ch 159, §21; 2009 Acts, ch 41, §194

Referred to in §144.18, 233.2

#### **144.43A Mutual consent voluntary adoption registry.**

1. In addition to other procedures by which birth certificates may be inspected under this chapter, the state registrar shall establish a mutual consent voluntary adoption registry through which adult adopted children, adult siblings, and the biological parents of adult adoptees may register to obtain identifying birth information.

2. If all of the following conditions are met, the state registrar shall reveal the identity of the biological parent to the adult adopted child or the identity of the adult adopted child to the biological parent, shall notify the parties involved that the requests have been matched, and shall disclose the identifying information to those parties:

a. A biological parent has filed a request and provided consent to the revelation of the biological parent's identity to the adult adopted child, upon request of the adult adopted child.

b. An adult adopted child has filed a request and provided consent to the revelation of the identity of the adult adopted child to a biological parent, upon request of the biological parent.

c. The state registrar has been provided sufficient information to make the requested match.

3. Notwithstanding the provisions of this section, if the adult adopted person has a sibling who is a minor and who has also been adopted, the state registrar shall not grant the request of either the adult adopted person or the biological parent to reveal the identities of the parties.

4. If all of the following conditions are met, the state registrar shall reveal the identity of the adult adopted child to an adult sibling and shall notify the parties involved that the requests have been matched, and disclose the identifying information to those parties:

a. An adult adopted child has filed a request and provided consent to the revelation of the adult adopted child's identity to an adult sibling.

b. The adult sibling has filed a request and provided consent to the revelation of the identity of the adult sibling to the adult adopted child.

c. The state registrar has been provided with sufficient information to make the requested match.

5. A person who has filed a request or provided consent under this section may withdraw the consent at any time prior to the release of any information by filing a written withdrawal of consent statement with the state registrar. The adult adoptee, adult sibling, and biological parent shall notify the state registrar of any change in the information contained in a filed request or consent.

6. The state registrar shall establish a fee by rule based on the average administrative costs for providing services under this section.

99 Acts, ch 141, §19

Referred to in §144.18

#### **144.44 Permits for research.**

The department may permit access to vital statistics by professional genealogists and historians, and may authorize the disclosure of data contained in vital statistics records when deemed essential for bona fide research purposes which are not for private gain. The department shall adopt rules which establish the parameters for access to and authorized disclosure of vital statistics and data contained in vital statistics records relating to birth and adoption records under this section.

[C24, 27, 31, 35, 39, §2406, 2415; C46, 50, 54, 58, 62, 66, §144.21, 144.30; C71, 73, 75, 77, 79, 81, §144.44]

94 Acts, ch 1171, §6

Referred to in §144.18, 144.46

**144.45 Certified copies.**

The state registrar and the county registrar shall, upon written request from any applicant entitled to a record, issue a certified copy of any certificate or record in the registrar's custody or of a part of a certificate or record. Each copy issued shall show the date of registration; and copies issued from records marked "delayed", "amended", or "court order" shall be similarly marked and show the effective date.

A certified copy of a certificate, or any part thereof, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts therein stated, provided that the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

The national division of vital statistics may be furnished copies or data which it requires for national statistics, provided that the state be reimbursed for the cost of furnishing data, and provided further that data shall not be used for other than statistical purposes by the national division of vital statistics unless so authorized by the state registrar.

Federal, state, local, and other public or private agencies may, upon written request, be furnished copies or data for statistical purposes upon terms or conditions prescribed by the department.

No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a certificate of birth, death, fetal death, or marriage except as authorized in this chapter.

[S13, §2575-a45; C24, 27, 31, 35, 39, §2349, 2416, 2426, 2429, 2431; C46, 50, 54, 58, 62, 66, §141.33, 144.31, 144.41, 144.46, 144.48; C71, 73, 75, 77, 79, 81, §144.45]

95 Acts, ch 124, §7, 26

Referred to in §144.18, 144.46, 331.611

**144.45A Commemorative birth and marriage certificates.**

Upon application and payment of a thirty-five dollar fee, the director may issue a commemorative copy of a certificate of birth or a certificate of marriage. Fees collected pursuant to this section shall be deposited in the emergency medical services fund established in section 135.25 to support the development and enhancement of emergency medical services systems and emergency medical services for children.

97 Acts, ch 203, §20

Referred to in §144.18

**144.46 Fees.**

1. The department by rule shall establish fees based on the average administrative cost which shall be collected by the state registrar or the county registrar for each of the following:

- a. A certified copy or short form certification of a certificate or record.
- b. A search of the files or records when no copy is made, or when no record is found on file.
- c. A copy of a certificate or record or a vital statistics data file provided to a researcher in accordance with section 144.44.
- d. A copy of a certificate or record or a vital statistics data file provided to a federal, state, local, or other public or private agency for statistical purposes in accordance with section 144.45.
- e. Verification or certification of vital statistics data provided to a federal, state, or local governmental agency authorized by rule to receive such data.

2. Fees collected by the state registrar and by the county registrar on behalf of the state under this section shall be deposited in the general fund of the state and the vital records fund established in section 144.46A in accordance with an apportionment established by rule.

Fees collected by the county registrar pursuant to section 331.605, subsection 1, paragraph “f”, shall be deposited in the county general fund.

[C24, 27, 31, 35, 39, §2417, 2418, 2427; C46, 50, 54, 58, 62, 66, §144.32, 144.33, 144.42; C71, 73, 75, 77, 79, 81, S81, §144.46; 81 Acts, ch 64, §11]

83 Acts, ch 123, §68, 209; 83 Acts, ch 186, §10050, 10201; 94 Acts, ch 1074, §1; 95 Acts, ch 124, §8, 26; 99 Acts, ch 114, §7; 2007 Acts, ch 159, §27; 2010 Acts, ch 1061, §164

Referred to in §144.13A, 144.18, 144.31A, 144.46A, 232.2, 331.611, 600.13

#### **144.46A Vital records fund.**

1. A vital records fund is created under the control of the department. Moneys in the fund shall be used for purposes of the purchase and maintenance of an electronic system for vital records scanning, data capture, data reporting, storage, and retrieval, and for all registration and issuance activities. Moneys in the fund may also be used for other related purposes including but not limited to the streamlining of administrative procedures and electronically linking offices of county registrars to state vital records so that the records may be issued at the county level.

2. Moneys credited to the fund pursuant to section 144.46 and otherwise are appropriated to the department to be used for the purposes designated in subsection 1. Notwithstanding section 8.33, moneys credited to the fund that remain unencumbered or unobligated at the close of the fiscal year shall not revert to any fund but shall remain available for expenditure for the purposes designated.

2005 Acts, ch 175, §83; 2007 Acts, ch 159, §28

Referred to in §144.46

#### **144.47 Persons confined in institutions.**

Every person in charge of an institution shall keep a record of personal particulars and data concerning each person admitted or confined to the institution. This record shall include information required by the standard certificate of birth, death, and fetal death forms issued under the provisions of this chapter. The record shall be made at the time of admission from information provided by such person, but when it cannot be so obtained, the same shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record.

[C24, 27, 31, 35, 39, §2407, 2408, 2409; C46, 50, 54, 58, 62, 66, §144.22, 144.23, 144.24; C71, 73, 75, 77, 79, 81, §144.47]

Referred to in §144.50

#### **144.48 Institutions — dead persons.**

When a dead human body is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the deceased, date of death, name and address of the person to whom the body is released, date of removal from the institution, or if finally disposed of by the institution, the date, place, and manner of disposition shall be recorded.

[C24, 27, 31, 35, 39, §2407; C46, 50, 54, 58, 62, 66, §144.22; C71, 73, 75, 77, 79, 81, §144.48]

Referred to in §144.50

#### **144.49 Additional record by funeral director.**

A funeral director or other person who removes from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any certificate or other form required by this chapter, shall keep a record which shall identify the body, and information pertaining to the funeral director’s or other person’s receipt, removal, and delivery of the body as prescribed by the department.

[C24, 27, 31, 35, 39, §2414; C46, 50, 54, 58, 62, 66, §144.29; C71, 73, 75, 77, 79, 81, §144.49]

Referred to in §144.50

**144.50 Length of time records to be kept.**

Records maintained under sections 144.47 to 144.49 shall be retained for a period of not less than ten years and shall be made available for inspection by the state registrar or the state registrar's representative upon demand.

[C71, 73, 75, 77, 79, 81, §144.50]

**144.51 Information by others furnished on demand.**

Any person having knowledge of the facts shall furnish information the person possesses regarding any birth, death, fetal death, adoption, marriage, dissolution, or annulment, upon demand of the state registrar or the state registrar's representative.

[C24, 27, 31, 35, 39, §2403, 2414; C46, 50, 54, 58, 62, 66, §144.18, 144.29; C71, 73, 75, 77, 79, 81, §144.51]

83 Acts, ch 101, §24

**144.52 Unlawful acts — punishment.**

Any person committing any of the following acts is guilty of a serious misdemeanor:

1. Willfully and knowingly makes any false statement in a report, record, or certificate required to be filed under this chapter, or in an application for an amendment thereof, or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof.

2. Without lawful authority and with the intent to deceive, makes, alters, amends, or mutilates any report, record, or certificate required to be filed under this chapter or a certified copy of such report, record, or certificate.

3. Willfully and knowingly uses or attempts to use or furnish to another for use for any purpose of deception, any certificate, record, report, or certified copy thereof so made, altered, amended, or mutilated.

4. Willfully, with the intent to deceive, uses or attempts to use any certificate of birth or certified copy of a record of birth knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person.

5. Willfully and knowingly furnishes a certificate of birth or certified copy of a record of birth with the intention that it be used by a person other than the person whose birth the record relates.

6. Disinterring a body in violation of section 144.34.

7. Knowingly violates a provision of section 144.29A.

[C24, 27, 31, 35, 39, §2349, 2350, 2436; C46, 50, 54, 58, 62, 66, §141.33, 141.34, 144.53, 144.54; C71, 73, 75, 77, 79, 81, §144.52]

97 Acts, ch 172, §2

**144.53 Other acts — simple misdemeanors.**

Any person committing any of the following acts is guilty of a simple misdemeanor:

1. Knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided in this chapter.

2. Refuses to provide information required by this chapter.

3. Willfully violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon the person by this chapter.

[C24, 27, 31, 35, 39, §2350, 2436; C46, 50, 54, 58, 62, 66, §141.34, 144.53; C71, 73, 75, 77, 79, 81, §144.53]

**144.54 Report to county attorney.**

The department shall report cases of alleged violations to the proper county attorney, with a statement of the facts and circumstances, for such action as is appropriate.

[C27, 31, 35, 39, §2434; C46, 50, 54, 58, 62, 66, §144.51; C71, 73, 75, 77, 79, 81, §144.54]

**144.55 Attorney general to assist in enforcement.**

Upon request of the department, the attorney general shall assist in the enforcement of the provisions of this chapter.

[C24, 27, 31, 35, 39, §2435; C46, 50, 54, 58, 62, 66, §144.52; C71, 73, 75, 77, 79, 81, §144.55]

**144.56 Autopsy.**

1. An autopsy or postmortem examination may be performed upon the body of a deceased person by a physician whenever the written consent to the examination or autopsy has been obtained from the person authorized to control the deceased person's remains under section 144C.5.

2. This section does not apply to any death investigated under the authority of sections 331.802 to 331.804.

[C75, 77, 79, 81, S81, §144.56; 81 Acts, ch 117, §1207]

2008 Acts, ch 1051, §3, 22

Referred to in §144.57

**144.57 Public safety officer death — required notice — autopsy.**

A person who is authorized to pronounce individuals dead is required to inform one of the persons authorized to request an autopsy, as provided in section 144.56, that an autopsy will be required if the individual who died was a public safety officer who may have died in the line of duty and an eligible beneficiary of the deceased seeks to claim a federal public safety officer death benefit.\*

2005 Acts, ch 174, §19

\*Public safety officers' death benefits, see 42 U.S.C. §3796 et seq.

## CHAPTER 144A

### LIFE-SUSTAINING PROCEDURES

Referred to in §142C.12B, 144B.6, 144D.4, 235B.2, 235E.1, 633.635, 707A.3

Policy statement; see 85 Acts, ch 3, §1  
See also chapter 144B concerning durable power of  
attorney for health care

144A.1	Short title.	144A.7A	Out-of-hospital do-not-resuscitate orders.
144A.2	Definitions.		
144A.3	Declaration relating to use of life-sustaining procedures.	144A.8	Transfer of patients.
144A.4	Revocation of declaration.	144A.9	Immunities.
144A.5	Determination of terminal condition.	144A.10	Penalties.
144A.6	Treatment of qualified patients.	144A.11	General provisions.
144A.7	Procedure in absence of declaration.	144A.12	Application to existing declarations.

**144A.1 Short title.**

This chapter may be cited as the “*Life-sustaining Procedures Act*”.

85 Acts, ch 3, §2

**144A.2 Definitions.**

Except as otherwise provided, as used in this chapter:

1. “*Adult*” means an individual eighteen years of age or older.
2. “*Attending physician*” means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.
3. “*Declaration*” means a document executed in accordance with the requirements of section 144A.3.
4. “*Department*” means the Iowa department of public health.

5. “*Emergency medical care provider*” means emergency medical care provider as defined in section 147A.1.

6. “*Health care provider*” means a person, including an emergency medical care provider, who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.

7. “*Hospital*” means hospital as defined in section 135B.1.

8. a. “*Life-sustaining procedure*” means any medical procedure, treatment, or intervention, including resuscitation, which meets both of the following requirements:

(1) Utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function.

(2) When applied to a patient in a terminal condition, would serve only to prolong the dying process.

b. “*Life-sustaining procedure*” does not include the provision of nutrition or hydration except when required to be provided parenterally or through intubation or the administration of medication or performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

9. “*Out-of-hospital do-not-resuscitate order*” means a written order signed by a physician, executed in accordance with the requirements of section 144A.7A and issued consistent with this chapter, that directs the withholding or withdrawal of resuscitation when an adult patient in a terminal condition is outside the hospital.

10. “*Physician*” means a person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state.

11. “*Qualified patient*” means a patient who has executed a declaration or an out-of-hospital do-not-resuscitate order in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

12. “*Resuscitation*” means any medical intervention that utilizes mechanical or artificial means to sustain, restore, or supplant a spontaneous vital function, including but not limited to chest compression, defibrillation, intubation, and emergency drugs intended to alter cardiac function or otherwise to sustain life.

13. “*Terminal condition*” means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short period of time or a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery.

85 Acts, ch 3, §3; 92 Acts, ch 1132, §1 – 3; 2002 Acts, ch 1061, §1; 2008 Acts, ch 1088, §141; 2013 Acts, ch 30, §37

Referred to in §144C.2, 144D.4

Subsection 8 amended

### **144A.3 Declaration relating to use of life-sustaining procedures.**

1. A competent adult may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn. The declaration shall be given operative effect only if the declarant’s condition is determined to be terminal and the declarant is not able to make treatment decisions.

2. The declaration must be signed by the declarant or another person acting on behalf of the declarant at the direction of the declarant, must contain the date of the declaration’s execution, and must be witnessed or acknowledged by one of the following methods:

a. Is signed by at least two individuals who, in the presence of each other and the declarant, witnessed the signing of the declaration by the declarant or by another person acting on behalf of the declarant at the declarant’s direction. At least one of the witnesses shall be an individual who is not a relative of the declarant by blood, marriage, or adoption within the third degree of consanguinity. The following individuals shall not be witnesses for a declaration:

(1) A health care provider attending the declarant on the date of execution of the declaration.

(2) An employee of a health care provider attending the declarant on the date of execution of the declaration.

(3) An individual who is less than eighteen years of age.

b. Is acknowledged before a notarial officer within this state as provided in chapter 9B.

3. It is the responsibility of the declarant to provide the declarant's attending physician or health care provider with the declaration. An attending physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

4. A declaration or similar document executed in another state or jurisdiction in compliance with the law of that state or jurisdiction shall be deemed valid and enforceable in this state, to the extent the declaration or similar document is consistent with the laws of this state. A declaration or similar document executed by a veteran of the armed forces which is in compliance with the federal department of veterans affairs advance directive requirements shall be deemed valid and enforceable.

5. A declaration executed pursuant to this chapter may, but need not, be in the following form:

#### DECLARATION

If I should have an incurable or irreversible condition that will result either in death within a relatively short period of time or a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery, it is my desire that my life not be prolonged by the administration of life-sustaining procedures. If I am unable to participate in my health care decisions, I direct my attending physician to withhold or withdraw life-sustaining procedures that merely prolong the dying process and are not necessary to my comfort or freedom from pain.

85 Acts, ch 3, §4; 92 Acts, ch 1132, §4; 98 Acts, ch 1083, §1; 2002 Acts, ch 1061, §2, 3; 2012 Acts, ch 1050, §37, 60

Referred to in §144A.2, 144A.11

#### **144A.4 Revocation of declaration.**

1. A declaration may be revoked at any time and in any manner by which the declarant is able to communicate the declarant's intent to revoke, without regard to mental or physical condition. A revocation is only effective as to the attending physician upon communication to such physician by the declarant or by another to whom the revocation was communicated.

2. The attending physician shall make the revocation a part of the declarant's medical record.

85 Acts, ch 3, §5

Referred to in §144A.10

#### **144A.5 Determination of terminal condition.**

When an attending physician who has been provided with a declaration determines that the declarant is in a terminal condition, this decision must be confirmed by another physician. The attending physician must record that determination in the declarant's medical record.

85 Acts, ch 3, §6

Referred to in §144A.8

#### **144A.6 Treatment of qualified patients.**

1. A qualified patient has the right to make decisions regarding use of life-sustaining procedures as long as the qualified patient is able to do so. If a qualified patient is not able to make such decisions, the declaration shall govern decisions regarding use of life-sustaining procedures.

2. The declaration of a qualified patient known to the attending physician to be pregnant shall not be in effect as long as the fetus could develop to the point of live birth with continued application of life-sustaining procedures. However, the provisions of this subsection do not impair any existing rights or responsibilities that any person may have in regard to the withholding or withdrawal of life-sustaining procedures.

85 Acts, ch 3, §7

Referred to in §144A.8

**144A.7 Procedure in absence of declaration.**

1. Life-sustaining procedures may be withheld or withdrawn from a patient who is in a terminal condition and who is comatose, incompetent, or otherwise physically or mentally incapable of communication and has not made a declaration in accordance with this chapter if there is consultation and written agreement for the withholding or the withdrawal of life-sustaining procedures between the attending physician and any of the following individuals, who shall be guided by the express or implied intentions of the patient, in the following order of priority if no individual in a prior class is reasonably available, willing, and competent to act:

a. The attorney in fact designated to make treatment decisions for the patient should such person be diagnosed as suffering from a terminal condition, if the designation is in writing and complies with chapter 144B or section 633B.1.

b. The guardian of the person of the patient if one has been appointed, provided court approval is obtained in accordance with section 633.635, subsection 2, paragraph “c”. This paragraph does not require the appointment of a guardian in order for a treatment decision to be made under this section.

c. The patient’s spouse.

d. An adult child of the patient or, if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation.

e. A parent of the patient, or parents if both are reasonably available.

f. An adult sibling.

2. When a decision is made pursuant to this section to withhold or withdraw life-sustaining procedures, there shall be a witness present at the time of the consultation when that decision is made.

3. Subsections 1 and 2 shall not be in effect for a patient who is known to the attending physician to be pregnant with a fetus that could develop to the point of live birth with continued application of life-sustaining procedures. However, the provisions of this subsection do not impair any existing rights or responsibilities that any person may have in regard to the withholding or withdrawal of life-sustaining procedures.

85 Acts, ch 3, §8; 87 Acts, ch 100, §1; 2002 Acts, ch 1061, §4; 2005 Acts, ch 38, §55

Referred to in §144A.8, 144D.1, 144D.4

**144A.7A Out-of-hospital do-not-resuscitate orders.**

1. If an attending physician issues an out-of-hospital do-not-resuscitate order for an adult patient under this section, the physician shall use the form prescribed pursuant to subsection 2, include a copy of the order in the patient’s medical record, and provide a copy to the patient or an individual authorized to act on the patient’s behalf.

2. The department, in collaboration with interested parties, shall prescribe uniform out-of-hospital do-not-resuscitate order forms and uniform personal identifiers, and shall adopt administrative rules necessary to implement this section. The uniform forms and personal identifiers shall be used statewide.

3. The out-of-hospital do-not-resuscitate order form shall include all of the following:

a. The patient’s name.

b. The patient’s date of birth.

c. The name of the individual authorized to act on the patient’s behalf, if applicable.

d. A statement that the patient is in a terminal condition.

e. The physician’s signature.

f. The date the form is signed.

g. A concise statement of the nature and scope of the order.

h. Any other information necessary to provide clear and reliable instructions to a health care provider.

4. A health care provider may withhold or withdraw resuscitation outside a hospital consistent with an out-of-hospital do-not-resuscitate order issued under this section and the rules or protocols adopted by the department.

5. In fulfilling the instructions of an out-of-hospital do-not-resuscitate order under this

chapter, a health care provider shall continue to provide appropriate comfort care and pain relief to the patient.

6. An out-of-hospital do-not-resuscitate order shall not apply when a patient is in need of emergency medical services due to a sudden accident or injury resulting from a motor vehicle collision, fire, mass casualty, or other cause of a sudden accident or injury which is outside the scope of the patient's terminal condition.

7. An out-of-hospital do-not-resuscitate order is deemed revoked at any time that a patient, or an individual authorized to act on the patient's behalf as designated on the out-of-hospital do-not-resuscitate order, is able to communicate in any manner the intent that the order be revoked, without regard to the mental or physical condition of the patient. A revocation is only effective as to the health care provider upon communication to that provider by the patient, an individual authorized to act on the patient's behalf as designated in the order, or by another person to whom the revocation is communicated.

8. The personal wishes of family members or other individuals who are not authorized in the order to act on the patient's behalf shall not supersede a valid out-of-hospital do-not-resuscitate order.

9. If uncertainty regarding the validity or applicability of an out-of-hospital do-not-resuscitate order exists, a health care provider shall provide necessary and appropriate resuscitation.

10. A health care provider shall document compliance or noncompliance with an out-of-hospital do-not-resuscitate order and the reasons for not complying with the order, including evidence that the order was revoked or uncertainty regarding the validity or applicability of the order.

11. This section shall not preclude a hospital licensed under chapter 135B from honoring an out-of-hospital do-not-resuscitate order entered in accordance with this section and in compliance with established hospital policies and protocols.

2002 Acts, ch 1061, §5

Referred to in §144A.2, 144A.8, 144A.10, 144A.11, 144D.4

Applicability to and validity of orders executed prior to July 1, 2002; 2002 Acts, ch 1061, §11

#### **144A.8 Transfer of patients.**

1. An attending physician who is unwilling to comply with the requirements of section 144A.5, or who is unwilling to comply with the declaration of a qualified patient in accordance with section 144A.6 or an out-of-hospital do-not-resuscitate order pursuant to section 144A.7A, or who is unwilling to comply with the provisions of section 144A.7 or 144A.7A shall take all reasonable steps to effect the transfer of the patient to another physician.

2. If the policies of a health care provider preclude compliance with the declaration or out-of-hospital do-not-resuscitate order of a qualified patient under this chapter or preclude compliance with the provisions of section 144A.7 or 144A.7A, the provider shall take all reasonable steps to effect the transfer of the patient to a facility in which the provisions of this chapter can be carried out.

85 Acts, ch 3, §9; 2002 Acts, ch 1061, §6

#### **144A.9 Immunities.**

1. In the absence of actual notice of the revocation of a declaration or of an out-of-hospital do-not-resuscitate order, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

a. A physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient.

b. The health care provider in which such withholding or withdrawal occurs.

c. A person who participates in the withholding or withdrawal of life-sustaining procedures under the direction of or with the authorization of a physician.

2. A physician is not subject to civil or criminal liability for actions under this chapter which are in accord with reasonable medical standards.

3. Any person, institution or facility against whom criminal or civil liability is asserted

because of conduct in compliance with this chapter may interpose this chapter as an absolute defense.

4. In the absence of actual notice of the revocation of an out-of-hospital do-not-resuscitate order, a health care provider who complies with this chapter is not subject to civil or criminal liability or guilty of unprofessional conduct in entering, executing, or otherwise participating in an out-of-hospital do-not-resuscitate order.

85 Acts, ch 3, §10; 2002 Acts, ch 1061, §7, 8

#### **144A.10 Penalties.**

1. Any person who willfully conceals, withholds, cancels, destroys, alters, defaces, or obliterates the declaration, out-of-hospital do-not-resuscitate order, or out-of-hospital do-not-resuscitate identifier of another without the declarant's or patient's consent or who falsifies or forges a revocation of the declaration or out-of-hospital do-not-resuscitate order of another is guilty of a serious misdemeanor.

2. Any person who falsifies or forges the declaration or out-of-hospital do-not-resuscitate order of another, or willfully conceals or withholds personal knowledge of or delivery of a revocation as provided in section 144A.4 or 144A.7A, with the intent to cause a withholding or withdrawal of life-sustaining procedures, is guilty of a serious misdemeanor.

85 Acts, ch 3, §11; 2002 Acts, ch 1061, §9

#### **144A.11 General provisions.**

1. Death resulting from the withholding or withdrawal of life-sustaining procedures pursuant to a declaration or out-of-hospital do-not-resuscitate order and in accordance with this chapter does not, for any purpose, constitute a suicide, homicide, or dependent adult abuse.

2. The executing of a declaration pursuant to section 144A.3 or an out-of-hospital do-not-resuscitate order pursuant to section 144A.7A does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance is legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures pursuant to this chapter, notwithstanding any term of the policy to the contrary.

3. A physician, health care provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan shall not require any person to execute a declaration or an out-of-hospital do-not-resuscitate order as a condition for being insured for, or receiving, health care services.

4. This chapter creates no presumption concerning the intention of an individual who has not executed a declaration or an out-of-hospital do-not-resuscitate order with respect to the use, withholding, or withdrawal of life-sustaining procedures in the event of a terminal condition.

5. This chapter shall not be interpreted to increase or decrease the right of a patient to make decisions regarding use of life-sustaining procedures as long as the patient is able to do so, nor to impair or supersede any right or responsibility that any person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this chapter are cumulative.

6. This chapter shall not be construed to condone, authorize or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

85 Acts, ch 3, §12; 2002 Acts, ch 1061, §10

Adult abuse, chapter 235B  
Homicide, chapter 707

#### **144A.12 Application to existing declarations.**

A declaration executed prior to April 23, 1992, shall remain valid and shall be given effect in accordance with the then-applicable provisions of this chapter. If a declaration executed prior to April 23, 1992, includes a provision which would not have been given effect under

this chapter prior to April 23, 1992, but which would be given effect under 1992 Acts, chapter 1132, then the provision shall be given effect in accordance with 1992 Acts, chapter 1132. 92 Acts, ch 1132, §5

## CHAPTER 144B

### DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Referred to in §142C.2, 142C.12B, 144A.7, 144C.2, 144C.6, 144D.4, 231E.5, 235B.2, 235B.19, 235E.1, 707A.3

<p>144B.1 Definitions.</p> <p>144B.2 Durable power of attorney for health care.</p> <p>144B.3 Requirements.</p> <p>144B.4 Individuals ineligible to be attorney in fact.</p> <p>144B.5 Durable power of attorney for health care — form.</p> <p>144B.6 Attorney in fact — priority to make decisions.</p>	<p>144B.7 Authority to review medical records.</p> <p>144B.8 Revocation of durable power of attorney.</p> <p>144B.9 Immunities and responsibilities.</p> <p>144B.10 Emergency treatment.</p> <p>144B.11 Prohibited practices.</p> <p>144B.12 General provisions.</p>
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**144B.1 Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. “Attorney in fact” means an individual who is designated by a durable power of attorney for health care as an agent to make health care decisions on behalf of a principal and has consented to act in that capacity.
2. “Designee” means a person named in a declaration under chapter 144C that is contained in or attached to a durable power of attorney for health care.
3. “Durable power of attorney for health care” means a document authorizing an attorney in fact to make health care decisions for the principal if the principal is unable, in the judgment of the attending physician, to make health care decisions.
4. “Health care” means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual’s physical or mental condition. “Health care” does not include the provision of nutrition or hydration except when they are required to be provided parenterally or through intubation.
5. “Health care decision” means the consent, refusal of consent, or withdrawal of consent to health care.
6. “Health care provider” means a person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.
7. “Principal” means a person age eighteen or older who has executed a durable power of attorney for health care.

91 Acts, ch 140, §1; 2008 Acts, ch 1051, §4, 22

Referred to in §141A.1, 231E.3, 321.189

**144B.2 Durable power of attorney for health care.**

A durable power of attorney for health care authorizes the attorney in fact to make health care decisions for the principal if the durable power of attorney for health care substantially complies with the requirements of this chapter. A document executed prior to May 8, 1991, purporting to create a durable power of attorney for health care shall be deemed valid if the document specifically authorizes the attorney in fact to make health care decisions and is signed by the principal.

91 Acts, ch 140, §2

**144B.3 Requirements.**

1. An attorney in fact shall make health care decisions only if the following requirements are satisfied:

a. The durable power of attorney for health care explicitly authorizes the attorney in fact to make health care decisions.

b. The durable power of attorney for health care contains the date of its execution and is witnessed or acknowledged by one of the following methods:

(1) Is signed by at least two individuals who, in the presence of each other and the principal, witnessed the signing of the instrument by the principal or by another person acting on behalf of the principal at the principal's direction.

(2) Is acknowledged before a notarial officer within this state as provided in chapter 9B.

2. The following individuals shall not be witnesses for a durable power of attorney for health care:

a. A health care provider attending the principal on the date of execution.

b. An employee of a health care provider attending the principal on the date of execution.

c. The individual designated in the durable power of attorney for health care as the attorney in fact.

d. An individual who is less than eighteen years of age.

3. At least one of the witnesses for a durable power of attorney for health care shall be an individual who is not a relative of the principal by blood, marriage, or adoption within the third degree of consanguinity.

4. A durable power of attorney for health care or similar document executed in another state or jurisdiction in compliance with the law of that state or jurisdiction shall be deemed valid and enforceable in this state, to the extent the document is consistent with the laws of this state. A durable power of attorney or similar document executed by a veteran of the armed forces which is in compliance with the federal department of veterans affairs advance directive requirements shall be deemed valid and enforceable.

91 Acts, ch 140, §3; 98 Acts, ch 1083, §2; 2012 Acts, ch 1050, §38, 60

**144B.4 Individuals ineligible to be attorney in fact.**

The following individuals shall not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care:

1. A health care provider attending the principal on the date of execution.

2. An employee of a health care provider attending the principal on the date of execution unless the individual to be designated is related to the principal by blood, marriage, or adoption within the third degree of consanguinity.

91 Acts, ch 140, §4

**144B.5 Durable power of attorney for health care — form.**

1. A durable power of attorney for health care executed pursuant to this chapter may, but need not, be in the following form:

I hereby designate ..... as my attorney in fact (my agent) and give to my agent the power to make health care decisions for me. This power exists only when I am unable, in the judgment of my attending physician, to make those health care decisions. The attorney in fact must act consistently with my desires as stated in this document or otherwise made known.

Except as otherwise specified in this document, this document gives my agent the power, where otherwise consistent with the law of this state, to consent to my physician not giving health care or stopping health care which is necessary to keep me alive.

This document gives my agent power to make health care decisions on my behalf, including to consent, to refuse to consent, or to withdraw consent to the provision of any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or

mental condition. This power is subject to any statement of my desires and any limitations included in this document.

My agent has the right to examine my medical records and to consent to disclosure of such records.

2. In addition to the foregoing, the principal may provide specific instructions in the document conferring the durable power of attorney for health care, consistent with the provisions of this chapter.

3. The principal may include a statement indicating that the designated attorney in fact has been notified of and consented to the designation.

4. A durable power of attorney for health care may designate one or more alternative attorneys in fact.

5. A durable power of attorney for health care may include a declaration under chapter 144C that names a designee and alternate designees who may be different persons than the attorney in fact or alternate attorneys in fact who are designated in the durable power of attorney for health care.

91 Acts, ch 140, §5; 2008 Acts, ch 1051, §5, 22

#### **144B.6 Attorney in fact — priority to make decisions.**

1. Unless the district court sitting in equity specifically finds that the attorney in fact is acting in a manner contrary to the wishes of the principal or the durable power of attorney for health care provides otherwise, an attorney in fact who is known to the health care provider to be available and willing to make health care decisions has priority over any other person, including a guardian appointed pursuant to chapter 633, to act for the principal in all matters of health care decisions. The attorney in fact has authority to make a particular health care decision only if the principal is unable, in the judgment of the attending physician, to make the health care decision. If the principal objects to a decision to withhold or withdraw health care, the principal shall be presumed to be able to make a decision.

2. In exercising the authority under the durable power of attorney for health care, the attorney in fact has a duty to act in accordance with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the attorney in fact at any time. A declaration executed by the principal pursuant to the life-sustaining procedures Act, chapter 144A, shall not be interpreted as expressing an intent to prohibit the withdrawal of hydration or nutrition when required to be provided parenterally or through intubation and shall not otherwise restrict the authority of the attorney in fact unless either the declaration or the durable power of attorney for health care expressly provides otherwise. If the principal's desires are unknown, the attorney in fact has a duty to act in the best interests of the principal, taking into account the principal's overall medical condition and prognosis.

91 Acts, ch 140, §6

#### **144B.7 Authority to review medical records.**

Except as limited by the durable power of attorney for health care, an attorney in fact has the same right as the principal to receive and review medical records of the principal, and to consent to the disclosure of medical records of the principal when acting pursuant to the durable power of attorney for health care.

91 Acts, ch 140, §7

#### **144B.8 Revocation of durable power of attorney.**

1. A durable power of attorney for health care may be revoked at any time and in any manner by which the principal is able to communicate the intent to revoke, without regard to mental or physical condition. Revocation may be by notifying the attorney in fact orally or in writing. Revocation may also be made by notifying a health care provider orally or in writing while that provider is engaged in providing health care to the principal. A revocation is only effective as to a health care provider upon its communication to the provider by the principal or by another to whom the principal has communicated revocation. The health care provider shall document the revocation in the treatment records of the principal.

2. The principal is presumed to have the capacity to revoke a durable power of attorney for health care.

3. Unless it provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health care.

4. If authority granted by a durable power of attorney for health care is revoked under this section, an individual is not subject to criminal prosecution or civil liability for acting in good faith reliance upon the durable power of attorney for health care unless the individual has actual knowledge of the revocation.

5. The fact of execution and subsequent revocation of a durable power of attorney shall have no effect upon subsequent health care decisions made in accordance with accepted principles of law and standards of medical care governing those decisions.

91 Acts, ch 140, §8

#### **144B.9 Immunities and responsibilities.**

1. A health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action if the health care provider relies on a health care decision and both of the following requirements are satisfied:

a. The decision is made by an attorney in fact who the health care provider believes in good faith is authorized to make the decision.

b. The health care provider believes in good faith that the decision is not inconsistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the health care provider, and, if the decision is to withhold or withdraw health care necessary to keep the principal alive, the health care provider has provided an opportunity for the principal to object to the decision.

2. Notwithstanding a contrary health care decision of the attorney in fact, the health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action for failing to withhold or withdraw health care necessary to keep the principal alive. However, the attorney in fact may make provisions to transfer the responsibility for the care of the principal to another health care provider.

3. An attorney in fact is not subject to criminal prosecution or civil liability for any health care decision made in good faith pursuant to a durable power of attorney for health care.

4. It shall be presumed that an attorney in fact, and a health care provider acting pursuant to the direction of an attorney in fact, are acting in good faith and in the best interests of the principal absent clear and convincing evidence to the contrary.

5. For purposes of this section, acting in “*good faith*” means acting consistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the attorney in fact, or where those desires are unknown, acting in the best interests of the principal, taking into account the principal’s overall medical condition and prognosis.

6. A health care provider or attorney in fact may presume that a durable power of attorney for health care is valid absent actual knowledge to the contrary.

91 Acts, ch 140, §9

#### **144B.10 Emergency treatment.**

This chapter does not affect the law governing health care treatment in an emergency.

91 Acts, ch 140, §10

#### **144B.11 Prohibited practices.**

1. A health care provider, health care service plan, insurer, self-insured employee welfare benefit plan, or nonprofit hospital plan shall not condition admission to a facility, or the providing of treatment, or insurance, on the requirement that an individual execute a durable power of attorney for health care.

2. A policy of life insurance shall not be legally impaired or invalidated in any manner by the withholding or withdrawing of health care pursuant to the direction of an attorney in fact appointed pursuant to this chapter.

91 Acts, ch 140, §11

**144B.12 General provisions.**

1. This chapter does not create a presumption concerning the intention of an individual who has not executed a durable power of attorney for health care and does not impair or supersede any right or responsibility of an individual to consent, refuse to consent, or withdraw consent to health care on behalf of another in the absence of a durable power of attorney for health care.

2. This chapter shall not be construed to condone, authorize, or approve any affirmative or deliberate act or omission which would constitute mercy killing or euthanasia.

3. If after executing a durable power of attorney for health care designating a spouse as attorney in fact, the marriage between the principal and the attorney in fact is dissolved, the power is thereby revoked. In the event of remarriage to each other, the power is reinstated unless otherwise revoked by the principal.

4. It is the responsibility of the principal to provide for notification of a health care provider of the terms of the principal’s durable power of attorney for health care.

91 Acts, ch 140, §12

**CHAPTER 144C**

**FINAL DISPOSITION ACT**

Referred to in §142.1, 144B.1, 144B.5

144C.1	Short title.	144C.6	Declaration of designee — form — requirements.
144C.2	Definitions.	144C.7	Revocation of declaration.
144C.3	Declaration — designee.	144C.8	Forfeiture of designee’s authority.
144C.4	Reliance — immunities.	144C.9	Interstate effect of declaration.
144C.5	Final disposition of remains — right to control.	144C.10	Effect of declaration.
		144C.11	Practice of mortuary science.

**144C.1 Short title.**

This chapter may be cited as the “*Final Disposition Act*”.  
2008 Acts, ch 1051, §6, 22

**144C.2 Definitions.**

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

1. “*Adult*” means a person who is married or who is eighteen years of age or older.
2. “*Adult day services program*” means adult day services program as defined in section 231D.1.
3. “*Assisted living program*” means an assisted living program under chapter 231C.
4. “*Ceremony*” means a formal act or set of formal acts established by custom or authority to commemorate a decedent.
5. “*Child*” means a son or daughter of a person, whether by birth or adoption.
6. “*Decedent*” means a deceased adult.
7. “*Declarant*” means a competent adult who executes a declaration pursuant to this chapter.
8. “*Declaration*” means a written instrument, contained in or attached to a durable power of attorney for health care under chapter 144B, that is executed by a declarant in accordance with the requirements of this chapter, and that names a designee who shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant’s remains and the ceremonies planned after the declarant’s death.
9. “*Designee*” means a competent adult designated under a declaration who shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant’s remains and the ceremonies planned after the declarant’s death.
10. “*Elder group home*” means elder group home as defined in section 231B.1.

11. “*Final disposition*” means the burial, interment, cremation, removal from the state, or other disposition of remains.
  12. “*Health care facility*” means health care facility as defined in section 135C.1.
  13. “*Health care provider*” means health care provider as defined in section 144A.2.
  14. “*Hospital*” means hospital as defined in section 135B.1.
  15. “*Interested person*” means a decedent’s spouse, parent, grandparent, adult child, adult sibling, adult grandchild, or a designee.
  16. “*Licensed hospice program*” means a licensed hospice program as defined in section 135J.1.
  17. “*Reasonable under the circumstances*” means consideration of what is appropriate in relation to the declarant’s finances, cultural or family customs, and religious or spiritual beliefs. “*Reasonable under the circumstances*” may include but is not limited to consideration of the declarant’s preneed funeral, burial, or cremation plan, and known or reasonably ascertainable creditors of the declarant.
  18. “*Remains*” means the body or cremated remains of a decedent.
  19. *a.* “*Third party*” means a person who is requested to dispose of remains by an adult with the right to dispose of a decedent’s remains under section 144C.5 or assist with arrangements for ceremonies planned after the declarant’s death.  
*b.* “*Third party*” includes but is not limited to a funeral director, funeral establishment, cremation establishment, cemetery, the state medical examiner, or a county medical examiner.
- 2008 Acts, ch 1051, §7, 22; 2009 Acts, ch 133, §45

#### **144C.3 Declaration — designee.**

1. A declaration shall name a designee who shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant’s remains and the ceremonies planned after the declarant’s death. A declaration may name one or more alternate designees and may include contact information for the designees and alternate designees.
  2. A declaration shall not include directives for final disposition of the declarant’s remains and shall not include arrangements for ceremonies planned after the declarant’s death.
  3. A designee, an alternate designee, and a third party shall act in good faith and in a manner that is reasonable under the circumstances.
  4. A funeral director, an attorney, or any agent, owner, or employee of a funeral establishment, cremation establishment, cemetery, elder group home, assisted living program, adult day services program, or licensed hospice program shall not serve as a designee unless related to the declarant within the third degree of consanguinity.
  5. This section shall not be construed to permit a person who is not licensed pursuant to chapter 156 to make funeral arrangements.
- 2008 Acts, ch 1051, §8, 22; 2008 Acts, ch 1191, §124; 2009 Acts, ch 133, §46

#### **144C.4 Reliance — immunities.**

1. A designee or third party who relies in good faith on a declaration is not subject to civil liability or to criminal prosecution or professional disciplinary action to any greater extent than if the designee or third party dealt directly with the declarant as a fully competent and living person.
2. A designee or third party who relies in good faith on a declaration may presume, in the absence of actual knowledge to the contrary, all of the following:
  - a.* That the declaration was validly executed.
  - b.* That the declarant was competent at the time the declaration was executed.
3. A third party who relies in good faith on a declaration is not subject to civil or criminal liability for the proper application of property delivered or surrendered in compliance with decisions made by the designee including but not limited to trust funds held pursuant to chapter 523A.
4. A third party who has reasonable cause to question the authenticity or validity of

a declaration may promptly and reasonably seek additional information from the person proffering the declaration or from other persons to verify the declaration.

5. The state medical examiner or a county medical examiner shall not be subject to civil liability or to criminal prosecution or professional disciplinary action for releasing a decedent's remains to a person who is not a designee or alternate designee.

6. This section shall not be construed to impair any contractual obligations of a designee or third party incurred in fulfillment of a declaration.

2008 Acts, ch 1051, §9, 22

#### **144C.5 Final disposition of remains — right to control.**

1. The right to control final disposition of a decedent's remains or to make arrangements for the ceremony after a decedent's death vests in and devolves upon the following persons who are competent adults at the time of the decedent's death, in the following order:

- a. A designee, or alternate designee, acting pursuant to the decedent's declaration.
- b. The surviving spouse of the decedent, if not legally separated from the decedent, whose whereabouts is reasonably ascertainable.
- c. A surviving child of the decedent, or, if there is more than one, a majority of the surviving children whose whereabouts are reasonably ascertainable.
- d. The surviving parents of the decedent whose whereabouts are reasonably ascertainable.
- e. A surviving grandchild of the decedent, or, if there is more than one, a majority of the surviving grandchildren whose whereabouts are reasonably ascertainable.
- f. A surviving sibling of the decedent, or, if there is more than one, a majority of the surviving siblings whose whereabouts are reasonably ascertainable.
- g. A surviving grandparent of the decedent, or, if there is more than one, a majority of the surviving grandparents whose whereabouts are reasonably ascertainable.
- h. A person in the next degree of kinship to the decedent in the order named by law to inherit the estate of the decedent under the rules of inheritance for intestate succession or, if there is more than one, a majority of such surviving persons whose whereabouts are reasonably ascertainable.
- i. A person who represents that the person knows the identity of the decedent and who signs an affidavit warranting the identity of the decedent and assuming the right to control final disposition of the decedent's remains and the responsibility to pay any expense attendant to such final disposition. A person who warrants the identity of the decedent pursuant to this paragraph is liable for all damages that result, directly or indirectly, from that warrant.
- j. The county medical examiner, if responsible for the decedent's remains.

2. A third party may rely upon the directives of a person who represents that the person is a member of a class of persons described in subsection 1, paragraph "c", "e", "f", "g", or "h", and who signs an affidavit stating that all other members of the class, whose whereabouts are reasonably ascertainable, have been notified of the decedent's death and the person has received the assent of a majority of those members of that class of persons to control final disposition of the decedent's remains and to make arrangements for the performance of a ceremony for the decedent.

3. A third party may await a court order before proceeding with final disposition of a decedent's remains or arrangements for the performance of a ceremony for a decedent if the third party is aware of a dispute among persons who are members of the same class of persons described in subsection 1, or of a dispute between persons who are authorized under subsection 1 and the executor named in a decedent's will or a personal representative appointed by the court.

2008 Acts, ch 1051, §10, 22

Referred to in §142.1, 144.34, 144.56, 144C.2, 144C.8, 331.802, 331.804, 331.805, 5231.309

Section applies to all deaths occurring on or after July 1, 2008, except that subsection 1, paragraph a, applies only to a designee or alternate designee designated in a declaration that is executed on or after July 1, 2008; 2008 Acts, ch 1051, §22

#### **144C.6 Declaration of designee — form — requirements.**

1. A declaration executed pursuant to this chapter may but need not be in the following form:

I hereby designate ..... as my designee. My designee shall have the sole responsibility for making decisions concerning the final disposition of my remains and the ceremonies to be performed after my death. This declaration hereby revokes all prior declarations. This designation becomes effective upon my death.

My designee shall act in a manner that is reasonable under the circumstances.

I may revoke or amend this declaration at any time. I agree that a third party (such as a funeral or cremation establishment, funeral director, or cemetery) who receives a copy of this declaration may act in reliance on it. Revocation of this declaration is not effective as to a third party until the third party receives notice of the revocation. My estate shall indemnify my designee and any third party for costs incurred by them or claims arising against them as a result of their good faith reliance on this declaration.

I execute this declaration as my free and voluntary act.

2. A declaration executed pursuant to this chapter shall be in a written form that substantially complies with the form in subsection 1, is properly completed, is contained in or attached to a durable power of attorney for health care under chapter 144B, and is dated and signed by the declarant or another person acting on the declarant's behalf at the direction of and in the presence of the declarant. In addition, a declaration shall be either of the following:

a. Signed by at least two individuals who are not named therein and who, in the presence of each other and the declarant, witnessed the signing of the declaration by the declarant, or another person acting on the declarant's behalf at the direction of and in the presence of the declarant, and witnessed the signing of the declaration by each other.

b. Acknowledged before a notarial officer as provided in chapter 9B.

3. A declaration may include the location of an agreement for prearranged funeral services or funeral merchandise as defined in and executed under chapter 523A, cemetery lots owned by or reserved for the declarant, and special instructions regarding organ donation consistent with chapter 142C.

4. A declaration for disposition of remains made by a service member who died while performing military duty as defined in section 29A.1, subsection 3, 8, or 12, on forms provided and authorized by the department of defense for service members for this purpose shall constitute a valid declaration of designee for purposes of this chapter.

2008 Acts, ch 1051, §11, 22; 2010 Acts, ch 1170, §3; 2011 Acts, ch 47, §8; 2012 Acts, ch 1050, §39, 60; 2012 Acts, ch 1072, §33

**144C.7 Revocation of declaration.**

1. A declaration is revocable by a declarant in a writing signed and dated by the declarant.

2. Unless otherwise expressly provided in a declaration:

a. A dissolution of marriage, annulment of marriage, or legal separation between the declarant and the declarant's spouse that occurs subsequent to the execution of the declaration constitutes an automatic revocation of the spouse as a designee.

b. A designation of a person as a designee pursuant to a declaration is ineffective if the designation is revoked by the declarant in writing subsequent to the execution of the declaration or if the designee is unable or unwilling to serve as the designee.

2008 Acts, ch 1051, §12, 22

**144C.8 Forfeiture of designee's authority.**

A designee shall forfeit all rights and authority under a declaration and all rights and authority under the declaration shall vest in and devolve upon an alternate designee, or if there is none, vest in and devolve pursuant to section 144C.5, under either of the following circumstances:

1. The designee is charged with murder in the first or second degree or voluntary manslaughter in connection with the declarant’s death and those charges are known to a third party.

2. The designee does not exercise the designee’s authority under the declaration within twenty-four hours of receiving notification of the death of the declarant or within forty hours of the declarant’s death, whichever is earlier.

2008 Acts, ch 1051, §13, 22

**144C.9 Interstate effect of declaration.**

Unless otherwise expressly provided in a declaration:

1. It is presumed that the declarant intended to have a declaration executed pursuant to this chapter have the full force and effect of law in any state of the United States, the District of Columbia, and any other territorial possessions of the United States.

2. A declaration or similar instrument executed in another state that complies with the requirements of this chapter may be relied upon, in good faith, by the designee, an alternate designee, and a third party in this state so long as the declaration is not invalid, illegal, or unconstitutional in this state.

2008 Acts, ch 1051, §14, 22

**144C.10 Effect of declaration.**

1. The designee designated in a declaration shall have the sole discretion pursuant to the declaration to determine what final disposition of the declarant’s remains and ceremonies to be performed after the declarant’s death are reasonable under the circumstances.

2. The most recent declaration executed by a declarant shall control.

3. This chapter does not prohibit a person from conducting a separate ceremony to commemorate a declarant, at the person’s expense, to assist in the bereavement process.

4. The rights of a donee created by an anatomical gift pursuant to chapter 142C are superior to the authority of a designee under a declaration executed pursuant to this chapter.

2008 Acts, ch 1051, §15, 22; 2010 Acts, ch 1032, §1

**144C.11 Practice of mortuary science.**

This chapter shall not be construed to authorize the unlicensed practice of mortuary science as provided in chapter 156.

2008 Acts, ch 1051, §16, 22

CHAPTER 144D

PHYSICIAN ORDERS FOR SCOPE OF TREATMENT

Legislative findings; 2012 Acts, ch 1008, §1

144D.1	Definitions.	144D.3	Compliance with POST form.
144D.2	Physician orders for scope of treatment (POST) form.	144D.4	General provisions.

**144D.1 Definitions.**

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

1. “*Advanced registered nurse practitioner*” means an advanced registered nurse practitioner licensed pursuant to chapter 152 or 152E.

2. “*Department*” means the department of public health.

3. “*Emergency medical care provider*” means emergency medical care provider as defined in section 147A.1.

4. “*Health care facility*” means health care facility as defined in section 135C.1, a hospice program as defined in section 135J.1, an elder group home as defined in section 231B.1, and an assisted living program as defined in section 231C.2.

5. “*Health care provider*” means an individual, including an emergency medical care provider and an individual providing home and community-based services, and including a home health agency, licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.

6. “*Home health agency*” means home health agency as defined in 42 C.F.R. pt. 484.

7. “*Hospital*” means hospital as defined in section 135B.1.

8. “*Legal representative*” means an individual authorized to execute a POST form on behalf of a patient who is not competent to do so, in the order of priority set out in section 144A.7, subsection 1, and guided by the express or implied intentions of the patient or, if such intentions are unknown, by the patient’s best interests given the patient’s overall medical condition and prognosis.

9. “*Patient*” means an individual who is frail and elderly or who has a chronic, critical medical condition or a terminal illness and for which a physician orders for scope of treatment is consistent with the individual’s goals of care.

10. “*Physician*” means a person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state.

11. “*Physician assistant*” means a person licensed as a physician assistant under chapter 148C.

12. “*Physician orders for scope of treatment form*” or “*POST form*” means a document containing medical orders which may be relied upon across medical settings that consolidates and summarizes a patient’s preferences for life-sustaining treatments and interventions and acts as a complement to and does not supersede any valid advance directive.

2012 Acts, ch 1008, §2

#### **144D.2 Physician orders for scope of treatment (POST) form.**

1. The POST form shall be a uniform form based upon the national physician orders for life-sustaining treatment paradigm form. The form shall have all of the following characteristics:

a. The form shall include the patient’s name and date of birth.

b. The form shall be signed and dated by the patient or the patient’s legal representative.

c. The form shall be signed and dated by the patient’s physician, advanced registered nurse practitioner, or physician assistant.

d. If preparation of the form was facilitated by an individual other than the patient’s physician, advanced registered nurse practitioner, or physician assistant, the facilitator shall also sign and date the form.

e. The form shall include the patient’s wishes regarding the care of the patient, including but not limited to all of the following:

(1) The administration of cardiopulmonary resuscitation.

(2) The level of medical interventions in the event of a medical emergency.

(3) The use of medically administered nutrition by tube.

(4) The rationale for the orders.

f. The form shall be easily distinguishable to facilitate recognition by health care providers, hospitals, and health care facilities.

g. An incomplete section on the form shall imply the patient’s wishes for full treatment for the type of treatment addressed in that section.

2. The department shall prescribe the uniform POST form and shall post the form on the department’s internet site for public availability.

2012 Acts, ch 1008, §3; 2013 Acts, ch 90, §257

Code editor directive applied

#### **144D.3 Compliance with POST form.**

1. A POST form executed in this state or another state or jurisdiction in compliance with the law of that state or jurisdiction shall be deemed valid and enforceable in this state to the extent the form is consistent with the laws of this state, and may be accepted by a health care provider, hospital, or health care facility.

2. A health care provider, hospital, or health care facility may comply with an executed POST form, notwithstanding that the physician, advanced registered nurse practitioner, or physician assistant who signed the POST form does not have admitting privileges at the hospital or health care facility providing health care or treatment.

3. A POST form may be revoked at any time and in any manner by which the patient or a patient's legal representative is able to communicate the patient's intent to revoke, without regard to the patient's mental or physical condition. A revocation is only effective as to the health care provider, hospital, or health care facility upon communication to the health care provider, hospital, or health care facility by the patient, the patient's legal representative, or by another to whom the revocation was communicated.

4. In the absence of actual notice of the revocation of a POST form, a health care provider, hospital, health care facility, or any other person who complies with a POST form shall not be subject to civil or criminal liability or professional disciplinary action for actions taken under this chapter which are in accordance with reasonable medical standards. A health care provider, hospital, health care facility, or other person against whom criminal or civil liability or professional disciplinary action is asserted because of conduct in compliance with this chapter may interpose the restriction on liability in this subsection as an absolute defense.

5. A health care provider, hospital, or health care facility that is unwilling to comply with an executed POST form based on policy, religious beliefs, or moral convictions shall take all reasonable steps to transfer the patient to another health care provider, hospital, or health care facility.

2012 Acts, ch 1008, §4; 2012 Acts, ch 1138, §50

#### **144D.4 General provisions.**

1. If an individual is a qualified patient as defined in section 144A.2, the individual's declaration executed under chapter 144A shall control health care decision making for the individual in accordance with chapter 144A. If an individual has not executed a declaration pursuant to chapter 144A, health care decision making relating to life-sustaining procedures for the individual shall be governed by section 144A.7. A POST form shall not supersede a declaration executed pursuant to chapter 144A.

2. If an individual has executed a durable power of attorney for health care pursuant to chapter 144B, the individual's durable power of attorney for health care shall control health care decision making for the individual in accordance with chapter 144B. A POST form shall not supersede a durable power of attorney for health care executed pursuant to chapter 144B.

3. If the individual's physician has issued an out-of-hospital do-not-resuscitate order pursuant to section 144A.7A, the POST form shall not supersede the out-of-hospital do-not-resuscitate order.

4. Death resulting from the withholding or withdrawal of life-sustaining procedures pursuant to an executed POST form and in accordance with this chapter does not, for any purpose, constitute a suicide, homicide, or dependent adult abuse.

5. The executing of a POST form does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures pursuant to this chapter notwithstanding any term of the policy to the contrary.

6. A health care provider, hospital, health care facility, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan shall not require any person to execute a POST form as a condition of being insured for, or receiving, health care services.

7. This chapter does not create a presumption concerning the intention of an individual who has not executed a POST form with respect to the use, withholding, or withdrawal of life-sustaining procedures in the event of a terminal condition.

8. This chapter shall not be interpreted to affect the right of an individual to make decisions regarding use of life-sustaining procedures as long as the individual is able to do so, nor to impair or supersede any right or responsibility that any person has to effect

the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this chapter are cumulative.

9. This chapter shall not be construed to condone, authorize, or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

10. A POST form executed between July 1, 2008, and June 30, 2012, as part of the patient autonomy in health care decisions pilot project created pursuant to 2008 Iowa Acts, chapter 1188, section 36, as amended by 2010 Iowa Acts, chapter 1192, section 58, shall remain effective until revoked or until a new POST form is executed pursuant to this chapter.

2012 Acts, ch 1008, §5; 2012 Acts, ch 1133, §95

## CHAPTER 145

RESERVED

## CHAPTER 145A

### AREA HOSPITALS

Referred to in §21.5, 97B.52A, 331.361, 331.382, 347.14, 347.25, 476B.1

Consolidation of hospital service; see chapter 348

145A.1	Consolidation for purpose.	145A.13	Political status.
145A.2	Definitions.	145A.14	Budget for operation.
145A.3	Official planning — maximum levy.	145A.15	Treasurer of hospital.
145A.4	Plans.	145A.16	Funds to aid hospital.
145A.5	Order of approval.	145A.17	Indebtedness and bonds.
145A.6	Petition of protest.	145A.18	Taxes.
145A.7	Special election.	145A.19	Special tax.
145A.8	Effect on other subdivisions.	145A.20	Revenue bonds.
145A.9	Continuance or abandonment.	145A.21	Amendment of plan of merger — procedures — qualifications.
145A.10	Board of hospital trustees.	145A.22	Actions subject to contest of elections — filing actions — limitation.
145A.11	Terms of members.		
145A.12	Operation and management.		

#### 145A.1 Consolidation for purpose.

Any of the political subdivisions of this state may consolidate to acquire and operate an area hospital for the purpose of providing hospital service for all residents of such area.

[C71, 73, 75, 77, 79, 81, §145A.1]

#### 145A.2 Definitions.

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

1. “*Area hospital*” means a hospital established and operated by a merged area.
2. “*Board*” means the board of trustees of an area hospital.
3. “*Merged area*” means a public corporation formed by the residents of two or more contiguous or noncontiguous political subdivisions which have merged resources to establish and operate an area hospital.

4. “*Officials*” means the respective governing bodies of political subdivisions.

5. “*Political subdivision*” means any county, township, school district or city.

[C71, 73, 75, 77, 79, 81, §145A.2]

85 Acts, ch 123, §1, 2

**145A.3 Official planning — maximum levy.**

The officials of a political subdivision may plan the formation of a public corporation as a merged area to establish and operate an area hospital. In planning for an area hospital, a county board of supervisors may exclude from the merged area any township of the county which the board of supervisors determines would not sufficiently benefit by the merger and the portion of the county not so excluded shall constitute one public corporation for the purposes of this chapter. Plans for an area hospital shall include the maximum amount to be levied for debt service and operation and maintenance of the area hospital in the portion of the merged area within each political subdivision taking part in the merger. However, the maximum tax rates for the various political subdivisions may vary as the officials determine, based upon the need for hospital service of the residents of each political subdivision, the proximity of the residents to the proposed location of the hospital, the property values within the subdivision, and the expected service benefits to the residents of each subdivision by the proposed area hospital.

[C71, 73, 75, 77, 79, 81, §145A.3]

85 Acts, ch 123, §3

Referred to in §145A.21, 347A.3

**145A.4 Plans.**

Officials of the various subdivisions may expend public funds for the purpose of formulating plans and in carrying out plans for a merged area and may arrive at an equitable distribution of costs to be paid by each participating political subdivision.

[C71, 73, 75, 77, 79, 81, §145A.4]

Referred to in §145A.21, 347A.3

**145A.5 Order of approval.**

When a plan is approved, the officials approving the plan shall jointly issue an order of approval. The order shall specify the area to be merged, the maximum rate of tax to be levied for debt service and operation and maintenance of the proposed area hospital in the portion of the merged area within each political subdivision, the proposed location of the hospital building, the estimated cost of the establishment of the hospital, and any other details concerning the establishment and operation of the hospital the officials deem pertinent. The order shall be published in one or more newspapers which have general circulation within the merged area once each week for three consecutive weeks, but the newspapers selected need not be published in the merged area. The published order shall contain a notice to the residents of each subdivision of the proposed merged area that if the residents fail to protest as provided in this chapter, the order shall be deemed approved upon the expiration of a sixty-day period following the date of the last published notice.

[C71, 73, 75, 77, 79, 81, §145A.5]

85 Acts, ch 123, §4

Referred to in §145A.21, 347A.3

**145A.6 Petition of protest.**

The plans formulated for the area hospital shall be deemed approved unless, within sixty days after the third and final publication of the order, a petition protesting the proposed plan containing the signatures of at least five percent of the registered voters of any political subdivision within the proposed merged area is filed with the respective officials of the protesting petitioners.

[C71, 73, 75, 77, 79, 81, §145A.6]

2001 Acts, ch 56, §8

Referred to in §145A.21

**145A.7 Special election.**

When a protesting petition is received, the officials receiving the petition shall call a special election of all registered voters of that political subdivision upon the question of approving or rejecting the order setting out the proposed merger plan. The election shall be held on a date specified in section 39.2, subsection 4, paragraph “a” or “b”, as applicable. The vote will

be taken by ballot in the form provided by sections 49.43 to 49.47, and the election shall be initiated and held as provided in chapter 49. A majority vote of those registered voters voting at the special election shall be sufficient to approve the order and thus include the political subdivision within the merged area.

[C71, 73, 75, 77, 79, 81, §145A.7]

2001 Acts, ch 56, §9; 2008 Acts, ch 1115, §31, 71

Referred to in §145A.21

#### **145A.8 Effect on other subdivisions.**

A protest petition filed in one political subdivision shall have no effect upon the other political subdivisions of the proposed merged area; and in the portion of the proposed area where no protest petition is filed within sixty days after the last published notice, the residents of that portion of the area shall be deemed to have approved the proposed plan, and shall not take part in any special election.

[C71, 73, 75, 77, 79, 81, §145A.8]

Referred to in §145A.21

#### **145A.9 Continuance or abandonment.**

If the voters at the special election approve by a majority vote the proposed plan, then the plan may be carried out as originally proposed. However, if the voters of any political subdivision within the proposed area reject the plan as set out in the original order, then said original order shall be wholly nullified.

[C71, 73, 75, 77, 79, 81, §145A.9]

Referred to in §145A.21

#### **145A.10 Board of hospital trustees.**

Upon acceptance of a plan, the officials of the merged area acting as a committee of the whole shall appoint a board of hospital trustees. The board of trustees shall then meet, elect a chairperson and adopt such rules for the organization of the board as may be necessary. The number and composition of the board shall be determined by the committee appointing the board; but as a matter of public policy the committee is directed to apportion the board into area districts in such a way that the residents of all of the merged area will be represented as nearly equally as possible on the board.

[C71, 73, 75, 77, 79, 81, §145A.10]

#### **145A.11 Terms of members.**

The terms of members of the board shall be four years, except that members of the initial board shall determine their respective terms by lot so that the terms of one-half of the members, as nearly as may be, shall expire at the next general election. The remaining initial terms shall expire at the following general election. The successors of the initial board shall be chosen from area districts at regular elections, and shall be nominated and elected in the same manner as county hospital trustees as provided in section 347.25, except that nomination papers on behalf of a candidate shall be signed by not less than twenty-five eligible electors from the area district.

[C71, 73, 75, 77, 79, 81, §145A.11]

#### **145A.12 Operation and management.**

The board shall govern the operation and management of the area hospital and may do all things necessary to establish and operate the hospital. The board has all the general powers, duties, and responsibilities of the trustees of county public hospitals as set out in sections 347.13 and 347.14 and may enter into contracts for the operation and management of area hospital facilities.

[C71, 73, 75, 77, 79, 81, §145A.12]

85 Acts, ch 123, §5

**145A.13 Political status.**

A merged area as a public corporation formed under this chapter may exercise the powers granted under this chapter, and may sue and be sued, purchase and sell property, incur indebtedness in accordance with constitutional limitations, and exercise all the powers granted by law and other powers incident to public corporations of like character and not inconsistent with the laws of this state.

[C71, 73, 75, 77, 79, 81, §145A.13]  
85 Acts, ch 123, §6

**145A.14 Budget for operation.**

The board shall prepare an annual budget designating the proposed expenditures for operation of the area hospital and payment of bonded indebtedness, and the amount to be raised by taxation, following the requirements of chapter 24. The board shall prorate the amount to be raised for operations by local taxation among the respective political subdivisions forming a part of the merged area in the proportion that the product of the value of taxable property and the maximum tax levy rate in each political subdivision bears to the total product of the value of taxable property and the maximum tax levy rate in the entire merged area, as set out in the published order of merger. The board of hospital trustees shall certify the amount so determined to the respective levying officials of the affected counties, and the officials shall levy a tax sufficient to raise the annual budget. Taxes collected pursuant to the levy shall be paid by the respective county treasurers to the treasurer of the area hospital in the same manner that school taxes are paid to local school districts.

[C71, 73, 75, 77, 79, 81, §145A.14]  
85 Acts, ch 123, §7  
Referred to in §145A.18, 347A.3

**145A.15 Treasurer of hospital.**

If the area hospital is located within the corporate limits of any city, the city treasurer shall act as treasurer of the area hospital; and if the area hospital is located outside the limits of any city, the county treasurer shall act as the treasurer of the area hospital; provided, however, the board may appoint some other person to serve as treasurer. The board may require that the treasurer furnish appropriate bond for faithful performance of the treasurer's duties.

[C71, 73, 75, 77, 79, 81, §145A.15]  
Referred to in §331.552

**145A.16 Funds to aid hospital.**

In addition to revenue derived by tax levy, the board of hospital trustees of a merged area shall be authorized to receive and expend:

1. Federal funds which may be available by federal laws, rules and regulations.
2. State aid which may be available by state laws and rules.
3. Fees and expenses charged to persons using the facilities of the hospital.
4. Donations and gifts which may be accepted by the hospital trustees and expended in accordance with the terms of the gift without compliance with the local budget law, chapter 24.

[C71, 73, 75, 77, 79, 81, §145A.16]  
2004 Acts, ch 1086, §41

**145A.17 Indebtedness and bonds.**

Boards of hospital trustees may by resolution acquire sites and buildings by purchase, lease, construction, or otherwise, for use by area hospitals and may by resolution contract indebtedness on behalf of the merged area and issue bonds bearing interest at a rate not exceeding the rate of interest permitted by chapter 74A, to raise funds in accordance with chapter 75 for the purpose of acquiring the sites and buildings.

[C71, 73, 75, 77, 79, 81, §145A.17]  
85 Acts, ch 123, §8  
Referred to in §145A.18

**145A.18 Taxes.**

Taxes for the payment of bonds issued under section 145A.17 shall be levied in accordance with chapter 76 and in the same proportion as provided in section 145A.14. Any indebtedness incurred shall not be considered an indebtedness incurred for general and ordinary purposes.

[C71, 73, 75, 77, 79, 81, §145A.18]

85 Acts, ch 123, §9

**145A.19 Special tax.**

In addition to the tax authorized in connection with the annual budget and with the issuance of bonds, the voters in any merged area may at any regular election vote a special tax for a period not to exceed five years for the purchase of grounds, purchase or construction of buildings, purchase of equipment, and for the purpose of maintaining, remodeling, improving, or expanding the hospital area. Such a tax shall not exceed one-fourth of the maximum levy of each political subdivision as set out in the published order of merger, but the total tax levy for annual budget, bonds, and special purposes shall not exceed the maximum levy as proposed in the published order of merger.

[C71, 73, 75, 77, 79, 81, §145A.19]

**145A.20 Revenue bonds.**

In addition to any other provisions of this chapter and for the purpose of acquiring, constructing, equipping, enlarging, or improving a hospital building or any part of a hospital building, merged areas may issue revenue bonds and the board has all the powers and duties of a county board of supervisors as provided in chapter 331, division IV, part 4 and section 347A.3.

[C71, 73, 75, 77, 79, 81, §145A.20]

83 Acts, ch 101, §25; 85 Acts, ch 123, §10

Referred to in §347A.3

**145A.21 Amendment of plan of merger — procedures — qualifications.**

A plan of merger once approved may be amended. An amendment shall be formulated and approved in the same manner and subject to the same limitations as provided in sections 145A.3 through 145A.9 for the formulation and approval of an original plan of merger. However, an amendment to a plan of merger shall not in any way impair the obligation of or source of payment for bonds or other indebtedness duly contracted prior to the effective date of the amendment to the plan of merger.

85 Acts, ch 123, §11

**145A.22 Actions subject to contest of elections — filing actions — limitation.**

A special election called to approve or reject an original plan of merger or an amendment to an approved plan of merger is subject to the provisions for contest of elections for public measures set forth in chapter 57. Except as provided with respect to election contests, after one hundred twenty days following the third and final publication of the order of approval of the plan or amendment to the plan of merger, an action shall not be filed to contest the regularity of the proceedings with respect to a plan of merger or amendment to a plan of merger. After one hundred twenty days the organization of the merged area is conclusively presumed to have been lawful.

85 Acts, ch 123, §12

## CHAPTER 145B

## DOGS FOR SCIENTIFIC RESEARCH

Repealed by 2008 Acts, ch 1058, §24

## CHAPTER 146

## ABORTIONS — REFUSAL TO PERFORM

Referred to in §135.1, 135.11, 135L.1

- |       |  |       |   |
|-------|--|-------|---|
| 146.1 | Liability of persons relating to performance of abortions. | 146.2 | Liability of hospitals refusing to perform abortions. |
|-------|--|-------|---|

**146.1 Liability of persons relating to performance of abortions.**

An individual who may lawfully perform, assist, or participate in medical procedures which will result in an abortion shall not be required against that individual's religious beliefs or moral convictions to perform, assist, or participate in such procedures. A person shall not discriminate against any individual in any way, including but not limited to employment, promotion, advancement, transfer, licensing, education, training or the granting of hospital privileges or staff appointments, because of the individual's participation in or refusal to participate in recommending, performing, or assisting in an abortion procedure. For the purposes of this chapter, "*abortion*" means the termination of a human pregnancy with the intent other than to produce a live birth or to remove a dead fetus. Abortion does not include medical care which has as its primary purpose the treatment of a serious physical condition requiring emergency medical treatment necessary to save the life of a mother.

[C77, 79, 81, §146.1]

Referred to in §707.8A

**146.2 Liability of hospitals refusing to perform abortions.**

A hospital, which is not controlled, maintained and supported by a public authority, shall not be required to permit the performance of an abortion. The refusal to permit such procedures shall not be grounds for civil liability to any person nor a basis for any disciplinary or other recriminatory action against the hospital.

[C77, 79, 81, §146.2]



147.57	Dental hygienist and dentist. Transferred to §153.34, subsection 16; 2009 Acts, ch 133, §192.	ANATOMIC PATHOLOGY SERVICES BILLING	147.106	Anatomic pathology services — billing.
147.58	through 147.71 Repealed by 2008 Acts, ch 1088, §78.			
		DRUG AND LENS DISPENSING, SUPPLYING, AND PRESCRIBING		
	USE OF TITLES AND DEGREES		147.107	Drug dispensing, supplying, and prescribing — limitations.
147.72	Professional titles and abbreviations.		147.108	Contact lens prescribing and dispensing.
147.73	Titles used by holder of degree.		147.109	Ophthalmic spectacle lens prescribing and dispensing.
147.74	Professional titles or abbreviations — false use prohibited.		147.110	Reserved.
147.75	Itinerants. Repealed by 2008 Acts, ch 1088, §78.			
147.76	Rules.	WOUNDS BY CRIMINAL VIOLENCE OR MOTOR VEHICLE		
147.77	through 147.79 Repealed by 63 Acts, ch 123, §1.		147.111	Report of treatment of wounds and other injuries.
			147.112	Investigation and report by law enforcement agency.
	FEEES		147.113	Violations.
147.80	Establishment of fees — administrative costs.			
147.81	Repealed by 81 Acts, ch 5, §10; 82 Acts, ch 1005, §9.			BURN INJURIES
147.82	Fee retention.		147.113A	Report of burn injuries.
	VIOLATIONS — CRIMES — PUNISHMENT			INSPECTOR FOR DENTAL BOARD
147.83	Injunction.		147.114	Inspector. Transferred to §153.33, subsection 7; 2009 Acts, ch 133, §192.
147.84	Forgeries.			
147.85	Fraud.		147.115	through 147.134 Reserved.
147.86	Penalties.			
	ENFORCEMENT PROVISIONS			MALPRACTICE
147.87	Enforcement.		147.135	Peer review committees — nonliability — records and reports privileged and confidential.
147.88	Inspections and investigations.		147.136	Scope of recovery.
147.89	Report of violators.		147.137	Consent in writing.
147.90	Rules and forms. Repealed by 2008 Acts, ch 1088, §78.		147.138	Contingent fee of attorney reviewed by court.
147.91	Publications.		147.139	Expert witness standards.
147.92	Attorney general.		147.140	through 147.150 Reserved.
147.93	Prima facie evidence.			
147.94	through 147.96 Repealed by 2008 Acts, ch 1088, §79.			
147.97	Reserved.			
147.98	through 147.100 Repealed by 2008 Acts, ch 1088, §79.			
147.101	Repealed by 74 Acts, ch 1086, §198.	SPEECH PATHOLOGISTS AND AUDIOLOGISTS		
147.102	through 147.103A Repealed by 2008 Acts, ch 1088, §79.		147.151	and 147.152 Repealed by 2008 Acts, ch 1088, §79.
147.104	Records. Repealed by 2008 Acts, ch 1088, §78.		147.153	through 147.156 Repealed by 2008 Acts, ch 1088, §78.
147.105	Reserved.		147.157	through 147.160 Reserved.

## BASIC EMERGENCY MEDICAL CARE PROVIDERS

147.161 Repealed by 95 Acts, ch 41, §27.

## DEFINITIONS

**147.1 Definitions.**

For the purpose of this and the following chapters of this subtitle:

1. “*Board*” means one of the boards enumerated in section 147.13 or any other board established in this subtitle whose members are appointed by the governor to license applicants and impose licensee discipline as authorized by law.

2. “*Department*” means the department of public health.

3. “*Licensed*” or “*certified*”, when applied to a physician and surgeon, podiatric physician, osteopathic physician and surgeon, physician assistant, psychologist, chiropractor, nurse, dentist, dental hygienist, dental assistant, optometrist, speech pathologist, audiologist, pharmacist, physical therapist, physical therapist assistant, occupational therapist, occupational therapy assistant, orthotist, prosthetist, pedorthist, respiratory care practitioner, practitioner of cosmetology arts and sciences, practitioner of barbering, funeral director, dietitian, marital and family therapist, mental health counselor, social worker, massage therapist, athletic trainer, acupuncturist, nursing home administrator, hearing aid dispenser, or sign language interpreter or transliterator means a person licensed under this subtitle.

4. “*Peer review*” means evaluation of professional services rendered by a person licensed to practice a profession.

5. “*Peer review committee*” means one or more persons acting in a peer review capacity who also serve as an officer, director, trustee, agent, or member of any of the following:

a. A state or local professional society of a profession for which there is peer review.

b. Any organization approved to conduct peer review by a society as designated in paragraph “a” of this subsection.

c. The medical staff of any licensed hospital.

d. A board enumerated in section 147.13 or any other board established in this subtitle which is appointed by the governor to license applicants and impose licensee discipline as authorized by law.

e. The board of trustees of a licensed hospital when performing a function relating to the reporting required by section 147.135, subsection 3.

f. A health care entity, including but not limited to a group medical practice, that provides health care services and follows a formal peer review process for the purpose of furthering quality health care.

6. “*Profession*” means medicine and surgery, podiatry, osteopathic medicine and surgery, practice as a physician assistant, psychology, chiropractic, nursing, dentistry, dental hygiene, dental assisting, optometry, speech pathology, audiology, pharmacy, physical therapy, physical therapist assisting, occupational therapy, occupational therapy assisting, respiratory care, cosmetology arts and sciences, barbering, mortuary science, marital and family therapy, mental health counseling, social work, dietetics, massage therapy, athletic training, acupuncture, nursing home administration, hearing aid dispensing, sign language interpreting or transliterating, orthotics, prosthetics, or pedorthics.

[C24, 27, 31, 35, 39, §2438; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.1]

84 Acts, ch 1075, §6; 85 Acts, ch 168, §1; 86 Acts, ch 1211, §13; 87 Acts, ch 91, §6; 88 Acts, ch 1225, §2; 89 Acts, ch 89, §4, 5; 91 Acts, ch 229, §1; 92 Acts, ch 1205, §13; 94 Acts, ch 1132, §10; 95 Acts, ch 41, §8; 95 Acts, ch 108, §3; 96 Acts, ch 1036, §3, 4; 96 Acts, ch 1109, §1; 96 Acts, ch 1219, §20; 98 Acts, ch 1053, §2, 3; 2000 Acts, ch 1053, §1; 2000 Acts, ch 1148, §1; 2004 Acts, ch 1175, §419, 420, 433; 2007 Acts, ch 10, §26, 27; 2008 Acts, ch 1088, §1; 2012 Acts, ch 1101, §1

Referred to in §148F.4

## LICENSES

**147.2 License required.**

1. A person shall not engage in the practice of medicine and surgery, podiatry, osteopathic medicine and surgery, psychology, chiropractic, physical therapy, physical therapist assisting, nursing, dentistry, dental hygiene, dental assisting, optometry, speech pathology, audiology, occupational therapy, occupational therapy assisting, orthotics, prosthetics, pedorthics, respiratory care, pharmacy, cosmetology arts and sciences, barbering, social work, dietetics, marital and family therapy or mental health counseling, massage therapy, mortuary science, athletic training, acupuncture, nursing home administration, hearing aid dispensing, or sign language interpreting or transliterating, or shall not practice as a physician assistant, unless the person has obtained a license for that purpose from the board for the profession.

2. For purposes of this section, a person who is licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in section 152E.1 or pursuant to the advanced practice registered nurse compact contained in section 152E.3 shall be considered to have obtained a license to practice nursing.

[C97, §2582, 2588; S13, §2575-a28, -a31, -a36, 2582, 2583-a, -d, -r, 2600-o4; SS15, §2588; C24, 27, 31, 35, 39, §2439; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.2]

85 Acts, ch 168, §2; 88 Acts, ch 1225, §3; 96 Acts, ch 1035, §1; 96 Acts, ch 1036, §5; 98 Acts, ch 1050, §1, 5; 2000 Acts, ch 1008, §1; 2000 Acts, ch 1053, §2; 2000 Acts, ch 1185, §1; 2004 Acts, ch 1045, §1; 2004 Acts, ch 1175, §421, 433; 2005 Acts, ch 53, §1; 2007 Acts, ch 10, §28; 2008 Acts, ch 1009, §1, 5; 2008 Acts, ch 1088, §2; 2012 Acts, ch 1101, §2

Referred to in §148.6

**147.3 Qualifications.**

An applicant for a license to practice a profession under this subtitle is not ineligible because of age, citizenship, sex, race, religion, marital status, or national origin, although the application form may require citizenship information. A board may consider the past criminal record of an applicant only if the conviction relates to the practice of the profession for which the applicant requests to be licensed.

[S13, §2575-a29, -a37, 2583-a, -1, 2600-d; C24, 27, 31, 35, 39, §2440, 2567; C46, 50, 54, 58, 62, 66, §147.3, 153.3; C71, 73, §147.3, 153.5; C75, 77, 79, 81, §147.3]

84 Acts, ch 1075, §7; 85 Acts, ch 168, §3; 88 Acts, ch 1225, §4; 94 Acts, ch 1132, §11; 96 Acts, ch 1036, §6; 98 Acts, ch 1053, §4; 2008 Acts, ch 1088, §3

Referred to in §152.7

**147.4 Grounds for refusing.**

A board may refuse to grant a license to practice a profession to any person otherwise qualified upon any of the grounds for which a license may be revoked or suspended.

[C97, §2578; S13, §2575-a33, -a41, 2578, 2583-c; C24, 27, 31, 35, 39, §2441; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.4]

90 Acts, ch 1086, §1; 2008 Acts, ch 1088, §4

Grounds for revocation, see §147.55

**147.5 Certificate of license.**

1. Every license to practice a profession shall be in the form of a certificate under the seal of the board. Such license shall be issued in the name of the board.

2. This section shall not apply to a person who is licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in section 152E.1 or pursuant to the advanced practice registered nurse compact contained in section 152E.3.

[C97, §2576, 2577, 2591; S13, §2575-a30, -a38, 2576, 2583-k, 2600-d; C24, 27, 31, 35, 39, §2442; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.5]

2000 Acts, ch 1008, §2; 2000 Acts, ch 1140, §30; 2005 Acts, ch 53, §2; 2007 Acts, ch 10, §29; 2008 Acts, ch 1088, §5

Section not amended; editorial change applied

**147.6 Certificate presumptive evidence.**

Every license issued under this subtitle shall be presumptive evidence of the right of the holder to practice in this state the profession therein specified.

[C97, §2576; S13, §2575-a30, -a38, 2576, 2583-k, 2600-d; C24, 27, 31, 35, 39, §2443; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.6]

94 Acts, ch 1132, §12; 96 Acts, ch 1036, §7; 98 Acts, ch 1053, §5

**147.7 Display of license.**

1. A board may require every person licensed by the board to display the license and evidence of current renewal publicly in a manner prescribed by the board.

2. This section shall not apply to a person who is licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in section 152E.1 or pursuant to the advanced practice registered nurse compact contained in section 152E.3. A person licensed in another state and recognized for licensure in this state pursuant to either compact shall, however, maintain a copy of a license issued by the person's home state available for inspection when engaged in the practice of nursing in this state.

[C97, §2591; S13, §2600-o1; C24, 27, 31, 35, 39, §2444; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.7]

90 Acts, ch 1086, §2; 94 Acts, ch 1132, §13; 96 Acts, ch 1036, §8; 98 Acts, ch 1053, §6; 2000 Acts, ch 1008, §3; 2005 Acts, ch 53, §3; 2006 Acts, ch 1010, §54; 2008 Acts, ch 1088, §6

**147.8 Record of licenses.**

A board shall keep the following information available for public inspection for each person licensed by the board:

1. Name.
2. Address of record.
3. The number of the license.
4. The date of issuance of the license.

[C97, §2591; S13, §2575-a40, 2583-a, -k, 2600-d; C24, 27, 31, 35, 39, §2445; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.8]

96 Acts, ch 1128, §5; 2008 Acts, ch 1088, §7; 2009 Acts, ch 41, §50

**147.9 Change of address.**

Every person licensed pursuant to this chapter shall notify the board which issued the license of a change in the person's address of record within a time period established by board rule.

[C97, §2591; C24, 27, 31, 35, 39, §2446; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.9]

90 Acts, ch 1086, §3; 94 Acts, ch 1132, §14; 96 Acts, ch 1036, §9; 98 Acts, ch 1053, §7; 2008 Acts, ch 1088, §8

**147.10 Renewal.**

1. Every license to practice a profession shall expire in multiyear intervals and be renewed as determined by the board upon application by the licensee. Each board shall establish rules for license renewal and concomitant fees. Application for renewal shall be made to the board accompanied by the required fee at least thirty days prior to the expiration of such license.

2. Each board may by rule establish a grace period following expiration of a license in which the license is not invalidated. Each board may assess a reasonable penalty for renewal of a license during the grace period. Failure of a licensee to renew a license within the grace period shall cause the license to become inactive or lapsed. A licensee whose license is inactive or lapsed shall not engage in the practice of the profession until the license is reactivated or reinstated.

[C97, §2590; S13, §2575-a39, 2589-d; C24, 27, 31, §2447; C35, §2447, 2573-g2 – 2573-g4; C39, §2447, 2573.02 – 2573.04; C46, 50, 54, 58, 62, 66, §147.10, 153.11 – 153.12; C71, 73, §147.10, 153.9, 153.10; C75, 77, 79, 81, §147.10]

2002 Acts, ch 1108, §12; 2008 Acts, ch 1088, §9

Referred to in §147.11, 148.6

**147.11 Reactivation and reinstatement.**

1. A licensee who allows the license to become inactive or lapsed by failing to renew the license, as provided in section 147.10, may reactivate the license upon payment of a reactivation fee and compliance with other terms established by board rule.

2. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with board rule and must apply for and be granted reactivation of the license in accordance with board rule prior to practicing the profession.

[C24, 27, 31, 35, 39, §2448; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.11]  
2007 Acts, ch 10, §30; 2008 Acts, ch 1088, §10; 2009 Acts, ch 41, §51

## HEALTH PROFESSION BOARDS

**147.12 Health profession boards.**

1. The governor shall appoint, subject to confirmation by the senate, a board for each of the professions. The board members shall not be required to be members of professional societies or associations composed of members of their professions.

2. If a person who has been appointed by the governor to serve on a board has ever been disciplined in a contested case by the board to which the person has been appointed, all board statements of charges, settlement agreements, findings of fact, and orders pertaining to the disciplinary action shall be made available to the senate committee to which the appointment is referred at the committee's request before the full senate votes on the person's appointment.

[C97, §2576, 2584; S13, §2575-a29, -a37, 2576, 2583-a, -h, 2600-b; SS15, §2584; C24, 27, 31, 35, 39, §2449; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.12]

88 Acts, ch 1128, §2; 94 Acts, ch 1132, §15; 96 Acts, ch 1036, §10; 98 Acts, ch 1053, §8; 2007 Acts, ch 10, §31; 2008 Acts, ch 1088, §11

Referred to in §147.13, 148.2A

Confirmation, see §2.32

Board of medicine alternate members, see §148.2A

**147.13 Designation of boards.**

The boards provided in section 147.12 shall be designated as follows:

1. For medicine and surgery, osteopathic medicine and surgery, and acupuncture, the board of medicine.

2. For physician assistants, the board of physician assistants.

3. For psychology, the board of psychology.

4. For podiatry, the board of podiatry.

5. For chiropractic, the board of chiropractic.

6. For physical therapy and occupational therapy, the board of physical and occupational therapy.

7. For nursing, the board of nursing.

8. For dentistry, dental hygiene, and dental assisting, the dental board.

9. For optometry, the board of optometry.

10. For speech pathology and audiology, the board of speech pathology and audiology.

11. For cosmetology arts and sciences, the board of cosmetology arts and sciences.

12. For barbering, the board of barbering.

13. For pharmacy, the board of pharmacy.

14. For mortuary science, the board of mortuary science.

15. For social work, the board of social work.

16. For marital and family therapy and mental health counseling, the board of behavioral science.

17. For dietetics, the board of dietetics.

18. For respiratory care, the board of respiratory care.

19. For massage therapy, the board of massage therapy.

20. For athletic training, the board of athletic training.

21. For interpreting, the board of sign language interpreters and transliterators.
22. For hearing aid dispensing, the board of hearing aid dispensers.
23. For nursing home administration, the board of nursing home administrators.
24. For orthotics, prosthetics, and pedorthics, the board of podiatry.

[C24, 27, 31, 35, 39, §2450; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.13]

84 Acts, ch 1075, §8; 85 Acts, ch 168, §4; 88 Acts, ch 1225, §5; 91 Acts, ch 229, §2; 92 Acts, ch 1205, §14; 93 Acts, ch 86, §12; 96 Acts, ch 1036, §11; 98 Acts, ch 1053, §9; 2000 Acts, ch 1002, §1; 2004 Acts, ch 1175, §422, 433; 2006 Acts, ch 1155, §3, 15; 2007 Acts, ch 10, §32; 2007 Acts, ch 218, §197; 2008 Acts, ch 1088, §12, 141; 2009 Acts, ch 41, §52; 2012 Acts, ch 1101, §3

Referred to in §147.1, 147.82, 232.69, 235B.16, 280.13C, 422.7

#### **147.14 Composition of boards — quorum.**

1. The board members shall consist of the following:
  - a. For barbering, three members licensed to practice barbering, and two members who are not licensed to practice barbering and who shall represent the general public.
  - b. For medicine, five members licensed to practice medicine and surgery, two members licensed to practice osteopathic medicine and surgery, and three members not licensed to practice either medicine and surgery or osteopathic medicine and surgery, and who shall represent the general public.\*
  - c. For nursing, four registered nurses, two of whom shall be actively engaged in practice, two of whom shall be nurse educators from nursing education programs; of these, one in higher education and one in area community and vocational-technical registered nurse education; one licensed practical nurse actively engaged in practice; and two members not registered nurses or licensed practical nurses and who shall represent the general public. The representatives of the general public shall not be members of health care delivery systems.
  - d. For dentistry, five members licensed to practice dentistry, two members licensed to practice dental hygiene, and two members not licensed to practice dentistry or dental hygiene and who shall represent the general public. The two dental hygienist board members and one dentist board member shall constitute a dental hygiene committee of the board as provided in section 153.33A.
  - e. For pharmacy, five members licensed to practice pharmacy and two members who are not licensed to practice pharmacy and who shall represent the general public.
  - f. For optometry, five members licensed to practice optometry and two members who are not licensed to practice optometry and who shall represent the general public.
  - g. For psychology, five members who are licensed to practice psychology and two members not licensed to practice psychology and who shall represent the general public. Of the five members who are licensed to practice psychology, one member shall be primarily engaged in graduate teaching in psychology or primarily engaged in research psychology, three members shall be persons who render services in psychology, and one member shall represent areas of applied psychology and may be affiliated with training institutions and shall devote a major part of the member's time to rendering service in psychology.
  - h. For chiropractic, five members licensed to practice chiropractic and two members who are not licensed to practice chiropractic and who shall represent the general public.
  - i. For speech pathology and audiology, five members licensed to practice speech pathology or audiology at least two of whom shall be licensed to practice speech pathology and at least two of whom shall be licensed to practice audiology, and two members who are not licensed to practice speech pathology or audiology and who shall represent the general public.
  - j. For physical therapy and occupational therapy, three members licensed to practice physical therapy, two members licensed to practice occupational therapy, and two members who are not licensed to practice physical therapy or occupational therapy and who shall represent the general public.
  - k. For dietetics, one licensed dietitian representing the approved or accredited dietetic education programs, one licensed dietitian representing clinical dietetics, one licensed dietitian representing community nutrition services, and two members who are not licensed dietitians and who shall represent the general public.

*l.* For the board of physician assistants, five members licensed to practice as physician assistants, at least two of whom practice in counties with a population of less than fifty thousand, one member licensed to practice medicine and surgery who supervises a physician assistant, one member licensed to practice osteopathic medicine and surgery who supervises a physician assistant, and two members who are not licensed to practice either medicine and surgery or osteopathic medicine and surgery or licensed as a physician assistant and who shall represent the general public. At least one of the physician or osteopathic physician members shall be in practice in a county with a population of less than fifty thousand.

*m.* For behavioral science, three members licensed to practice marital and family therapy, all of whom shall be practicing marital and family therapists; three members licensed to practice mental health counseling, one of whom shall be employed in graduate teaching, training, or research in mental health counseling and two of whom shall be practicing mental health counselors; and three members who are not licensed to practice marital and family therapy or mental health counseling and who shall represent the general public.

*n.* For cosmetology arts and sciences, a total of seven members, three who are licensed cosmetologists, one who is a licensed electrologist, esthetician, or nail technologist, one who is a licensed instructor of cosmetology arts and sciences at a public or private school and who does not own a school of cosmetology arts and sciences, and two who are not licensed in a practice of cosmetology arts and sciences and who shall represent the general public.

*o.* For respiratory care, one licensed physician with training in respiratory care, three respiratory care practitioners who have practiced respiratory care for a minimum of six years immediately preceding their appointment to the board and who are recommended by the society for respiratory care, and one member not licensed to practice medicine, osteopathic medicine, or respiratory care who shall represent the general public.

*p.* For mortuary science, four members licensed to practice mortuary science, one member owning, operating, or employed by a crematory, and two members not licensed to practice mortuary science and not a crematory owner, operator, or employee who shall represent the general public.

*q.* For massage therapists, four members licensed to practice massage therapy and three members who are not licensed to practice massage therapy and who shall represent the general public.

*r.* For athletic trainers, three members licensed to practice athletic training, three members licensed to practice medicine and surgery, and one member not licensed to practice athletic training or medicine and surgery and who shall represent the general public.

*s.* For podiatry, five members licensed to practice podiatry, two members licensed to practice orthotics, prosthetics, or pedorthics, and two members who are not so licensed and who shall represent the general public.

*t.* For social work, a total of seven members, five who are licensed to practice social work, with at least one from each of three levels of licensure described in section 154C.3, subsection 1, and one employed in the area of children's social work, and two who are not licensed social workers and who shall represent the general public.

*u.* For sign language interpreting and transliterating, four members licensed to practice interpreting and transliterating, three of whom shall be practicing interpreters and transliterators at the time of appointment to the board and at least one of whom is employed in an educational setting; and three members who are consumers of interpreting or transliterating services as defined in section 154E.1, each of whom shall be deaf.

*v.* For hearing aid dispensers, three licensed hearing aid dispensers and two members who are not licensed hearing aid dispensers who shall represent the general public. No more than two members of the board shall be employees of, or dispensers principally for, the same hearing aid manufacturer.

*w.* For nursing home administrators, a total of nine members, four who are licensed nursing home administrators, one of whom is the administrator of a nonproprietary nursing home; three licensed members of any profession concerned with the care and treatment of chronically ill or elderly patients who are not nursing home administrators or nursing home owners; and two members of the general public who are not licensed under chapter 155, have no financial interest in any nursing home, and who shall represent the general public.

2. A majority of the members of a board constitutes a quorum.

[C97, §2564, 2576, 2584; S13, §2564, 2575-a29, -a30, -a37, -a38, 2576, 2583-a, -h, -i, 2600-b, -c; SS15, §2584; C24, 27, 31, 35, 39, §2451, 2452, 2475; C46, 50, 54, 58, 62, 66, §147.14, 147.15, 147.38; C71, 73, §147.14, 147.15, 147.38, 153.1; C75, 77, 79, 81, §147.14]

84 Acts, ch 1075, §9; 85 Acts, ch 168, §5; 86 Acts, ch 1003, §1; 86 Acts, ch 1022, §1; 88 Acts, ch 1134, §29; 88 Acts, ch 1225, §6, 7; 91 Acts, ch 229, §3; 92 Acts, ch 1183, §2; 92 Acts, ch 1205, §15, 16; 96 Acts, ch 1035, §2, 3, 13; 96 Acts, ch 1036, §12; 96 Acts, ch 1148, §1, 2; 98 Acts, ch 1002, §1, 2; 98 Acts, ch 1010, §1; 98 Acts, ch 1053, §10; 99 Acts, ch 19, §1; 99 Acts, ch 96, §14; 2004 Acts, ch 1175, §423, 433; 2005 Acts, ch 3, §36; 2007 Acts, ch 10, §33; 2007 Acts, ch 218, §188; 2008 Acts, ch 1032, §26; 2008 Acts, ch 1088, §13; 2009 Acts, ch 56, §2; 2009 Acts, ch 133, §47; 2010 Acts, ch 1069, §18; 2012 Acts, ch 1101, §4

Referred to in §148.2A, 154F.1

\*Board of medicine alternate members, see §148.2A

**147.15** Repealed by 74 Acts, ch 1086, § 198.

**147.16 Board members.**

1. Each licensed board member shall be actively engaged in the practice or the instruction of the board member's profession and shall have been so engaged for a period of five years just preceding the board member's appointment, the last two of which shall be in this state.

2. However, each licensed physician assistant member of the board of physician assistants shall be actively engaged in practice as a physician assistant and shall have been so engaged for a period of three years just preceding the member's appointment, the last year of which shall be in this state.

[C97, §2584; S13, §2583-a, -h, 2600-b; SS15, §2584; C24, 27, 31, 35, 39, §2453; C46, 50, 54, 58, 62, 66, §147.16; C71, 73, §147.16, 153.1; C75, 77, 79, 81, §147.16; 81 Acts, ch 65, §1]

88 Acts, ch 1225, §8; 2007 Acts, ch 10, §34

**147.17** Repealed by 74 Acts, ch 1086, § 198.

**147.18 Disqualifications.** Repealed by 2008 Acts, ch 1088, § 79.

**147.19 Terms of office.**

The board members shall serve three-year terms, which shall commence and end as provided by section 69.19. Any vacancy in the membership of a board shall be filled by appointment of the governor subject to senate confirmation. A member shall serve no more than nine years in total on the same board.

[C97, §2564, 2576, 2584; S13, §2564, 2575-a29, -a37, 2576, 2583-a, -h, 2600-b; SS15, §2584; C24, 27, 31, 35, 39, §2456, 2458; C46, 50, 54, 58, 62, 66, §147.19, 147.21; C71, 73, §147.19, 147.21, 153.1; C75, 77, 79, 81, §147.19]

2007 Acts, ch 10, §36; 2008 Acts, ch 1088, §14

Referred to in §148.2A

Confirmation, see §2.32

Board of medicine alternate members, see §148.2A

**147.20 Nomination of board members.**

The regular state association or society for each profession may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations.

[S13, §2583-a, -h, 2600-b; C24, 27, 31, 35, 39, §2457; C46, 50, 54, 58, 62, 66, §147.20; C71, 73, §147.20, 153.1; C75, 77, 79, 81, §147.20]

2007 Acts, ch 10, §37

**147.21 Examination information.**

1. The public members of a board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

2. A member of the board shall not disclose information relating to any of the following:

a. The contents of the examination.

b. The examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

3. A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, §147.21]

83 Acts, ch 101, §26; 2008 Acts, ch 1088, §15

Referred to in §152.12, 157.3B

#### **147.22 Officers.**

Each board shall annually select a chairperson and a vice chairperson from its own membership.

[C97, §2576, 2585; S13, §2576, 2583-i, 2585, 2600-c; C24, 27, 31, 35, 39, §2459; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.22]

2007 Acts, ch 10, §38; 2008 Acts, ch 1088, §16

**147.23** Repealed by 78 Acts, ch 1104, § 3.

#### **147.24 Compensation.**

Members of a board shall receive actual expenses for their duties as a member of the board. Each member of each board shall also be eligible to receive compensation as provided in section 7E.6, within the limits of funds available.

[C97, §2574; S13, §2574, 2575-a34, -a44, 2583-a, -p, 2600-g; C24, 27, 31, 35, 39, §2461; C46, 50, 54, 58, 62, 66, §147.24; C71, 73, §147.24, 153.3; C75, 77, 79, 81, §147.24]

86 Acts, ch 1245, §1141; 2007 Acts, ch 10, §39; 2008 Acts, ch 1088, §17

#### **147.25 System of health personnel statistics — fee.**

1. A board may establish a system to collect, maintain, and disseminate health personnel statistical data regarding board licensees, including but not limited to number of licensees, employment status, location of practice or place of employment, areas of professional specialization and ages of licensees, and other pertinent information bearing on the availability of trained and licensed personnel to provide services in this state.

2. In addition to any other fee provided by law, a fee may be set by the respective boards for each license and renewal of a license to practice a profession, which fee shall be based on the annual cost of collecting information for use by the board in the administration of the system of health personnel statistics established by this section. The fee shall be retained by the respective board in the manner in which license and renewal fees are retained in section 147.82.

[C75, 77, 79, 81, §147.25]

84 Acts, ch 1075, §10; 85 Acts, ch 168, §6; 88 Acts, ch 1225, §9; 2006 Acts, ch 1155, §4, 15; 2007 Acts, ch 10, §40, 184; 2008 Acts, ch 1088, §18

**147.26 Supplies and examination quarters.** Repealed by 2008 Acts, ch 1088, § 79.

**147.27** Repealed by 74 Acts, ch 1086, § 198.

#### **147.28 National organization.**

Each board may maintain a membership in the national organization of the regulatory boards of its profession to be paid from board funds.

[C27, 31, 35, §2465-b1; C39, §2465.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.28]

2007 Acts, ch 10, §42; 2008 Acts, ch 1088, §19

**147.28A Scope of practice review committees — future repeal.** Repealed by its own terms; 2005 Acts, ch 175, § 84.

## EXAMINATIONS

**147.29 Applications.** Repealed by 2008 Acts, ch 1088, § 78.

**147.30 Time and place of examinations.** Repealed by 2008 Acts, ch 1088, § 78. See § 147.34.

**147.31** Repealed by 74 Acts, ch 1086, § 198.

**147.32** Repealed by 89 Acts, ch 3, § 3.

**147.33 Professional schools.**

A dean of a college or university which provides instruction or training in a profession shall supply information or data related to the college or university upon request of a board.

[C24, 27, 31, 35, 39, §2470; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.33]  
2007 Acts, ch 10, §44; 2008 Acts, ch 1088, §20

**147.34 Examinations.**

1. Each board shall by rule prescribe the examination or examinations required for licensure for the profession and the manner in which an applicant shall complete the examination process. A board may develop and administer the examination, may designate a national, uniform, or other examination as the prescribed examination, or may contract for such services. Dentists shall pass an examination approved by a majority of the dentist members of the dental board.

2. When a board administers an examination, the board shall provide adequate public notice of the time and place of the examination to allow candidates to comply with the provisions of this subtitle. Administration of examinations, including location, frequency, and reexamination, may be determined by the board.

3. Applicants who fail the examination once shall be allowed to take the examination at the next authorized time. Thereafter, applicants shall be allowed to take the examination at the discretion of the board. An applicant who has failed an examination may request in writing information from the board concerning the examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board prescribes a national or uniform examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

[C97, §2576, 2582, 2589, 2597; S13, §2575-a29, -a37, 2576, 2582, 2583-a, -i, -k, 2589-a, 2600-c, -d; SS15, §2589-a; C24, 27, 31, 35, 39, §2471, 2567, 2572, 2573; C46, 50, 54, 58, 62, 66, §147.34, 153.3, 153.8, 153.9; C71, 73, §147.34, 153.2, 153.6, 153.8; C75, 77, 79, 81, §147.34]

94 Acts, ch 1132, §17; 96 Acts, ch 1036, §14; 98 Acts, ch 1053, §12; 2007 Acts, ch 10, §45; 2008 Acts, ch 1088, §21

Referred to in §153.21, 155.3, 156.4

**147.35 Names of eligible candidates.** Repealed by 2008 Acts, ch 1088, § 79.

**147.36 Rules.**

Each board may establish rules for any of the following:

1. The qualifications required for applicants seeking to take examinations.
2. The denial of applicants seeking to take examinations.
3. The conducting of examinations.
4. The grading of examinations and passing upon the technical qualifications of applicants, as shown by such examinations.

5. The minimum scores required for passing standardized examinations.

[C97, §2584; S13, §2575-a38, 2583-a, -i, 2600-e; SS15, §2584; C24, 27, 31, 35, 39, §2473; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.36]

92 Acts, ch 1183, §3; 2007 Acts, ch 10, §47; 2008 Acts, ch 1088, §22

**147.37 Identity of candidate concealed.**

The identity of the person taking an examination shall not be disclosed during the examination process and in practice the identity of the candidate shall be concealed to the extent possible.

[C97, §2576; S13, §2576, 2583-a; C24, 27, 31, 35, 39, §2474; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.37]

2007 Acts, ch 10, §48; 2008 Acts, ch 1088, §23

**147.38** Repealed by 74 Acts, ch 1086, § 198.

**147.39 through 147.42** Repealed by 2008 Acts, ch 1088, § 79.

**147.43 Preservation of records.** Repealed by 2008 Acts, ch 1088, § 78.

## RECIPROCAL LICENSES

**147.44 Reciprocal agreements.**

A board may enter into a reciprocal agreement with a licensing authority of another state for the purpose of recognizing licenses issued by the other state, provided that such licensing authority imposes licensure requirements substantially equivalent to those imposed in this state. The board may establish by rule the conditions for the recognition of such licenses and the process for licensing such individuals to practice in this state.

[C97, §2582; S13, §2582; C24, 27, 31, 35, 39, §2481; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.44]

94 Acts, ch 1132, §19; 96 Acts, ch 1036, §16; 98 Acts, ch 1053, §14; 2007 Acts, ch 10, §53; 2008 Acts, ch 1088, §24

Referred to in §148.3, 152.8, 153.36, 155.11, 157.3, 158.3

**147.45 through 147.47** Repealed by 2008 Acts, ch 1088, § 79.

**147.48 Termination of reciprocal agreements.**

If the requirements for a license in any state with which this state has a reciprocal agreement are changed by any law or rule of the authorities in that state so that such requirements are no longer substantially equivalent to those existing in this state, the agreement shall be deemed terminated and licenses issued in that state shall not be recognized as a basis of granting a license in this state until a new agreement has been negotiated.

[C24, 27, 31, 35, 39, §2485; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.48]

2007 Acts, ch 10, §57; 2008 Acts, ch 1088, §25

Referred to in §152.8, 153.36, 155.11, 157.3, 158.3

**147.49 License of another state.**

A board shall, upon presentation of a license to practice a profession issued by the duly constituted authority of another state with which this state has established reciprocal relations, and subject to the rules of the board for such profession, license the applicant to practice in this state, unless under the rules of the board a practical or jurisprudence examination is required. The board of medicine may accept in lieu of the examination prescribed in section 148.3 a license to practice medicine and surgery or osteopathic medicine and surgery, issued by the duly constituted authority of another state, territory, or foreign country. Endorsement may be accepted in lieu of further written examination

without regard to the existence or nonexistence of a reciprocal agreement, but shall not be in lieu of the standards and qualifications prescribed by section 148.3.

[C97, §2582; S13, §2575-a30, -a39, 2582, 2583-l, 2589-b, 2600-m; C24, 27, 31, 35, 39, §2486; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.49]

2007 Acts, ch 10, §58; 2008 Acts, ch 1088, §26

Referred to in §152.8, 153.36, 155.11, 157.3, 158.3

**147.50 Practical examinations.** Repealed by 2008 Acts, ch 1088, § 79.

**147.51 and 147.52** Repealed by 2008 Acts, ch 1088, § 78.

**147.53 Power to adopt rules.**

Each board entering into a reciprocal agreement shall adopt necessary rules, not inconsistent with law, for carrying out the reciprocal relations with other states which are authorized by this chapter.

[C24, 27, 31, 35, 39, §2490; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.53]

2007 Acts, ch 10, §60; 2008 Acts, ch 1088, §27

Referred to in §152.8, 153.36, 155.11

**147.54 Change of residence.** Repealed by 2008 Acts, ch 1088, § 78.

## LICENSEE DISCIPLINE

**147.55 Grounds.**

A licensee's license to practice a profession shall be revoked or suspended, or the licensee otherwise disciplined by the board for that profession, when the licensee is guilty of any of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetence.
3. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representations as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of the provisions of this chapter, chapter 272C, or a board's enabling statute.
9. Other acts or offenses as specified by board rule.
  1. [C97, §2578; S13, §2575-a33, -a41, 2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39, §2492; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(1)]
  2. [C97, §2578; S13, §2578, 2583-c, -m; C24, 27, 31, 35, 39, §2492; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(2)]
  3. [C97, §2578; S13, §2575-a33, -a41, 2578, 2583-m, 2600-o5; C24, 27, 31, 35, 39, §2492; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(3)]
  4. [C97, §2578; S13, §2575-a41, 2578, 2583-c, -m, 2600-o5; C24, 27, 31, 35, 39, §2492; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(4)]
  5. [C97, §2578; S13, §2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39, §2492; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(5)]
  6. [C97, §2578; S13, §2578, 2583-c; C24, 27, 31, 35, 39, §2492; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(6)]

7. [C97, §2578; S13, §2578, 2583-c, 2600-o5; C24, 27, 31, 35, 39, §2492; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.55(7)]

8. [C97, §2596; S13, §2575-a33, -a41; C24, 27, 31, 35, 39, §2492; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §147.55(9); C79, 81, §147.55(8)]

2008 Acts, ch 1088, §28; 2009 Acts, ch 133, §48

Referred to in §148.6, 148.7, 148A.7, 148E.8, 152.10, 152D.6, 153.36, 155.4, 155A.12, 156.9, 272C.3, 272C.4

**147.56** Repealed by 74 Acts, ch 1086, § 198.

**147.57 Dental hygienist and dentist.** Transferred to § 153.34, subsection 16; 2009 Acts, ch 133, § 192.

**147.58 through 147.71** Repealed by 2008 Acts, ch 1088, § 78.

## USE OF TITLES AND DEGREES

### **147.72 Professional titles and abbreviations.**

Any person licensed to practice a profession under this subtitle may append to the person's name any recognized title or abbreviation, which the person is entitled to use, to designate the person's particular profession, but no other person shall assume or use such title or abbreviation, and no licensee shall advertise in such a manner as to lead the public to believe that the licensee is engaged in the practice of any other profession than the one which the licensee is licensed to practice.

[S13, §2575-a28, -a31, 2583-q; C24, 27, 31, 35, 39, §2509; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.72]

94 Acts, ch 1132, §22; 96 Acts, ch 1036, §19; 98 Acts, ch 1053, §17

Referred to in §147.73

### **147.73 Titles used by holder of degree.**

Nothing in section 147.72 shall be construed:

1. As authorizing any person licensed to practice a profession under this subtitle to use or assume any degree or abbreviation of the degree unless such degree has been conferred upon the person by an institution of learning accredited by the appropriate board, or by some recognized state or national accredited agency.

2. As prohibiting any holder of a degree conferred by an institution of learning accredited by the appropriate board created in this chapter, or by some recognized state or national accrediting agency, from using the title which such degree authorizes the holder to use, but the holder shall not use such degree or abbreviation in any manner which might mislead the public as to the holder's qualifications to treat human ailments.

[C24, 27, 31, 35, 39, §2510; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.73]

94 Acts, ch 1132, §23; 96 Acts, ch 1036, §20; 98 Acts, ch 1053, §18; 2008 Acts, ch 1088, §30

### **147.74 Professional titles or abbreviations — false use prohibited.**

1. Any person who falsely claims by the use of any professional title or abbreviation, either in writing, cards, signs, circulars, advertisements, the internet, or other written or electronic means, to be a practitioner of a profession other than the one under which the person holds a license or who fails to use the designations provided in this section shall be guilty of a simple misdemeanor.

2. A physician or surgeon may use the prefix "Dr." or "Doctor", and shall add after the person's name the letters, "M. D."

3. An osteopathic physician and surgeon may use the prefix "Dr." or "Doctor", and shall add after the person's name the letters, "D. O.", or the words "osteopathic physician and surgeon".

4. A chiropractor may use the prefix "Dr." or "Doctor", but shall add after the person's name the letters, "D. C." or the word, "chiropractor".

5. A dentist may use the prefix “Dr.” or “Doctor”, but shall add after the person’s name the letters “D. D. S.”, or “D. M. D.”, or the word “dentist” or “dental surgeon”. A dental hygienist may use the words “registered dental hygienist” or the letters “R. D. H.” after the person’s name. A dental assistant may use the words “registered dental assistant” or the letters “R. D. A.” after the person’s name.

6. A podiatric physician may use the prefix “Dr.” or “Doctor”, but shall add after the person’s name the letters “D. P. M.” or the words “podiatric physician”.

7. A graduate of a school accredited by the board of optometry may use the prefix “Dr.” or “Doctor”, but shall add after the person’s name the letters “O. D.”

8. A physical therapist registered or licensed under chapter 148A may use the words “physical therapist” after the person’s name or signify the same by the use of the letters “P. T.” after the person’s name. A physical therapist with an earned doctoral degree from an accredited school, college, or university may use the suffix designating the degree, or the prefix “Doctor” or “Dr.” and add after the person’s name the words “physical therapist”. An occupational therapist registered or licensed under chapter 148B may use the words “occupational therapist” after the person’s name or signify the same by the use of the letters “O. T.” after the person’s name. An occupational therapist with an earned doctoral degree from an accredited school, college, or university may use the suffix designating the degree, or the prefix “Doctor” or “Dr.” and add after the person’s name the words “occupational therapist”.

9. A physical therapist assistant licensed under chapter 148A may use the words “physical therapist assistant” after the person’s name or signify the same by use of the letters “P. T. A.” after the person’s name. An occupational therapy assistant licensed under chapter 148B may use the words “occupational therapy assistant” after the person’s name or signify the same by use of the letters “O. T. A.” after the person’s name.

10. A psychologist who possesses a doctoral degree may use the prefix “Dr.” or “Doctor” but shall add after the person’s name the word “psychologist”.

11. A speech pathologist with an earned doctoral degree in speech pathology obtained beyond a bachelor’s degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix “Doctor” or “Dr.” and add after the person’s name the words “speech pathologist”. An audiologist with an earned doctoral degree in audiology obtained beyond a bachelor’s degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix “Doctor” or “Dr.” and add after the person’s name the word “audiologist”.

12. A bachelor social worker licensed under chapter 154C may use the words “licensed bachelor social worker” or the letters “L. B. S. W.” after the person’s name. A master social worker licensed under chapter 154C may use the words “licensed master social worker” or the letters “L. M. S. W.” after the person’s name. An independent social worker licensed under chapter 154C may use the words “licensed independent social worker”, or the letters “L. I. S. W.” after the person’s name.

13. A marital and family therapist licensed under chapter 154D and this chapter may use the words “licensed marital and family therapist” after the person’s name or signify the same by the use of the letters “L. M. F. T.” after the person’s name. A marital and family therapist licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix “Doctor” or “Dr.” in conjunction with the person’s name, but shall add after the person’s name the words “licensed marital and family therapist”.

14. A mental health counselor licensed under chapter 154D and this chapter may use the words “licensed mental health counselor” after the person’s name. A mental health counselor licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix “Doctor” or “Dr.” in conjunction with the person’s name, but shall add after the person’s name the words “licensed mental health counselor”.

15. A pharmacist who possesses a doctoral degree recognized by the accreditation council for pharmacy education from a college of pharmacy approved by the board of pharmacy or a doctor of philosophy degree in an area related to pharmacy may use the prefix “Doctor” or “Dr.” but shall add after the person’s name the word “pharmacist” or “Pharm. D.”

16. A physician assistant licensed under chapter 148C may use the words “physician

assistant” after the person’s name or signify the same by the use of the letters “P.A.” after the person’s name.

17. A massage therapist licensed under chapter 152C may use the words “licensed massage therapist” or the initials “L. M. T.” after the person’s name.

18. An acupuncturist licensed under chapter 148E may use the words “licensed acupuncturist” or the abbreviation “L. Ac.” after the person’s name.

19. A respiratory care practitioner licensed under chapter 152B and this chapter may use the title “respiratory care practitioner” or the letters “R. C. P.” after the person’s name.

20. An athletic trainer licensed under chapter 152D and this chapter may use the words “licensed athletic trainer” or the letters “LAT” after the person’s name.

21. A registered nurse licensed under chapter 152 may use the words “registered nurse” or the letters “R. N.” after the person’s name. A licensed practical nurse licensed under chapter 152 may use the words “licensed practical nurse” or the letters “L. P. N.” after the person’s name.

22. A sign language interpreter or transliterator licensed under chapter 154E and this chapter may use the title “licensed sign language interpreter” or the letters “L. I.” after the person’s name.

23. a. An orthotist licensed under chapter 148F may use the words “licensed orthotist” after the person’s name or signify the same by the use of the letters “L.O.” after the person’s name.

b. A pedorthist licensed under chapter 148F may use the words “licensed pedorthist” after the person’s name or signify the same by the use of the letters “L.ped.” after the person’s name.

c. A prosthetist licensed under chapter 148F may use the words “licensed prosthetist” after the person’s name or signify the same by the use of the letters “L.P.” after the person’s name.

24. No other practitioner licensed to practice a profession under any of the provisions of this subtitle shall be entitled to use the prefix “Dr.” or “Doctor” unless the licensed practitioner possesses an earned doctoral degree. Such a practitioner shall reference the degree held after the person’s name.

[C31, 35, §2510-d1; C39, §2510.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.74; 81 Acts, ch 66, §1]

84 Acts, ch 1075, §11; 87 Acts, ch 215, §40; 88 Acts, ch 1225, §10; 90 Acts, ch 1168, §27; 91 Acts, ch 228, §1; 91 Acts, ch 229, §4; 92 Acts, ch 1137, §7; 92 Acts, ch 1183, §4; 93 Acts, ch 86, §13; 95 Acts, ch 108, §4; 96 Acts, ch 1035, §4; 96 Acts, ch 1036, §21; 98 Acts, ch 1053, §19; 99 Acts, ch 101, §1; 2000 Acts, ch 1053, §3; 2001 Acts, ch 58, §7; 2003 Acts, ch 93, §1, 14; 2004 Acts, ch 1045, §2; 2004 Acts, ch 1175, §424, 433; 2007 Acts, ch 10, §61; 2007 Acts, ch 215, §246; 2008 Acts, ch 1088, §31; 2012 Acts, ch 1101, §5

Referred to in §148A.7

**147.75 Itinerants.** Repealed by 2008 Acts, ch 1088, § 78.

**147.76 Rules.**

The boards for the various professions shall adopt all necessary and proper rules to administer and interpret this chapter and chapters 148 through 158, except chapter 148D.

[C77, 79, 81, §147.76]

89 Acts, ch 83, §28; 92 Acts, ch 1097, §4; 2007 Acts, ch 10, §62; 2008 Acts, ch 1088, §32

**147.77 through 147.79** Repealed by 63 Acts, ch 123, § 1.

FEES

**147.80 Establishment of fees — administrative costs.**

1. Each board may by rule establish fees for the following based on the costs of sustaining the board and the actual costs of the service:

a. Examinations.

- b. Licensure, certification, or registration.
  - c. Renewal of licensure, certification, or registration.
  - d. Renewal of licensure, certification, or registration during the grace period.
  - e. Reinstatement or reactivation of licensure, certification, or registration.
  - f. Issuance of a certified statement that a person is licensed, registered, or has been issued a certificate to practice in this state.
  - g. Issuance of a duplicate license, registration, or certificate, which shall be so designated on its face. A board may require satisfactory proof that the original license, registration, or certificate issued by the board has been lost or destroyed.
  - h. Issuance of a renewal card.
  - i. Verification of licensure, registration, or certification.
  - j. Returned checks.
  - k. Inspections.
2. Each board shall annually prepare estimates of projected revenues to be generated by the fees received by the board as well as a projection of the fairly apportioned administrative costs and rental expenses attributable to the board. Each board shall annually review and adjust its schedule of fees to cover projected expenses.
3. The board of medicine, the board of pharmacy, the dental board, and the board of nursing shall retain individual executive officers, but shall make every effort to share administrative, clerical, and investigative staff to the greatest extent possible.
- [C97, §2576, 2597, 2590; S13, §2575-a30, -a38, -a39, 2582, 2583-a, -l, 2589-d, 2600-d; C24, 27, 31, 35, 39, §2516; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.80; 81 Acts, ch 2, §10(5), ch 5, §4(5)]
1. [C97, §2597; S13, §2600-d, -m; C24, 27, 31, 35, 39, §2516; C46, 50, 54, 58, 62, §147.80(1, 2, 7); C66, 71, 73, §147.80(1, 7); C75, 77, 79, 81, §147.80(1)]
  2. [C97, §2590; S13, §2589-b, -d; C24, 27, 31, 35, 39, §2516; C46, 50, 54, 58, 62, §147.80(5 - 7); C66, 71, 73, §147.80(1, 7); C75, 77, 79, 81, §147.80(2)]
  3. [C97, §2576; S13, §2576, 2582, 2583-a; C24, 27, 31, 35, 39, §2516; C46, 50, 54, 58, 62, §147.80(1 - 4); C66, 71, 73, §147.80(2, 7); C75, 77, 79, 81, §147.80(3)]
  4. [C75, 77, 79, 81, §147.80(4)]
  6. [C24, 27, 31, 35, 39, §2516; C46, 50, 54, 58, 62, 66, 71, 73, §147.80(3, 4, 7); C75, 77, 79, 81, §147.80(5)]
  7. [C24, 27, 31, 35, 39, §2516; C46, 50, 54, 58, 62, 66, 71, 73, §147.80(3, 4, 7); C75, 77, 79, 81, §147.80(6)]
  8. [C66, 71, 73, §147.80(3, 4, 7); C75, 77, 79, 81, §147.80(7)]
  10. [S13, §2583-l, -n; C24, 27, 31, 35, 39, §2516; C46, 50, 54, 58, 62, 66, 71, 73, §147.80(3, 4, 7); C75, 77, 79, 81, §147.80(8)]
  11. [C24, 27, 31, 35, 39, §2516; C46, 50, 54, 58, 62, 66, 71, 73, §147.80(5 - 7); C75, 77, 79, 81, §147.80(9)]
  12. [S13, §2575-a38, -a39; C24, 27, 31, 35, 39, §2516; C46, 50, 54, 58, 62, 66, 71, 73, §147.80(5 - 7); C75, 77, 79, 81, §147.80(10)]
  13. [S13, §2575-a30; C24, 27, 31, 35, 39, §2516; C46, 50, 54, 58, 62, §147.80(5 - 7); C66, §147.80(6, 7, 16, 17); C71, 73, §147.80(6, 7, 19, 20); C75, 77, 79, 81, §147.80(11)]
  14. [C66, §147.80(19); C71, 73, §147.80(22); C75, 77, 79, 81, §147.80(12)]
  15. [C27, §2516(5 - 7); C31, 35, 39, §2516(5 - 7, 11, 13); C46, 50, 54, 58, 62, §147.80(5 - 7, 11, 13); C66, 71, 73, §147.80(5 - 7, 10, 11); C75, 77, 79, 81, §147.80(13)]
  16. [C27, 31, 35, 39, §2516; C46, 50, 54, §147.80(5 - 7, 12, 13); C58, 62, 66, §147.80(5 - 7, 12 - 14); C71, 73, §147.80(5 - 7, 12 - 17); C75, 77, 79, 81, §147.80(14)]
  17. [C77, 79, 81, §147.80(15)]
  18. [C81, §147.80(16)]
  19. [C81, §147.80(17)]
  24. [S13, §2600-n; C24, 27, 31, 35, 39, §2516; C46, 50, 54, 58, 62, 66, 71, 73, §147.80(8); C75, §147.80(15); C77, 79, §147.80(16); C81, §147.80(18)]
  25. [C66, 71, 73, §147.80(18); C75, §147.80(16); C77, 79, §147.80(17); C81, §147.80(19)]
- 84 Acts, ch 1075, §12; 85 Acts, ch 168, §7; 85 Acts, ch 246, §1; 88 Acts, ch 1225, §11; 89 Acts, ch 240, §1; 91 Acts, ch 228, §2; 91 Acts, ch 229, §5; 92 Acts, ch 1183, §5; 92 Acts, ch 1205, §17;

93 Acts, ch 86, §14; 96 Acts, ch 1036, §22; 98 Acts, ch 1053, §20; 2000 Acts, ch 1002, §2; 2000 Acts, ch 1053, §4; 2001 Acts, ch 24, §31; 2001 Acts, ch 58, §8; 2003 Acts, ch 93, §2, 14; 2004 Acts, ch 1175, §425, 433; 2005 Acts, ch 175, §85; 2006 Acts, ch 1155, §5, 15; 2007 Acts, ch 10, §63; 2007 Acts, ch 218, §199, 200; 2008 Acts, ch 1088, §33; 2009 Acts, ch 133, §49

Referred to in §147.82, 148F.3, 154A.13, 155A.43, 157.4, 157.8, 157.11, 158.4, 158.7, 158.9

**147.81** Repealed by 81 Acts, ch 5, § 10; 82 Acts, ch 1005, § 9.

**147.82 Fee retention.**

All fees collected by a board listed in section 147.13 or by the department for the bureau of professional licensure, and fees collected pursuant to sections 124.301 and 147.80 and chapter 155A by the board of pharmacy, shall be retained by each board or by the department for the bureau of professional licensure. The moneys retained by a board shall be used for any of the board's duties, including but not limited to the addition of full-time equivalent positions for program services and investigations. Revenues retained by a board pursuant to this section shall be considered repayment receipts as defined in section 8.2. Notwithstanding section 8.33, moneys retained by a board pursuant to this section are not subject to reversion to the general fund of the state.

[C97, §2583; S13, §2575-a44, 2583-a, -s; C24, 27, 31, 35, 39, §2518; C46, 50, 54, 58, 62, 66, §147.82; C71, 73, §147.82, 153.4; C75, 77, 79, 81, §147.82]

2005 Acts, ch 175, §86; 2006 Acts, ch 1155, §6, 15; 2006 Acts, ch 1184, §86; 2007 Acts, ch 10, §184; 2008 Acts, ch 1088, §34

Referred to in §147.25, 153.37, 155A.43

VIOLATIONS — CRIMES — PUNISHMENT

**147.83 Injunction.**

Any person engaging in any business or in the practice of any profession for which a license is required by this subtitle without such license may be restrained by permanent injunction.

[C24, 27, 31, 35, 39, §2519; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.83]

94 Acts, ch 1132, §24; 96 Acts, ch 1036, §23; 98 Acts, ch 1053, §21

Referred to in §154C.2, 156.16

Injunctions, R.C.P. 1.1501 – 1.1511

**147.84 Forgeries.**

Any person who files or attempts to file with a board any false or forged diploma, certificate or affidavit of identification or qualification, or other document shall be guilty of a fraudulent practice.

[C97, §2580, 2595; S13, §2583-d; C24, 27, 31, 35, 39, §2520; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.84]

2008 Acts, ch 1088, §35

Referred to in §148.6

See also §714.8, chapter 715A

**147.85 Fraud.**

Any person who presents to a board a diploma or certificate of which the person is not the rightful owner, for the purpose of procuring a license, or who falsely impersonates anyone to whom a license has been issued by the board shall be guilty of a serious misdemeanor.

[C97, §2580, 2581, 2595; S13, §2575-a45, 2581, 2583-c, -d; C24, 27, 31, 35, 39, §2521; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.85]

2008 Acts, ch 1088, §36; 2009 Acts, ch 133, §50

Referred to in §148.6

**147.86 Penalties.**

Any person violating any provision of this or the following chapters of this subtitle, except insofar as the provisions apply or relate to or affect the practice of pharmacy, or where a specific penalty is otherwise provided, shall be guilty of a serious misdemeanor.

[C97, §2580, 2581, 2588, 2590, 2591, 2595; S13, §2575-a35, -a45, 2581, 2583-d, -r, 2589-d, 2600-o4; SS15, §2588; C24, 27, 31, 35, 39, §2522; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.86]

92 Acts, ch 1183, §6; 94 Acts, ch 1023, §12; 94 Acts, ch 1132, §25; 96 Acts, ch 1036, §24; 98 Acts, ch 1053, §22

Referred to in §147.107, 147.108, 147.109

## ENFORCEMENT PROVISIONS

**147.87 Enforcement.**

A board shall enforce the provisions of this chapter and the board's enabling statute and for that purpose may request the department of inspections and appeals to make necessary investigations. Every licensee and member of a board shall furnish the board or the department of inspections and appeals such evidence as the member or licensee may have relative to any alleged violation which is being investigated.

[C24, 27, 31, 35, 39, §2523; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.87]

90 Acts, ch 1204, §19; 94 Acts, ch 1132, §26; 96 Acts, ch 1036, §25; 98 Acts, ch 1053, §23; 2007 Acts, ch 10, §64; 2008 Acts, ch 1088, §37; 2009 Acts, ch 41, §53

Referred to in §152.10, 153.36, 156.9

Continuing education and regulation, chapter 272C

**147.88 Inspections and investigations.**

The department of inspections and appeals may perform inspections and investigations as required by this subtitle, except inspections and investigations for the board of medicine, board of pharmacy, board of nursing, and the dental board. The department of inspections and appeals shall employ personnel related to the inspection and investigative functions.

[C31, 35, §2523-c1; C39, §2523.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.88]

90 Acts, ch 1204, §20; 94 Acts, ch 1132, §27; 96 Acts, ch 1036, §26; 98 Acts, ch 1053, §24; 2007 Acts, ch 10, §65; 2007 Acts, ch 218, §201; 2008 Acts, ch 1088, §38

Referred to in §152.10, 153.36

**147.89 Report of violators.**

Every licensee and member of a board shall report to the board the name of any person without the required license if the licensee or member of the board has reason to believe the person is practicing the profession without a license.

[C24, 27, 31, 35, 39, §2524; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.89]

2007 Acts, ch 10, §66; 2008 Acts, ch 1088, §39; 2009 Acts, ch 41, §54

Referred to in §152.10, 153.36

**147.90 Rules and forms.** Repealed by 2008 Acts, ch 1088, § 78.**147.91 Publications.**

Each board shall provide access to the laws and rules regulating the board to the public upon request and shall make this information available through the internet.

[C24, 27, 31, 35, 39, §2526; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.91]

90 Acts, ch 1204, §22; 2001 Acts, ch 58, §9; 2007 Acts, ch 10, §67; 2008 Acts, ch 1088, §40

Referred to in §153.36

**147.92 Attorney general.**

Upon request of a board the attorney general shall institute in the name of the state the proper proceedings against any person charged by the board with violating any provision of this or the following chapters of this subtitle.

[S13, §2600-o7; C24, 27, 31, 35, 39, §2527; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.92]

94 Acts, ch 1132, §29; 94 Acts, ch 1173, §8; 96 Acts, ch 1036, §28; 98 Acts, ch 1053, §26; 2008 Acts, ch 1088, §41

Referred to in §153.36

**147.93 Prima facie evidence.**

The opening of an office or place of business for the practice of any profession for which a license is required by this subtitle, the announcing to the public in any way the intention to practice any such profession, the use of any professional degree or designation, or of any sign, card, circular, device, internet site, or advertisement, as a practitioner of any such profession, or as a person skilled in the same, shall be prima facie evidence of engaging in the practice of such profession.

[S13, §2575-a28, -a31, 2600-o; C24, 27, 31, 35, 39, §2528; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.93]

94 Acts, ch 1132, §30; 96 Acts, ch 1036, §29; 98 Acts, ch 1053, §27; 2008 Acts, ch 1088, §42; 2013 Acts, ch 90, §257

Code editor directive applied

**147.94 through 147.96** Repealed by 2008 Acts, ch 1088, § 79.

**147.97** Reserved.

**147.98 through 147.100** Repealed by 2008 Acts, ch 1088, § 79.

**147.101** Repealed by 74 Acts, ch 1086, § 198.

**147.102 through 147.103A** Repealed by 2008 Acts, ch 1088, § 79.

**147.104 Records.** Repealed by 2008 Acts, ch 1088, § 78.

**147.105** Reserved.

ANATOMIC PATHOLOGY  
SERVICES BILLING

**147.106 Anatomic pathology services — billing.**

1. A physician or a clinical laboratory located in this state or in another state that provides anatomic pathology services to a patient in this state shall present or cause to be presented a claim, bill, or demand for payment for such services only to the following persons:

- a. The patient who is the recipient of the services.
- b. The insurer or other third-party payor responsible for payment of the services.
- c. The hospital that ordered the services.
- d. The public health clinic or nonprofit clinic that ordered the services.
- e. The referring clinical laboratory, other than the laboratory of a physician's office or group practice, that ordered the services. A laboratory of a physician's office or group practice that ordered the services may be presented a claim, bill, or demand for payment if a physician in the physician's office or group practice is performing the professional component of the anatomic pathology services.
- f. A governmental agency or a specified public or private agent, agency, or organization that is responsible for payment of the services on behalf of the recipient of the services.

2. Except as provided under subsections 5 and 6, a clinical laboratory or a physician providing anatomic pathology services to patients in this state shall not, directly or indirectly, charge, bill, or otherwise solicit payment for such services unless the services were personally rendered by the clinical laboratory or the physician or under the direct supervision of the clinical laboratory or the physician in accordance with section 353 of the federal Public Health Service Act, 42 U.S.C. § 263a.

3. A person to whom a claim, bill, or demand for payment for anatomic pathology services is submitted is not required to pay the claim, bill, or demand for payment if the claim, bill, or demand for payment is submitted in violation of this section.

4. This section shall not be construed to mandate the assignment of benefits for anatomic pathology services as defined in this section.

5. This section does not prohibit claims or charges presented to a referring clinical laboratory, other than a laboratory of a physician's office or group practice unless in accordance with subsection 1, paragraph "e", by another clinical laboratory when samples are transferred between laboratories for the provision of anatomic pathology services.

6. This section does not prohibit claims or charges for anatomic pathology services presented on behalf of a public health clinic or nonprofit clinic that ordered the services provided that the clinic is identified on the claim or charge presented.

7. A violation of this section by a physician shall subject the physician to the disciplinary provisions of section 272C.3, subsection 2.

8. As used in this section:

a. "Anatomic pathology services" includes all of the following:

(1) Histopathology or surgical pathology, meaning the gross and microscopic examination and histologic processing of organ tissue performed by a physician or under the supervision of a physician.

(2) Cytopathology, meaning the examination of cells from fluids, aspirates, washings, brushings, or smears, including the Pap test examination, performed by a physician or under the supervision of a physician.

(3) Hematology, meaning the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician, and the examination of peripheral blood smears performed by a physician or under the supervision of a physician upon the request of an attending or treating physician or technologist that a blood smear be reviewed by a physician.

(4) Subcellular pathology and molecular pathology services performed by a physician or under the supervision of a physician.

(5) Bloodbanking services performed by a physician or under the supervision of a physician.

b. "Physician" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state or in another state.

2005 Acts, ch 10, §1; 2005 Acts, ch 179, §120; 2006 Acts, ch 1185, §73, 74; 2008 Acts, ch 1088, §95

#### DRUG AND LENS DISPENSING, SUPPLYING, AND PRESCRIBING

##### **147.107 Drug dispensing, supplying, and prescribing — limitations.**

1. A person, other than a pharmacist, physician, dentist, podiatric physician, or veterinarian who dispenses as an incident to the practice of the practitioner's profession, shall not dispense prescription drugs or controlled substances.

2. a. A pharmacist, physician, dentist, or podiatric physician who dispenses prescription drugs, including but not limited to controlled substances, for human use, may delegate nonjudgmental dispensing functions to staff assistants only when verification of the accuracy and completeness of the dispensing is determined by the pharmacist or practitioner in the pharmacist's or practitioner's physical presence. However, the physical presence

requirement does not apply when a pharmacist or practitioner is utilizing an automated dispensing system or when a pharmacist is utilizing a tech-check-tech program, as defined in section 155A.3. When using an automated dispensing system the pharmacist or practitioner shall utilize an internal quality control assurance plan that ensures accuracy for dispensing. When using a tech-check-tech program the pharmacist shall utilize an internal quality control assurance plan, in accordance with rules adopted by the board of pharmacy, that ensures accuracy for dispensing. Verification of automated dispensing and tech-check-tech accuracy and completeness remains the responsibility of the pharmacist or practitioner and shall be determined in accordance with rules adopted by the board of pharmacy, the board of medicine, the dental board, and the board of podiatry for their respective licensees.

b. A dentist, physician, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall report the fact that they dispense prescription drugs with the practitioner's respective board at least biennially.

c. A physician, dentist, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall offer to provide the patient with a written prescription that may be dispensed from a pharmacy of the patient's choice or offer to transmit the prescription orally, electronically, or by facsimile in accordance with section 155A.27 to a pharmacy of the patient's choice.

3. A physician assistant or registered nurse may supply, when pharmacist services are not reasonably available or when it is in the best interests of the patient, on the direct order of the supervising physician, a quantity of properly packaged and labeled prescription drugs, controlled substances, or contraceptive devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician assistant or registered nurse, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices.

4. Notwithstanding subsection 3, a physician assistant shall not dispense prescription drugs as an incident to the practice of the supervising physician or the physician assistant, but may supply, when pharmacist services are not reasonably available, or when it is in the best interests of the patient, a quantity of properly packaged and labeled prescription drugs, controlled substances, or medical devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician assistant, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices. Prescription drugs supplied under the provisions of this subsection shall be supplied for the purpose of accommodating the patient and shall not be sold for more than the cost of the drug and reasonable overhead costs, as they relate to supplying prescription drugs to the patient, and not at a profit to the physician or the physician assistant. If prescription drug supplying authority is delegated by a supervising physician to a physician assistant, a nurse or staff assistant may assist the physician assistant in providing that service. Rules shall be adopted by the board of physician assistants, after consultation with the board of pharmacy, to implement this subsection.

5. Notwithstanding subsection 1 and any other provision of this section to the contrary, a physician may delegate the function of prescribing drugs, controlled substances, and medical devices to a physician assistant licensed pursuant to chapter 148C. When delegated prescribing occurs, the supervising physician's name shall be used, recorded, or otherwise indicated in connection with each individual prescription so that the individual who dispenses or administers the prescription knows under whose delegated authority the physician assistant is prescribing. Rules relating to the authority of physician assistants to prescribe drugs, controlled substances, and medical devices pursuant to this subsection shall be adopted by the board of physician assistants, after consultation with the board of medicine and the board of pharmacy. However, the rules shall prohibit the prescribing of schedule II controlled substances which are listed as depressants pursuant to chapter 124.

6. Health care providers shall consider the instructions of the physician assistant to be instructions of the supervising physician if the instructions concern duties delegated to the physician assistant by a supervising physician.

7. Notwithstanding subsection 1, a family planning clinic may dispense birth control drugs and devices upon the order of a physician. Subsections 2 and 3 do not apply to a family planning clinic under this subsection.

8. Notwithstanding subsection 1, but subject to the limitations contained in subsections 2 and 3, a registered nurse who is licensed and registered as an advanced registered nurse practitioner and who qualifies for and is registered in a recognized nursing specialty may prescribe substances or devices, including controlled substances or devices, if the nurse is engaged in the practice of a nursing specialty regulated under rules adopted by the board of nursing in consultation with the board of medicine and the board of pharmacy.

9. Notwithstanding section 147.86, a person, including a pharmacist, who violates this section is guilty of a simple misdemeanor.

84 Acts, ch 1006, §1; 88 Acts, ch 1232, §1; 91 Acts, ch 238, §1; 91 Acts, ch 239, §1; 92 Acts, ch 1163, §37; 92 Acts, ch 1183, §10; 94 Acts, ch 1134, §1; 95 Acts, ch 108, §5; 2002 Acts, ch 1108, §13; 2003 Acts, ch 93, §3, 14; 2003 Acts, ch 108, §39; 2004 Acts, ch 1036, §8; 2004 Acts, ch 1101, §22; 2006 Acts, ch 1094, §1; 2007 Acts, ch 10, §78; 2007 Acts, ch 218, §202; 2008 Acts, ch 1016, §1; 2008 Acts, ch 1088, §43

Referred to in §152B.1, 154.1, 155A.2, 155A.4, 280.16

See also §154.1, 155A.4

Notwithstanding subsection 2 or section 155A.33, board of pharmacy authorized to approve a pilot or demonstration research project relating to authority of prescription validation and pharmacist ability to provide enhanced patient care; see 2011 Acts, ch 63, §36; 2012 Acts, ch 1113, §31; 2013 Acts, ch 138, §128

Section not amended; footnote revised

#### **147.108 Contact lens prescribing and dispensing.**

1. A person shall not dispense or adapt contact lenses without first receiving authorization to do so by a written, electronic, or facsimile prescription, except when authorized orally under subsection 2, from a person licensed under chapter 148 or 154. The board of optometry shall adopt rules relating to electronic or facsimile transmission of a prescription under this section.

2. After contact lenses have been adequately adapted and the patient released from initial follow-up care by a person licensed under chapter 148 or 154, the patient may request a copy, at no cost, of the contact lens prescription from that licensed person. A person licensed under chapter 148 or 154 shall not withhold a contact lens prescription after the requirements of this section have been met. The prescription, at the option of the prescriber, may be given orally only to a person who is actively practicing and licensed under chapter 148, 154, or 155A. The contact lens prescription shall contain an expiration date, at the discretion of the prescriber, but not to exceed eighteen months. The contact lens prescription shall contain the necessary requirements of the ophthalmic lens, and the prescription validation requirements as defined by rules adopted pursuant to this section. The prescription may contain adapting and material guidelines and may also contain specific instructions for use by the patient. For the purpose of this section, “*ophthalmic lens*” means one which has been fabricated to fill the requirements of a particular contact lens prescription, including pharmaceutical-delivering contact lenses as defined in section 154.1, subsection 3.

3. A person who fills a contact lens prescription shall maintain a file of a valid prescription for a period of two years.

4. Notwithstanding section 147.86, a person who violates this section is guilty of a simple misdemeanor for a first violation. Subsequent violations are governed by section 147.86.

94 Acts, ch 1098, §1; 2004 Acts, ch 1036, §9; 2007 Acts, ch 10, §79; 2008 Acts, ch 1088, §96; 2010 Acts, ch 1010, §1; 2012 Acts, ch 1004, §1

#### **147.109 Ophthalmic spectacle lens prescribing and dispensing.**

1. A person shall not dispense or adapt an ophthalmic spectacle lens or lenses without first receiving authorization to do so by a written, electronic, or facsimile prescription from a person licensed under chapter 148 or 154. For the purpose of this section, “*ophthalmic spectacle lens*” means one which has been fabricated to fill the requirements of a particular spectacle lens prescription. The board of optometry shall adopt rules relating to electronic or facsimile transmission of a prescription under this section.

2. Upon completion of an eye examination, a person licensed under chapter 148 or 154

shall furnish the patient a copy of their ophthalmic spectacle lens prescription at no cost. The ophthalmic spectacle lens prescription shall contain an expiration date. The ophthalmic spectacle lens prescription shall contain the requirements of the ophthalmic spectacle lens and the prescription validation requirements as defined by rules adopted pursuant to this section. The prescription, at the option of the prescriber, may contain adapting and material guidelines and may also contain specific instructions for use by the patient.

3. Upon request of a patient, a person licensed under chapter 148 or 154 shall provide the prescription of the patient, if the prescription has not expired, at no cost to another person licensed under chapter 148 or 154. The person licensed under chapter 148 or 154 shall accept the prescription and shall not require the patient to undergo an eye examination unless, due to observation or patient history, the licensee has reason to require an examination.

4. A dispenser shall maintain a file of a valid prescription for a period of two years.

5. Notwithstanding section 147.86, a person who violates this section is guilty of a simple misdemeanor for a first violation. Subsequent violations are governed by section 147.86.

94 Acts, ch 1098, §2; 2004 Acts, ch 1036, §10; 2007 Acts, ch 10, §80; 2008 Acts, ch 1088, §97

**147.110** Reserved.

## WOUNDS BY CRIMINAL VIOLENCE OR MOTOR VEHICLE

### **147.111 Report of treatment of wounds and other injuries.**

1. A person licensed under the provisions of this subtitle who administers any treatment to any person suffering a gunshot or stab wound or other serious injury, as defined in section 702.18, which appears to have been received in connection with the commission of a criminal offense, or a motor vehicle accident or crash, or to whom an application is made for treatment of any nature because of any such gunshot or stab wound or other serious injury, as defined in section 702.18, shall at once but not later than twelve hours thereafter, report that fact to the law enforcement agency within whose jurisdiction the treatment was administered or an application for treatment was made, or if ascertainable, to the law enforcement agency in whose jurisdiction the gunshot or stab wound or other serious injury occurred, stating the name of such person, the person's residence if ascertainable, and giving a brief description of the gunshot or stab wound or other serious injury.

2. A person certified under the provisions of chapter 147A who administers any treatment to any person suffering a gunshot or stab wound or other serious injury, as defined in section 702.18, which appears to have been received in connection with the commission of a criminal offense, or a motor vehicle accident or crash, or to whom an application is made for treatment of any nature because of any such gunshot or stab wound or other serious injury, may report that fact to the law enforcement agency within whose jurisdiction the treatment was administered or application for treatment was made, or if ascertainable, to the law enforcement agency in whose jurisdiction the gunshot or stab wound or other serious injury occurred, stating the name of the person, the person's residence if ascertainable, and giving a brief description of the gunshot or stab wound or other serious injury.

3. Any provision of law or rule of evidence relating to a confidential communication is suspended for communications under this section.

[C31, 35, §2537-d1; C39, §2537.7; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.111]

93 Acts, ch 100, §2; 94 Acts, ch 1132, §31; 96 Acts, ch 1036, §30; 98 Acts, ch 1053, §28; 99 Acts, ch 114, §8; 2010 Acts, ch 1127, §1

Referred to in §147.112, 331.653

### **147.112 Investigation and report by law enforcement agency.**

The law enforcement agency who has received any report required by this chapter and who has any reason to believe that the person injured was involved in the commission of any crime, either as perpetrator or victim, shall at once commence an investigation into the circumstances of the gunshot or stab wound or other serious injury and make a report of the investigation to the county attorney in whose jurisdiction the gunshot or stab wound or

other serious injury occurred. Law enforcement personnel shall not divulge any information received under the provisions of this section and section 147.111 to any person other than a law enforcing officer, and then only in connection with the investigation of the alleged commission of a crime.

[C31, 35, §2537-d2; C39, §2537.8; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.112]

93 Acts, ch 100, §3; 99 Acts, ch 114, §9

Referred to in §331.653

"Serious injury" definition, see §702.18

#### **147.113 Violations.**

Any person failing to make the report required herein shall be guilty of a simple misdemeanor.

[C31, 35, §2537-d3; C39, §2537.9; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §147.113]

## BURN INJURIES

#### **147.113A Report of burn injuries.**

Any person licensed under the provisions of this subtitle who administers any treatment to a person suffering a burn which appears to be of a suspicious nature on the body, a burn to the upper respiratory tract, a laryngeal edema due to the inhalation of super-heated air, or a burn injury that is likely to result in death, which appears to have been received in connection with the commission of a criminal offense, or to whom an application is made for treatment of any nature because of any such burn or burn injury shall at once but not later than twelve hours after treatment was administered or application was made report the fact to law enforcement. The report shall be made to the law enforcement agency within whose jurisdiction the treatment was administered or application was made, or if ascertainable, to the law enforcement agency in whose jurisdiction the burn or burn injury occurred, stating the name of such person, the person's residence if ascertainable, and giving a brief description of the burn or burn injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this section are concerned.

2003 Acts, ch 134, §1

## INSPECTOR FOR DENTAL BOARD

**147.114 Inspector.** Transferred to § 153.33, subsection 7; 2009 Acts, ch 133, § 192.

**147.115 through 147.134** Reserved.

## MALPRACTICE

#### **147.135 Peer review committees — nonliability — records and reports privileged and confidential.**

1. A person shall not be civilly liable as a result of acts, omissions, or decisions made in connection with the person's service on a peer review committee. However, such immunity from civil liability shall not apply if an act, omission, or decision is made with malice.

2. As used in this subsection, "*peer review records*" means all complaint files, investigation files, reports, and other investigative information relating to licensee discipline or professional competence in the possession of a peer review committee or an employee of a peer review committee. As used in this subsection, "*peer review committee*" does not include licensing boards. Peer review records are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion for release to a person other than an affected licensee or a peer review committee, and are not admissible in evidence in

a judicial or administrative proceeding other than a proceeding involving licensee discipline or a proceeding brought by a licensee who is the subject of a peer review record and whose competence is at issue. A person shall not be liable as a result of filing a report or complaint with a peer review committee or providing information to such a committee, or for disclosure of privileged matter to a peer review committee. A person present at a meeting of a peer review committee shall not be permitted to testify as to the findings, recommendations, evaluations, or opinions of the peer review committee in any judicial or administrative proceeding other than a proceeding involving licensee discipline or a proceeding brought by a licensee who is the subject of a peer review committee meeting and whose competence is at issue. Information or documents discoverable from sources other than the peer review committee do not become nondiscoverable from the other sources merely because they are made available to or are in the possession of a peer review committee. However, such information relating to licensee discipline may be disclosed to an appropriate licensing authority in any jurisdiction in which the licensee is licensed or has applied for a license. If such information indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. This subsection shall not preclude the discovery of the identification of witnesses or documents known to a peer review committee. Any final written decision and finding of fact by a licensing board in a disciplinary proceeding is a public record. Upon appeal by a licensee of a decision of a board, the entire case record shall be submitted to the reviewing court. In all cases where privileged and confidential information under this subsection becomes discoverable, admissible, or part of a court record the identity of an individual whose privilege has been involuntarily waived shall be withheld.

3. a. A full and confidential report concerning any final hospital disciplinary action approved by a hospital board of trustees that results in a limitation, suspension, or revocation of a physician's privilege to practice for reasons relating to the physician's professional competence or concerning any voluntary surrender or limitation of privileges for reasons relating to professional competence shall be made to the board of medicine by the hospital administrator or chief of medical staff within ten days of such action. The board of medicine shall investigate the report and take appropriate action. These reports shall be privileged and confidential as though included in and subject to the requirements for peer review committee information in subsection 2. Persons making these reports and persons participating in resulting proceedings related to these reports shall be immune from civil liability with respect to the making of the report or participation in resulting proceedings. As used in this subsection, "physician" means a person licensed pursuant to chapter 148.

b. Notwithstanding subsection 2, if the board of medicine conducts an investigation based on a complaint received or upon its own motion, a hospital pursuant to subpoena shall make available information and documents requested by the board, specifically including reports or descriptions of any complaints or incidents concerning an individual who is the subject of the board's investigation, even though the information and documents are also kept for, are the subject of, or are being used in peer review by the hospital. However, the deliberations, testimony, decisions, conclusions, findings, recommendations, evaluations, work product, or opinions of a peer review committee or its members and those portions of any documents or records containing or revealing information relating thereto shall not be subject to the board's request for information, subpoena, or other legal compulsion. All information and documents received by the board from a hospital under this section shall be confidential pursuant to section 272C.6, subsection 4.

[C77, 79, 81, §147.135]

86 Acts, ch 1211, §14; 90 Acts, ch 1086, §7; 2007 Acts, ch 10, §82; 2009 Acts, ch 133, §51

Referred to in §139A.22, 147.1, 147A.24

#### **147.136 Scope of recovery.**

1. Except as otherwise provided in subsection 2, in an action for damages for personal injury against a physician and surgeon, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, or nurse licensed to practice that profession in this state, or against a hospital licensed for operation in this state, based on the alleged

negligence of the practitioner in the practice of the profession or occupation, or upon the alleged negligence of the hospital in patient care, in which liability is admitted or established, the damages awarded shall not include actual economic losses incurred or to be incurred in the future by the claimant by reason of the personal injury, including but not limited to the cost of reasonable and necessary medical care, rehabilitation services, and custodial care, and the loss of services and loss of earned income, to the extent that those losses are replaced or are indemnified by insurance, or by governmental, employment, or service benefit programs or from any other source.

2. This section shall not bar recovery of economic losses replaced or indemnified by any of the following:

a. Benefits received under the medical assistance program under chapter 249A.

b. The assets of the claimant or of the members of the claimant's immediate family.

[C77, 79, 81, §147.136]

95 Acts, ch 108, §6; 2008 Acts, ch 1088, §141; 2011 Acts, ch 129, §85, 156

Referred to in §668.14

#### **147.137 Consent in writing.**

A consent in writing to any medical or surgical procedure or course of procedures in patient care which meets the requirements of this section shall create a presumption that informed consent was given. A consent in writing meets the requirements of this section if it:

1. Sets forth in general terms the nature and purpose of the procedure or procedures, together with the known risks, if any, of death, brain damage, quadriplegia, paraplegia, the loss or loss of function of any organ or limb, or disfiguring scars associated with such procedure or procedures, with the probability of each such risk if reasonably determinable.

2. Acknowledges that the disclosure of that information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner.

3. Is signed by the patient for whom the procedure is to be performed, or if the patient for any reason lacks legal capacity to consent, is signed by a person who has legal authority to consent on behalf of that patient in those circumstances.

[C77, 79, 81, §147.137]

#### **147.138 Contingent fee of attorney reviewed by court.**

In any action for personal injury or wrongful death against any physician and surgeon, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor or nurse licensed under this chapter or against any hospital licensed under chapter 135B, based upon the alleged negligence of the licensee in the practice of that profession or occupation, or upon the alleged negligence of the hospital in patient care, the court shall determine the reasonableness of any contingent fee arrangement between the plaintiff and the plaintiff's attorney.

[C77, 79, 81, §147.138]

95 Acts, ch 108, §7; 2008 Acts, ch 1088, §141

#### **147.139 Expert witness standards.**

If the standard of care given by a physician and surgeon or an osteopathic physician and surgeon licensed pursuant to chapter 148, or a dentist licensed pursuant to chapter 153, is at issue, the court shall only allow a person to qualify as an expert witness and to testify on the issue of the appropriate standard of care if the person's medical or dental qualifications relate directly to the medical problem or problems at issue and the type of treatment administered in the case.

86 Acts, ch 1211, §16; 2008 Acts, ch 1088, §98

**147.140 through 147.150** Reserved.

SPEECH PATHOLOGISTS AND AUDIOLOGISTS

147.151 and 147.152 Repealed by 2008 Acts, ch 1088, § 79. See § 154F.1, 154F.2.

147.153 through 147.156 Repealed by 2008 Acts, ch 1088, § 78. See § 154F.3 through 154F.6.

147.157 through 147.160 Reserved.

BASIC EMERGENCY MEDICAL CARE PROVIDERS

147.161 Repealed by 95 Acts, ch 41, § 27. See chapter 147A.

CHAPTER 147A

EMERGENCY MEDICAL CARE — TRAUMA CARE

Referred to in §68B.2A, 135.11, 135.24, 147.111, 272C.1, 321.267A, 422.12, 708.3A, 719.1, 719.1A

Enforcement, §147.87, 147.92  
Penalty, general, §147.86

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147A.10	Exemptions from liability in certain circumstances.		147A.24	Trauma system advisory council established.
147A.11	Prohibited acts.		147A.25	System evaluation and quality improvement committee. Repealed by 2013 Acts, ch 129, §57.
147A.12	Registered nurse exception.		147A.26	Trauma registry.
147A.13	Physician assistant exception.		147A.27	Department to adopt rules.
			147A.28	Prohibited acts.

SUBCHAPTER I  
EMERGENCY MEDICAL CARE

**147A.1 Definitions.**

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

1. “*Department*” means the Iowa department of public health.
2. “*Director*” means the director of the Iowa department of public health.
3. “*Emergency medical care*” means such medical procedures as:
  - a. Administration of intravenous solutions.
  - b. Intubation.
  - c. Performance of cardiac defibrillation and synchronized cardioversion.
  - d. Administration of emergency drugs as provided by rule by the department.
  - e. Any other medical procedure approved by the department, by rule, as appropriate to be performed by emergency medical care providers who have been trained in that procedure.
4. “*Emergency medical care provider*” means an individual trained to provide emergency and nonemergency medical care at the emergency medical responder, emergency medical technician, advanced emergency medical technician, paramedic, or other certification levels adopted by rule by the department, who has been issued a certificate by the department.
5. “*Emergency medical services*” or “*EMS*” means an integrated medical care delivery system to provide emergency and nonemergency medical care at the scene or during out-of-hospital patient transportation in an ambulance.
6. “*Emergency medical services medical director*” means a physician licensed under chapter 148, who is responsible for overall medical direction of an emergency medical services program and who has completed a medical director workshop, sponsored by the department, within one year of assuming duties. An emergency medical services medical director who receives no compensation for the performance of the director’s volunteer duties under this chapter shall be considered a state volunteer as provided in section 669.24 while performing volunteer duties as an emergency medical services medical director.
7. “*Physician*” means an individual licensed under chapter 148.
8. “*Service program*” or “*service*” means any medical care ambulance service or nontransport service that has received authorization from the department under section 147A.5.
9. “*Training program*” means an Iowa college approved by the north central association of colleges and schools or an Iowa hospital authorized by the department to conduct emergency medical care services training.

[C79, 81, §147A.1]

84 Acts, ch 1287, §1; 86 Acts, ch 1245, §1142; 89 Acts, ch 89, §6; 93 Acts, ch 58, §7; 95 Acts, ch 41, §9; 99 Acts, ch 141, §21; 2008 Acts, ch 1088, §99; 2009 Acts, ch 56, §3; 2010 Acts, ch 1149, §6 – 8

Referred to in §85.61, 97B.49B, 100B.14, 100B.31, 139A.2, 141A.1, 144A.2, 144D.1, 321.423, 422.12, 708.3A, 724.6

**147A.1A Lead agency.**

The department is designated as the lead agency for coordinating and implementing the provision of emergency medical services in this state.

93 Acts, ch 58, §2

**147A.2 Council established — terms of office.**

1. An EMS advisory council shall be appointed by the director. Membership of the council shall be comprised of individuals nominated from, but not limited to, the following state or national organizations: Iowa osteopathic medical association, Iowa medical society, American college of emergency physicians, Iowa physician assistant society, Iowa academy of family physicians, university of Iowa hospitals and clinics, American academy of emergency medicine, American academy of pediatrics, Iowa EMS association, Iowa firefighters association, Iowa professional fire fighters, EMS education programs committee, Iowa nurses association, Iowa hospital association, and the Iowa state association of

counties. The council shall also include at least two at-large members who are volunteer emergency medical care providers and a representative of a private service program.

2. The EMS advisory council shall advise the director and develop policy recommendations concerning the regulation, administration, and coordination of emergency medical services in the state.

95 Acts, ch 41, §10; 98 Acts, ch 1100, §18; 2001 Acts, ch 74, §5; 2010 Acts, ch 1149, §9; 2011 Acts, ch 25, §18

**147A.3 Meetings of the council — quorum — expenses.**

Membership, terms of office, quorum, and expenses shall be determined by the director pursuant to chapter 135.

95 Acts, ch 41, §11

**147A.4 Rulemaking authority.**

1. *a.* The department shall adopt rules required or authorized by this subchapter pertaining to the operation of service programs which have received authorization under section 147A.5 to utilize the services of certified emergency medical care providers. These rules shall include but need not be limited to requirements concerning physician supervision, necessary equipment and staffing, and reporting by service programs which have received the authorization pursuant to section 147A.5.

*b.* The director, pursuant to rule, may grant exceptions and variances from the requirements of rules adopted under this subchapter for any service program. Exceptions or variations shall be reasonably related to undue hardships which existing services experience in complying with this subchapter or the rules adopted pursuant to this subchapter. Services requesting exceptions and variances shall be subject to other applicable rules adopted pursuant to this subchapter.

2. The department shall adopt rules required or authorized by this subchapter pertaining to the examination and certification of emergency medical care providers. These rules shall include, but need not be limited to, requirements concerning prerequisites, training, and experience for emergency medical care providers and procedures for determining when individuals have met these requirements. The department shall adopt rules to recognize the previous EMS training and experience of emergency medical care providers transitioning to the emergency medical responder, emergency medical technician, advanced emergency medical technician, and paramedic levels. The department may require additional training and examinations as necessary and appropriate to ensure that individuals seeking transition to another level have met the knowledge and skill requirements. All requirements for transition to another level, including fees, shall be adopted by rule.

3. The department shall establish the fee for the examination of the emergency medical care providers to cover the administrative costs of the examination program.

4. The department shall adopt rules required or authorized by this subchapter pertaining to the operation of training programs. These rules shall include but need not be limited to requirements concerning curricula, resources, facilities, and staff.

[C79, 81, §147A.4; 82 Acts, ch 1005, §1, 2]

84 Acts, ch 1287, §4; 86 Acts, ch 1245, §1143; 89 Acts, ch 89, §7; 93 Acts, ch 58, §3; 95 Acts, ch 41, §12, 28; 99 Acts, ch 141, §22; 2009 Acts, ch 133, §198; 2010 Acts, ch 1149, §10

Referred to in §147A.6

**147A.5 Applications for emergency medical care services — approval — denial, probation, suspension, or revocation.**

1. A service program in this state that desires to provide emergency medical care in the out-of-hospital setting shall apply to the department for authorization to establish a program for delivery of the care at the scene of an emergency, during transportation to a hospital, during transfer from one medical care facility to another or to a private residence, or while in the hospital emergency department, and until care is directly assumed by a physician or by authorized hospital personnel.

2. The department shall approve an application submitted in accordance with subsection

1 when the department is satisfied that the program proposed by the application will be operated in compliance with this subchapter and the rules adopted pursuant to this subchapter.

3. The department may deny an application for authorization, or may place on probation, suspend or revoke the authorization of, or otherwise discipline a service program with an existing authorization if the department finds that the service program has not been or will not be operated in compliance with this subchapter and the rules adopted pursuant to this subchapter, or that there is insufficient assurance of adequate protection for the public. The authorization denial or period of probation, suspension, or revocation, or other disciplinary action shall be effected and may be appealed as provided by section 17A.12.

[C79, 81, §147A.5]

84 Acts, ch 1287, §5; 86 Acts, ch 1245, §1144; 89 Acts, ch 89, §8; 95 Acts, ch 41, §13; 2010 Acts, ch 1149, §11

Referred to in §147A.1, 147A.4

#### **147A.6 Emergency medical care provider certificates — renewal.**

1. The department, upon application and receipt of the prescribed fee, shall issue a certificate to an individual who has met all of the requirements for emergency medical care provider certification established by the rules adopted under section 147A.4, subsection 2.

2. All fees received pursuant to this section shall be deposited in the emergency medical services fund established in section 135.25.

2. Emergency medical care provider certificates are valid for the multiyear period determined by the department, unless sooner suspended or revoked. The certificate shall be renewed upon application of the holder and receipt of the prescribed fee if the holder has satisfactorily completed continuing medical education programs as required by rule.

[C79, 81, §147A.6; 82 Acts, ch 1005, §3]

84 Acts, ch 1287, §6; 89 Acts, ch 89, §9; 93 Acts, ch 58, §7; 95 Acts, ch 41, §14; 97 Acts, ch 6, §1

Referred to in §232.68

#### **147A.7 Denial, suspension or revocation of certificates — hearing — appeal.**

1. The department may deny an application for issuance or renewal of an emergency medical care provider certificate, or suspend or revoke the certificate when it finds that the applicant or certificate holder is guilty of any of the following acts or offenses:

- a. Negligence in performing authorized services.
- b. Failure to follow the directions of the supervising physician.
- c. Rendering treatment not authorized under this subchapter.
- d. Fraud in procuring certification.
- e. Professional incompetency.
- f. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
- g. Habitual intoxication or addiction to the use of drugs.
- h. Fraud in representations as to skill or ability.
- i. Willful or repeated violations of this subchapter or of rules adopted pursuant to this subchapter.
- j. Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to the practice of an emergency medical care provider. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.
- k. Having certification to practice as an emergency medical care provider revoked or suspended, or having other disciplinary action taken by a licensing or certifying authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.
2. A determination of mental incompetence by a court of competent jurisdiction

automatically suspends a certificate for the duration of the certificate unless the department orders otherwise.

3. A denial, suspension or revocation under this section shall be effected, and may be appealed in accordance with the rules of the department established pursuant to chapter 272C.

[C79, 81, §147A.7]

84 Acts, ch 1287, §7; 89 Acts, ch 89, §10; 93 Acts, ch 58, §4, 7; 95 Acts, ch 41, §15, 16; 99 Acts, ch 141, §23

#### **147A.8 Authority of certified emergency medical care provider.**

An emergency medical care provider properly certified under this subchapter may:

1. Render emergency and nonemergency medical care, rescue, and lifesaving services in those areas for which the emergency medical care provider is certified, as defined and approved in accordance with the rules of the department, at the scene of an emergency, during transportation to a hospital or while in the hospital emergency department, and until care is directly assumed by a physician or by authorized hospital personnel.

2. Function in any hospital or any other entity in which health care is ordinarily provided only when under the direct supervision, as defined by rules adopted pursuant to chapter 17A, of a physician, when the emergency care provider is any of the following:

a. Enrolled as a student or participating as a preceptor in a training program approved by the department or an agency authorized in another state to provide initial EMS education and approved by the department.

b. Fulfilling continuing education requirements as defined by rule.

c. Employed by or assigned to a hospital or other entity in which health care is ordinarily provided only when under the direct supervision of a physician, as a member of an authorized service program, or in an individual capacity, by rendering lifesaving services in the facility in which employed or assigned pursuant to the emergency medical care provider's certification and under the direct supervision of a physician, physician assistant, or registered nurse. An emergency medical care provider shall not routinely function without the direct supervision of a physician, physician assistant, or registered nurse. However, when the physician, physician assistant, or registered nurse cannot directly assume emergency care of the patient, the emergency medical care provider may perform without direct supervision emergency medical care procedures for which that individual is certified if the life of the patient is in immediate danger and such care is required to preserve the patient's life.

d. Employed by or assigned to a hospital or other entity in which health care is ordinarily provided only when under the direct supervision of a physician, as a member of an authorized service program, or in an individual capacity, to perform nonlifesaving procedures for which those individuals have been certified and are designated in a written job description. Such procedures may be performed after the patient is observed by and when the emergency medical care provider is under the supervision of the physician, physician assistant, or registered nurse, including when the registered nurse is not acting in the capacity of a physician designee, and where the procedure may be immediately abandoned without risk to the patient.

[C79, 81, §147A.8]

84 Acts, ch 1287, §8; 89 Acts, ch 89, §11; 93 Acts, ch 58, §5, 7; 93 Acts, ch 107, §1; 95 Acts, ch 41, §17; 99 Acts, ch 141, §24; 2000 Acts, ch 1009, §1; 2001 Acts, ch 58, §10; 2009 Acts, ch 41, §263; 2010 Acts, ch 1149, §12

#### **147A.9 Remote supervision — emergency communication failure — authorization to initiate emergency procedures.**

1. When voice contact or a telemetered electrocardiogram is monitored by a physician, physician's designee, or physician assistant, and direct communication is maintained, an emergency medical care provider may upon order of the monitoring physician or upon standing orders of a physician transmitted by the monitoring physician's designee

or physician assistant perform any emergency medical care procedure for which that emergency medical care provider is certified.

2. If communications fail during an emergency or nonemergency situation, the emergency medical care provider may perform any emergency medical care procedure for which that individual is certified and which is included in written protocols if in the judgment of the emergency medical care provider the life of the patient is in immediate danger and such care is required to preserve the patient's life.

3. The department shall adopt rules to authorize medical care procedures which can be initiated in accordance with written protocols prior to the establishment of communication.

[C79, 81, §147A.9]

84 Acts, ch 1287, §9; 89 Acts, ch 89, §12; 93 Acts, ch 58, §6, 7; 93 Acts, ch 107, §2; 95 Acts, ch 41, §18; 99 Acts, ch 141, §25

#### **147A.10 Exemptions from liability in certain circumstances.**

1. A physician, physician's designee, advanced registered nurse practitioner, or physician assistant who gives orders, either directly or via communications equipment from some other point, or via standing protocols to an appropriately certified emergency medical care provider, registered nurse, or licensed practical nurse at the scene of an emergency, and an appropriately certified emergency medical care provider, registered nurse, or licensed practical nurse following the orders, are not subject to criminal liability by reason of having issued or executed the orders, and are not liable for civil damages for acts or omissions relating to the issuance or execution of the orders unless the acts or omissions constitute recklessness.

2. A physician, physician's designee, advanced registered nurse practitioner, physician assistant, registered nurse, licensed practical nurse, or emergency medical care provider shall not be subject to civil liability solely by reason of failure to obtain consent before rendering emergency medical, surgical, hospital or health services to any individual, regardless of age, when the patient is unable to give consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care.

3. An act of commission or omission of any appropriately certified emergency medical care provider, registered nurse, licensed practical nurse, or physician assistant, while rendering emergency medical care under the responsible supervision and control of a physician to a person who is deemed by them to be in immediate danger of serious injury or loss of life, shall not impose any liability upon the certified emergency medical care provider, registered nurse, licensed practical nurse, or physician assistant, the supervising physician, physician designee, advanced registered nurse practitioner, or any hospital, or upon the state, or any county, city or other political subdivision, or the employees of any of these entities; provided that this section shall not relieve any person of liability for civil damages for any act of commission or omission which constitutes recklessness.

[C79, 81, §147A.10]

84 Acts, ch 1287, §10; 89 Acts, ch 89, §13; 93 Acts, ch 107, §3; 95 Acts, ch 41, §19

Referred to in §147A.12

#### **147A.11 Prohibited acts.**

1. Any person not certified as required by this subchapter who claims to be an emergency medical care provider, or who uses any other term to indicate or imply that the person is an emergency medical care provider, or who acts as an emergency medical care provider without having obtained the appropriate certificate under this subchapter, is guilty of a class "D" felony.

2. An owner of an unauthorized service program in this state who operates or purports to operate a service program, or who uses any term to indicate or imply authorization without having obtained the appropriate authorization under this subchapter, is guilty of a class "D" felony.

3. Any person who imparts or conveys, or causes to be imparted or conveyed, or attempts to impart or convey false information concerning the need for assistance of a service program

or of any personnel or equipment thereof, knowing such information to be false, is guilty of a serious misdemeanor.

[C79, 81, §147A.11]

84 Acts, ch 1287, §11; 89 Acts, ch 89, §14; 95 Acts, ch 41, §20; 2010 Acts, ch 1149, §13

**147A.12 Registered nurse exception.**

1. This subchapter does not restrict a registered nurse, licensed pursuant to chapter 152, from staffing an authorized service program provided the registered nurse can document equivalency through education and additional skills training essential in the delivery of out-of-hospital emergency care. The equivalency shall be accepted when:

a. Documentation has been reviewed and approved at the local level by the medical director of the service program in accordance with the rules of the board of nursing developed jointly with the department.

b. Authorization has been granted to that service program by the department.

2. Section 147A.10 applies to a registered nurse in compliance with this section.

84 Acts, ch 1287, §12; 85 Acts, ch 129, §1; 89 Acts, ch 89, §15; 95 Acts, ch 41, §21; 2010 Acts, ch 1149, §14

**147A.13 Physician assistant exception.**

This subchapter does not restrict a physician assistant, licensed pursuant to chapter 148C, from staffing an authorized service program if the physician assistant can document equivalency through education and additional skills training essential in the delivery of out-of-hospital emergency care. The equivalency shall be accepted when:

1. Documentation has been reviewed and approved at the local level by the medical director of the service program in accordance with the rules of the board of physician assistants developed after consultation with the department.

2. Authorization has been granted to that service program by the department.

93 Acts, ch 107, §4; 95 Acts, ch 41, §22; 2007 Acts, ch 10, §85; 2010 Acts, ch 1149, §15

**147A.14 Enforcement.**

Investigators authorized by the department have the powers and status of peace officers when enforcing this chapter.

99 Acts, ch 141, §26

**147A.15 Automated external defibrillator equipment — penalty.**

Any person who damages, wrongfully takes or withholds, or removes any component of automated external defibrillator equipment located in a public or privately owned location, including batteries installed to operate the equipment, is guilty of a serious misdemeanor.

2006 Acts, ch 1184, §89

**147A.16 Exception for care within scope of certification.**

1. This subchapter does not apply to a registered member of the national ski patrol system, an industrial safety officer, a lifeguard, or a person employed or volunteering in a similar capacity in which the person provides on-site emergency medical care at a facility solely to the patrons or employees of that facility, provided that such person provides emergency medical care only within the scope of the person's training and certification and the person does not claim to be a certified emergency medical care provider or use any other term to indicate or imply that the person is a certified emergency medical care provider.

2. This subchapter does not apply to the national ski patrol system or any similar system in which the system provides on-site emergency medical care at a facility solely to the patrons or employees of that facility, provided that such system does not provide transportation to a hospital or other medical facility and provided that such system does not use any term to indicate or imply authorization to transport patients to a hospital or other medical facility without having obtained proper authorization to transport patients to a hospital or other medical facility under this subchapter.

2006 Acts, ch 1078, §1

**147A.17 Applications for emergency medical care services training programs — approval or denial — disciplinary actions.**

1. An Iowa college approved by the north central association of colleges and schools or an Iowa hospital in this state that desires to provide emergency medical care services training leading to certification as an emergency medical care provider shall apply to the department for authorization to establish a training program.

2. The department shall approve an application submitted in accordance with subsection 1 when the department is satisfied that the program proposed by the application will be operated in compliance with this subchapter and the rules adopted pursuant to this subchapter.

3. The department may deny an application for authorization, or may place on probation, suspend or revoke the authorization of, or otherwise discipline a training program with an existing authorization if the department finds reason to believe the program has not been or will not be operated in compliance with this subchapter and the rules adopted pursuant to this subchapter, or that there is insufficient assurance of adequate protection for the public. The authorization denial, period of probation, suspension, or revocation, or other disciplinary action shall be effected and may be appealed as provided by section 17A.12.

2010 Acts, ch 1149, §16

**147A.18 and 147A.19** Reserved.

**SUBCHAPTER II****STATEWIDE TRAUMA CARE SYSTEM****147A.20 Short title.**

This subchapter may be cited as the “*Iowa Trauma Care System Development Act*”.  
95 Acts, ch 40, §1

**147A.21 Definitions.**

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

1. “*Categorization*” means a preliminary determination by the department that a hospital or emergency care facility is capable of providing trauma care in accordance with criteria adopted pursuant to chapter 17A for level I, II, III, and IV care capabilities.

2. “*Department*” means the Iowa department of public health.

3. “*Director*” means the director of public health.

4. “*Emergency care facility*” means a physician’s office, clinic, or other health care center which provides emergency medical care in conjunction with other primary care services.

5. “*Hospital*” means a facility licensed under chapter 135B, or a comparable emergency care facility located and licensed in another state.

6. “*Trauma*” means a single or multisystem life-threatening or limb-threatening injury, or an injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

7. “*Trauma care facility*” means a hospital or emergency care facility which provides trauma care and has been verified by the department as having level I, II, III, or IV care capabilities and issued a certificate of verification pursuant to section 147A.23, subsection 2, paragraph “c”.

8. “*Trauma care system*” means an organized approach to providing personnel, facilities, and equipment for effective and coordinated trauma care.

9. “*Verification*” means a formal process by which the department certifies a hospital or emergency care facility’s capacity to provide trauma care in accordance with criteria established for level I, II, III, and IV trauma care facilities.

95 Acts, ch 40, §2

**147A.22 Legislative findings and intent — purpose.**

The general assembly finds the following:

1. Trauma is a serious health problem in the state of Iowa and is the leading cause of death of younger Iowans. The death and disability associated with traumatic injury contributes to the significant medical expenses and lost work, and adversely affects the productivity of Iowans.

2. Optimal trauma care is limited in many parts of the state. With health care delivery in transition, access to quality trauma and emergency medical care continues to challenge our rural communities.

3. The goal of a statewide trauma care system is to coordinate the medical needs of the injured person with an integrated system of optimal and cost-effective trauma care. The result of a well-coordinated statewide trauma care system is to reduce the incidences of inadequate trauma care and preventable deaths, minimize human suffering, and decrease the costs associated with preventable mortality and morbidity.

4. The development of the Iowa trauma care system will achieve these goals while meeting the unique needs of the rural residents of the state.

95 Acts, ch 40, §3

**147A.23 Trauma care system development.**

1. The department is designated as a lead agency in this state responsible for the development of a statewide trauma care system.

2. The department, in consultation with the trauma system advisory council, shall develop, coordinate, and monitor a statewide trauma care system. This system shall include, but not be limited to, the following:

a. The categorization of all hospitals and emergency care facilities by the department as to their capacity to provide trauma care services. The categorization shall be determined by the department from self-reported information provided to the department by the hospital or emergency care facility. This categorization shall not be construed to imply any guarantee on the part of the department as to the level of trauma care services available at the hospital or emergency care facility.

b. The issuance of a certificate of verification of all categorized hospitals and emergency care facilities from the department at the level preferred by the hospital or emergency care facility. The standards and verification process shall be established by rule and may vary as appropriate by level of trauma care capability. To the extent possible, the standards and verification process shall be coordinated with other applicable accreditation and licensing standards.

c. Upon verification and the issuance of a certificate of verification, a hospital or emergency care facility agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards as required by the trauma care criteria established by rule under this subchapter. Verifications are valid for a period of three years or as determined by the department and are renewable. As part of the verification and renewal process, the department may conduct periodic on-site reviews of the services and facilities of the hospital or emergency care facility.

d. The department is responsible for the funding of the administrative costs of this subchapter. Any funds received by the department for this purpose shall be deposited in the emergency medical services fund established in section 135.25.

e. This section shall not be construed to limit the number and distribution of level I, II, III, and IV categorized and verified trauma care facilities in a community or region.

95 Acts, ch 40, §4

Referred to in §147A.21

**147A.24 Trauma system advisory council established.**

1. A trauma system advisory council is established. The following organizations or officials may recommend a representative to the council:

a. American academy of pediatrics.

b. American college of emergency physicians, Iowa chapter.

- c. American college of surgeons, Iowa chapter.
  - d. Department of public health.
  - e. Governor's traffic safety bureau.
  - f. Iowa academy of family physicians.
  - g. Iowa emergency medical services association.
  - h. Iowa emergency nurses association.
  - i. Iowa hospital association representing rural hospitals.
  - j. Iowa hospital association representing urban hospitals.
  - k. Iowa medical society.
  - l. Iowa osteopathic medical society.
  - m. Iowa physician assistant society.
  - n. Iowa society of anesthesiologists.
  - o. Orthopedic system advisory council of the American academy of orthopedic surgeons, Iowa representative.
  - p. Rehabilitation services delivery representative.
  - q. Iowa's Medicare quality improvement organization.
  - r. State medical examiner.
  - s. Trauma nurse coordinator representing a trauma registry hospital.
  - t. University of Iowa, injury prevention research center.
2. The council shall be appointed by the director from the recommendations of the organizations in subsection 1 for terms of two years. Vacancies on the council shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed.
3. The voting members of the council shall elect a chairperson and a vice chairperson and other officers as the council deems necessary. The officers shall serve until their successors are elected and qualified.
4. The council shall do all of the following:
- a. Advise the department on issues and strategies to achieve optimal trauma care delivery throughout the state.
  - b. Assist the department in the implementation of an Iowa trauma care plan.
  - c. Develop criteria for the categorization of all hospitals and emergency care facilities according to their trauma care capabilities. These categories shall be for levels I, II, III, and IV, based on the most current guidelines published by the American college of surgeons committee on trauma, the American college of emergency physicians, and the model trauma care plan of the United States department of health and human services' health resources and services administration.
  - d. Develop a process for the verification of the trauma care capacity of each facility and the issuance of a certificate of verification.
  - e. Develop standards for medical direction, trauma care, triage and transfer protocols, and trauma registries.
  - f. Promote public information and education activities for injury prevention.
  - g. Review the rules adopted under this subchapter and make recommendations to the director for changes to further promote optimal trauma care.
  - h. Develop, implement, and conduct trauma care system evaluation, quality assessment, and quality improvement.
5. Proceedings, records, and reports developed pursuant to this section constitute peer review records under section 147.135, and are not subject to discovery by subpoena or admissible as evidence. All information and documents received from a hospital or emergency care facility under this subchapter shall be confidential pursuant to section 272C.6, subsection 4.

95 Acts, ch 40, §5; 98 Acts, ch 1100, §19; 2001 Acts, ch 74, §6; 2013 Acts, ch 129, §50 – 52

Subsection 1, paragraph q stricken and rewritten

Subsection 4, NEW paragraph h

NEW subsection 5

**147A.25 System evaluation and quality improvement committee.** Repealed by 2013 Acts, ch 129, § 57.

With respect to proposed amendment to former §147A.25 by 2013 Acts, ch 81, §1, see Code editor's note on simple harmonization

**147A.26 Trauma registry.**

1. The department shall maintain a statewide trauma reporting system by which the trauma system advisory council and the department may monitor the effectiveness of the statewide trauma care system.

2. The data collected by and furnished to the department pursuant to this section are confidential records of the condition, diagnosis, care, or treatment of patients or former patients, including outpatients, pursuant to section 22.7. The compilations prepared for release or dissemination from the data collected are not confidential under section 22.7, subsection 2. However, information which individually identifies patients shall not be disclosed and state and federal law regarding patient confidentiality shall apply.

3. To the extent possible, activities under this section shall be coordinated with other health data collection methods.

95 Acts, ch 40, §7; 96 Acts, ch 1079, §7; 2013 Acts, ch 129, §53

Subsection 1 amended

**147A.27 Department to adopt rules.**

The department shall adopt rules, pursuant to chapter 17A, to implement the Iowa trauma care system plan, which specify all of the following:

1. Standards for trauma care.
2. Triage and transfer protocols.
3. Trauma registry procedures and policies.
4. Trauma care education and training requirements.
5. Hospital and emergency care facility categorization criteria.
6. Procedures for approval, denial, probation, and revocation of certificates of verification.

95 Acts, ch 40, §8

**147A.28 Prohibited acts.**

A hospital or emergency care facility that imparts or conveys, or causes to be imparted or conveyed, that it is a trauma care facility, or that uses any other term to indicate or imply that the hospital or emergency care facility is a trauma care facility without having obtained a certificate of verification under this subchapter is subject to a civil penalty not to exceed one hundred dollars per day for each offense. In addition, the director may apply to the district court for a writ of injunction to restrain the use of the term "trauma care facility". However, nothing in this subchapter shall be construed to restrict a hospital or emergency facility from providing any services for which it is duly authorized.

95 Acts, ch 40, §9; 95 Acts, ch 209, §21

Section not amended; editorial change applied

## CHAPTER 148

MEDICINE AND SURGERY AND  
OSTEOPATHIC MEDICINE AND SURGERY

Referred to in §85B.9, 124.555, 125.86, 135.24, 135.61, 135.105D, 135.159, 135B.7, 135C.40, 135G.1, 135H.1, 135J.1, 136.1, 137.105, 142C.7, 144.29A, 147.76, 147.108, 147.109, 147.135, 147.139, 147A.1, 148A.3, 152.1, 154.1, 154.10, 154B.2, 157.13, 225C.6, 229.1, 232.68, 280.16, 321.34, 321.186, 321.186A, 321.375, 321.376, 321.445, 321.446, 321L.2, 505.8, 509.3, 514.7, 514.17, 514B.1, 514C.3, 514C.11, 514C.13, 514C.17, 514C.18, 514C.20, 514C.25, 514C.29, 514F.1, 702.8, 702.17, 707.7, 707C.4, 708.3A, 714H.4, 915.86

Enforcement, §147.87, 147.92

Penalty, §147.86

Licensing board, support staff exceptions;  
location and powers; see §135.11A, 135.31

Utilization and cost control  
review committee; §514F.1

148.1	Persons engaged in practice.	148.8	Voluntary surrender of license.
148.2	Persons not engaged in practice.	148.9	Reinstatement.
148.2A	Board of medicine — alternate members.	148.10	Temporary license.
148.2B	Executive director.	148.11	Special license to practice medicine and surgery or osteopathic medicine and surgery.
148.3	License to practice.	148.12	Voluntary agreements.
148.4	Certificates of national board. Repealed by 2008 Acts, ch 1088, §79.	148.13	Authority of board as to supervising physicians and review of contested cases under chapter 148C — rules.
148.5	Resident physician license.	148.14	Board of medicine investigators.
148.6	Licensee discipline — criminal penalty.		
148.7	Procedure for licensee discipline.		

**148.1 Persons engaged in practice.**

For the purpose of this subtitle, the following classes of persons shall be deemed to be engaged in the practice of medicine and surgery or osteopathic medicine and surgery:

1. Persons who publicly profess to be physicians and surgeons or osteopathic physicians and surgeons, or who publicly profess to assume the duties incident to the practice of medicine and surgery or osteopathic medicine and surgery.
2. Persons who prescribe, or prescribe and furnish, medicine for human ailments or treat the same by surgery.
3. Persons who act as representatives of any person in doing any of the things mentioned in this section.

[C97, §2579; C24, 27, 31, 35, 39, §2538; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.1] 2008 Acts, ch 1088, §44; 2009 Acts, ch 41, §170, 264

Referred to in §148.2

**148.2 Persons not engaged in practice.**

Section 148.1 shall not be construed to include the following classes of persons:

1. Persons who advertise or sell patent or proprietary medicines.
2. Persons who advertise, sell, or prescribe natural mineral waters flowing from wells or springs.
3. Students of medicine and surgery or osteopathic medicine and surgery who have completed at least two years' study in a medical school or a college of osteopathic medicine and surgery, approved by the board, and who prescribe medicine under the supervision of a licensed physician and surgeon or licensed osteopathic physician and surgeon, or who render gratuitous service to persons in case of emergency.
4. Licensed podiatric physicians, chiropractors, physical therapists, nurses, dentists, optometrists, and pharmacists who are exclusively engaged in the practice of their respective professions.
5. Physicians and surgeons or osteopathic physicians and surgeons of the United States army, navy, air force, marines, public health service, or other uniformed service when acting in the line of duty in this state, and holding a current, active permanent license in good standing in another state, district, or territory of the United States, or physicians and surgeons

or osteopathic physicians and surgeons licensed in another state, when incidentally called into this state in consultation with a physician and surgeon or osteopathic physician and surgeon licensed in this state.

[C97, §2579, 2581; S13, §2581; C24, 27, 31, 35, 39, §2539; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.2]

96 Acts, ch 1034, §68; 2006 Acts, ch 1184, §90; 2007 Acts, ch 10, §86; 2008 Acts, ch 1088, §45

#### **148.2A Board of medicine — alternate members.**

1. As used in this chapter, “*board*” means the board of medicine established in chapter 147.

2. Notwithstanding sections 17A.11, 69.16, 69.16A, 147.12, 147.14, and 147.19, the board may have a pool of up to ten alternate members, including members licensed to practice under this chapter and members not licensed to practice under this chapter, to substitute for board members who are disqualified or become unavailable for any other reason for contested case hearings.

a. The board may recommend, subject to approval by the governor, up to ten people to serve in a pool of alternate members.

b. A person serves in the pool of alternate members at the discretion of the board; however, the length of time an alternate member may serve in the pool shall not exceed nine years. A person who serves as an alternate member may later be appointed to the board and may serve nine years, in accordance with sections 147.12 and 147.19. A former board member may serve in the pool of alternate members.

c. An alternate member licensed under this chapter shall hold an active license and shall have been actively engaged in the practice of medicine and surgery or osteopathic medicine and surgery in the preceding three years, with the two most recent years of practice being in Iowa.

d. When a sufficient number of board members are unavailable to hear a contested case, the board may request alternate members to serve.

e. Notwithstanding section 17A.11, section 147.14, subsection 2, and section 272C.6, subsection 5:

(1) An alternate member is deemed a member of the board only for the hearing panel for which the alternate member serves.

(2) A hearing panel containing alternate members must include at least six people.

(3) The majority of a hearing panel containing alternate members shall be members of the board.

(4) The majority of a hearing panel containing alternate members shall be licensed to practice under this chapter.

(5) A decision of a hearing panel containing alternate members is considered a final decision of the board.

f. An alternate member shall not receive compensation in excess of that authorized by law for a board member.

92 Acts, ch 1183, §11; 2007 Acts, ch 10, §87; 2008 Acts, ch 1088, §46; 2009 Acts, ch 133, §52  
Referred to in §148.7

#### **148.2B Executive director.**

The salary of the executive director of the board shall be established by the governor with approval of the executive council pursuant to section 8A.413, subsection 3, under the pay plan for exempt positions in the executive branch of government.

2008 Acts, ch 1088, §47

#### **148.3 License to practice.**

1. An applicant for a license to practice medicine and surgery or osteopathic medicine and surgery shall present to the board all of the following:

a. Evidence of a diploma issued by a medical college or college of osteopathic medicine and surgery approved by the board, or other evidence of equivalent medical education

approved by the board. The board may accept, in lieu of a diploma from a medical college or college of osteopathic medicine and surgery approved by the board, all of the following:

(1) A diploma issued by a medical college or college of osteopathic medicine and surgery which has been neither approved nor disapproved by the board.

(2) A valid standard certificate issued by the educational commission for foreign medical graduates or similar accrediting agency.

b. Evidence of having passed an examination prescribed by the board which shall include subjects which determine the applicant's qualifications to practice medicine and surgery or osteopathic medicine and surgery and which shall be given according to the methods deemed by the board to be the most appropriate and practicable. However, one or more examinations as prescribed by the board or any other national standardized examination which the board approves may be administered to any or all applicants in lieu of or in conjunction with other examinations which the board prescribes. The board may establish necessary achievement levels on all examinations for a passing grade and adopt rules relating to examinations.

c. Satisfactory evidence that the applicant has successfully completed one year of postgraduate internship or resident training in a hospital approved for such training by the board. An applicant who holds a valid certificate issued by the educational commission for foreign medical graduates shall submit satisfactory evidence of successful completion of two years of such training.

2. An application for a license shall be made to the board of medicine. All license and renewal fees shall be paid to the board.

3. The board shall give priority to the processing of applications for licensure submitted by physicians and surgeons and osteopathic physicians and surgeons whose practice will primarily involve provision of service to underserved populations, including but not limited to minorities or low-income persons, or who live in rural areas.

4. The issuance of reciprocal agreements pursuant to section 147.44 is not required and is subject to the discretion of the board.

1. [C97, §2582; S13, §2582; C24, 27, 31, 35, 39, §2540; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.3; 82 Acts, ch 1005, §4]

2. [C97, §2576; S13, §2576; C24, 27, 31, 35, 39, §2540; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.3]

3. [C27, 31, 35, 39, §2540; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.3]  
90 Acts, ch 1086, §9, 10; 92 Acts, ch 1183, §12; 2004 Acts, ch 1168, §7; 2007 Acts, ch 10, §88; 2008 Acts, ch 1088, §48; 2009 Acts, ch 41, §55; 2009 Acts, ch 133, §53; 2010 Acts, ch 1069, §19; 2010 Acts, ch 1163, §2

Referred to in §147.49

**148.4 Certificates of national board.** Repealed by 2008 Acts, ch 1088, § 79.

#### **148.5 Resident physician license.**

A physician, who is a graduate of a medical school or college of osteopathic medicine and surgery and is serving as a resident physician who is not otherwise licensed to practice medicine and surgery or osteopathic medicine and surgery in this state, shall be required to obtain from the board a license to practice as a resident physician. The license shall be designated "Resident Physician License" and shall authorize the licensee to serve as a resident physician only, under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery, in an institution approved for such training by the board. A license shall be valid for a duration as determined by the board. The fee for each license shall be set by the board to cover the administrative costs of issuing the license. The board shall determine in each instance those eligible for a license, whether or not examinations shall be given, and the type of examinations. Requirements of the law pertaining to regular permanent licensure shall not be mandatory for a resident physician license except as specifically designated by the board. The granting of a resident physician

license does not in any way indicate that the person licensed is necessarily eligible for regular permanent licensure, or that the board in any way is obligated to license the individual.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §148.5]

90 Acts, ch 1086, §11; 92 Acts, ch 1183, §14; 2000 Acts, ch 1140, §32; 2007 Acts, ch 10, §90; 2008 Acts, ch 1088, §49

#### **148.6 Licensee discipline — criminal penalty.**

1. The board, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 272C, or this subsection. Notwithstanding section 272C.3, licensee discipline may include a civil penalty not to exceed ten thousand dollars.

2. Pursuant to this section, the board may discipline a licensee who is guilty of any of the following acts or offenses:

a. Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of the physician's profession.

b. Being convicted of a felony in the courts of this state or another state, territory, or country. Conviction as used in this paragraph shall include a conviction of an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding in which a finding or verdict of guilt is made or returned, but the adjudication of guilt is either withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state shall be conclusive evidence.

c. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine.

d. Having the license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is prima facie evidence.

e. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice medicine and surgery or osteopathic medicine and surgery.

f. Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

g. Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery or osteopathic medicine and surgery in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice, or good morals, whether the same is committed in the course of the physician's practice or otherwise, and whether committed within or without this state.

h. Inability to practice medicine and surgery or osteopathic medicine and surgery with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

(1) The board may, upon probable cause, compel a physician to submit to a mental or physical examination by designated physicians or to submit to alcohol or drug screening within a time specified by the board.

(2) A person licensed to practice medicine and surgery or osteopathic medicine and surgery who makes application for the renewal of a license, as required by section 147.10, gives consent to submit to a mental or physical examination as provided by this paragraph "h" when directed in writing by the board. All objections shall be waived as to the admissibility of an examining physicians' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against a physician in another proceeding and shall be confidential, except for other actions filed against a physician to revoke or suspend a license.

i. Willful or repeated violation of lawful rule or regulation adopted by the board or violating a lawful order of the board, previously entered by the board in a disciplinary or

licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

3. A person violating the provisions of section 147.2, 147.84, or 147.85, shall upon conviction be guilty of a class “D” felony.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.6]

90 Acts, ch 1086, §12 – 14; 92 Acts, ch 1183, §15; 2007 Acts, ch 10, §91; 2008 Acts, ch 1088, §50; 2009 Acts, ch 133, §54

Referred to in §148.7, 272C.3, 272C.4, 272C.5

Service of notice, R.C.P. 1.305 and 1.306

#### **148.7 Procedure for licensee discipline.**

A proceeding for the revocation or suspension of a license to practice medicine and surgery or osteopathic medicine and surgery or to discipline a person licensed to practice medicine and surgery or osteopathic medicine and surgery shall be substantially in accord with the following procedure:

1. The board may, upon its own motion or upon receipt of a complaint in writing, order an investigation. The board may, upon its own motion, order a hearing. A written notice of the time and place of the hearing together with a statement of the charges shall be served upon the licensee at least ten days before the hearing in the manner required for the service of notice of the commencement of an ordinary action or by restricted certified mail.

2. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by the rules. In case the licensee fails to appear, either in person or by counsel at the time and place designated in the notice, the board shall proceed with the hearing as provided in this section.

3. *a.* The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board according to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The presiding board member or administrative law judge shall issue subpoenas at the request and on behalf of the licensee.

*b.* The administrative law judge shall be an attorney vested with full authority of the board to schedule and conduct hearings. The administrative law judge shall prepare and file with the board the administrative law judge’s findings of fact and conclusions of law, together with a complete written transcript of all testimony and evidence introduced at the hearing and all exhibits, pleas, motions, objections, and rulings of the administrative law judge.

4. Disciplinary hearings held pursuant to section 272C.6, subsection 1, shall be heard by the board, or by a panel of not less than six members, at least three of whom are board members, and the remaining appointed pursuant to section 148.2A, with no more than three of the six being public members. Notwithstanding chapters 17A and 21, a disciplinary hearing shall be open to the public at the discretion of the licensee.

5. A record of the proceedings shall be kept. The licensee shall have the opportunity to appear personally and by an attorney, with the right to produce evidence on the licensee’s own behalf, to examine and cross-examine witnesses, and to examine documentary evidence produced against the licensee.

6. If a person refuses to obey a subpoena issued by the presiding member or administrative law judge or to answer a proper question during the hearing, the presiding member or administrative law judge may invoke the aid of a court of competent jurisdiction or judge of this court in requiring the attendance and testimony of the person and the production of papers. A failure to obey the order of the court may be punished by the court as a civil contempt may be punished.

7. Unless the hearing is before the entire board, a transcript of the proceeding, together with exhibits presented, shall be considered by the entire board at the earliest practicable time. The licensee and the licensee’s attorney shall have the opportunity to appear personally to present the licensee’s position and arguments to the board. The board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it.

8. If a majority of the members of the board vote in favor of finding the licensee guilty of

an act or offense specified in section 147.55 or 148.6, the board shall prepare written findings of fact and its decision imposing one or more of the following disciplinary measures:

a. Suspend the licensee's license to practice the profession for a period to be determined by the board.

b. Revoke the licensee's license to practice the profession.

c. Suspend imposition of judgment and penalty or impose the judgment and penalty, but suspend enforcement and place the physician on probation. The probation ordered may be vacated upon noncompliance. The board may restore and reissue a license to practice medicine and surgery or osteopathic medicine and surgery, but may impose a disciplinary or corrective measure which the board might originally have imposed. A copy of the board's order, findings of fact, and decision, shall be served on the licensee in the manner of service of an original notice or by certified mail return receipt requested.

9. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

10. The board's order revoking or suspending a license to practice medicine and surgery or osteopathic medicine and surgery or to discipline a licensee shall remain in force and effect until the appeal is finally determined and disposed of upon its merit.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.7]

88 Acts, ch 1109, §16; 90 Acts, ch 1086, §15; 92 Acts, ch 1183, §16, 17; 98 Acts, ch 1202, §31, 46; 2003 Acts, ch 44, §114; 2007 Acts, ch 10, §92; 2008 Acts, ch 1088, §51

Referred to in §272C.5

Manner of service, R.C.P. 1.302 - 1.315

#### **148.8 Voluntary surrender of license.**

The board may accept the voluntary surrender of a license if accompanied by a written statement of intention. A voluntary surrender, when accepted, has the same force and effect as an order of revocation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.8]

92 Acts, ch 1183, §18; 2007 Acts, ch 10, §93

Referred to in §272C.5

#### **148.9 Reinstatement.**

Any person whose license has been suspended may apply to the board for reinstatement at any time and the board may hold a hearing on any such petition and may order reinstatement and impose terms and conditions thereof and issue a certificate of reinstatement.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §148.9]

2007 Acts, ch 10, §94; 2008 Acts, ch 1088, §52

Referred to in §272C.5

#### **148.10 Temporary license.**

1. The board may, in its discretion, issue a temporary license authorizing the licensee to practice medicine and surgery or osteopathic medicine and surgery in a specific location or locations and for a specified period of time if, in the opinion of the board, a need exists and the person possesses the qualifications prescribed by the board for the license, which shall be substantially equivalent to those required for licensure under this chapter. The board shall determine in each instance those eligible for the license, whether or not examinations shall be given, and the type of examinations. No requirements of the law pertaining to regular permanent licensure are mandatory for the temporary license except as specifically designated by the board. The granting of a temporary license does not in any way indicate that the person so licensed is necessarily eligible for regular licensure or that the board in any way is obligated to so license the person.

2. The temporary license shall be issued for a period not to exceed one year and may be renewed, but a person shall not practice medicine and surgery or osteopathic medicine and surgery in excess of three years while holding a temporary license. The fee for the license

and the fee for renewal of the license shall be set by the board. The fees shall be based on the administrative costs of issuing and renewing the licenses.

[C66, 71, 73, 75, 77, 79, 81, §148.10]

87 Acts, ch 128, §1; 2004 Acts, ch 1167, §5; 2007 Acts, ch 10, §95; 2007 Acts, ch 215, §248; 2008 Acts, ch 1088, §53

#### **148.11 Special license to practice medicine and surgery or osteopathic medicine and surgery.**

1. Whenever the need exists, the board may issue a special license. The special license shall authorize the licensee to practice medicine and surgery or osteopathic medicine and surgery under the policies and standards applicable to the health care services of a medical or osteopathic medical school academic staff member or as otherwise specified in the special license.

2. A person applying for a special license shall:

a. Be a physician in a professional specialty.

b. Present a diploma issued by a medical or osteopathic medical college.

c. Present evidence of an unrestricted license to practice medicine and surgery or osteopathic medicine and surgery which has been issued by a foreign state or territory or an alien country.

d. Present a letter of recommendation from the dean of a medical or osteopathic medical school in this state indicating that the applicant has been invited to serve on the academic staff of the medical or osteopathic medical school.

e. Present letters of recommendation from universities, other educational institutions, or research facilities that indicate the noteworthy professional attainment by the applicant.

f. Present biographical background information concerning the applicant's education and qualifications.

3. The board shall establish a fee for initial issuance and renewal of a special license. The board shall establish rules for granting and renewing a special license consistent with those for permanent licenses.

4. A special license issued under this section shall automatically expire upon the special licensee discontinuing service on the academic staff of a medical or osteopathic medical school in this state. An expired special license shall not be renewed. However, a former special licensee may reapply for a special license.

[C77, 79, 81, §148.11]

2007 Acts, ch 10, §96; 2008 Acts, ch 1088, §54

#### **148.12 Voluntary agreements.**

The board, after due notice and hearing, may issue an order to revoke, suspend, or restrict a license to practice medicine and surgery or osteopathic medicine and surgery, or to issue a restricted license on application if the board determines that a physician licensed to practice medicine and surgery or osteopathic medicine and surgery or an applicant for licensure has entered into a voluntary agreement to restrict the practice of medicine and surgery or osteopathic medicine and surgery in another state, district, territory, country, or an agency of the federal government. A certified copy of the voluntary agreement shall be considered prima facie evidence.

86 Acts, ch 1211, §17; 92 Acts, ch 1183, §19; 2005 Acts, ch 89, §14; 2007 Acts, ch 10, §97; 2008 Acts, ch 1088, §55

#### **148.13 Authority of board as to supervising physicians and review of contested cases under chapter 148C — rules.**

1. The board of medicine shall adopt rules setting forth in detail its criteria and procedures for determining the ineligibility of a physician to serve as a supervising physician under chapter 148C. The rules shall provide that a physician may serve as a supervising physician under chapter 148C until such time as the board of medicine determines, following normal disciplinary procedures, that the physician is ineligible to serve in that capacity.

2. The board of medicine shall establish by rule specific procedures for consulting with

and considering the advice of the board of physician assistants in determining whether to initiate a disciplinary proceeding under chapter 17A against a licensed physician in a matter involving the supervision of a physician assistant.

3. In exercising their respective authorities, the board of medicine and the board of physician assistants shall cooperate with the goal of encouraging the utilization of physician assistants in a manner that is consistent with the provision of quality health care and medical services for the citizens of Iowa.

4. The board of medicine shall adopt rules requiring a physician serving as a supervising physician to notify the board of medicine of the identity of a physician assistant the physician is supervising, and of any change in the status of the supervisory relationship.

88 Acts, ch 1225, §14; 2003 Acts, ch 93, §4, 5, 14; 2007 Acts, ch 10, §98

#### **148.14 Board of medicine investigators.**

The board of medicine may appoint investigators, who shall not be members of the board, and whose compensation shall be determined pursuant to chapter 8A, subchapter IV. Investigators appointed by the board have the powers and status of peace officers when enforcing this chapter, chapter 147, and chapter 272C.

2008 Acts, ch 1088, §56; 2009 Acts, ch 133, §55

## CHAPTER 148A

### PHYSICAL THERAPY

Referred to in §135.24, 135.61, 147.74, 147.76, 714H.4

Enforcement, §147.87, 147.92  
Penalty, §147.86

148A.1	Definitions — referral — authorization.	148A.4	Requirements to practice.
148A.2	Who engaged in practice.	148A.5	Limitations.
148A.3	Persons not included.	148A.6	Physical therapist assistant.
		148A.7	False use of titles prohibited.

#### **148A.1 Definitions — referral — authorization.**

1. *a.* As used in this chapter, “*board*” means the board of physical and occupational therapy created under chapter 147.

*b.* As used in this chapter, “*physical therapy*” is that branch of science that deals with the evaluation and treatment of human capabilities and impairments. Physical therapy uses the effective properties of physical agents including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound, and therapeutic exercises, and rehabilitative procedures to prevent, correct, minimize, or alleviate a physical impairment. Physical therapy includes the interpretation of performances, tests, and measurements, the establishment and modification of physical therapy programs, treatment planning, consultative services, instructions to the patients, and the administration and supervision attendant to physical therapy facilities.

2. Physical therapy evaluation and treatment may be rendered by a physical therapist with or without a referral from a physician, podiatric physician, dentist, or chiropractor, except that a hospital may require that physical therapy evaluation and treatment provided in the hospital shall be done only upon prior review by and authorization of a member of the hospital’s medical staff.

[C66, 71, 73, 75, 77, 79, 81, §148A.1]

84 Acts, ch 1268, §1; 86 Acts, ch 1238, §7; 87 Acts, ch 65, §3; 88 Acts, ch 1002, §1; 95 Acts, ch 108, §8; 2007 Acts, ch 10, §99

Referred to in §148A.3

**148A.2 Who engaged in practice.**

For the purpose of this chapter the following classes of persons shall be deemed to be engaged in the practice of physical therapy:

1. Persons who treat human ailments by physical therapy as defined in this chapter.
2. Persons who publicly profess to be physical therapists or who publicly profess to perform the functions incident to the practice of physical therapy.

[C66, 71, 73, 75, 77, 79, 81, §148A.2]

**148A.3 Persons not included.**

Section 148A.1 shall not be construed to include the following classes of persons:

1. Licensed physicians and surgeons, osteopathic physicians and surgeons, podiatric physicians, chiropractors, nurses, dentists, cosmetologists, and barbers, who are engaged in the practice of their respective professions.

2. Students of physical therapy who practice physical therapy under the supervision of a licensed physical therapist in connection with the regular course of instruction at a school of physical therapy.

3. Physical therapists of the United States army, navy, or public health service, or physical therapists licensed in another state, when incidentally called into this state in consultation with a physician and surgeon or physical therapists licensed in this state.

4. Nonprofessional workers not held out as physical therapists who are employed in hospitals, clinics, offices or health care facilities as defined in section 135C.1 working under the supervision and direction of a physical therapist or physician licensed pursuant to chapter 148.

5. Massage therapists, massage technicians, masseurs and masseuses who administer body massage by Swedish or other massage technique, including modalities, in a massage establishment, health club, athletic club or school athletic department, but in no instance shall they designate themselves as physical therapists.

[C66, 71, 73, 75, 77, 79, 81, §148A.3]

84 Acts, ch 1268, §2; 96 Acts, ch 1034, §68; 2008 Acts, ch 1088, §100

**148A.4 Requirements to practice.**

Each applicant for a license to practice physical therapy shall:

1. Complete a course of study in, and hold a diploma or certificate issued by, a school of physical therapy accredited by the American physical therapy association or another appropriate accrediting body, and meet requirements as established by rules of the board.

2. Have passed an examination administered by the board.

[C66, 71, 73, 75, 77, 79, 81, §148A.4]

83 Acts, ch 101, §27; 84 Acts, ch 1268, §3; 2007 Acts, ch 10, §100

**148A.5 Limitations.**

A license to practice physical therapy does not authorize the licensee to practice operative surgery or osteopathic or chiropractic manipulation, or to administer or prescribe any drug or medicine included in materia medica.

88 Acts, ch 1002, §2

**148A.6 Physical therapist assistant.**

1. A licensed physical therapist assistant is required to function under the direction and supervision of a licensed physical therapist to perform physical therapy procedures delegated and supervised by the licensed physical therapist in a manner consistent with the rules adopted by the board. Selected and delegated tasks of physical therapist assistants may include but are not limited to therapeutic procedures and related tasks, routine operational functions, documentation of treatment progress, and the use of selected physical agents. The ability of the licensed physical therapist assistant to perform the selected and delegated tasks shall be assessed on an ongoing basis by the supervising physical therapist. The licensed physical therapist assistant shall not interpret referrals, perform initial evaluation

or reevaluations, initiate physical therapy treatment programs, change specified treatment programs, or discharge a patient from physical therapy services.

2. Each applicant for a license to practice as a physical therapist assistant shall:

a. Successfully complete a course of study for the physical therapist assistant accredited by the commission on accreditation in education of the American physical therapy association, or another appropriate accrediting body, and meet other requirements established by the rules of the board.

b. Have passed an examination administered by the board.

3. This section does not prevent a person not licensed as a physical therapist assistant from performing services ordinarily performed by a physical therapy aide, assistant, or technician, provided that the person does not represent to the public that the person is a licensed physical therapist assistant, or use the title “physical therapist assistant” or the letters “P.T.A.”, and provided that the person performs services consistent with the supervision requirements of the board for persons not licensed as physical therapist assistants.

91 Acts, ch 228, §3; 2000 Acts, ch 1140, §33; 2004 Acts, ch 1068, §2; 2007 Acts, ch 10, §101

**148A.7 False use of titles prohibited.**

1. A person or business entity, including the employees, agents, or representatives of the business entity, shall not use in connection with that person’s or business entity’s business activity the words “physical therapy”, “physical therapist”, “licensed physical therapist”, “registered physical therapist”, “doctor of physical therapy”, “physical therapist assistant”, “licensed physical therapist assistant”, “registered physical therapist assistant”, or the letters “P.T.”, “L. P.T.”, “R. P.T.”, “D. P.T.”, “P. T.A.”, “L. P. T.A.”, “R. P. T.A.”, or any other words, abbreviations, or insignia indicating or implying that physical therapy is provided or supplied, unless such services are provided by or under the direction and supervision of a physical therapist licensed pursuant to this chapter.

2. Notwithstanding section 147.74, a person or the owner, officer, or agent of an entity that violates this section is guilty of a serious misdemeanor, and a license to practice shall be revoked or suspended pursuant to section 147.55.

3. This section shall not apply to the use of the term “physiotherapy” by a provider licensed under this chapter, chapter 151, or by an individual under the direction and supervision of a provider licensed under this chapter or chapter 151.

2004 Acts, ch 1068, §1; 2009 Acts, ch 133, §56

**CHAPTER 148B**

**OCCUPATIONAL THERAPY**

Referred to in §135.24, 147.74, 147.76, 714H.4

Enforcement, §147.87, 147.92  
Penalty, §147.86

148B.1	Title and purpose.	148B.6	Waiver of examination requirement.
148B.2	Definitions.	148B.7	Board of physical and occupational therapy — powers and duties.
148B.3	Persons and practices not affected.	148B.8	Unlawful practice.
148B.3A	Referral.	148B.9	False use of titles prohibited.
148B.4	Limited permit.		
148B.5	Requirements for licensure.		

**148B.1 Title and purpose.**

This chapter may be cited and referred to as the “Occupational Therapy Practice Act”.

The purpose of this chapter is to provide for the regulation of persons offering occupational therapy services to the public in order to safeguard the public health, safety and welfare.

[C81, §148B.1]

### **148B.2 Definitions.**

As used in this chapter:

1. “*Board*” means the board of physical and occupational therapy created under chapter 147.

2. “*Occupational therapist*” means a person licensed under this chapter to practice occupational therapy.

3. “*Occupational therapy*” means the therapeutic use of occupations, including everyday life activities with individuals, groups, populations, or organizations to support participation, performance, and function in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for habilitation, rehabilitation, and the promotion of health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory-perceptual, and other aspects of performance in a variety of contexts and environments to support engagement in occupations that affect physical and mental health, well-being, and quality of life. “*Occupational therapy*” includes but is not limited to providing assessment, design, fabrication, application, and fitting of selected orthotic devices and training in the use of prosthetic devices.

4. “*Occupational therapy assistant*” means a person licensed under this chapter to assist in the practice of occupational therapy.

[C81, §148B.2]

2007 Acts, ch 10, §102; 2012 Acts, ch 1101, §6

### **148B.3 Persons and practices not affected.**

This chapter does not prevent or restrict the practice, services or activities of any of the following:

1. A person licensed in this state by any other law from engaging in the profession or occupation for which the person is licensed.

2. A person employed as an occupational therapist or occupational therapy assistant by the government of the United States, if that person provides occupational therapy solely under the direction or control of the organization by which the person is employed.

3. A person pursuing a course of study leading to a degree or certificate in occupational therapy in an accredited or approved educational program, if the activities and services constitute a part of a supervised course of study and the person is designated by a title which clearly indicates the person’s status as a student or trainee.

4. A person fulfilling the supervised field work experience requirements of section 148B.5, if the activities and services constitute a part of the experience necessary to meet the requirements of that section.

5. A nonresident performing occupational therapy services in the state who is not licensed under this chapter, if the services are performed for not more than thirty days in a calendar year in association with an occupational therapist licensed under this chapter, and the nonresident meets either of the following requirements:

a. The nonresident is licensed under the law of another state which has licensure requirements at least as stringent as the requirements of this chapter.

b. The nonresident meets the requirements for certification as an occupational therapist registered (O.T.R.), or a certified occupational therapy assistant (C.O.T.A.) established by the national board for certification in occupational therapy.

[C81, §148B.3]

2012 Acts, ch 1101, §7, 8

**148B.3A Referral.**

Occupational therapy may be provided by an occupational therapist without referral from a physician, podiatric physician, dentist, or chiropractor, except that a hospital may require that occupational therapy provided in the hospital be performed only following prior review by and authorization of the performance of the occupational therapy by a member of the hospital medical staff.

2000 Acts, ch 1140, §34

**148B.4 Limited permit.**

1. A limited permit to practice occupational therapy may be granted to a person who has completed the academic and field work requirements for occupational therapists under this chapter and has not yet taken or received the results of the entry-level certification examination. A permit granted pursuant to this subsection shall be valid for a period of time as determined by the board by rule and shall allow the person to practice occupational therapy under the direction and appropriate supervision of an occupational therapist licensed under this chapter. The permit shall expire when the person is issued a license under section 148B.5 or if the person is notified that the person did not pass the examination. The limited permit shall not be renewed.

2. A limited permit to assist in the practice of occupational therapy may be granted to a person who has completed the academic and field work requirements for occupational therapy assistants under this chapter and has not yet taken or received the results of the entry-level certification examination. A permit granted pursuant to this subsection shall be valid for a period of time as determined by the board by rule and shall allow the person to assist in the practice of occupational therapy under the direction and appropriate supervision of an occupational therapist licensed under this chapter. The permit shall expire when the person is issued a license under section 148B.5 or if the person is notified that the person did not pass the examination. The limited permit shall not be renewed.

[C81, §148B.4]

2012 Acts, ch 1101, §9

**148B.5 Requirements for licensure.**

An applicant applying for a license as an occupational therapist or as an occupational therapy assistant must file a written application on forms provided by the board, showing to the satisfaction of the board that the applicant meets the following requirements:

1. Successful completion of the academic requirements of an educational program in occupational therapy recognized by the board.

a. For an occupational therapist, the program must be one accredited by the accreditation council for occupational therapy education of the American occupational therapy association.

b. For an occupational therapy assistant, the program must be one approved by the American occupational therapy association.

2. Successful completion of a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where the applicant met the academic requirements.

a. For an occupational therapist, a minimum of six months of supervised field work experience is required.

b. For an occupational therapy assistant, a minimum of two months of supervised field work experience is required.

3. Pass an examination, either in electronic or written form, satisfactory to the board and in accordance with rules.

[C81, §148B.5]

2000 Acts, ch 1140, §35; 2002 Acts, ch 1108, §14; 2004 Acts, ch 1167, §6

Referred to in §148B.3, 148B.4

**148B.6 Waiver of examination requirement.**

The board may waive the examination and grant a license:

1. To a person certified prior to January 1, 1981, as an occupational therapist registered

(O.T.R.) or a certified occupational therapy assistant (C.O.T.A.) by the American occupational therapy association.

2. To an applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure of this chapter.

[C81, §148B.6]

2012 Acts, ch 1101, §10

#### **148B.7 Board of physical and occupational therapy — powers and duties.**

The board shall adopt rules relating to professional conduct to carry out the policy of this chapter, including but not limited to rules relating to professional licensing and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy in this state.

[C81, §148B.7]

2007 Acts, ch 10, §103

Referred to in §272C.3, 272C.4

#### **148B.8 Unlawful practice.**

1. A person shall not practice occupational therapy or assist in the practice of occupational therapy, provide occupational therapy services, hold oneself out as an occupational therapist or occupational therapy assistant or as being able to practice occupational therapy or assist in the practice of occupational therapy, or provide occupational therapy services in this state unless the person is licensed under this chapter.

2. It is unlawful for any person not licensed as an occupational therapist in this state or whose license is suspended or revoked to use in connection with the person's name or place of business in this state the words "occupational therapist", "licensed occupational therapist", or any word, title, letters, or designation that implies that the person is an occupational therapist.

3. It is unlawful for any person not licensed as an occupational therapy assistant in this state or whose license is suspended or revoked to use in connection with the person's name or place of business in this state, the words "occupational therapy assistant", "licensed occupational therapy assistant", or any word, title, letters, or designation that implies that the person is an occupational therapy assistant.

2012 Acts, ch 1101, §11

#### **148B.9 False use of titles prohibited.**

A person or business entity, including the employees, agents, or representatives of the business entity, shall not use in connection with that person or business entity's business activity, the words "occupational therapy", "occupational therapist", "licensed occupational therapist", "doctor of occupational therapy", "occupational therapy assistant", "licensed occupational therapy assistant", or the letters "O.T.", "O.T./L.", "O.T.D.", "O.T.A.", "O.T.A./L.", or any words, abbreviations, or insignia indicating or implying that occupational therapy is provided or supplied unless such services are provided by or under the direction and supervision of an occupational therapist licensed pursuant to this chapter.

2012 Acts, ch 1101, §12

## CHAPTER 148C

## PHYSICIAN ASSISTANTS

Referred to in §135.24, 135.61, 135.105D, 135B.7, 135G.1, 136C.3, 142C.7, 144.29A, 144D.1, 147.74, 147.76, 147.107, 147A.13, 148.13, 225C.6, 261.114, 272C.1, 321.34, 321.186, 321L.2, 514C.11, 514C.13, 702.8, 702.17, 708.3A, 714H.4

Enforcement, §147.87, 147.92

Penalty, general, §147.86

Drug dispensing, supplying, and prescribing; limitations, rules, see §147.107 and 91 Acts, ch 238, §2

148C.1	Definitions.	148C.6A	and 148C.7 Repealed by 2003 Acts, ch 93, §13, 14.
148C.2	Repealed by 2003 Acts, ch 93, §13, 14.	148C.8	Right to delegate.
148C.3	Licensure.	148C.9	Eye examination restricted.
148C.4	Services performed by physician assistants.	148C.10	Applicability of other provisions of law.
148C.5	Repealed by 88 Acts, ch 1225, §27.	148C.11	Prohibition — crime.
148C.5A	Repealed by 2003 Acts, ch 93, §13, 14.	148C.12	Annual report.
148C.6	Repealed by 88 Acts, ch 1225, §27.	148C.13	Investigators for physician assistants.

**148C.1 Definitions.**

1. “*Approved program*” means a program for the education of physician assistants which has been accredited by the American medical association’s committee on allied health education and accreditation or its successor, by the commission on accreditation of allied health educational programs or its successor, or by the accreditation review commission on education for the physician assistant or its successor.

2. “*Board*” means the board of physician assistants created under chapter 147.

3. “*Department*” means the Iowa department of public health.

4. “*Licensed physician assistant*” means a person who is licensed by the board to practice as a physician assistant under the supervision of one or more physicians. “*Supervision*” does not require the personal presence of the supervising physician at the place where medical services are rendered except insofar as the personal presence is expressly required by this chapter or required by rules of the board adopted pursuant to this chapter.

5. “*Physician*” means a person who is currently licensed in Iowa to practice medicine and surgery or osteopathic medicine and surgery. Notwithstanding this subsection, a physician supervising a physician assistant practicing in a federal facility or under federal authority shall not be required to obtain licensure beyond licensure requirements mandated by the federal government for supervising physicians.

6. “*Physician assistant*” means a person who has successfully completed an approved program and passed an examination approved by the board or is otherwise found by the board to be qualified to perform medical services under the supervision of a physician.

7. “*Trainee*” means a person who is currently enrolled in an approved program.

[C73, 75, 77, 79, §148B.1; C81, §148C.1]

88 Acts, ch 1225, §15; 2003 Acts, ch 93, §6 – 8, 14; 2004 Acts, ch 1101, §23; 2007 Acts, ch 10, §105; 2008 Acts, ch 1088, §141

Referred to in §321J.11, 462A.14A

**148C.2** Repealed by 2003 Acts, ch 93, § 13, 14.

**148C.3 Licensure.**

1. The board shall adopt rules to govern the licensure of physician assistants. An applicant for licensure shall submit the fee prescribed by the board and shall meet the requirements established by the board with respect to each of the following:

a. Academic qualifications, including evidence of graduation from an approved program. A physician assistant who is not a graduate of an approved program, but who passed the

national commission on certification of physician assistants' physician assistant national certifying examination prior to 1986, is exempt from this graduation requirement.

b. Evidence of passing the national commission on the certification of physician assistants' physician assistant national certifying examination or an equivalent examination approved by the board.

c. Hours of continuing medical education necessary to become or remain licensed.

2. Rules shall be adopted by the board pursuant to this chapter requiring a licensed physician assistant to be supervised by physicians. The rules shall provide that not more than five physician assistants shall be supervised by a physician at one time. The rules shall also provide that a physician assistant shall notify the board of the identity of the physician assistant's supervising physician and of any change in the status of the supervisory relationship.

3. A licensed physician assistant shall perform only those services for which the licensed physician assistant is qualified by training or not prohibited by the board.

4. The board may issue a temporary license under special circumstances and upon conditions prescribed by the board. A temporary license shall not be valid for more than one year and shall not be renewed more than once.

5. The board may issue an inactive license under conditions prescribed by rules adopted by the board.

6. The board shall adopt rules pursuant to this section after consultation with the board of medicine.

[C73, 75, 77, 79, §148B.3; C81, §148C.3; 82 Acts, ch 1005, §5]

88 Acts, ch 1225, §17; 2003 Acts, ch 93, §9, 14; 2004 Acts, ch 1101, §24; 2007 Acts, ch 10, §106; 2012 Acts, ch 1037, §1

Referred to in §148C.4

#### **148C.4 Services performed by physician assistants.**

1. A physician assistant may perform medical services when the services are rendered under the supervision of a physician. A physician assistant student may perform medical services when the services are rendered within the scope of an approved program. For the purposes of this section, "*medical services when the services are rendered under the supervision of a physician*" includes making a pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, or a Medicare-certified hospice program or facility, with notice of the death to a physician and in accordance with the directions of a physician.

2. a. Notwithstanding subsection 1, a physician assistant licensed pursuant to this chapter or authorized to practice in any other state or federal jurisdiction who voluntarily and gratuitously, and other than in the ordinary course of the physician assistant's employment or practice, responds to a need for medical care created by an emergency or a state or local disaster may render such care that the physician assistant is able to provide without supervision as described in this section or with such supervision as is available.

b. A physician who supervises a physician assistant providing medical care pursuant to this subsection shall not be required to meet the requirements of rules adopted pursuant to section 148C.3, subsection 2, relating to supervision by physicians. A physician providing physician assistant supervision pursuant to this subsection or a physician assistant, who voluntarily and gratuitously, and other than in the ordinary course of the physician assistant's employment or practice, responds to a need for medical care created by an emergency or a state or local disaster shall not be subject to criminal liability by reason of having issued or executed the orders for such care, and shall not be liable for civil damages for acts or omissions relating to the issuance or execution of the orders unless the acts or omissions constitute recklessness.

[C73, 75, 77, 79, §148B.4; C81, §148C.4]

88 Acts, ch 1225, §18; 2001 Acts, ch 113, §1; 2003 Acts, ch 93, §10, 14; 2009 Acts, ch 41, §263  
Referred to in §489.1102, 489.1105, 496C.4, 496C.7

**148C.5** Repealed by 88 Acts, ch 1225, § 27.

**148C.5A** Repealed by 2003 Acts, ch 93, § 13, 14.

**148C.6** Repealed by 88 Acts, ch 1225, § 27.

**148C.6A and 148C.7** Repealed by 2003 Acts, ch 93, § 13, 14.

**148C.8 Right to delegate.**

Nothing in this chapter affects or limits a physician's existing right to delegate various medical tasks to aides, assistants or others acting under the physician's supervision or direction, including orthopedic physician's assistant technologists. Such aides, assistants, orthopedic physician's assistant technologists, and others who perform only those tasks which can be so delegated shall not be required to qualify as physician assistants under this chapter.

[C73, 75, 77, 79, §148B.8; C81, §148C.8]  
88 Acts, ch 1225, §22

**148C.9 Eye examination restricted.**

A physician assistant shall not be permitted to prescribe lenses, prisms, or contact lenses for the aid, relief, or correction of human vision. A physician assistant shall not be permitted to measure the visual power and visual efficiency of the human eye, as distinguished from routine visual screening, except in the personal presence of a supervising physician at the place where such services are rendered.

[C73, 75, 77, 79, §148B.9; C81, §148C.9]  
88 Acts, ch 1225, §23

**148C.10 Applicability of other provisions of law.**

The provisions of chapter 147, not otherwise inconsistent with the provisions of this chapter, shall apply to the provisions of this chapter.

[C73, 75, 77, 79, §148B.10; C81, §148C.10]

**148C.11 Prohibition — crime.**

A person not licensed as required by this chapter who practices as a physician assistant is guilty of a serious misdemeanor.

[82 Acts, ch 1005, §7]  
88 Acts, ch 1225, §24; 2003 Acts, ch 93, §11, 14

**148C.12 Annual report.**

By January 31 of each year the board and the board of medicine shall provide to the general assembly and the governor a joint report detailing the boards' collaborative efforts and team building practices.

2007 Acts, ch 10, §184; 2007 Acts, ch 218, §189

**148C.13 Investigators for physician assistants.**

1. The board may appoint investigators, who shall not be members of the board, to administer and aid in the enforcement of the provisions of law relating to physician assistants. The amount of compensation for the investigators shall be determined pursuant to chapter 8A, subchapter IV.

2. Investigators authorized by the board have the powers and status of peace officers when enforcing this chapter and chapters 147 and 272C.

2008 Acts, ch 1088, §57

## CHAPTER 148D

## RESIDENT PHYSICIANS

Referred to in §144.29A, 147.76, 708.3A

Enforcement, §147.87, 147.92  
Penalty, §147.86

148D.1	Definitions.	148D.3	through 148D.5 Repealed by 86
148D.2	Establishment.		Acts, ch 1245, §2053.
		148D.6	Use of funds.

**148D.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “*Affiliated*” means established or developed by the college of medicine.
2. “*College of medicine*” means the university of Iowa college of medicine.
3. “*Family practice unit*” means the community facility or classroom for the teaching of ambulatory health care skills within a residency program.
4. The “*medical profession*” means medical and osteopathic physicians.
5. “*Residency program*” means a community based family practice residency education program presently in existence or established under this chapter.

[C75, 77, 79, §148C.1; C81, §148D.1]

86 Acts, ch 1245, §2051; 2001 Acts, ch 74, §7

**148D.2 Establishment.**

A statewide medical education system is established for the purpose of training resident physicians in family practice. The dean of the college of medicine is responsible for implementing the development and expansion of residency programs in cooperation with the medical profession, hospitals, and clinics located throughout the state. The head of the department of family practice in the college of medicine shall determine where affiliated residency programs shall be established, giving consideration to communities in the state where the population, hospital facilities, number of physicians and interest in medical education indicate the potential success of the residency programs. The medical education systems shall provide financial support for residents in training in accredited affiliated residency programs and shall establish positions for a director, assistant director, and other faculty in the programs. To assure continued growth, development, and academic essentials in ongoing programs, nonaffiliated residency programs which are accredited by a recognized national accrediting organization, shall be funded under this chapter at a level commensurate with the support of the affiliated residency programs having a comparable number of residents in training or, if there are no affiliated residency programs having a comparable number of residents in training, then a nonaffiliated program shall be funded in an amount determined on a pro rata capitation basis for each resident in training, equivalent to the per capita funding for each resident in training in an affiliated program having the nearest number of residents in training. As used in the preceding sentence, “*support*” means both cash grants and the value of service directly provided to affiliated residency programs by the college of medicine.

[C75, 77, 79, §148C.2; C81, §148D.2]

88 Acts, ch 1134, §30

**148D.3 through 148D.5** Repealed by 86 Acts, ch 1245, § 2053.

**148D.6 Use of funds.**

1. Moneys appropriated for the residency program shall be in addition to all the income of the state university of Iowa, and shall not be used to supplant funds for other programs under the administration of the college of medicine.

2. The allocation of state funds for a residency program shall not exceed fifty percent of the total cost of the program and shall be used for:

- a. The salaries of the director, assistant director and other faculty and auxiliary personnel on the community level.
- b. The stipends for the residents in training.
- c. The initial construction or remodeling of a facility which serves as a family practice unit within a residency program.
- d. The purchase of equipment for use in the family practice unit.
- e. Travel expenses for consultative visits by faculty.
- 3. No more than twenty percent of the appropriation for each fiscal year for affiliated programs shall be authorized for expenditures made in support of the faculty and staff of the college of medicine who are associated with the affiliated residency program.
- 4. No funds appropriated under this chapter shall be used to subsidize the cost of care incurred by patients.
- 5. Allocations for the renovation or construction of a family practice unit shall not exceed thirty-five thousand dollars per program.  
[C75, 77, 79, §148C.6; C81, §148D.6]

## CHAPTER 148E

### ACUPUNCTURE

Referred to in §147.74, 147.76

Enforcement, §147.87, 147.92  
Penalty, §147.86

148E.1	Definitions.	148E.7	Duties of board.
148E.2	License required — renewal.	148E.8	License revocation or suspension.
148E.3	Scope of chapter.	148E.9	Accident and health insurance coverage.
148E.4	Standard of care.	148E.10	Repealed by 2000 Acts, ch 1053, §14.
148E.5	Use and disposal of needles.		
148E.6	Display of certificate and disclosure of information to patients.		

#### 148E.1 Definitions.

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

- 1. “*Acupuncture*” means a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.
- 2. “*Acupuncturist*” means a person who is engaged in the practice of acupuncture.
- 3. “*Board*” means the board of medicine established in chapter 147.
- 4. “*Practice of acupuncture*” means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medicine concepts.

93 Acts, ch 86, §1; 2000 Acts, ch 1053, §5; 2007 Acts, ch 10, §107

#### 148E.2 License required — renewal.

- 1. In order to obtain a license to practice acupuncture, an applicant shall present evidence to the board of all of the following:
  - a. Current active status as a diplomate in acupuncture of the national commission for the certification of acupuncturists.
  - b. Successful completion of a three-year postsecondary training program or acupuncture college program which is accredited by, in candidacy for accreditation by, or which meets the

standards of the national accreditation commission for schools and colleges of acupuncture and oriental medicine.

c. Successful completion of a course in clean needle technique approved by the national commission for the certification of acupuncturists.

2. Notwithstanding subsection 1, a license to practice acupuncture shall be granted by the board to a resident of this state who has successfully completed an acupuncture degree program approved by the board, or an apprenticeship or tutorial program approved by the board, on or before July 1, 2001.

3. A license granted pursuant to this section shall be renewed every two years. Renewal shall require evidence of current active membership in the national commission for the certification of acupuncturists.

93 Acts, ch 86, §2; 2000 Acts, ch 1053, §6

Referred to in §148E.6

### **148E.3 Scope of chapter.**

This chapter does not apply to the following:

1. A person otherwise licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, or dentistry who is exclusively engaged in the practice of the person's profession.

2. A student practicing acupuncture under the direct supervision of a licensed acupuncturist as part of a course of study approved by the board.

93 Acts, ch 86, §3; 2000 Acts, ch 1053, §7; 2000 Acts, ch 1232, §49; 2008 Acts, ch 1088, §141

### **148E.4 Standard of care.**

A person licensed under this chapter shall be held to the same standard of care as a person licensed to practice medicine and surgery or osteopathic medicine and surgery.

93 Acts, ch 86, §4; 2000 Acts, ch 1053, §8; 2008 Acts, ch 1088, §141

### **148E.5 Use and disposal of needles.**

An acupuncturist shall use only presterilized, disposable needles, and shall provide for adequate disposal of used needles.

93 Acts, ch 86, §5; 2000 Acts, ch 1053, §9

### **148E.6 Display of certificate and disclosure of information to patients.**

An acupuncturist shall display the license issued pursuant to section 148E.2 in a conspicuous place in the acupuncturist's place of business. An acupuncturist shall provide to each patient upon initial contact with the patient the following information in written form:

1. The name, business address, and business telephone number of the acupuncturist.

2. A fee schedule.

3. A listing of the acupuncturist's education, experience, degrees, certificates, or credentials related to acupuncture awarded by professional acupuncture organizations, the length of time required to obtain the degrees or credentials, and experience.

4. A statement indicating any license, certificate, or registration in a health care occupation which was revoked by any local, state, or national health care agency.

5. A statement that the acupuncturist is complying with statutes and rules adopted by the board, including a statement that only presterilized, disposable needles are used by the acupuncturist.

6. A statement indicating that the practice of acupuncture is regulated by the board.

7. A statement indicating that a license to practice acupuncture does not authorize a person to practice medicine and surgery in this state, and that the services of an acupuncturist must not be regarded as diagnosis and treatment by a person licensed to practice medicine and must not be regarded as medical opinion or advice.

93 Acts, ch 86, §6; 2000 Acts, ch 1053, §10

Referred to in §148E.8

**148E.7 Duties of board.**

The board shall adopt rules consistent with this chapter and chapter 147 which are necessary for the performance of its duties.

93 Acts, ch 86, §7; 2000 Acts, ch 1053, §11

**148E.8 License revocation or suspension.**

In addition to the grounds for revocation or suspension referred to in section 147.55, a license to practice acupuncture shall be revoked or suspended when the acupuncturist is guilty of any of the following acts or offenses:

1. Failure to provide information as required in section 148E.6 or provision of false information to patients.
  2. Acceptance of remuneration for referral of a patient to other health professionals.
  3. Offering of or giving of remuneration for the referral of patients, not including paid advertisements or marketing services.
  4. Failure to comply with this chapter, rules adopted pursuant to this chapter, or applicable provisions of chapter 147.
  5. Engaging in sexual activity or genital contact with a patient while acting or purporting to act within the scope of practice, whether or not the patient consented to the sexual activity or genital contact.
  6. Disclosure of confidential information regarding the patient.
- 93 Acts, ch 86, §8; 2000 Acts, ch 1053, §12

**148E.9 Accident and health insurance coverage.**

This chapter shall not be construed to require accident and health insurance coverage for acupuncture services under an existing or future contract or policy for insurance issued or issued for delivery in this state, unless otherwise provided by the contract or policy.

93 Acts, ch 86, §9; 2000 Acts, ch 1053, §13

**148E.10** Repealed by 2000 Acts, ch 1053, § 14.

**CHAPTER 148F**

**ORTHOTICS, PROSTHETICS, AND PEDORTHICS**

Referred to in §147.74, 147.76

148F1	Title and purpose.	148F6	Assistants and technicians.
148F2	Definitions.	148F7	Limitation on provision of care and services.
148F3	Duties of the board.	148F8	Penalties.
148F4	Persons and practices not affected.	148F9	Transition period.
148F5	Qualifications for licensure as orthotist, prosthetist, or pedorthist.		

**148F.1 Title and purpose.**

1. This chapter may be cited and referred to as the “*Orthotics, Prosthetics, and Pedorthics Practice Act*”.

2. The purpose of this chapter is to provide for the regulation of persons offering orthotic, prosthetic, and pedorthic services to the public in order to safeguard the public health, safety, and welfare.

2012 Acts, ch 1101, §13

**148F.2 Definitions.**

As used in this chapter:

1. “*Board*” means the board of podiatry.

2. “*Orthosis*” means a custom-fabricated or custom-fitted brace or support designed to provide for alignment, correction, or prevention of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity. “*Orthosis*” does not include fabric or elastic supports, corsets, arch supports, low temperature plastic splints, trusses, elastic hose, canes, crutches, soft cervical collars, dental appliances, or other similar devices carried in stock and sold as “over-the-counter” items by a drug store, department store, corset shop, or surgical supply facility.

3. “*Orthotic and prosthetic education program*” means a course of instruction accredited by the commission on accreditation of allied health education programs, consisting of both of the following:

a. A basic curriculum of college level instruction in math, physics, biology, chemistry, and psychology.

b. A specific curriculum in orthotic or prosthetic courses, including but not limited to:

(1) Lectures covering pertinent anatomy, biomechanics, pathomechanics, prosthetic-orthotic components and materials, training and functional capabilities, prosthetic or orthotic performance evaluation, prescription considerations, etiology of amputations and disease processes necessitating prosthetic or orthotic use, and medical management.

(2) Subject matter related to pediatric and geriatric problems.

(3) Instruction in acute care techniques, such as immediate and early post-surgical prosthetics and fracture bracing techniques.

(4) Lectures, demonstrations, and laboratory experiences related to the entire process of measuring, casting, fitting, fabricating, aligning, and completing prostheses or orthoses.

4. “*Orthotic and prosthetic scope of practice*” means a list of tasks, with relative weight given to such factors as importance, criticality, and frequency, based on nationally accepted standards of orthotic and prosthetic care as outlined by the American board for certification in orthotics, prosthetics, and pedorthics, incorporated.

5. “*Orthotics*” means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician or podiatric physician for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

6. “*Orthotist*” means a health care professional, specifically educated and trained in orthotic patient care, who measures, designs, fabricates, fits, or services orthoses and may assist in the formulation of the order and treatment plan of orthoses for the support or correction of disabilities caused by neuromusculoskeletal diseases, injuries, or deformities.

7. “*Pedorthic device*” means therapeutic shoes, such as diabetic shoes and inserts, shoe modifications made for therapeutic purposes, below-the-ankle partial foot prostheses, and foot orthoses for use at the ankle or below. The term also includes subtalar-control foot orthoses designed to manage the function of the anatomy by controlling the range of motion of the subtalar joint. Excluding pedorthic devices which are footwear, the proximal height of a custom pedorthic device does not extend beyond the junction of the gastrocnemius and the Achilles tendon. “*Pedorthic device*” does not include nontherapeutic inlays or footwear regardless of method of manufacture; unmodified, nontherapeutic over-the-counter shoes; or prefabricated foot care products.

8. “*Pedorthic education program*” means an educational program approved by the national commission on orthotic and prosthetic education consisting of all of the following:

a. A basic curriculum of instruction in foot-related pathology of diseases, anatomy, and biomechanics.

b. A specific curriculum in pedorthic courses, including lectures covering shoes, foot orthoses, and shoe modifications, pedorthic components and materials, training and functional capabilities, pedorthic performance evaluation, prescription considerations, etiology of disease processes necessitating use of pedorthic devices, medical management, subject matter related to pediatric and geriatric problems, and lectures, demonstrations, and laboratory experiences related to the entire process of measuring and casting, fitting, fabricating, aligning, and completing pedorthic devices.

9. “*Pedorthic scope of practice*” means a list of tasks with relative weight given to such

factors as importance, criticality, and frequency based on nationally accepted standards of pedorthic care as outlined by the American board for certification in orthotics, prosthetics, and pedorthics, incorporated.

10. “*Pedorthics*” means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a pedorthic device under an order from a licensed physician or podiatric physician for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

11. “*Pedorthist*” means a health care professional, specifically educated and trained in pedorthic patient care, who measures, designs, fabricates, fits, or services pedorthic devices and may assist in the formulation of the order and treatment plan of pedorthic devices for the support or correction of disabilities caused by neuromusculoskeletal diseases, injuries, or deformities.

12. “*Prosthesis*” means an artificial medical device that is not surgically implanted and that is used to replace a missing limb, appendage, or any other external human body part including an artificial limb, hand, or foot.

13. “*Prosthetics*” means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed physician.

14. “*Prosthetist*” means a health care professional, specifically educated and trained in prosthetic patient care, who measures, designs, fabricates, fits, or services prostheses and may assist in the formulation of the order and treatment plan of prostheses for the replacement of external parts of the human body lost due to amputation or congenital deformities or absences.

15. “*Residency*” means an approved supervised program of a minimum duration of one year to acquire practical clinical training in orthotics or prosthetics in a patient care setting.

16. “*Resident*” means a person who has completed an education program in either orthotics or prosthetics and is continuing the person’s clinical education in a residency accredited by the national commission on orthotic and prosthetic education.

2012 Acts, ch 1101, §14; 2013 Acts, ch 32, §1 – 4

Subsection 2 amended

Subsection 3, unnumbered paragraph 1 amended

Subsection 4 amended

Subsection 8, unnumbered paragraph 1 amended

Subsections 9 and 16 amended

### **148F.3 Duties of the board.**

The board shall administer this chapter. The board’s duties shall include but are not limited to the following:

1. Adoption of rules to administer and interpret this chapter, chapter 147, and chapter 272C with respect to the education and licensing of orthotists, prosthetists, and pedorthists.

2. Adoption of rules to establish accepted standards of orthotic and prosthetic scope of practice, including the classification of devices and supervision of nonlicensed caregivers. Any changes to the nationally accepted standards by the American board for certification in orthotics, prosthetics and pedorthics which impact scope of practice may be approved by the board along with the adoption of rules as required in this section.

3. Adoption of rules relating to professional conduct and licensing and the establishment of ethical and professional standards of practice.

4. Acting on matters concerning licensure and the process of applying for, granting, suspending, imposing supervisory or probationary conditions upon, reinstating, revoking, or renewing a license.

5. Establishing and collecting licensure fees as provided in section 147.80.

6. Developing continuing education requirements as a condition of license renewal.

7. Evaluating requirements for licensure in other states to determine if reciprocity may be granted.

8. Adoption of rules providing temporary licensing for persons providing orthotic,

prosthetic, and pedorthic care in this state prior to the effective date of this Act. A temporary license is good for no more than one year.

2012 Acts, ch 1101, §15

**148F.4 Persons and practices not affected.**

This chapter does not prevent or restrict the practice, services, or activities of any of the following:

1. A person licensed in this state by any other law from engaging in the profession or occupation for which the person is licensed, including but not limited to persons set out in section 147.1, subsections 3 and 6.

2. A person employed as an orthotics, prosthetics, or pedorthics practitioner by the government of the United States if that person practices solely under the direction or control of the organization by which the person is employed.

3. A person pursuing a course of study leading to a degree or certificate in orthotics, prosthetics, or pedorthics in an educational program accredited or approved according to rules adopted by the board, if the activities and services constitute a part of a supervised course of study and the person is designated by a title which clearly indicates the person's status as a student, resident, or trainee.

2012 Acts, ch 1101, §16

**148F.5 Qualifications for licensure as orthotist, prosthetist, or pedorthist.**

1. To qualify for a license to practice orthotics or prosthetics, a person shall meet the following requirements:

a. Possess a baccalaureate degree from a college or university.

b. Have completed the amount of formal training, including but not limited to an orthotic and prosthetic education program, and clinical practice established and approved by the board.

c. Complete a clinical residency in the professional area for which a license is sought in accordance with standards, guidelines, or procedures for residencies established and approved by the board. The majority of training must be devoted to services performed under the supervision of a licensed practitioner of orthotics or prosthetics or a person certified as a certified orthotist, certified prosthetist, or certified prosthetist orthotist whose practice is located outside the state.

d. Pass all written, practical, and oral examinations that are required and approved by the board.

e. Be qualified to practice in accordance with accepted standards of orthotic and prosthetic care as established by the board.

2. To qualify for a license to practice pedorthics, a person shall meet the following requirements:

a. Submit proof of a high school diploma or its equivalent.

b. Have completed the amount of formal training, including but not limited to a pedorthic education program, and clinical practice established and approved by the board.

c. Complete a qualified clinical experience program in pedorthics that has a minimum of one thousand hours of pedorthic patient care experience in accordance with any standards, guidelines, or procedures established and approved by the board. The majority of training must be devoted to services performed under the supervision of a licensed orthotist or licensed practitioner of pedorthics or a person certified as a certified pedorthist whose practice is located outside the state.

d. Pass all examinations that are required and approved by the board.

e. Be qualified to practice in accordance with accepted standards of pedorthic care as established by the board.

3. The standards and requirements for licensure established by the board shall be substantially equal to or in excess of standards commonly accepted in the professions of orthotics, prosthetics, or pedorthics, as applicable. The board shall adopt rules as necessary to set the standards and requirements.

4. A person may be licensed in more than one discipline.

2012 Acts, ch 1101, §17; 2013 Acts, ch 32, §5

Referred to in §148F.9

Subsection 2, paragraph c amended

#### **148F.6 Assistants and technicians.**

1. *a.* A person shall not work as an assistant to an orthotist or prosthetist or provide patient care services or fabrication of orthoses or prostheses, unless the work is performed under the supervision of a licensed orthotist or prosthetist.

*b.* An assistant may perform orthotic or prosthetic procedures and related tasks in the management of patient care. An assistant may also fabricate, repair, and maintain orthoses and prostheses.

2. A technician may assist a person licensed under this chapter with fabrication of orthoses, prostheses, or pedorthic devices but shall not provide direct patient care.

2012 Acts, ch 1101, §18

#### **148F.7 Limitation on provision of care and services.**

A licensed orthotist, prosthetist, or pedorthist may provide care or services only if the care or services are provided pursuant to an order from a licensed physician, a licensed podiatric physician, an advanced registered nurse practitioner licensed pursuant to chapter 152 or 152E, or a physician assistant who has been delegated the authority to order the services of an orthotist, prosthetist, or pedorthist by the assistant's supervising physician.

2012 Acts, ch 1101, §19; 2013 Acts, ch 32, §6

Section amended

#### **148F.8 Penalties.**

1. If any person, company, or other entity violates a provision of this chapter, the attorney general may petition for an order enjoining the violation or for an order enforcing compliance with this chapter. Upon the filing of a verified petition in court, the court may issue a temporary restraining order, without notice or bond, and may preliminarily and permanently enjoin the violation. If it is established that the person, company, or other entity has violated or is violating the injunction, the court may punish the offender for contempt of court. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided in this chapter.

2. If a person practices as an orthotist, prosthetist, or pedorthist or represents the person as such without being licensed under the provisions of this chapter, then any other licensed orthotist, pedorthist, or prosthetist, any interested party, or any person injured by the person may petition for relief as provided in subsection 1.

3. If a company or other entity holds itself out to provide orthotic, prosthetic, or pedorthic services without having an orthotist, prosthetist, or pedorthist licensed under the provisions of this chapter on its staff to provide those services, then any other licensed orthotist, prosthetist, or pedorthist or any interested party or injured person may petition for relief as provided in subsection 1.

2012 Acts, ch 1101, §20

#### **148F.9 Transition period.**

1. Through June 30, 2014, a person certified as an orthotist, prosthetist, or pedorthist by the American board for certification in orthotics, prosthetics, and pedorthics, incorporated, or holding similar certification from other accrediting bodies, may apply for and may be issued an initial license to practice orthotics, prosthetics, or pedorthics under the provisions of this chapter without meeting the requirements of section 148F.5, upon proof of current certification in good standing and payment of the required licensure fees.

2. Through June 30, 2014, a person not certified as described in subsection 1 who has practiced continuously for at least thirty hours per week on average for at least five of seven years in an accredited and bonded facility as an orthotist, prosthetist, or pedorthist may file an application with the board to continue to practice orthotics, prosthetics, or pedorthics. The practice described under this subsection shall only be required to have been performed

in an accredited and bonded facility if the facility is required to be accredited and bonded by Medicare. The five years of continuous practice must occur between July 1, 2007, and July 1, 2014. A person applying under this subsection may be issued an initial license to practice orthotics, prosthetics, or pedorthics under the provisions of this chapter without meeting the requirements of section 148F.5, upon payment of the licensure fees required by the department and after the board has reviewed the application.

3. On or after July 1, 2014, an applicant for licensure as an orthotist, prosthetist, or pedorthist shall meet the requirements of section 148F.5.

4. The board shall adopt rules to administer this section.

2013 Acts, ch 32, §7

NEW section

## CHAPTER 149

### PODIATRY

Referred to in §135.24, 135.61, 135B.7, 147.76, 321.34, 321L.2, 514.17, 514.18, 514C.13, 514F.1, 714H.4

Enforcement, §147.87, 147.92

Penalty, §147.86

Utilization and cost control review committee; §514F.1

149.1	Persons engaged in practice — definitions.	149.5	Amputations — anesthesia — prescription drugs.
149.2	Exceptions.	149.6	Title or abbreviation.
149.3	License.	149.7	Temporary license.
149.4	Approved school.		

#### 149.1 Persons engaged in practice — definitions.

1. For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of podiatry:

a. Persons who publicly profess to be podiatric physicians or who publicly profess to assume the duties incident to the practice of podiatry.

b. Persons who diagnose, prescribe, or prescribe and furnish medicine for ailments of the human foot, or treat such ailments by medical, mechanical, or surgical treatments.

2. As used in this chapter:

a. “Board” means the board of podiatry, created under chapter 147.

b. “Human foot” means the ankle and soft tissue which insert into the foot as well as the foot.

c. “Podiatric physician” means a physician or surgeon licensed under this chapter to engage in the practice of podiatric medicine and surgery.

[C24, 27, 31, 35, 39, §2542; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §149.1]

88 Acts, ch 1199, §2; 95 Acts, ch 108, §9; 2007 Acts, ch 10, §108; 2009 Acts, ch 133, §199

Referred to in §149.5

#### 149.2 Exceptions.

This chapter shall not apply to the following:

1. Physicians and surgeons or osteopathic physicians and surgeons who are authorized to practice in this state and are not licensed podiatric physicians.

2. Podiatric physicians licensed to practice in the state prior to July 4, 1937.

3. Nothing herein shall affect or alter the existing right now held by retailers, manufacturers or others to sell corrective shoes, arch supports, drugs or medicines for use on feet.

[C24, 27, 31, 35, 39, §2543; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §149.2]

88 Acts, ch 1199, §3; 96 Acts, ch 1034, §68; 2008 Acts, ch 1088, §141

**149.3 License.**

Every applicant for a license to practice podiatry shall:

1. Be a graduate of an accredited school of podiatry.
2. Present an official transcript issued by a school of podiatry approved by the board.
3. Pass an examination as determined by the board by rule.
4. Have successfully completed a residency as determined by the board by rule. This subsection applies to all applicants who graduate from a school of podiatry on or after January 1, 1995.

[C24, 27, 31, 35, 39, §2544; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §149.3]

89 Acts, ch 43, §1; 92 Acts, ch 1212, §5; 2006 Acts, ch 1184, §91; 2007 Acts, ch 10, §109; 2007 Acts, ch 126, §36

**149.4 Approved school.**

A school of podiatry shall not be approved by the board as a school of recognized standing unless the school:

1. Requires for graduation or the receipt of any podiatric degree the completion of a course of study covering a period of at least eight months in each of four calendar years.
2. A school of podiatry shall not be approved by the board which does not have as an additional entrance requirement two years study in a recognized college, university, or academy.

[C24, 27, 31, 35, 39, §2545; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §149.4]

90 Acts, ch 1253, §2; 2007 Acts, ch 10, §110

**149.5 Amputations — anesthesia — prescription drugs.**

1. A license to practice podiatry shall not authorize the licensee to amputate the human foot.
2. A licensed podiatric physician may do all of the following:
  - a. Administer local anesthesia.
  - b. Administer conscious sedation in a hospital or an ambulatory surgical center.
  - c. Prescribe and administer drugs for the treatment of human foot ailments as provided in section 149.1.

[C24, 27, 31, 35, 39, §2546; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §149.5]

88 Acts, ch 1199, §4; 95 Acts, ch 108, §10; 2003 Acts, ch 22, §1; 2009 Acts, ch 133, §200

**149.6 Title or abbreviation.**

Every licensee shall be designated as a licensed podiatric physician and shall not use any title or abbreviation without the designation “practice limited to the foot,” nor mislead the public in any way as to the limited field or practice.

[C24, 27, 31, 35, 39, §2547; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §149.6]

88 Acts, ch 1199, §5; 95 Acts, ch 108, §11

Titles and degrees, §147.72 – 147.74

**149.7 Temporary license.**

1. The board may issue a temporary license authorizing the licensee to practice podiatry if, in the opinion of the board, a need exists and the person possesses the qualifications prescribed by the board for the temporary license, which shall be substantially equivalent to those required for permanent licensure under this chapter. The board shall determine in each instance the applicant’s eligibility for the temporary license, whether or not an examination shall be given, and the type of examination. The requirements of the law pertaining to permanent licensure shall not be mandatory for temporary licensure except as specifically designated by the board. The granting of a temporary license does not in any way indicate that the person licensed is necessarily eligible for permanent licensure, and the board is not obligated to issue a permanent license to the person.

2. The board shall determine the duration of time a person is qualified to practice podiatry while holding a temporary license. The fee for this license shall be set by the board, and if

extended beyond one year, a renewal fee per year shall be set by the board. The fees shall be based on the administrative costs of issuing and renewing the temporary licenses.

[82 Acts, ch 1040, §1]

87 Acts, ch 128, §2; 2006 Acts, ch 1184, §92, 93; 2007 Acts, ch 10, §111; 2009 Acts, ch 56, §4

## CHAPTER 150

### OSTEOPATHY

Repealed by 2008 Acts, ch 1088, §80

## CHAPTER 150A

### OSTEOPATHIC MEDICINE AND SURGERY

Repealed by 2008 Acts, ch 1088, §80; see chapter 148

## CHAPTER 151

### CHIROPRACTIC

Referred to in §135.24, 135.61, 135.157, 147.76, 148A.7, 261.73, 272C.3, 272C.4, 321.34, 321.445, 321L.2, 509.3, 514.7, 514B.1, 514C.13, 514C.29, 514F.1, 514F.2, 514I.6, 702.17, 714H.4

Enforcement, §147.87, 147.92  
Penalty, §147.86

Utilization and cost control  
review committee; §514F.1

151.1	“Chiropractic” defined.	151.8	Training in procedures used in practice.
151.1A	Board defined.		
151.2	Persons not engaged in.	151.9	Revocation or suspension of license.
151.3	License.		
151.4	Approved college.	151.10	Education requirements.
151.5	Operative surgery — drugs.	151.11	Rules.
151.6	Display of word “chiropractor”.	151.12	Temporary certificate.
151.7	Repealed by 99 Acts, ch 141, §42.		

#### 151.1 “Chiropractic” defined.

For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of chiropractic:

1. Persons publicly professing to be chiropractors or publicly professing to assume the duties incident to the practice of chiropractic.

2. Persons who treat human ailments by the adjustment of the neuromusculoskeletal structures, primarily, by hand or instrument, through spinal care.

3. Persons utilizing differential diagnosis and procedures related thereto, withdrawing or ordering withdrawal of the patient’s blood for diagnostic purposes, performing or utilizing routine laboratory tests, performing physical examinations, rendering nutritional advice, utilizing chiropractic physiotherapy procedures, all of which are subject to and authorized by section 151.8.

[C24, 27, 31, 35, 39, §2555; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.1]

83 Acts, ch 83, §1, 2; 99 Acts, ch 141, §27

Referred to in §151.2, 151.10, 151.11

**151.1A Board defined.**

As used in this chapter, “board” means the board of chiropractic created under chapter 147. 2007 Acts, ch 10, §119

**151.2 Persons not engaged in.**

Section 151.1 shall not be construed to include the following classes of persons:

1. Licensed physicians and surgeons, licensed osteopathic physicians and surgeons, and physical therapists who are exclusively engaged in the practice of their respective professions.
2. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state, or to chiropractors licensed in another state, when incidentally called into this state in consultation with a chiropractor licensed in this state.
3. Students of chiropractic who have entered upon a regular course of study in a chiropractic college approved by the board, who practice chiropractic under the direction of a licensed chiropractor and in accordance with the rules of the board.

[C24, 27, 31, 35, 39, §2556; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.2]  
2007 Acts, ch 10, §120; 2008 Acts, ch 1088, §58

**151.3 License.**

Every applicant for a license to practice chiropractic shall do all of the following:

1. Present satisfactory evidence that the applicant possesses a preliminary education equal to the requirements for graduation from an accredited high school or other secondary school.
2. Present a diploma issued by a college of chiropractic approved by the board.
3. Pass an examination prescribed by the board.

[C24, 27, 31, 35, 39, §2557; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.3]  
83 Acts, ch 83, §3; 2007 Acts, ch 10, §121; 2008 Acts, ch 1088, §59

**151.4 Approved college.**

1. A college of chiropractic shall not be approved by the board as a college of recognized standing unless the college requires for graduation or for the receipt of any chiropractic degree the completion of a course of study covering a period of four academic years.

2. An approved college of chiropractic may include but is not limited to offerings of courses of study in procedures for withdrawing a patient’s blood, performing or utilizing laboratory tests, and performing physical examinations for diagnostic purposes. A chiropractor, employed by an approved college of chiropractic and who has been trained to withdraw blood may withdraw blood and instruct, and supervise a student in the withdrawing of blood.

[C24, 27, 31, 35, 39, §2558; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.4]  
83 Acts, ch 83, §4; 2007 Acts, ch 10, §122; 2008 Acts, ch 1088, §60  
Referred to in §261.71, 261.73

**151.5 Operative surgery — drugs.**

A license to practice chiropractic shall not authorize the licensee to practice operative surgery or administer or prescribe prescription drugs or controlled substances which can only be prescribed by persons authorized by law.

[C24, 27, 31, 35, 39, §2559; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.5]  
2008 Acts, ch 1088, §61  
Drug dispensing, supplying, and prescribing, see §147.107

**151.6 Display of word “chiropractor”.**

Every licensee shall place upon all signs used by the licensee, and display prominently in the licensee’s office the word “chiropractor”.

[C24, 27, 31, 35, 39, §2560; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §151.6]  
Titles and degrees, §147.72 – 147.74

**151.7 Repealed by 99 Acts, ch 141, § 42.**

**151.8 Training in procedures used in practice.**

1. A chiropractor shall not use in the chiropractor's practice the procedures otherwise authorized by law unless the chiropractor has received training in their use by a college of chiropractic offering courses of instructions approved by the board or by curriculum taught on a postgraduate level approved by the board.

2. Any chiropractor licensed as of July 1, 1974, may use the procedures authorized by law if the chiropractor files with the board an affidavit that the chiropractor has completed the necessary training and is fully qualified in these procedures and possesses that degree of proficiency and will exercise that care which is common to physicians in this state.

3. A chiropractor using the additional procedures and practices authorized by this chapter shall be held to the standard of care applicable to any other health care practitioner in this state.

[C75, 77, 79, 81, §151.8]

83 Acts, ch 83, §5; 2007 Acts, ch 10, §123; 2008 Acts, ch 1088, §62

Referred to in §151.1

**151.9 Revocation or suspension of license.**

A entry to practice as a chiropractor may be revoked or suspended when the licensee is guilty of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

4. Habitual intoxication or addiction to the use of drugs.

5. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice as a professional chiropractor. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

6. Fraud in representations as to skill or ability.

7. Use of untruthful or improbable statements in advertisements.

8. Willful or repeated violations of the provisions of this chapter or chapter 272C.

[C79, 81, §151.9]

2008 Acts, ch 1088, §63

**151.10 Education requirements.**

A person who is an applicant for a license to practice chiropractic shall only be required to be tested for the adjunctive procedures specified in section 151.1, subsection 3 which the person chooses to utilize. A person licensed to practice chiropractic shall only be required to complete continuing education requirements for the adjunctive procedures specified in section 151.1, subsection 3 which the person chooses to utilize. A person who is an applicant for a license to practice chiropractic or a person licensed to practice chiropractic shall not be required to utilize any of the adjunctive procedures specified in section 151.1, subsection 3 to obtain a license or continue to practice chiropractic, respectively.

83 Acts, ch 83, §6

**151.11 Rules.**

The board shall adopt rules necessary to administer section 151.1, to protect the health, safety, and welfare of the public, including rules governing the practice of chiropractic and defining any terms, whether or not specified in section 151.1, subsection 3. Such rules shall not be inconsistent with the practice of chiropractic and shall not expand the scope of practice of chiropractic or authorize the use of procedures not authorized by this chapter. These rules shall conform with chapter 17A.

83 Acts, ch 83, §7; 2007 Acts, ch 10, §124

**151.12 Temporary certificate.**

1. The board may, in its discretion, issue a temporary certificate for one year authorizing

the certificate holder to practice chiropractic if, in the opinion of the board, a need exists and the person possesses the qualifications prescribed by the board for the certificate, which shall be substantially equivalent to those required for licensure under this chapter. No requirements of the law pertaining to regular permanent licensure are mandatory for the temporary certificate except as specifically designated by the board. The granting of a temporary certificate does not in any way indicate that the person is eligible for regular licensure or that the board is obligated to issue the person a regular license.

2. The fee for the temporary certificate shall be based on the administrative costs of issuing the certificates.

86 Acts, ch 1127, §1; 2006 Acts, ch 1184, §94; 2007 Acts, ch 10, §125; 2007 Acts, ch 126, §37; 2007 Acts, ch 215, §250; 2008 Acts, ch 1088, §64

## CHAPTER 152

### NURSING

Referred to in §125.2, 135.24, 135.61, 135B.7, 135G.1, 135J.1, 142C.7, 144.29A, 144D.1, 147.74, 147.76, 147A.12, 148F.7, 225C.6, 229.1, 249A.4, 261.114, 321.34, 321.186, 321L.2, 514.21, 514C.11, 514C.13, 514F.1, 622.10, 702.8, 702.17, 708.3A, 714H.4

Enforcement, §147.87, 147.92

Penalty, §147.86

Licensing board, support staff exception; location and powers; see §135.11A, 135.31

Utilization and cost control review committee; §514F.1

Authority of advanced registered nurse practitioner

to prescribe drugs; limitations; see §147.107

Conditioned upon availability of funding,

board of nursing required to replace database

and data platform and update nursing

survey instrument; 2010 Acts, ch 1147, §11, 13

152.1	Definitions.	152.7	Applicant qualifications.
152.2	Executive director — assistants.	152.8	Reciprocity.
152.3	Director’s duties.	152.9	Temporary license.
152.4	Appropriations.	152.10	License revocation or suspension.
152.5	Education programs — record checks.	152.11	Investigators for nurses.
152.6	Licenses — professional abbreviations.	152.12	Examination information.

#### 152.1 Definitions.

As used in this chapter:

1. “Board” means the board of nursing, created under chapter 147.

2. As used in this section, “nursing diagnosis” means to identify and use discriminatory judgment concerning physical and psychosocial signs and symptoms essential to determining effective nursing intervention.

3. “Physician” means a person licensed in this state to practice medicine and surgery, osteopathic medicine and surgery, or a person licensed in this state to practice dentistry or podiatry when acting within the scope of the license. A physician licensed to practice medicine and surgery or osteopathic medicine and surgery in a state bordering this state shall be considered a physician for purposes of this chapter unless previously determined to be ineligible for such consideration by the board of medicine.

4. The “practice of a licensed practical nurse” means the practice of a natural person who is licensed by the board to do all of the following:

a. Perform services in the provision of supportive or restorative care under the supervision of a registered nurse or a physician.

b. Perform additional acts under emergency or other conditions which require education and training and which are recognized by the medical and nursing professions and are approved by the board, as being proper to be performed by a licensed practical nurse.

c. Make the pronouncement of death for a patient whose death is anticipated if the death

occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, a Medicare-certified hospice program or facility, or an assisted living facility or residential care facility, with notice of the death to a physician and in accordance with any directions of a physician.

5. The “*practice of nursing*” means the practice of a registered nurse or a licensed practical nurse. It does not mean any of the following:

a. The practice of medicine and surgery and the practice of osteopathic medicine and surgery, as defined in chapter 148, or the practice of pharmacy as defined in chapter 155A, except practices which are recognized by the medical and nursing professions and approved by the board as proper to be performed by a registered nurse.

b. The performance of nursing services by an unlicensed student enrolled in a nursing education program if performance is part of the course of study. Individuals who have been licensed as registered nurses or licensed practical or vocational nurses in any state or jurisdiction of the United States are not subject to this exemption.

c. The performance of services by unlicensed workers employed in offices, hospitals, or health care facilities, as defined in section 135C.1, under the supervision of a physician or a nurse licensed under this chapter, or employed in the office of a psychologist, podiatric physician, optometrist, chiropractor, speech pathologist, audiologist, or physical therapist licensed to practice in this state, and when acting while within the scope of the employer’s license.

d. The practice of a nurse licensed in another state and employed in this state by the federal government if the practice is in discharge of official employment duties.

e. The care of the sick rendered in connection with the practice of the religious tenets of any church or order by the adherents thereof which is not performed for hire, or if performed for hire by those who depend upon prayer or spiritual means for healing in the practice of the religion of their church or denomination, so long as they do not otherwise engage in the practice of nursing as practical nurses.

6. The “*practice of the profession of a registered nurse*” means the practice of a natural person who is licensed by the board to do all of the following:

a. Formulate nursing diagnosis and conduct nursing treatment of human responses to actual or potential health problems through services, such as case finding, referral, health teaching, health counseling, and care provision which is supportive to or restorative of life and well-being.

b. Execute regimen prescribed by a physician, an advanced registered nurse practitioner, or a physician assistant.

c. Supervise and teach other personnel in the performance of activities relating to nursing care.

d. Perform additional acts or nursing specialties which require education and training under emergency or other conditions which are recognized by the medical and nursing professions and are approved by the board as being proper to be performed by a registered nurse.

e. Make the pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, a Medicare-certified hospice program or facility, an assisted living facility, or a residential care facility, with notice of the death to a physician and in accordance with any directions of a physician.

f. Apply to the abilities enumerated in paragraphs “a” through “e” of this subsection scientific principles, including the principles of nursing skills and of biological, physical, and psychosocial sciences.

[S13, §2575-a28, -a31, -a32; C24, 27, 31, 35, 39, §2561, 2562; C46, 50, 54, 58, 62, 66, 71, 73, 75, §152.1, 152.2; C77, 79, 81, §152.1]

87 Acts, ch 215, §41; 91 Acts, ch 100, §1; 95 Acts, ch 108, §12; 2001 Acts, ch 113, §2 – 4; 2003 Acts, ch 78, §4, 5; 2004 Acts, ch 1168, §8; 2007 Acts, ch 10, §126; 2007 Acts, ch 159, §29, 30; 2008 Acts, ch 1088, §101, 102

Referred to in §509.3, 514.7, 514B.1

**152.2 Executive director — assistants.**

The board shall appoint a full-time executive director. The executive director shall be a registered nurse and shall not be a member of the board. The governor, with the approval of the executive council pursuant to section 8A.413, subsection 3, under the pay plan for exempt positions in the executive branch of government, shall set the salary of the executive director.

[C35, §2537-g1; C39, §2537.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.105; C77, 79, 81, §152.2]

2003 Acts, ch 145, §197; 2008 Acts, ch 1031, §106

Referred to in §152E.2

**152.3 Director's duties.**

The duties of the executive director shall be as follows:

1. To receive all applications to be licensed for the practice of nursing.
2. To collect and receive all fees.
3. To keep all records pertaining to the licensing of nurses, including a record of all board proceedings.
4. To perform such other duties as may be prescribed by the board.
5. To appoint assistants to the director and persons necessary to administer this chapter.

Any appointments shall be merit appointments made pursuant to chapter 8A, subchapter IV.

[C35, §2537-g2, -g3; C39, §2537.2, 2537.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.106, 147.107; C77, 79, 81, §152.3]

88 Acts, ch 1134, §31; 2003 Acts, ch 145, §198, 286; 2006 Acts, ch 1155, §8, 9, 15

**152.4 Appropriations.**

The board may apply appropriated funds to:

1. The administration and enforcement of the provisions of this chapter and of chapter 147.
2. The elevation of the standards of the schools of nursing.
3. The promotion of educational and professional standards of nurses in this state.

[C35, §2537-g3; C39, §2537.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, §147.107; C77, 79, 81, §152.4]

**152.5 Education programs — record checks.**

1. All programs preparing a person to be a registered nurse or a licensed practical nurse shall be approved by the board. The board shall not recognize a program unless it:

- a. Is of recognized standing.
- b. Has provisions for adequate physical and clinical facilities and other resources with which to conduct a sound education program.
- c. Requires, for graduation of a registered nurse applicant, the completion of at least a two academic year course of study.
- d. Requires, for graduation of a licensed practical nurse applicant, the completion of at least a one academic year course of study as prescribed by the board.

2. All advanced formal academic nursing education programs shall also be approved by the board.

3. a. For the purposes of this subsection:

(1) "Nursing program" means a nursing program that is approved by the board pursuant to subsection 1 or 2.

(2) "Student" means a person applying for, enrolled in, or returning to the clinical education component of a nursing program.

b. A nursing program may access the single contact repository established pursuant to section 135C.33 as necessary for the nursing program to initiate record checks of students.

c. A nursing program shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks in this state on the nursing program's students.

d. If a student has a criminal record or a record of founded child or dependent adult abuse, upon request of the nursing program, the department of human services shall perform an

evaluation to determine whether the record warrants prohibition of the person's involvement in a clinical education component of a nursing program involving children or dependent adults. The department of human services shall utilize the criteria provided in section 135C.33 in performing the evaluation and shall report the results of the evaluation to the nursing program. The department of human services has final authority in determining whether prohibition of the person's involvement in a clinical education component is warranted.

[S13, §2575-a29; C24, 27, 31, 35, 39, §2564; C46, 50, 54, 58, 62, 66, 71, 73, 75, §152.4; C77, 79, 81, §152.5]

95 Acts, ch 79, §1; 2006 Acts, ch 1008, §1

Referred to in §152.7, 235A.15, 235B.6, 261.23

### **152.6 Licenses — professional abbreviations.**

The board may license a natural person to practice as a registered nurse or as a licensed practical nurse. However, only a person currently licensed as a registered nurse in this state may use that title and the abbreviation "RN" after the person's name and only a person currently licensed as a licensed practical nurse in this state may use that title and the abbreviation "LPN" after the person's name. For purposes of this section, "currently licensed" includes persons licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in section 152E.1 or pursuant to the advanced practice registered nurse compact contained in section 152E.3.

[C50, 54, 58, 62, 66, 71, 73, 75, §152.5; C77, 79, 81, §152.6]

2000 Acts, ch 1008, §4; 2005 Acts, ch 53, §4

### **152.7 Applicant qualifications.**

1. In addition to the provisions of section 147.3, an applicant to be licensed for the practice of nursing shall have the following qualifications:

- a. Be a graduate of an accredited high school or the equivalent.
- b. Pass an examination as prescribed by the board.
- c. Complete a course of study approved by the board pursuant to section 152.5.

2. For purposes of licensure pursuant to the nurse licensure compact contained in section 152E.1, the compact administrator may refuse to accept a change in the qualifications for licensure as a registered nurse or as a licensed practical or vocational nurse by a licensing authority in another state which is a party to the compact which substantially modifies that state's qualifications for licensure in effect on July 1, 2000. For purposes of licensure pursuant to the advanced practice registered nurse compact contained in section 152E.3, the compact administrator may refuse to accept a change in the qualifications for licensure as an advanced practice registered nurse by a licensing authority in another state which is a party to the compact which substantially modifies that state's qualifications for licensure in effect on July 1, 2005. A refusal to accept a change in a party state's qualifications for licensure may result in submitting the issue to an arbitration panel or in withdrawal from the respective compact, at the discretion of the compact administrator.

[S13, §2575-a29, -a30; C24, 27, 31, 35, 39, §2563; C46, 50, 54, 58, 62, 66, 71, 73, 75, §152.3; C77, 79, 81, §152.7]

95 Acts, ch 79, §2; 2000 Acts, ch 1008, §5; 2000 Acts, ch 1140, §37; 2000 Acts, ch 1232, §50; 2005 Acts, ch 53, §5; 2006 Acts, ch 1030, §15; 2007 Acts, ch 22, §37

Referred to in §152.8

### **152.8 Reciprocity.**

Notwithstanding the provisions of sections 147.44, 147.48, 147.49, and 147.53, the following shall apply regarding applicants for nurse licensure possessing a license from another state:

1. A license possessed by an applicant from a state which has not adopted the nurse licensure compact contained in section 152E.1 or the advanced practice registered nurse compact contained in section 152E.3 shall be recognized by the board under conditions specified which indicate that the licensee meets all the qualifications required under section 152.7. If a foreign license is recognized, the board may issue a license by endorsement without an examination being required. Recognition shall be based on whether the foreign licensee is qualified to practice nursing. The board may issue a temporary license to a natural

person who has completed the requirements of and applied for licensure by endorsement. The board shall determine the length of time a temporary license shall remain effective.

2. A license possessed by an applicant and issued by a state which has adopted the nurse licensure compact contained in section 152E.1 or the advanced practice registered nurse compact contained in section 152E.3 shall be recognized pursuant to the provisions of that section.

[C35, §2537-g3; C39, §2537.3; C46, 50, 54, 58, 62, §147.107; C66, 71, 73, 75, §147.107, 152.7; C77, 79, 81, §152.8]

2000 Acts, ch 1008, §6; 2005 Acts, ch 53, §6; 2008 Acts, ch 1088, §103

#### **152.9 Temporary license.**

The board may issue a temporary license to a natural person who has completed the requirements of and applied for licensure by endorsement. The board shall determine the length of time a temporary license shall remain effective.

[C77, 79, 81, §152.9]

94 Acts, ch 1123, §1

#### **152.10 License revocation or suspension.**

1. Notwithstanding sections 147.87 to 147.89, the board may restrict, suspend, or revoke a license to practice nursing or place the licensee on probation. The board may also prescribe by rule conditions of license reinstatement. The board shall prescribe rules of procedure by which to restrict, suspend, or revoke a license. These procedures shall conform to the provisions of chapter 17A.

2. In addition to the grounds stated in section 147.55, the following are grounds for suspension or revocation under subsection 1 of this section:

a. Willful violation of the rules of the board.

b. Continued practice while knowingly having an infectious or contagious disease which could be harmful to a patient's welfare.

c. Conviction for a felony in the courts of this state or another state, territory, or country if the felony relates to the practice of nursing. Conviction shall include only a conviction for an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another jurisdiction shall be conclusive evidence of conviction.

d. (1) Having a license to practice nursing as a registered nurse or licensed practical nurse revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is prima facie evidence of such fact.

(2) Having a license to practice nursing as a registered nurse or licensed practical nurse revoked or suspended, or having other disciplinary action taken, by a licensing authority in another state which has adopted the nurse licensure compact contained in section 152E.1 or the advanced practice registered nurse compact contained in section 152E.3 and which has communicated information relating to such action pursuant to the coordinated licensure information system established by the compact. If the action taken by the licensing authority occurs in a jurisdiction which does not afford the procedural protections of chapter 17A, the licensee may object to the communicated information and shall be afforded the procedural protections of chapter 17A.

e. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice nursing.

f. Being adjudicated mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license, unless the board orders otherwise.

g. Being guilty of willful or repeated departure from or the failure to conform to the minimum standard of acceptable and prevailing practice of nursing; however, actual injury to a patient need not be established.

h. (1) Inability to practice nursing with reasonable skill and safety by reason of illness,

excessive use of alcohol, drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

(2) The board may, upon probable cause, request a licensee to submit to an appropriate medical examination by a designated physician. If requested by the licensee, the licensee may also designate a physician for an independent medical examination. The reasonable costs of such examinations and medical reports to the board shall be paid by the board. Refusal or failure of a licensee to complete such examinations shall constitute an admission of any allegations relating to such condition. All objections shall be waived as to the admissibility of the examining physicians' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against a registered nurse or licensed practical nurse in another proceeding and shall be confidential. At reasonable intervals, a registered nurse or licensed practical nurse shall be afforded an opportunity to demonstrate that the registered nurse or licensed practical nurse can resume the competent practice of nursing with reasonable skill and safety to patients.

[C77, 79, 81, §152.10]

2000 Acts, ch 1008, §7; 2005 Acts, ch 53, §7; 2008 Acts, ch 1088, §104  
 Referred to in §272C.3, 272C.4, 272C.5

**152.11 Investigators for nurses.**

The board of nursing may appoint investigators, who shall not be members of the board, to administer and aid in the enforcement of the provisions of law related to those licensed to practice nursing. The amount of compensation for the investigators shall be determined pursuant to chapter 8A, subchapter IV. Investigators authorized by the board of nursing have the powers and status of peace officers when enforcing this chapter and chapters 147 and 272C.

93 Acts, ch 41, §1; 2003 Acts, ch 145, §199  
 Referred to in §272C.5

**152.12 Examination information.**

Notwithstanding section 147.21, individual pass or fail examination results made available from the authorized national testing agency may be disclosed to the appropriate licensing authority in another state, the District of Columbia, or a territory or country, and the board-approved education program, for purposes of verifying accuracy of national data and determining program approval.

97 Acts, ch 159, §22; 2008 Acts, ch 1088, §105; 2012 Acts, ch 1021, §47

**CHAPTER 152A**

**DIETETICS**

Referred to in §147.76, 714H.4

Enforcement, §147.87, 147.92  
 Penalty, §147.86

152A.1 Definitions.  
 152A.2 License requirements.

152A.3 Exemptions.

**152A.1 Definitions.**

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

1. "Board" means the board of dietetics created under chapter 147.
2. "Licensed dietitian" or "dietitian" means a person who holds a valid license to practice dietetics pursuant to this chapter.

85 Acts, ch 168, §8; 2007 Acts, ch 10, §127

**152A.2 License requirements.**

1. An applicant shall be issued a license to practice dietetics by the board when the applicant satisfies all of the following:

a. Possesses a baccalaureate degree or postbaccalaureate degree with a major course of study in human nutrition, food and nutrition, dietetics, or food systems management, or in an equivalent major course of study which meets minimum academic requirements as established by the American dietetic association and approved by the board.

b. Completes an internship or preplanned professional experience program approved by the American dietetic association and approved by the board.

c. Satisfactorily completes an examination designed by the board.

2. Renewal of a license granted under this chapter shall not be approved unless the applicant has satisfactorily completed the continuing education requirements for the license as prescribed by the board.

85 Acts, ch 168, §9

**152A.3 Exemptions.**

The following are not subject to this chapter:

1. Licensed physicians and surgeons, nurses, chiropractors, dentists, dental hygienists, pharmacists or physical therapists who make dietetic or nutritional assessments, or give dietetic or nutritional advice in the normal practice of their profession or as otherwise authorized by law.

2. Dietetics students who engage in clinical practice under the supervision of a dietitian as part of a dietetic education program approved or accredited by the American dietetic association.

3. Dietitians who serve in the armed forces or the public health service of the United States or are employed by the United States department of veterans affairs, provided their practice is limited to that service or employment.

4. Dietitians who are licensed in another state, United States possession, or country, or have received at least a baccalaureate degree and are in this state for the purpose of:

a. Consultation, provided the practice in this state is limited to consultation.

b. Conducting a teaching clinical demonstration in connection with a program of basic clinical education, graduate education, or postgraduate education which is sponsored by a dietetic education program or accredited by the American dietetic association and carried out in an educational institution or its affiliated clinical facility or health care agency, or before a group of licensed dietitians.

5. Individuals who do not call themselves dietitians but routinely, in the course of doing business, market or distribute weight loss programs or sell nutritional products and provide explanations for customers regarding the use of the programs or products relative to normal nutritional needs.

6. Individuals who provide routine education and advice regarding normal nutritional requirements and sources of nutrients, including, but not limited to, persons who provide information as to the use and sale of food and food materials including dietary supplements.

85 Acts, ch 168, §10; 2009 Acts, ch 26, §9

## CHAPTER 152B

### RESPIRATORY CARE

Referred to in §135.24, 147.74, 147.76, 272C.1, 714H.4

Enforcement, §147.87, 147.92

152B.1	Definitions.	152B.9	Injunction.
152B.2	Respiratory care as a practice defined.	152B.10	Liability.
152B.3	Performance of respiratory care.	152B.11	Continuing education.
152B.4	Location of respiratory care.	152B.12	Suspension and revocation of licenses.
152B.5	Respiratory care students.	152B.13	Board of respiratory care. Repealed by 2010 Acts, ch 1163, §8.
152B.6	Board duties.	152B.14	Licensure through examination.
152B.7	Representation.		
152B.7A	Exceptions.		
152B.8	Penalty.		

#### 152B.1 Definitions.

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

1. “*Board*” means the board of respiratory care created under chapter 147.
2. “*Department*” means the Iowa department of public health.
3. “*Formal training*” means a supervised, structured educational activity that includes preclinical didactic and laboratory activities and clinical activities approved by an accrediting agency recognized by the board, and including an evaluation of competence through a standardized testing mechanism that is determined by the board to be both valid and reliable.
4. “*Qualified health care professional prescriber*” means a physician assistant operating under the prescribing authority granted in section 147.107 or an advanced registered nurse practitioner operating under the prescribing authority granted in section 147.107.
5. “*Qualified medical director*” means a licensed physician or surgeon who is a member of a hospital’s or health care facility’s active medical staff and who has special interest and knowledge in the diagnosis and treatment of respiratory problems, is qualified by special training or experience in the management of acute and chronic respiratory disorders, is responsible for the quality, safety, and appropriateness of the respiratory care services provided, and is readily accessible to the respiratory care practitioners to assure their competency.
6. “*Respiratory care*” includes “respiratory therapy” or “inhalation therapy”.
7. “*Respiratory care education program*” means a course of study leading to eligibility for registration or certification in respiratory care which is recognized or approved by the board.
8. “*Respiratory care practitioner*” or “*practitioner*” means a person who meets all of the following:
  - a. Is qualified in the practice of cardiorespiratory care and has the knowledge and skill necessary to administer respiratory care as defined in section 152B.3.
  - b. Is capable of serving as a resource to the physician or surgeon in relation to the technical aspects of cardiorespiratory care and to safe and effective methods for administering respiratory care modalities.
  - c. Is able to function in situations of unsupervised patient contact requiring individual judgment.
  - d. Is capable of supervising, directing, or teaching less skilled personnel in the provision of respiratory care services.
9. “*Respiratory therapist*” means a person who has successfully completed a respiratory care education program for training respiratory therapists and has passed the registry examination for respiratory therapists administered by the national board for respiratory care or a respiratory therapy licensure examination approved by the board.
10. “*Respiratory therapy technician*” means a person who has successfully completed a respiratory care education program for training therapists and has passed the certification examination for respiratory therapy technicians administered by the national board for

respiratory care or a respiratory therapist technicians' licensure examination approved by the board.

85 Acts, ch 151, §1

CS85, §135F.1

90 Acts, ch 1193, §1

C93, §152B.1

96 Acts, ch 1036, §31; 2007 Acts, ch 10, §128; 2012 Acts, ch 1041, §1; 2013 Acts, ch 90, §30  
Subsection 8, paragraph b amended

### **152B.2 Respiratory care as a practice defined.**

1. *a. "Respiratory care as a practice"* means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems' functions, and includes all of the following:

(1) Direct and indirect pulmonary care services that are safe and of comfort, aseptic, preventative, and restorative to the patient.

(2) Direct and indirect respiratory care services including but not limited to the administration of pharmacological and diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a licensed physician or surgeon or a qualified health care professional prescriber.

(3) Observation and monitoring of signs and symptoms, general behavior, reactions, general physical response to respiratory care treatment and diagnostic testing.

(4) Determination of whether the signs, symptoms, behavior, reactions, or general response exhibit abnormal characteristics.

(5) Implementation based on observed abnormalities, of appropriate reporting, referral, or respiratory care protocols or changes in treatment regimen.

*b. "Respiratory care as a practice"* does not include the delivery, assembly, setup, testing, or demonstration of respiratory care equipment in the home upon the order of a licensed physician or surgeon or a qualified health care professional prescriber. As used in this paragraph, "*demonstration*" does not include the actual teaching, administration, or performance of the respiratory care procedures.

2. "*Respiratory care protocols*" as used in this section means policies and procedures developed by an organized health care system through consultation, when appropriate, with administrators, licensed physicians and surgeons, qualified health care professional prescribers, licensed registered nurses, licensed physical therapists, licensed respiratory care practitioners, and other licensed health care practitioners.

85 Acts, ch 151, §2

CS85, §135F.2

90 Acts, ch 1193, §2

C93, §152B.2

97 Acts, ch 68, §1; 2012 Acts, ch 1041, §2 – 4; 2012 Acts, ch 1138, §51; 2013 Acts, ch 90, §31

Referred to in §152B.5, 152B.7A, 152B.11

Subsection 1, paragraph b amended

### **152B.3 Performance of respiratory care.**

1. The performance of respiratory care shall be in accordance with the prescription of a licensed physician or surgeon or a qualified health care professional prescriber and includes but is not limited to the diagnostic and therapeutic use of the following:

*a.* Administration of medical gases, aerosols, and humidification, not including general anesthesia.

*b.* Environmental control mechanisms and paramedical therapy.

*c.* Pharmacologic agents relating to respiratory care procedures.

*d.* Mechanical or physiological ventilatory support.

*e.* Bronchopulmonary hygiene.

*f.* Cardiopulmonary resuscitation.

- g. Maintenance of the natural airways.
  - h. Insertion without cutting tissues and maintenance of artificial airways.
  - i. Specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment, and research of pulmonary abnormalities, including measurement of ventilatory volumes, pressures, and flows, collection of specimens of blood, and collection of specimens from the respiratory tract.
  - j. Analysis of blood gases and respiratory secretions.
  - k. Pulmonary function testing.
  - l. Hemodynamic and physiologic measurement and monitoring of cardiac function as it relates to cardiopulmonary pathophysiology.
  - m. Invasive procedures that relate to respiratory care.
2. A respiratory care practitioner may transcribe and implement a written or verbal order from a licensed physician or surgeon or a qualified health care professional prescriber pertaining to the practice of respiratory care.
  3. This chapter does not authorize a respiratory care practitioner to practice medicine, surgery, or other medical practices except as provided in this section.

85 Acts, ch 151, §3

CS85, §135F.3

C93, §152B.3

2009 Acts, ch 41, §263; 2012 Acts, ch 1041, §5, 6; 2012 Acts, ch 1138, §52, 53

Referred to in §152B.1, 152B.5, 152B.7A, 152B.11

#### **152B.4 Location of respiratory care.**

The practice of respiratory care may be performed in a hospital as defined in section 135B.1, subsection 3, and other settings where respiratory care is to be provided in accordance with a prescription of a licensed physician or surgeon or a qualified health care professional prescriber. Respiratory care may be provided during transportation of a patient and under circumstances where an emergency necessitates respiratory care.

85 Acts, ch 151, §4

CS85, §135F.4

C93, §152B.4

2012 Acts, ch 1041, §7; 2012 Acts, ch 1138, §54

#### **152B.5 Respiratory care students.**

Respiratory care services may be rendered by a student enrolled in a respiratory therapy training program when these services are incidental to the student's course of study.

A student enrolled in a respiratory therapy training program who is employed in an organized health care system may render services defined in sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for a limited period of time as determined by rule. The student shall be identified as a "student respiratory care practitioner".

85 Acts, ch 151, §5

CS85, §135F.5

90 Acts, ch 1193, §3

C93, §152B.5

2005 Acts, ch 89, §15

#### **152B.6 Board duties.**

The board shall administer and implement this chapter. The board's duties in these areas shall include, but are not limited to, the following:

1. The adoption, publication and amendment of rules, in accordance with chapter 17A, necessary for the administration and enforcement of this chapter.
2. The establishment of a system for the licensure of respiratory care practitioners and the establishment and collection of licensure fees.
3. The designation of licensure examinations for respiratory care practitioners.

85 Acts, ch 151, §6

CS85, §135F.6  
90 Acts, ch 1193, §4  
C93, §152B.6  
96 Acts, ch 1036, §32; 2006 Acts, ch 1155, §10, 15  
Referred to in §152B.12

#### **152B.7 Representation.**

A person who is qualified as a respiratory care practitioner and is licensed by the board may use the title “respiratory care practitioner” or the letters R.C.P. after the person’s name to indicate that the person is a qualified respiratory care practitioner licensed by the board. No other person is entitled to use the title or letters or any other title or letters that indicate or imply that the person is a respiratory care practitioner, nor may a person make any representation, orally or in writing, expressly or by implication, that the person is a licensed respiratory care practitioner.

85 Acts, ch 151, §7  
CS85, §135F.7  
90 Acts, ch 1193, §5  
C93, §152B.7  
96 Acts, ch 1036, §33

#### **152B.7A Exceptions.**

1. A person shall not practice respiratory care or represent oneself to be a respiratory care practitioner unless the person is licensed under this chapter.

2. This chapter does not prohibit any of the following:

a. The practice of respiratory care which is an integral part of the program of study by students enrolled in an accredited respiratory therapy training program approved by the board in those situations where that care is provided under the direct supervision of an appropriate clinical instructor recognized by the educational program.

b. Respiratory care services rendered in the course of an emergency.

c. Care administered in the course of assigned duties of persons in the military services.

3. This chapter is not intended to limit, preclude, or otherwise interfere with the practice of other health care providers not otherwise licensed under this chapter who are licensed and certified by this state to administer respiratory care procedures.

4. An individual who passes an examination that includes the content of one or more of the functions included in sections 152B.2 and 152B.3 shall not be prohibited from performing such procedures for which they were tested, as long as the testing body offering the examination is approved by the board.

96 Acts, ch 1036, §34; 97 Acts, ch 68, §2

#### **152B.8 Penalty.**

A person who violates a provision of this chapter is guilty of a simple misdemeanor.

85 Acts, ch 151, §8  
CS85, §135F.8  
C93, §152B.8

#### **152B.9 Injunction.**

The board may apply to a court for the issuance of an injunction or other appropriate restraining order against a person who is engaging in a violation of this chapter.

85 Acts, ch 151, §9  
CS85, §135F.9  
C93, §152B.9  
96 Acts, ch 1036, §35

#### **152B.10 Liability.**

A respiratory care practitioner who in good faith renders emergency care at the scene of an emergency is not liable for civil damages as a result of acts or omissions by the person

rendering the emergency care. This section does not grant immunity from liability for civil damages when the respiratory care practitioner is grossly negligent.

85 Acts, ch 151, §10  
CS85, §135F.10  
C93, §152B.10

**152B.11 Continuing education.**

After July 1, 1991, a respiratory care practitioner shall submit evidence satisfactory to the board that during the year preceding renewal of licensure the practitioner has completed continuing education courses as prescribed by the board. In lieu of the continuing education, a person may successfully complete the most current version of the licensure examination.

Persons who are not licensed under this chapter but who perform respiratory care as defined by sections 152B.2 and 152B.3 shall comply with the continuing education requirements of this section. The board shall adopt rules for the administration of this requirement.

Except for those licensed by the board, this section does not apply to persons who are licensed to practice a health profession covered by chapter 147, when the licensee's performance of respiratory care practices falls within the scope of practice, as permitted by their respective licensing boards.

85 Acts, ch 151, §11  
CS85, §135F.11  
90 Acts, ch 1193, §6  
C93, §152B.11  
95 Acts, ch 41, §23; 96 Acts, ch 1036, §36; 97 Acts, ch 68, §3

**152B.12 Suspension and revocation of licenses.**

The board may suspend, revoke or impose probationary conditions upon a license issued pursuant to rules adopted in accordance with section 152B.6.

85 Acts, ch 151, §12  
CS85, §135F.12  
90 Acts, ch 1193, §7  
C93, §152B.12  
96 Acts, ch 1036, §37

**152B.13 Board of respiratory care.** Repealed by 2010 Acts, ch 1163, § 8.

**152B.14 Licensure through examination.**

The board shall issue a license to practice respiratory care to an applicant who has passed an examination administered by the state or a national agency approved by the board.

96 Acts, ch 1036, §39; 2005 Acts, ch 89, §16

## CHAPTER 152C

## MASSAGE THERAPY

Referred to in §147.74, 147.76, 261B.11, 272C.1, 423.2

Enforcement, §147.87, 147.92  
Penalty, general, §147.86

152C.1	Definitions.	152C.5A	Massage therapy modalities study.
152C.2	Repealed by 98 Acts, ch 1053, §43.	152C.6	Enforcement.
152C.3	Requirements for licensure.	152C.7	Suspension and revocation of licenses.
152C.4	Practicing as a massage therapist without a license — employment of person not licensed — civil penalty.	152C.7A	Temporary exemptions.
152C.5	Practice or use of title — license required.	152C.8	Transition provisions. Repealed by 2008 Acts, ch 1088, §79.
		152C.9	Exemptions.

**152C.1 Definitions.**

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

1. “Board” means the board of massage therapy created under chapter 147.
2. “*Massage therapist*” means a person licensed to practice the health care service of the healing art of massage therapy under this chapter.

3. “*Massage therapy*” means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.

4. “*Reflexology*” means manipulation of the soft tissues of the human body which is restricted to the hands, feet, or ears, performed by persons who do not hold themselves out to be massage therapists or to be performing massage therapy.

92 Acts, ch 1137, §1; 98 Acts, ch 1053, §29, 30; 2000 Acts, ch 1185, §2, 3; 2004 Acts, ch 1065, §1, 2; 2007 Acts, ch 10, §130

Referred to in §152C.5, 152C.7A

**152C.2 Repealed by 98 Acts, ch 1053, § 43.****152C.3 Requirements for licensure.**

1. The board shall adopt rules pursuant to chapter 17A establishing a procedure for licensing of massage therapists. License requirements shall include the following:

a. Completion of a curriculum of massage education at a school approved by the board which requires for admission a diploma from an accredited high school or the equivalent and requires completion of at least six hundred hours of supervised academic instruction. However, educational requirements under this paragraph are subject to reduction by the board if, after public notice and hearing, the board determines that the welfare of the public may be adequately protected with fewer hours of education.

b. Passage of an examination given or approved by the board.

c. Payment of a reasonable fee required by the board which shall compensate and be retained by the board for the costs of administering this chapter.

2. In addition to provisions for licensure, the rules shall include the following:

a. Requirements regarding completion of at least twelve hours of continuing education annually regarding subjects concerning massage and related techniques or the health and safety of the public, subject to reduction by the board if, after public notice and hearing, the board determines that the welfare of the public may be adequately protected with fewer hours.

b. Requirements for issuance of a reciprocal license to licensees of states with license

requirements equal to or exceeding those of this chapter. The rules shall provide for issuance of a temporary reciprocal license for licensees of states with lower requirements.

3. A massage therapist licensed pursuant to this chapter shall be issued a license number and a license certificate.

92 Acts, ch 1137, §3; 93 Acts, ch 71, §1; 98 Acts, ch 1053, §31 – 33; 2011 Acts, ch 57, §1  
Referred to in §152C.5, 152C.7

#### **152C.4 Practicing as a massage therapist without a license — employment of person not licensed — civil penalty.**

1. The board, or its authorized agents, may inspect any facility that advertises or offers the services of massage therapy. The board may, by order, impose a civil penalty upon a person who practices as a massage therapist without a license issued under this chapter or a person or business that employs an individual who is not licensed under this chapter. The penalty shall not exceed one thousand dollars for each offense. Each day of a continued violation after an order or citation by the board constitutes a separate offense, with the maximum penalty not to exceed ten thousand dollars. In determining the amount of a civil penalty, the board may consider the following:

- a. Whether the amount imposed will be a substantial economic deterrent to the violation.
- b. The circumstances leading to or resulting in the violation.
- c. The severity of the violation and the risk of harm to the public.
- d. The economic benefits gained by the violator as a result of noncompliance.
- e. The welfare or best interest of the public.

2. Before issuing an order or citation under this section, the board shall provide written notice and the opportunity to request a hearing on the record. The hearing must be requested within thirty days of the issuance of the notice and shall be conducted as provided in chapter 17A. The board may, in connection with a proceeding under this section, issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence and may request the attorney general to bring an action to enforce the subpoena.

3. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review in accordance with section 17A.19. The board shall notify the attorney general of the failure to pay a civil penalty within thirty days after entry of an order pursuant to subsection 1, or within ten days following final judgment in favor of the board if an order has been stayed pending appeal. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs. An action to enforce an order under this section may be joined with an action for an injunction.

92 Acts, ch 1137, §4; 98 Acts, ch 1053, §34; 2000 Acts, ch 1185, §4

#### **152C.5 Practice or use of title — license required.**

The practice of massage therapy as defined in section 152C.1 is strictly prohibited by unlicensed individuals. It is unlawful for a person to engage in or offer to engage in the practice of massage therapy, or use in connection with the person's name, the initials "L. M. T." or the words "licensed massage therapist", "massage therapist", "masseur", "masseur", or any other word or title that implies or represents that the person practices massage therapy, unless the person possesses a license issued under the provisions of section 152C.3.

92 Acts, ch 1137, §5; 2000 Acts, ch 1185, §5

#### **152C.5A Massage therapy modalities study.**

The Iowa department of public health, with input from the board, shall conduct a study regarding the modalities associated with the practice of massage therapy. The study shall be conducted with the input of licensed massage therapists, reflexologists, and unlicensed persons practicing modalities related to massage therapy. The objective of the study shall be to determine which modalities shall be included under the definition of massage therapy and require licensure, and shall include, but not be limited to, a recommendation regarding the licensure of reflexologists. The study shall focus on the health, safety, and welfare of the public regarding each of the modalities reviewed. The department shall submit a report

summarizing the results of the study and making recommendations regarding modality inclusion to the general assembly by January 15, 2004.

2003 Acts, ch 70, §1

Referred to in §152C.7A

#### **152C.6 Enforcement.**

No city, township, or county governmental body, agency, or department shall enact or enforce restrictions or requirements regarding massage therapists which are not equally enacted or enforced regarding all licensed health care practitioners, including but not limited to zoning, building code, health, and sanitation regulations.

92 Acts, ch 1137, §6

#### **152C.7 Suspension and revocation of licenses.**

The board may suspend, revoke, or impose probationary conditions upon a license issued pursuant to rules adopted in accordance with section 152C.3.

92 Acts, ch 1237, §11; 98 Acts, ch 1053, §35

#### **152C.7A Temporary exemptions.**

An individual who is engaged exclusively in the practice of reflexology or an unlicensed individual who is practicing a modality related to massage therapy, and whose professional practice does not incorporate aspects that constitute massage therapy as defined in section 152C.1, shall not be subject to the licensure provisions of this chapter for a one-year period beginning July 1, 2003, and ending June 30, 2004. Beginning July 1, 2004, an individual who is engaged exclusively in the practice of reflexology or an unlicensed individual who is practicing a modality related to massage therapy shall be subject to licensure pursuant to this chapter unless, based upon the recommendations contained in the massage therapy modalities study as provided in section 152C.5A, the practice of reflexology or an unlicensed individual who is practicing a modality related to massage therapy is permanently exempted from massage therapy licensure.

2003 Acts, ch 70, §2

#### **152C.8 Transition provisions.** Repealed by 2008 Acts, ch 1088, § 79.

#### **152C.9 Exemptions.**

This chapter shall not apply to the following persons:

1. Persons who are licensed to practice medicine or surgery, osteopathic medicine and surgery, chiropractic, cosmetology arts and sciences, or podiatry in this state; or athletic trainers, technicians, nurses, occupational therapists, physical therapists, or physician assistants licensed, certified, or registered in this state or acting under the prescription or supervision of a person licensed to practice medicine or surgery or osteopathic medicine and surgery in this state.

2. Persons who are licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally present in this state to teach a course of instruction related to massage and bodywork therapy or to consult with a person licensed under subtitle 3 of this title.

3. Students enrolled in a program recognized by the board while completing a clinical requirement for graduation performed under the supervision of a person licensed under subtitle 3 of this title.

4. Persons giving massage and bodywork to members of their immediate family.

5. Persons practicing reflexology.

6. Persons engaged within the scope of practice of a profession with established standards and ethics utilizing touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement, provided that the practices performed or services rendered are not designated or implied to be massage therapy. Such practices include, but are not limited to, the Feldenkrais method, the Trager approach, and mind-body centering.

7. Persons engaged within the scope of practice of a profession with established standards and ethics in which touch is limited to that which is essential for palpitation and affectation of the human energy system, provided that the practices performed or services rendered are not designated or implied to be massage therapy.

8. Persons incidentally present in this state to provide services as part of an emergency response team working in conjunction with disaster relief officials.

2004 Acts, ch 1065, §3; 2008 Acts, ch 1088, §141

## CHAPTER 152D

### ATHLETIC TRAINING

Referred to in §147.74, 147.76, 272.2, 272C.1

Enforcement, §147.87, 147.92

152D.1	Definitions.	152D.6	License suspension and revocation.
152D.2	Licensing and practice requirements. Repealed by 2004 Acts, ch 1045, §11.	152D.7	Practice or use of title — license required.
152D.3	Requirements for licensure.	152D.8	Penalty.
152D.4	Scope of chapter.	152D.9	Transition provisions.
152D.5	Duties of the board.		

#### 152D.1 Definitions.

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

1. “*Athlete*” means a person who participates in a sanctioned amateur or professional sport or other recreational sports activity.

2. “*Athletic injury*” means any of the following:

a. An injury or illness sustained by an athlete as a result of the athlete’s participation in sports, games, or recreational sports activities.

b. An injury or illness that impedes or prevents an athlete from participating in sports, games, or recreational sports activities.

3. “*Athletic trainer*” means a person licensed under this chapter to practice athletic training under the direction of a licensed physician.

4. “*Athletic training*” means the practice of prevention, recognition, assessment, physical evaluation, management, treatment, disposition, and physical reconditioning of athletic injuries that are within the professional preparation and education of a licensed athletic trainer and under the direction of a licensed physician. The term “*athletic training*” includes the organization and administration of educational programs and athletic facilities, and the education and counseling of the public on matters relating to athletic training.

5. “*Board*” means the board of athletic training created under chapter 147.

94 Acts, ch 1132, §1; 98 Acts, ch 1053, §36, 37; 2004 Acts, ch 1045, §3; 2007 Acts, ch 10, §131

**152D.2 Licensing and practice requirements.** Repealed by 2004 Acts, ch 1045, § 11. See § 152D.7.

#### 152D.3 Requirements for licensure.

1. An applicant for a license to practice athletic training shall:

a. Be a graduate of an accredited college or university and comply with the minimum athletic training curriculum requirements established by the board.

b. Have successfully completed an examination prepared or selected by the board.

2. Application and renewal procedures, fees, and reciprocal agreements shall be provided in accordance with rules adopted by the board pursuant to chapter 17A.

94 Acts, ch 1132, §3; 95 Acts, ch 94, §2; 98 Acts, ch 1053, §38; 2004 Acts, ch 1045, §4

**152D.4 Scope of chapter.**

The provisions of this chapter do not apply to any of the following:

1. Persons otherwise licensed to practice medicine and surgery, osteopathic medicine and surgery, optometry, occupational therapy, nursing, chiropractic, podiatry, dentistry, or physical therapy, and licensed physician assistants who do not represent themselves to the public as athletic trainers.

2. Elementary or secondary school teachers, coaches, or authorized volunteers who do not hold themselves out to the public as athletic trainers.

3. Students of athletic training who practice athletic training under the supervision of a licensed athletic trainer in connection with the regular course of instruction at a school providing athletic training instruction.

4. An athletic trainer who is in this state temporarily with an individual or group that is participating in an athletic event and who is licensed, certified, or registered by another state or country, or certified as an athletic trainer by the board of certification of the national athletic trainers association or its successor organization.

94 Acts, ch 1132, §4; 2004 Acts, ch 1045, §5, 6; 2006 Acts, ch 1010, §55; 2008 Acts, ch 1088, §141

**152D.5 Duties of the board.**

The board shall:

1. Adopt rules consistent with this chapter and chapter 147 which are necessary for the performance of its duties.

2. Establish standards and guidelines for athletic trainers including minimum curriculum requirements.

3. Prepare and conduct, or prescribe, an examination for applicants for a license.

4. Establish a system for the collection of licensure fees.

94 Acts, ch 1132, §5; 98 Acts, ch 1053, §39; 2004 Acts, ch 1045, §7; 2006 Acts, ch 1155, §11, 15

**152D.6 License suspension and revocation.**

A license issued by the board under the provisions of this chapter may be suspended or revoked, or renewal denied by the board, for violation of any provision of this chapter or section 147.55, section 272C.10, or rules adopted by the board.

94 Acts, ch 1132, §6; 98 Acts, ch 1053, §40

**152D.7 Practice or use of title — license required.**

1. An individual licensed pursuant to this chapter shall be designated a licensed athletic trainer and may use the letters “LAT” after the individual’s name.

2. It is unlawful for a person to engage in the practice of athletic training, or use in connection with the person’s name the title “athletic trainer”, “licensed athletic trainer”, “registered athletic trainer”, the letters “AT”, “AT,C”, “LAT”, “ATC/L”, or “ATC-L”, or other words, abbreviations, or insignia that imply or represent that the person practices athletic training, unless the person is licensed pursuant to this chapter.

3. The practice of physical reconditioning shall be carried out under the oral or written orders of a physician or physician assistant. A physician or physician assistant who issues an oral order must reduce the order to writing and provide a copy of the order to the athletic trainer within thirty days of the oral order.

2004 Acts, ch 1045, §8

**152D.8 Penalty.**

A person who violates a provision of this chapter is guilty of a serious misdemeanor.

94 Acts, ch 1132, §8; 2004 Acts, ch 1045, §9

**152D.9 Transition provisions.**

1. Applicants for licensure under this chapter who have not passed a licensure examination administered or approved by the board by July 1, 2004, shall be issued a

temporary license to practice athletic training for a period of three years, commencing on July 1, 2004, provided that the applicant satisfies all of the following requirements:

- a. Submits a letter of recommendation to the board from the applicant’s most recent employer.
  - b. Submits letters of recommendation to the board from two licensed physicians attesting to the competency of the applicant.
  - c. Presents satisfactory evidence to the board that the applicant possesses current cardiopulmonary resuscitation and first aid certification.
  - d. Presents satisfactory evidence to the board demonstrating that the applicant possesses a baccalaureate degree from an accredited college or university.
2. An applicant issued a temporary license pursuant to this section shall pass a licensure examination administered or approved by the board on or before July 1, 2007, in order to remain licensed as an athletic trainer.
- 2004 Acts, ch 1045, §10

## CHAPTER 152E

### NURSE AND ADVANCED PRACTICE REGISTERED NURSE LICENSURE COMPACTS

Referred to in §125.2, 135.24, 135G.1, 144D.1, 147.76, 148F.7, 225C.6, 229.1

152E.1	Form of compact.	152E.3	Form of advanced practice
152E.2	Compact administrator.		registered nurse compact.

#### **152E.1 Form of compact.**

The nurse licensure compact is entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

- 1. *Article I — Findings and purpose.*
  - a. The party states find all of the following:
    - (1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws.
    - (2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public.
    - (3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation’s health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation.
    - (4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex.
    - (5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.
  - b. The general purposes of this compact are to:
    - (1) Facilitate the states’ responsibility to protect the public’s health and safety.
    - (2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation.
    - (3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions.
    - (4) Promote compliance with the laws governing the practice of nursing in each jurisdiction.
    - (5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.
- 2. *Article II — Definitions.* As used in this compact:
  - a. “Adverse action” means a home or remote state action.

b. “*Alternative program*” means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

c. “*Coordinated licensure information system*” means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

d. “*Current significant investigative information*” means either of the following:

(1) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

(2) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

e. “*Home state*” means the party state which is the nurse’s primary state of residence.

f. “*Home state action*” means any administrative, civil, equitable, or criminal action permitted by the home state’s laws which are imposed on a nurse by the home state’s licensing board or other authority, including actions against an individual’s license such as revocation, suspension, probation, or any other action which affects a nurse’s authorization to practice.

g. “*Licensing board*” means a party state’s regulatory body responsible for issuing nurse licenses.

h. “*Multistate licensure privilege*” means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse’s privilege such as revocation, suspension, probation, or any other action which affects a nurse’s authorization to practice.

i. “*Nurse*” means a registered nurse or licensed practical or vocational nurse, as those terms are defined by each party state’s practice laws.

j. “*Party state*” means any state that has adopted this compact.

k. “*Remote state*” means a party state, other than the home state, where either of the following applies:

(1) Where the patient is located at the time nursing care is provided.

(2) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing care is located.

l. “*Remote state action*” means either of the following:

(1) Any administrative, civil, equitable, or criminal action permitted by a remote state’s laws which is imposed on a nurse by the remote state’s licensing board or other authority, including actions against an individual’s multistate licensure privilege to practice in the remote state.

(2) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards of remote states.

m. “*State*” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

n. “*State practice laws*” means those individual party state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. “*State practice laws*” does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

3. *Article III — General provisions and jurisdiction.*

a. A license to practice registered nursing issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical or vocational nursing issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed

practical or vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

b. Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

c. Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing subjects a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

d. This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

e. Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals shall not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

4. *Article IV — Applications for licensure in a party state.*

a. Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

b. A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

c. A nurse who intends to change the nurse's primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses shall not be issued by a party state until after a nurse provides evidence of change in the nurse's primary state of residence satisfactory to the new home state's licensing board.

d. (1) If a nurse changes the nurse's primary state of residence by moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid.

(2) If a nurse changes the nurse's primary state of residence by moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and shall remain in full force if so provided by the laws of the nonparty state.

(3) If a nurse changes the nurse's primary state of residence by moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

5. *Article V — Adverse actions.* In addition to the general provisions described in article III, the following provisions apply:

a. The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

b. The licensing board of a party state shall have the authority to complete any pending

investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

c. A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

d. For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

e. The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

f. Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

6. *Article VI — Additional authorities invested in party state nurse licensing boards.* Notwithstanding any other powers, party state nurse licensing boards shall have the authority to do all of the following:

a. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

b. Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence is located.

c. Issue cease and desist orders to limit or revoke a nurse's authority to practice in the state.

d. Promulgate uniform rules and regulations as provided for in article VIII, paragraph "c".

7. *Article VII — Coordinated licensure information system.*

a. All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical or vocational nurses. This system shall include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

b. Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

c. Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

d. Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that shall not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

e. Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system shall not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

f. Any information contributed to the coordinated licensure information system that

is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

g. The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

8. *Article VIII — Compact administration and interchange of information.*

a. The head of the nurse licensing board, or the head's designee, of each party state shall be the administrator of this compact for the head's state.

b. The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including but not limited to a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

c. Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under article VI, paragraph "d".

9. *Article IX — Immunity.* A party state or the officers or employees or agents of a party state's nurse licensing board who act in accordance with the provisions of this compact shall not be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

10. *Article X — Entry into force, withdrawal, and amendment.*

a. This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but such withdrawal shall not take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

b. Withdrawal shall not affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

c. This compact shall not be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

d. This compact may be amended by the party states. An amendment to this compact shall not become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

11. *Article XI — Construction and severability.*

a. This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

b. (1) In the event party states find a need for settling disputes arising under this compact, the party states may submit the issues in dispute to an arbitration panel which shall be comprised of an individual appointed by the compact administrator in the home state, an individual appointed by the compact administrator in the remote state or states involved, and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.

(2) The decision of a majority of the arbitrators shall be final and binding.

2000 Acts, ch 1008, §8; 2000 Acts, ch 1232, §51 – 55; 2008 Acts, ch 1032, §201

Referred to in §147.2, 147.5, 147.7, 152.6, 152.7, 152.8, 152.10, 152E.2, 272C.6

**152E.2 Compact administrator.**

The executive director of the board of nursing, as provided for in section 152.2, shall serve as the compact administrator identified in article VIII, paragraph “a”, of the nurse licensure compact contained in section 152E.1 and as the compact administrator identified in article VIII, paragraph “a”, of the advanced practice registered nurse compact contained in section 152E.3.

2000 Acts, ch 1008, §9; 2005 Acts, ch 53, §8; 2008 Acts, ch 1032, §201

**152E.3 Form of advanced practice registered nurse compact.**

The advanced practice registered nurse compact is entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

1. *Article I — Findings and declaration of purpose.*

a. The party states find all of the following:

(1) The health and safety of the public are affected by the degree of compliance with advanced practice registered nurse licensure and practice requirements and the effectiveness of enforcement activities related to state advanced practice registered nurse license or authority to practice laws.

(2) Violations of advanced practice registered nurse licensure and practice and other laws regulating the practice of nursing may result in injury or harm to the public.

(3) The expanded mobility of advanced practice registered nurses and the use of advanced communication technologies as part of our nation’s health care delivery system require greater coordination and cooperation among states in the areas of advanced practice registered nurse licensure and practice requirements.

(4) New practice modalities and technology make compliance with individual state advanced practice registered nurse licensure and practice requirements difficult and complex.

(5) The current system of duplicative advanced practice registered nurse licensure and practice requirements for advanced practice registered nurses practicing in multiple states is cumbersome and redundant to both advanced practice registered nurses and states.

(6) Uniformity of advanced practice registered nurse requirements throughout the states promotes public safety and public health benefits.

(7) Access to advanced practice registered nurse services increases the public’s access to health care, particularly in rural and underserved areas.

b. The general purposes of this compact are to:

(1) Facilitate the states’ responsibilities to protect the public’s health and safety.

(2) Ensure and encourage the cooperation of party states in the areas of advanced practice registered nurse licensure and practice requirements including promotion of uniform licensure requirements.

(3) Facilitate the exchange of information between party states in the areas of advanced practice registered nurse regulation, investigation, and adverse actions.

(4) Promote compliance with the laws governing advanced practice registered nurse practice in each jurisdiction.

(5) Invest all party states with the authority to hold an advanced practice registered nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

2. *Article II — Definitions.* As used in this compact:

a. “Advanced practice registered nurse” means a nurse anesthetist, nurse practitioner, nurse midwife, or clinical nurse specialist to the extent a party state licenses or grants authority to practice in that advanced practice registered nurse role and title.

b. “Advanced practice registered nurse licensure and practice requirements” means the regulatory mechanism used by a party state to grant legal authority to practice as an advanced practice registered nurse.

c. “Advanced practice registered nurse uniform license or authority to practice requirements” means those minimum uniform licensure, education, and examination requirements as agreed to by the compact administrators and adopted by licensing boards for the recognized advanced practice registered nurse role and title.

d. “Adverse action” means a home or remote state action.

e. “Alternative program” means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

f. “Coordinated licensure information system” means an integrated process for collecting, storing, and sharing information on advanced practice registered nurse licensure or authority to practice and enforcement activities related to advanced practice registered nurse license or authority to practice laws, which is administered by a nonprofit organization composed of and controlled by state licensing boards.

g. “Current significant investigative information” means either of the following:

(1) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the advanced practice registered nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

(2) Investigative information that indicates that the advanced practice registered nurse represents an immediate threat to public health and safety regardless of whether the advanced practice registered nurse has been notified and had an opportunity to respond.

h. “Home state” means the party state that is the advanced practice registered nurse’s primary state of residence.

i. “Home state action” means any administrative, civil, equitable, criminal, or other action permitted by the home state’s laws which is imposed on an advanced practice registered nurse by the home state’s licensing board or other authority, including actions against an individual’s license or authority to practice such as revocation, suspension, probation, or any other action which affects an advanced practice registered nurse’s authorization to practice.

j. “Licensing board” means a party state’s regulatory body responsible for advanced practice registered nurse licensure or authority to practice.

k. “Multistate advanced practice privilege” means current authority from a remote state permitting an advanced practice registered nurse to practice in that state in the same role and title as the advanced practice registered nurse is licensed or authorized to practice in the home state to the extent that the remote state laws recognize such advanced practice registered nurse role and title. A party state has the authority, in accordance with existing state due process laws, to take action against the advanced practice registered nurse’s privilege, including revocation, suspension, probation, or any other action that affects an advanced practice registered nurse’s multistate privilege to practice.

l. “Party state” means any state that has adopted this compact.

m. “Prescriptive authority” means the legal authority to prescribe medications and devices as defined by party state laws.

n. “Remote state” means a party state, other than the home state, where either of the following applies:

(1) Where the patient is located at the time advanced practice registered nurse care is provided.

(2) In the case of advanced practice registered nurse practice not involving a patient, in such party state where the recipient of advanced practice registered nurse care is located.

o. “Remote state action” means either of the following:

(1) Any administrative, civil, equitable, criminal, or other action permitted by a remote state’s laws which is imposed on an advanced practice registered nurse by the remote state’s licensing board or other authority, including actions against an individual’s multistate advanced practice privilege in the remote state.

(2) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards of remote states.

p. “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

q. “State practice laws” means a party state’s laws and regulations that govern advanced practice registered nurse practice, define the scope of advanced nursing practice, including prescriptive authority, and create the methods and grounds for imposing discipline. “State practice laws” does not include the requirements necessary to obtain and retain advanced

practice registered nurse licensure or authority to practice as an advanced practice registered nurse, except for qualifications or requirements of the home state.

r. “Unencumbered” means that a state has no current disciplinary action against an advanced practice registered nurse’s license or authority to practice.

3. *Article III — General provisions and jurisdiction.*

a. All party states shall participate in the nurse licensure compact for registered nurses and licensed practical or vocational nurses in order to enter into the advanced practice registered nurse compact.

b. A state shall not enter the advanced practice registered nurse compact until the state adopts, at a minimum, the advanced practice registered nurse uniform license or authority to practice requirements for each advanced practice registered nurse role and title recognized by the state seeking to enter the advanced practice registered nurse compact.

c. Advanced practice registered nurse license or authority to practice issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate advanced practice privilege to the extent that the role and title are recognized by each party state. To obtain or retain advanced practice registered nurse licensure and practice requirements as an advanced practice registered nurse, an applicant must meet the home state’s qualifications for authority or renewal of authority as well as all other applicable state laws.

d. The advanced practice registered nurse multistate advanced practice privilege does not include prescriptive authority, and does not affect any requirements imposed by states to grant to an advanced practice registered nurse initial and continuing prescriptive authority according to state practice laws. However, a party state may grant prescriptive authority to an individual on the basis of a multistate advanced practice privilege to the extent permitted by state practice laws.

e. A party state may, in accordance with state due process laws, limit or revoke the multistate advanced practice privilege in the party state and may take any other necessary actions under the party state’s applicable laws to protect the health and safety of the party state’s citizens. If a party state takes action, the party state shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

f. An advanced practice registered nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is provided. The advanced practice registered nurse practice includes patient care and all advanced nursing practice defined by the party state’s practice laws. The advanced practice registered nurse practice subjects an advanced practice registered nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state.

g. Individuals not residing in a party state may apply for an advanced practice registered nurse license or authority to practice as an advanced practice registered nurse under the laws of a party state. However, the authority to practice granted to these individuals shall not be recognized as granting the privilege to practice as an advanced practice registered nurse in any other party state unless explicitly agreed to by that party state.

4. *Article IV — Applications for advanced practice registered nurse licensure or authority to practice in a party state.*

a. (1) Once an application for an advanced practice registered nurse license or authority to practice is submitted, a party state shall ascertain, through the coordinated licensure information system, whether the applicant has held, or is the holder of, a nursing license or authority to practice issued by another state, whether the applicant has had a history of previous disciplinary action by any state, whether an encumbrance exists on any license or authority to practice, and whether any other adverse action by any other state has been taken against a license or authority to practice.

(2) This information may be used in approving or denying an application for an advanced practice registered nurse license or authority to practice.

b. An advanced practice registered nurse in a party state shall hold an advanced practice

registered nurse license or authority to practice in only one party state at a time, issued by the home state.

c. An advanced practice registered nurse who intends to change the nurse's primary state of residence may apply for an advanced practice registered nurse license or authority to practice in the new home state in advance of such change. However, a new license or authority to practice shall not be issued by a party state until after an advanced practice registered nurse provides evidence of change in the nurse's primary state of residence satisfactory to the new home state's licensing board.

d. (1) If an advanced practice registered nurse changes the nurse's primary state of residence by moving between two party states, and obtains an advanced practice registered nurse license or authority to practice from the new home state, the advanced practice registered nurse license or authority to practice from the former home state is no longer valid.

(2) If an advanced practice registered nurse changes the nurse's primary state of residence by moving from a nonparty state to a party state, and obtains an advanced practice registered nurse license or authority to practice from the new home state, the individual state license issued by the nonparty state is not affected and shall remain in full force if so provided by the laws of the nonparty state.

(3) If an advanced practice registered nurse changes the nurse's primary state of residence by moving from a party state to a nonparty state, the advanced practice registered nurse license or authority to practice issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

5. *Article V — Adverse actions.* In addition to the general provisions described in article III, the following provisions apply:

a. The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

b. The licensing board of a party state shall have the authority to complete any pending investigations for an advanced practice registered nurse who changes the nurse's primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

c. A remote state may take adverse action affecting the multistate advanced practice privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the advanced practice registered nurse license or authority to practice issued by the home state.

d. For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

e. The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

f. Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require advanced practice registered nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

g. All home state licensing board disciplinary orders, agreed to or otherwise, which limit the scope of the advanced practice registered nurse's practice or require monitoring of the

advanced practice registered nurse as a condition of the order shall include the requirements that the advanced practice registered nurse will limit the nurse's practice to the home state during the pendency of the order. This requirement may allow the advanced practice registered nurse to practice in other party states with prior written authorization from both the home state and party state licensing boards.

6. *Article VI — Additional authorities invested in party state licensing boards.* Notwithstanding any other powers, party state licensing boards shall have the authority to do all of the following:

a. If otherwise permitted by state law, recover from the affected advanced practice registered nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that advanced practice registered nurse.

b. Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses, or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence is located.

c. Issue cease and desist orders to limit or revoke an advanced practice registered nurse's privilege, license, or authority to practice in the state.

d. Promulgate uniform rules and regulations as provided for in article VIII, paragraph "c".

7. *Article VII — Coordinated licensure information system.*

a. All party states shall participate in a cooperative effort to create a coordinated database of all advanced practice registered nurses. This system shall include information on the advanced practice registered nurse licensure and practice requirements and disciplinary history of each advanced practice registered nurse, as contributed by party states, to assist in the coordination of the advanced practice registered nurse licensure or authority to practice and enforcement efforts.

b. Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate advanced practice privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

c. Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

d. Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that shall not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

e. Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system shall not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

f. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

g. The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

8. *Article VIII — Compact administration and interchange of information.*

a. The head of the licensing board, or the head's designee, of each party state shall be the administrator of this compact for the head's state.

b. The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including but not

limited to a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

c. Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under article VI, paragraph “d”.

9. *Article IX — Immunity.* A party state or the officers or employees or agents of a party state’s licensing board who act in accordance with the provisions of this compact shall not be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

10. *Article X — Entry into force, withdrawal, and amendment.*

a. This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but such withdrawal shall not take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

b. Withdrawal shall not affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

c. This compact shall not be construed to invalidate or prevent any advanced practice registered nurse licensure or authority to practice agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

d. This compact may be amended by the party states. An amendment to this compact shall not become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

11. *Article XI — Construction and severability.*

a. This compact shall be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or the applicability of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person, or circumstance shall not be affected by that action. If this compact shall be held contrary to the constitution of any state which is party to the compact, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

b. (1) In the event party states find a need for settling disputes arising under this compact, the party states may submit the issues in dispute to an arbitration panel which shall be comprised of an individual appointed by the compact administrator in the home state, an individual appointed by the compact administrator in the remote state or states involved, and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.

(2) The decision of a majority of the arbitrators shall be final and binding.

2005 Acts, ch 53, §9; 2007 Acts, ch 22, §38; 2008 Acts, ch 1032, §201

Referred to in §147.2, 147.5, 147.7, 152.6, 152.7, 152.8, 152.10, 152E.2, 272C.6

## CHAPTER 153

## DENTISTRY

Referred to in §135.24, 135.61, 135B.7, 147.76, 147.139, 514.17, 714H.4

Penalty, §147.86

Licensing board, support staff exceptions;  
location and powers; see §135.11A, 135.31

153.1	through 153.11	Reserved.	153.23	through 153.30	Repealed by 2002 Acts, ch 1108, §31.
153.12	Board defined.		153.31	Falsification in application for renewal.	
153.13	“Practice of dentistry” defined.		153.32	Unprofessional conduct.	
153.14	Persons not included.		153.33	Powers of board.	
153.15	Dental hygienists — scope of term.		153.33A	Dental hygiene committee.	
153.15A	Dental hygienists — license requirements, renewal.		153.34	Discipline.	
153.16	Dental office where dentist is employed.		153.35	Construction rule.	
153.17	Unlawful practice.		153.36	Exceptions to other statutes.	
153.18	Employment of unlicensed dentist.		153.37	Dental college and dental hygiene program faculty permits.	
153.19	Temporary permit — fees.		153.38	Dental assistants — scope of practice.	
153.20	Drugs, medicine, and surgery.		153.39	Dental assistants — registration requirements, renewal, revocation, or suspension.	
153.21	License by credentials.		153.40	Reserved.	
153.22	Resident license.				

**153.1 through 153.11** Reserved.

**153.12 Board defined.**

As used in this chapter, “*board*” means the dental board created under chapter 147. 2007 Acts, ch 10, §132; 2007 Acts, ch 218, §204

**153.13 “Practice of dentistry” defined.**

For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of dentistry:

1. Persons publicly professing to be dentists, dental surgeons, or skilled in the science of dentistry, or publicly professing to assume the duties incident to the practice of dentistry.
2. Persons who perform examination, diagnosis, treatment, and attempted correction by any medicine, appliance, surgery, or other appropriate method of any disease, condition, disorder, lesion, injury, deformity, or defect of the oral cavity and maxillofacial area, including teeth, gums, jaws, and associated structures and tissue, which methods by education, background experience, and expertise are common to the practice of dentistry.
3. Persons who offer to perform, perform, or assist with any phase of any operation incident to tooth whitening, including the instruction or application of tooth whitening materials or procedures at any geographic location. For purposes of this subsection, “*tooth whitening*” means any process to whiten or lighten the appearance of human teeth by the application of chemicals, whether or not in conjunction with a light source.

[S13, §2600-o; C24, 27, 31, 35, 39, §2565; C46, 50, 54, 58, 62, 66, §153.1; C71, 73, 75, 77, 79, 81, §153.13]

96 Acts, ch 1147, §1; 2009 Acts, ch 56, §5, 13

Referred to in §153.14

**153.14 Persons not included.**

Section 153.13 shall not be construed to include the following classes:

1. Students of dentistry who practice dentistry upon patients at clinics in connection with their regular course of instruction at an accredited dental college, students of dental hygiene who practice upon patients at clinics in connection with their regular course of instruction at state-approved schools, and students of dental assisting who practice upon patients at clinics

in connection with a regular course of instruction determined by the board pursuant to section 153.39.

2. Licensed “physicians and surgeons” or licensed “osteopathic physicians and surgeons” who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession.

3. Persons licensed to practice dental hygiene who are exclusively engaged in the practice of said profession.

4. Dentists and dental hygienists who are licensed in another state and who are active or reserve members of the United States military service when acting in the line of duty in this state.

5. Persons registered to practice as a dental assistant.

1, 2. [S13, §2600-1, -o; C24, 27, 31, 35, 39, §2566; C46, 50, 54, 58, 62, 66, §153.2; C71, 73, 75, 77, 79, 81, §153.14]

3. [C24, 27, 31, 35, 39, §2566; C46, 50, 54, 58, 62, 66, §153.2; C71, 73, 75, 77, 79, 81, §153.14]

89 Acts, ch 63, §1; 95 Acts, ch 16, §1; 2000 Acts, ch 1002, §3, 4; 2007 Acts, ch 10, §133; 2009 Acts, ch 133, §57; 2011 Acts, ch 129, §86, 156

#### **153.15 Dental hygienists — scope of term.**

A licensed dental hygienist may perform those services which are educational, therapeutic, and preventive in nature which attain or maintain optimal oral health as determined by the board and may include but are not necessarily limited to complete oral prophylaxis, application of preventive agents to oral structures, exposure and processing of radiographs, administration of medicaments prescribed by a licensed dentist, obtaining and preparing nonsurgical, clinical and oral diagnostic tests for interpretation by the dentist, and preparation of preliminary written records of oral conditions for interpretation by the dentist. Such services shall be performed under supervision of a licensed dentist and in a dental office, a public or private school, public health agencies, hospitals, and the armed forces, but nothing herein shall be construed to authorize a dental hygienist to practice dentistry.

[C24, 27, 31, 35, 39, §2571; C46, 50, 54, 58, 62, 66, §153.7; C71, 73, 75, 77, 79, 81, §153.15]  
2007 Acts, ch 10, §134

#### **153.15A Dental hygienists — license requirements, renewal.**

1. In addition to requirements adopted by rule by the board, in order to obtain a license as a dental hygienist, an applicant shall present evidence to the board of both of the following:

a. That the applicant possesses a degree or certificate of graduation from a college, university, or institution of higher education, accredited by a national agency recognized by the council on postsecondary accreditation or the United States department of education, in a program of dental hygiene with a minimum of two academic years of curriculum.

b. That the applicant possesses a valid certificate in a nationally recognized course in cardiopulmonary resuscitation.

2. In order to renew a license as a dental hygienist, a licensee shall furnish evidence of valid annual certification for cardiopulmonary resuscitation which shall be credited toward the licensee’s continuing education requirement.

92 Acts, ch 1121, §1

#### **153.16 Dental office where dentist is employed.**

Every person who owns, operates, or controls a dental office in which anyone other than that person is practicing dentistry shall display the name of the other person in a conspicuous manner at the public entrance to said office.

[S13, §2600-01; C24, 27, 31, 35, 39, §2568; C46, 50, 54, 58, 62, 66, §153.4; C71, 73, 75, 77, 79, 81, §153.16]

#### **153.17 Unlawful practice.**

Except as herein otherwise provided, it shall be unlawful for any person to practice dentistry or dental surgery or dental hygiene in this state, other than:

1. Those who are now duly licensed dentists, under the laws of this state in force at the time of their licensure; and
2. Those who are now duly licensed dental hygienists under the laws of this state in force at the time of their licensure; and
3. Those who may hereafter be duly licensed as dentists or dental hygienists pursuant to the provisions of this chapter.  
[C71, 73, 75, 77, 79, 81, §153.17]

#### **153.18 Employment of unlicensed dentist.**

No person owning or conducting any place where dental work of any kind is done or contracted for, shall employ or permit any unlicensed dentist to practice dentistry in said place.

[S13, §2600-o2; C24, 27, 31, 35, 39, §2569; C46, 50, 54, 58, 62, 66, §153.5; C71, 73, 75, 77, 79, 81, §153.18]

#### **153.19 Temporary permit — fees.**

1. The board may, in its discretion, issue a temporary permit authorizing the permit holder to practice dentistry or dental hygiene in a specific location or locations and for a specified period of time if, in the opinion of the board, a need exists and the person possesses the qualifications prescribed by the board for the permit, which shall be substantially equivalent to those required for licensure under this chapter. The board shall determine in each instance those eligible for this permit, whether or not examinations shall be given, and the type of examinations. None of the requirements for regular licensure under this chapter are mandatory for a temporary permit except as specifically designated by the board. The issuance of a temporary permit shall not in any way indicate that the permit holder is necessarily eligible for regular licensure, nor is the board in any way obligated to so license the person.

2. A temporary permit shall be issued for a period determined by the board and may be renewed at the discretion of the board. The fee for a temporary permit and the fee for renewal shall be set by the board. The fees shall be based on the administrative costs of issuing and renewing the permits.

2002 Acts, ch 1108, §15; 2004 Acts, ch 1167, §7, 8

#### **153.20 Drugs, medicine, and surgery.**

A dentist shall have the right to prescribe and administer drugs or medicine, perform such surgical operations, administer general or local anesthetics and use such appliances as may be necessary to the proper practice of dentistry.

[C71, 73, 75, 77, 79, 81, §153.20]

#### **153.21 License by credentials.**

The board may issue a license under this chapter without examination to an applicant who furnishes satisfactory proof that the applicant meets all of the following requirements:

1. Holds a license from a similar dental board of another state, territory, or district of the United States under requirements equivalent or substantially equivalent to those of this state.
2. Has satisfied at least one of the following:
  - a. Passed an examination administered by a regional or national testing service, which examination has been approved by the dental board in accordance with section 147.34, subsection 1.
  - b. Has for three consecutive years immediately prior to the filing of the application in this state been in a legal practice of dentistry or dental hygiene in such other state, territory, or district of the United States.
3. Furnishes such other evidence as to the applicant's qualifications and lawful practice as the board may require.

[C71, 73, 75, 77, 79, 81, §153.21]

2002 Acts, ch 1108, §16; 2011 Acts, ch 80, §1

**153.22 Resident license.**

A dentist or dental hygienist who is serving only as a resident, intern, or graduate student and who is not licensed to practice in this state is required to obtain from the board a temporary or special license to practice as a resident, intern, or graduate student. The license shall be designated "Resident License" and shall authorize the licensee to serve as a resident, intern, or graduate student only, under the supervision of a licensed practitioner, in an institution approved for this purpose by the board. Such license shall be renewed at the discretion of the board. The fee for a resident license and the renewal fee shall be set by the board based upon the cost of issuance of the license. The board shall determine in each instance those eligible for a resident license, whether or not examinations shall be given, and the type of examination. None of the requirements for regular permanent licensure are mandatory for resident licensure except as specifically designated by the board. The issuance of a resident license shall not in any way indicate that the person so licensed is necessarily eligible for regular licensure or that the board is obligated to so license the person. The board may revoke a resident license at any time it shall determine either that the caliber of work done by a licensee or the type of supervision being given such licensee does not conform to reasonable standards established by the board.

[C71, 73, 75, 77, 79, 81, §153.22]

2002 Acts, ch 1108, §17; 2007 Acts, ch 10, §135

**153.23 through 153.30** Repealed by 2002 Acts, ch 1108, § 31. See § 153.33 and 153.34.

**153.31 Falsification in application for renewal.**

A license to practice either dentistry or dental hygiene, or registration as a dental assistant, shall be revoked or suspended in the manner and upon the grounds elsewhere provided in this chapter, and also when the certificate accompanying the application of such licensee or registrant for renewal of license or registration filed with the board is not in all material respects true.

[C35, §2573-g15; C39, §2573.15; C46, 50, 54, 58, 62, 66, §153.24; C71, 73, 75, 77, 79, 81, §153.31]

2002 Acts, ch 1108, §18

**153.32 Unprofessional conduct.**

As to dentists and dental hygienists "*unprofessional conduct*" shall consist of any of the acts denominated as such elsewhere in this chapter, and also any other of the following acts:

1. Receiving any rebate, or other thing of value, directly or indirectly from any dental laboratory or dental technician.
2. Solicitation of professional patronage by agents or persons popularly known as "cappers" or "steerers", or profiting by the acts of those representing themselves to be agents of the licensee.
3. Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured.
4. Division of fees or agreeing to split or divide the fees received for professional services with any person for bringing or referring a patient or assisting in the care or treatment of a patient without the consent of said patient or the patient's legal representative.
5. Willful neglect of a patient in a critical condition.

[C35, §2573-g16; C39, §2573.16; C46, 50, 54, 58, 62, 66, §153.25; C71, 73, 75, 77, 79, 81, §153.32]

**153.33 Powers of board.**

Subject to the provisions of this chapter, any provision of this subtitle to the contrary notwithstanding, the board shall exercise the following powers:

1. *a.* To initiate investigations of and conduct hearings on all matters or complaints relating to the practice of dentistry, dental hygiene, or dental assisting or pertaining to the enforcement of any provision of this chapter, to provide for mediation of disputes between licensees or registrants and their patients when specifically recommended by the board, to

revoke or suspend licenses or registrations, or the renewal thereof, issued under this or any prior chapter, to provide for restitution to patients, and to otherwise discipline licensees and registrants.

b. Subsequent to an investigation by the board, the board may appoint a disinterested third party to mediate disputes between licensees or registrants and patients. Referral of a matter to mediation shall not preclude the board from taking disciplinary action against the affected licensee or registrant.

2. To appoint investigators, who shall not be members of the board, to administer and aid in the enforcement of the provisions of law relating to those persons licensed to practice dentistry and dental hygiene, and persons registered as dental assistants. The amount of compensation for the investigators shall be determined pursuant to chapter 8A, subchapter IV. Investigators authorized by the board have the powers and status of peace officers when enforcing this chapter and chapters 147 and 272C.

3. All employees needed to administer this chapter shall be appointed pursuant to the merit system.

4. To initiate in its own name or cause to be initiated in a proper court appropriate civil proceedings against any person to enforce the provisions of this chapter or this subtitle relating to the practice of dentistry, and the board may have the benefit of counsel in connection therewith. Any such judicial proceeding as may be initiated by the board shall be commenced and prosecuted in the same manner as any other civil action and injunctive relief may be granted therein without proof of actual damage sustained by any person but such injunctive relief shall not relieve the person so enjoined from criminal prosecution by the attorney general or county attorney for violation of any provision of this chapter or this subtitle relating to the practice of dentistry.

5. In any investigation made or hearing conducted by the board on its own motion, or upon written complaint filed with the board by any person, pertaining to any alleged violation of this chapter or the accusation against any licensee or registrant, the following procedure and rules so far as material to such investigation or hearing shall obtain:

a. The accusation of such person against any licensee or registrant shall be reduced to writing, verified by some person familiar with the facts therein stated, and three copies thereof filed with the board.

b. If the board shall deem the charges sufficient, if true, to warrant suspension or revocation of license or registration, it shall make an order fixing the time and place for hearing thereon and requiring the licensee or registrant to appear and answer thereto, such order, together with a copy of the charges so made to be served upon the accused at least twenty days before the date fixed for hearing, either personally or by certified or registered mail, sent to the licensee's or registrant's last known post office address as shown by the records of the board.

c. At the time and place fixed in said notice for said hearing, or at any time and place to which the said hearing shall be adjourned, the board shall hear the matter and may take evidence, administer oaths, take the deposition of witnesses, including the person accused, in the manner provided by law in civil cases, compel the appearance of witnesses before it in person the same as in civil cases by subpoena issued over the signature of the chairperson of the board and in the name of the state of Iowa, require answers to interrogatories and compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation or relating to the hearing.

d. In all such investigations and hearings pertaining to the suspension or revocation of licenses or registrations, the board and any person affected thereby may have the benefit of counsel, and upon the request of the licensee or registrant or the licensee's or registrant's counsel the board shall issue subpoenas for the attendance of such witnesses in behalf of the licensee or registrant, which subpoenas when issued shall be delivered to the licensee or registrant or the licensee's or registrant's counsel. Such subpoenas for the attendance of witnesses shall be effective if served upon the person named therein anywhere within this state, provided, that at the time of such service the fees now or hereafter provided by law for witnesses in civil cases in district court shall be paid or tendered to such person.

e. In case of disobedience of a subpoena lawfully served hereunder, the board or any party

to such hearing aggrieved thereby may invoke the aid of the district court in the county where such hearing is being conducted to require the attendance and testimony of such witnesses. Such district court of the county within which the hearing is being conducted may, in case of contumacy or refusal to obey such subpoena, issue an order requiring such person to appear before said board, and if so ordered give evidence touching the matter involved in the hearing. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

f. If the licensee or registrant pleads guilty, or after hearing shall be found guilty by the board of any of the charges made, it may suspend for a limited period or revoke the license or registration, and the last renewal thereof, and shall enter the order on its records and notify the accused of the revocation or suspension of the person's license or registration, as the case may be, who shall thereupon forthwith surrender that license or registration to the board. Any such person whose license or registration has been so revoked or suspended shall not thereafter and while such revocation or suspension is in force and effect practice dentistry, dental hygiene, or dental assisting within this state.

g. The findings of fact made by the board acting within its power shall, in the absence of fraud, be conclusive, but the district court shall have power to review questions of law involved in any final decision or determination of the board; provided, that application is made by the aggrieved party within thirty days after such determination by certiorari, mandamus or such other method of review or appeal permitted under the laws of this state, and to make such further orders in respect thereto as justice may require.

h. Pending the review and final disposition thereof by the district court, the action of the board suspending or revoking such license or registration shall not be stayed.

6. To adopt rules regarding infection control in dental practice which are consistent with standards of the federal Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 – 678, and recommendations of the centers for disease control.

7. An inspector may be appointed by the dental board pursuant to the provisions of chapter 8A, subchapter IV.

8. To promulgate rules as may be necessary to implement the provisions of this chapter.  
[C71, 73, 75, 77, 79, 81, §153.33]

90 Acts, ch 1112, §1; 92 Acts, ch 1121, §2; 93 Acts, ch 41, §2; 2002 Acts, ch 1108, §19, 20; 2003 Acts, ch 44, §38, 39; 2003 Acts, ch 145, §200; 2007 Acts, ch 10, §136; 2009 Acts, ch 41, §263; 2009 Acts, ch 133, §192

Referred to in §272C.5

Merit system, see chapter 8A, subchapter IV

### **153.33A Dental hygiene committee.**

1. A three-member dental hygiene committee of the board is created, consisting of the two dental hygienist members of the board and one dentist member of the board. The dentist member of the committee must have supervised and worked in collaboration with a dental hygienist for a period of at least three years immediately preceding election to the committee. The dentist member shall be elected to the committee annually by a majority vote of board members.

2. The committee shall have the authority to adopt recommendations regarding the practice, discipline, education, examination, and licensure of dental hygienists, subject to subsection 3, and shall carry out duties as assigned by the board. The committee shall have no regulatory or disciplinary authority with regard to dentists, dental assistants, dental lab technicians, or any other auxiliary dental personnel.

3. The board shall ratify recommendations of the committee at the first meeting of the board following adoption of the recommendations by the committee, or at a meeting of the board specifically called for the purpose of board review and ratification of committee recommendations. The board shall decline to ratify committee recommendations only if the board makes a specific finding that a recommendation exceeds the jurisdiction or expands the scope of the committee beyond the authority granted in subsection 2, creates an undue financial impact on the board, or is not supported by the record. The board shall

pay the necessary expenses of the committee and of the board in implementing committee recommendations ratified by the board.

4. This section shall not be construed as impacting or changing the scope of practice of the profession of dental hygiene or authorizing the independent practice of dental hygiene.

98 Acts, ch 1010, §2; 2007 Acts, ch 10, §137

Referred to in §147.14

### **153.34 Discipline.**

The board may issue an order to discipline a licensed dentist or dental hygienist, or registered dental assistant, for any of the grounds set forth in this chapter, chapter 272C, or Title IV. Notwithstanding section 272C.3, licensee or registrant discipline may include a civil penalty not to exceed ten thousand dollars. Pursuant to this section, the board may discipline a licensee or registrant for any of the following reasons:

1. For fraud or deceit in procuring the license or registration or the renewal thereof to practice dentistry, dental hygiene, or dental assisting.

2. For being guilty of willful and gross malpractice or willful and gross neglect in the practice of dentistry, dental hygiene, or dental assisting.

3. For fraud in representation as to skill or ability.

4. For willful or repeated violations of this chapter, this subtitle, or the rules of the board.

5. For obtaining any fee by fraud or misrepresentation.

6. For having failed to pay license or registration fees as provided herein.

7. For gross immorality or dishonorable or unprofessional conduct in the practice of dentistry, dental hygiene, or dental assisting.

8. For failure to maintain a reasonably satisfactory standard of competency in the practice of dentistry, dental hygiene, or dental assisting.

9. For the conviction of a felony in the courts of this state or another state, territory, or country. Conviction as used in this subsection includes a conviction of an offense which if committed in this state would be a felony without regard to its designation elsewhere, and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction.

10. For a violation of a law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which law relates to the practice of dentistry, dental hygiene, or dental assisting. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction.

11. The revocation or suspension of a license or registration to practice dentistry, dental hygiene, or dental assisting or other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

12. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice dentistry, dental hygiene, or dental assisting.

13. For an adjudication of mental incompetence by a court of competent jurisdiction. Such adjudication shall automatically suspend a license or registration for the duration of the license or registration unless the board orders otherwise.

14. Inability to practice dentistry, dental hygiene, or dental assisting with reasonable skill and safety by reason of illness, drunkenness, or habitual or excessive use of drugs, intoxicants, narcotics, chemicals, or other types of materials or as a result of a mental or physical condition. At reasonable intervals following suspension or revocation under this subsection, a dentist, dental hygienist, or dental assistant shall be afforded an opportunity to demonstrate that the dentist, dental hygienist, or dental assistant can resume the competent practice of dentistry, dental hygiene, or dental assisting with reasonable skill and safety to patients.

15. For being a party to or assisting in any violation of any provision of this chapter.

16. For a dental hygienist, the practice of dentistry by the dental hygienist; and for a

dentist, permitting the practice of dentistry by a dental hygienist by the dentist under whose supervision the dental hygienist is operating.

[C71, 73, 75, 77, 79, 81, §153.34]

88 Acts, ch 1124, §1 – 4; 93 Acts, ch 41, §3; 2002 Acts, ch 1108, §21; 2007 Acts, ch 10, §138; 2009 Acts, ch 133, §192; 2010 Acts, ch 1069, §20

Referred to in §272C.3, 272C.4

### **153.35 Construction rule.**

This chapter shall be deemed to be passed in the interest of the public health, safety and welfare of the people of this state, and its provisions shall be liberally construed to carry out its object and purposes.

[C71, 73, 75, 77, 79, 81, §153.35]

### **153.36 Exceptions to other statutes.**

1. Sections 147.44, 147.48, 147.49, 147.53, and 147.55, and sections 147.87 through 147.92 shall not apply to the practice of dentistry.

2. In addition to the provisions of section 272C.2, subsection 4, a person licensed by the board shall also be deemed to have complied with continuing education requirements of this state if, during periods that the person practiced the profession in another state or district, the person met all of the continuing education and other requirements of that state or district for the practice of the occupation or profession.

3. Notwithstanding the panel composition provisions in section 272C.6, subsection 1, the board's disciplinary hearing panels shall be comprised of three board members, at least two of which are licensed in the profession.

[C71, 73, 75, 77, 79, 81, §153.36]

97 Acts, ch 159, §23; 2007 Acts, ch 10, §139; 2009 Acts, ch 41, §56

### **153.37 Dental college and dental hygiene program faculty permits.**

The board may issue a faculty permit entitling the holder to practice dentistry or dental hygiene within a college of dentistry or a dental hygiene program and affiliated teaching facilities as an adjunct to the faculty member's teaching position, associated responsibilities, and functions. The dean of the college of dentistry or chairperson of a dental hygiene program shall certify to the board those bona fide members of the college's or a dental hygiene program's faculty who are not licensed and registered to practice dentistry or dental hygiene in Iowa. Any faculty member so certified shall, prior to commencing the member's duties in the college of dentistry or a dental hygiene program, make written application to the board for a permit. The permit shall be for a period determined by the board and may be renewed at the discretion of the board. The fee for the faculty permit and the renewal shall be set by the board based upon the administrative cost of issuance of the permit. The fee shall be deposited in the same manner as fees provided for in section 147.82. The faculty permit shall be valid during the time the holder remains a member of the faculty and shall subject the holder to all provisions of this chapter.

[C79, 81, §153.37]

93 Acts, ch 41, §4; 2002 Acts, ch 1108, §22; 2007 Acts, ch 10, §140

### **153.38 Dental assistants — scope of practice.**

A registered dental assistant may perform those services of assistance to a licensed dentist as determined by the board by rule. Such services shall be performed under supervision of a licensed dentist in a dental office, a public or private school, public health agencies, hospitals, and the armed forces, but shall not be construed to authorize a dental assistant to practice dentistry or dental hygiene. Every licensed dentist who utilizes the services of a registered dental assistant for the purpose of assistance in the practice of dentistry shall be responsible for acts delegated to the registered dental assistant. A dentist shall delegate to a registered dental assistant only those acts which are authorized to be delegated to registered dental assistants by the board.

2000 Acts, ch 1002, §5; 2007 Acts, ch 10, §141

**153.39 Dental assistants — registration requirements, renewal, revocation, or suspension.**

1. A person shall not practice on or after July 1, 2001, as a dental assistant unless the person has registered with the board and received a certificate of registration pursuant to this chapter.

2. Education requirements shall be determined by the board by rule, according to standards to be determined by the board. A person shall be registered upon the successful completion of either of the education and examination requirements established in paragraph “a” or “b”:

a. Successful completion of a course of study and examination approved by the board and sponsored by a board-approved postsecondary school.

b. Successful completion of on-the-job training and examination consisting of all of the following:

(1) Completion of on-the-job training as specified in rule.

(2) Successful completion of an examination process approved by the board. A written examination may be waived by the board pursuant to section 17A.9A, in practice situations where the written examination is deemed to be unnecessary or detrimental to the dentist’s practice.

3. The education requirements in subsection 2, paragraphs “a” and “b” may include possession of a valid certificate in a nationally recognized course in cardiopulmonary resuscitation. Successful passage of an examination administered by the board under subsection 2, paragraph “a” or “b”, which shall include sections regarding infection control, hazardous materials, and jurisprudence, shall also be required.

4. The board shall establish continuing education requirements as a condition of renewing registration as a registered dental assistant, as well as standards for the suspension or revocation of registration.

5. A person employed as a dental assistant after July 1, 2005, shall have a twelve-month period following the person’s first date of employment after July 1, 2005, to comply with the provisions of subsection 1.

2000 Acts, ch 1002, §6; 2002 Acts, ch 1108, §23; 2005 Acts, ch 28, §1, 2; 2007 Acts, ch 22, §39; 2009 Acts, ch 133, §201

Referred to in §153.14

**153.40 Reserved.**

For future text of this section effective upon receipt by the Iowa department of public health of federal funding to establish a mobile dental delivery system, see 2004 Acts, ch 1175, §227, 287

**CHAPTER 153A**

RESERVED

**CHAPTER 154**

OPTOMETRY

Referred to in §135.24, 135.61, 147.76, 147.108, 147.109, 321.186, 321.186A, 509.3, 514.7, 514B.1, 514C.13, 714H.4

Enforcement, §147.87, 147.92  
Penalty, §147.86

154.1	Board defined — optometry — licensed optometrists.	154.3	License.
		154.4	through 154.9 Reserved.
154.2	Scope of chapter.	154.10	Standard of care.

**154.1 Board defined — optometry — licensed optometrists.**

1. As used in this chapter, “board” means the board of optometry created under chapter 147.

2. For the purpose of this subtitle, the following classes of persons shall be deemed to be engaged in the practice of optometry:

a. Persons employing any means for the measurement of the visual power and visual efficiency of the human eye; persons engaged in the prescribing and adapting of lenses, prisms, and contact lenses; persons engaged in the using or employing of visual training or ocular exercise for the aid, relief, or correction of vision; and persons employing the use of medicines and procedures for the purposes of diagnosis and treatment of diseases or conditions of the eye and adnexa.

b. Persons who allow the public to use any mechanical device for a purpose described in paragraph “a”.

c. Persons who publicly profess to be optometrists and to assume the duties incident to the profession.

3. a. An optometrist licensed under this chapter may employ all diagnostic and therapeutic pharmaceutical agents for the purpose of diagnosis and treatment of conditions of the human eye and adnexa pursuant to this subsection, excluding the use of injections other than to counteract an anaphylactic reaction, and notwithstanding section 147.107, may without charge supply any of the above pharmaceuticals to commence a course of therapy. A licensed optometrist may perform minor surgical procedures and use medications for the diagnosis and treatment of diseases, disorders, and conditions of the eye and adnexa. A license to practice optometry under this chapter does not authorize the performance of surgical procedures which require the use of injectable or general anesthesia, moderate sedation, penetration of the globe, or the use of ophthalmic lasers for the purpose of ophthalmic surgery within or upon the globe. The removal of pterygia and Salzmann’s nodules, incisional corneal refractive surgery, and strabismus surgery are prohibited.

b. A licensed optometrist may employ and, notwithstanding section 147.107, supply pharmaceutical-delivering contact lenses for the purpose of treatment of conditions of the human eye and adnexa. For purposes of this paragraph, “*pharmaceutical-delivering contact lenses*” means contact lenses that contain one or more therapeutic pharmaceutical agents authorized for employment by this section for the purpose of treatment of conditions of the human eye and adnexa and that deliver such agents into the wearer’s eye.

c. A licensed optometrist may prescribe oral steroids for a period not to exceed fourteen days without consultation with a physician.

d. A licensed optometrist may be authorized, where reasonable and appropriate, by rule of the board, to employ new diagnostic and therapeutic pharmaceutical agents approved by the United States food and drug administration on or after July 1, 2002, for the diagnosis and treatment of the human eye and adnexa.

e. The board is not required to adopt rules relating to topical pharmaceutical agents, oral antimicrobial agents, oral antihistamines, oral antiglaucoma agents, and oral analgesic agents. A licensed optometrist may remove superficial foreign bodies from the human eye and adnexa.

f. The therapeutic efforts of a licensed optometrist are intended for the purpose of examination, diagnosis, and treatment of visual defects, abnormal conditions, and diseases of the human eye and adnexa, for proper optometric practice or referral for consultation or treatment to persons licensed under chapter 148.

g. A licensed optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board to use the agents and procedures authorized pursuant to this subsection.

4. Beginning July 1, 2012, all licensed optometrists shall meet requirements established by the board by rule to employ diagnostic and therapeutic pharmaceutical agents for the practice of optometry. All licensees practicing optometry in this state shall have demonstrated

qualifications and obtained certification to use diagnostic and therapeutic pharmaceutical agents as a condition of license renewal.

[S13, §2583-g; C24, 27, 31, 35, 39, §2574; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §154.1]

85 Acts, ch 248, §1; 87 Acts, ch 119, §1; 91 Acts, ch 9, §1; 2002 Acts, ch 1026, §1; 2007 Acts, ch 10, §142; 2007 Acts, ch 159, §1; 2007 Acts, ch 215, §251; 2008 Acts, ch 1088, §106; 2010 Acts, ch 1010, §2; 2010 Acts, ch 1163, §3; 2012 Acts, ch 1004, §2

Referred to in §147.108

#### **154.2 Scope of chapter.**

This chapter shall not be construed to include the following classes:

1. Merchants or dealers who sell glasses as merchandise in an established place of business and who do not profess to be optometrists or practice optometry as herein defined.
2. Licensed physicians and surgeons.

[S13, §2583-q; C24, 27, 31, 35, 39, §2575; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §154.2]

#### **154.3 License.**

Every applicant for a license to practice optometry shall:

1. Be a graduate of an accredited school of optometry and meet requirements as established by rules of the board.
2. Present an official transcript issued by an accredited school of optometry.
3. Pass an examination as determined by the board by rule.

[S13, §2583-l; C24, 27, 31, 35, 39, §2576; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §154.3]  
85 Acts, ch 248, §2; 86 Acts, ch 1237, §8; 87 Acts, ch 119, §2; 2006 Acts, ch 1184, §95; 2007 Acts, ch 10, §143; 2007 Acts, ch 159, §2; 2007 Acts, ch 215, §252

**154.4 through 154.9** Reserved.

#### **154.10 Standard of care.**

A person licensed as an optometrist pursuant to this chapter shall be held to the same standard of care as is common to persons licensed under chapter 148 in this state.

[C81, §154.10]

85 Acts, ch 248, §3; 2007 Acts, ch 159, §3; 2008 Acts, ch 1088, §107; 2012 Acts, ch 1004, §3

## CHAPTER 154A

## HEARING AIDS

Referred to in §147.76, 154F2, 216E.7, 272C.1, 272C.6

Enforcement, §147.87, 147.92

154A.1	Definitions.	154A.13	Temporary permit.
154A.2	Establishment of board. Repealed by 2012 Acts, ch 1113, §15.	154A.14	Reciprocity. Repealed by 2012 Acts, ch 1113, §15.
154A.3	Term of office. Repealed by 2012 Acts, ch 1113, §15.	154A.15	License renewal. Repealed by 2012 Acts, ch 1113, §15.
154A.4	Duties of the board. Repealed by 2012 Acts, ch 1113, §15.	154A.16	Repealed by 77 Acts, ch 95, §25.
154A.5	Public members. Repealed by 2012 Acts, ch 1113, §15.	154A.17	Fees. Repealed by 2012 Acts, ch 1113, §15.
154A.6	Disclosure of confidential information. Repealed by 2012 Acts, ch 1113, §15.	154A.18	Display of license. Repealed by 2012 Acts, ch 1113, §15.
154A.7	Board meetings.	154A.19	Exceptions.
154A.8	Duties of department. Repealed by 2012 Acts, ch 1113, §15.	154A.20	Rights of purchaser.
154A.9	Applications. Repealed by 2012 Acts, ch 1113, §15.	154A.21	Notice of address.
154A.10	Issuance of licenses.	154A.22	Receipt of fees. Repealed by 2006 Acts, ch 1155, §13, 15.
154A.11	Examinations. Repealed by 2012 Acts, ch 1113, §15.	154A.23	Disciplinary orders — attorney general.
154A.12	Scope of examination.	154A.24	Suspension or revocation.
		154A.25	Prohibitions.
		154A.26	Consumer protection.
		154A.27	Penalties.

**154A.1 Definitions.**

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

1. “*Board*” means the board of hearing aid dispensers.
2. “*Department*” means the Iowa department of public health.
3. “*Dispense*” or “*sell*” means a transfer of title or of the right to use by lease, bailment, or any other means, but excludes a wholesale transaction with a distributor or dispenser, and excludes the temporary, charitable loan or educational loan of a hearing aid without remuneration.
4. “*Hearing aid*” means a wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing, and any parts, attachments, or accessories, including earmold, but excluding batteries and cords.
5. “*Hearing aid dispenser*” means any person engaged in the fitting, dispensing, and the sale of hearing aids and providing hearing aid services or maintenance, by means of procedures stipulated by this chapter or the board.
6. “*Hearing aid fitting*” means the measurement of human hearing by any means for the purpose of selections, adaptations, and sales of hearing aids, and the instruction and counseling pertaining thereto, and demonstration of techniques in the use of hearing aids, and the making of earmold impressions as part of the fitting of hearing aids.
7. “*License*” means a license issued by the state under this chapter to hearing aid dispensers.
8. “*Person*” means a natural person.
9. “*Temporary permit*” means a permit issued while the applicant is in training to become a licensed hearing aid dispenser.

[C75, 77, 79, 81, §154A.1]

2001 Acts, ch 58, §18; 2007 Acts, ch 10, §145

**154A.2 Establishment of board.** Repealed by 2012 Acts, ch 1113, § 15. See § 147.12 – 147.14, 147.16.

**154A.3 Term of office.** Repealed by 2012 Acts, ch 1113, § 15. See § 147.19.

**154A.4 Duties of the board.** Repealed by 2012 Acts, ch 1113, § 15. See § 147.22, 147.34, 147.76.

**154A.5 Public members.** Repealed by 2012 Acts, ch 1113, § 15. See § 147.21(1).

**154A.6 Disclosure of confidential information.** Repealed by 2012 Acts, ch 1113, § 15. See § 147.21(2, 3).

**154A.7 Board meetings.**

The board shall meet at least one time per year at the seat of government and may hold additional meetings as deemed necessary. Additional meetings shall be held at the call of the chairperson or a majority of the members of the board.

[C75, 77, 79, 81, §154A.7]

86 Acts, ch 1245, §1146; 2012 Acts, ch 1113, §10

**154A.8 Duties of department.** Repealed by 2012 Acts, ch 1113, § 15.

**154A.9 Applications.** Repealed by 2012 Acts, ch 1113, § 15. See § 147.3.

**154A.10 Issuance of licenses.**

An applicant may obtain a license, if the applicant:

1. Successfully passes the qualifying examination prescribed in section 154A.12.
2. Is free of contagious or infectious disease.
3. Pays the necessary fees set by the board.

[C75, 77, 79, 81, §154A.10]

2012 Acts, ch 1113, §11

**154A.11 Examinations.** Repealed by 2012 Acts, ch 1113, § 15. See § 147.34, 147.37.

**154A.12 Scope of examination.**

1. The examination required by this chapter shall be designed to demonstrate the applicant's adequate technical qualifications including but not limited to the following:

a. Evidence of knowledge in areas such as physics of sound, anatomy and physiology of hearing, and the function of hearing aids, as these areas pertain to the fitting or selection and sale of hearing aids.

b. Evidence of knowledge of the medical and rehabilitation facilities that are available in the area served, for children and adults who have hearing problems.

c. Evidence of knowledge of situations in which it is commonly believed that a hearing aid is inappropriate.

2. The board shall not require the applicant to possess the degree of professional competence normally expected of physicians.

[C75, 77, 79, 81, §154A.12]

2000 Acts, ch 1140, §39; 2009 Acts, ch 41, §263; 2012 Acts, ch 1113, §12

Referred to in §154A.10

**154A.13 Temporary permit.**

A person who has not been licensed as a hearing aid dispenser may obtain a temporary permit from the department upon completion of the application accompanied by the written verification of employment from a licensed hearing aid dispenser. The department shall issue a temporary permit for one year which shall not be renewed or reissued. The fee for issuance of the temporary permit shall be set by the board in accordance with the provisions for establishment of fees in section 147.80. The temporary permit entitles an applicant to engage in the fitting or selection and sale of hearing aids under the supervision of a person holding a valid license.

[C75, 77, 79, 81, §154A.13]

2001 Acts, ch 58, §18; 2012 Acts, ch 1113, §13

**154A.14 Reciprocity.** Repealed by 2012 Acts, ch 1113, § 15. See § 147.44, 147.48, 147.49, 147.53.

**154A.15 License renewal.** Repealed by 2012 Acts, ch 1113, § 15. See § 147.10.

**154A.16** Repealed by 77 Acts, ch 95, § 25.

**154A.17 Fees.** Repealed by 2012 Acts, ch 1113, § 15. See § 147.80.

**154A.18 Display of license.** Repealed by 2012 Acts, ch 1113, § 15. See § 147.7.

**154A.19 Exceptions.**

This chapter shall not prohibit a corporation, partnership, trust, association, or other organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license if it employs only licensed hearing aid dispensers in the direct fitting or selection and sale of hearing aids. Such an organization shall file annually with the board a list of all licensed hearing aid dispensers and persons holding temporary permits directly or indirectly employed by it. Such an organization shall also file with the board a statement on a form approved by the board that the organization submits itself to the rules and regulations of the board and the provisions of this chapter which the department deems applicable.

This chapter shall not apply to a person who engages in the practices covered by this chapter if this activity is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public or charitable institution, or nonprofit organization, unless the institution or organization also dispenses or sells hearing aids.

This chapter shall not prevent any person from engaging in practices covered by this chapter, provided the person, or organization employing the person, does not dispense or sell hearing aids.

[C75, 77, 79, 81, §154A.19]  
2001 Acts, ch 58, §18

**154A.20 Rights of purchaser.**

1. A hearing aid dispenser shall deliver, to each person supplied with a hearing aid, a receipt which contains the licensee's signature and shows the licensee's business address and the number of the license, together with specifications as to the make, model, and serial number of the hearing aid furnished, and full terms of sale clearly stated, including the date of consummation of the sale of the hearing aid. If a hearing aid is sold which is not new, the receipt and the container must be clearly marked "used" or "reconditioned", with the terms of guarantee, if any.

2. The receipt shall bear the following statement in type no smaller than the largest used in the body copy portion of the receipt:

The purchaser has been advised that any examination or representation made by a licensed hearing aid dispenser in connection with the fitting or selection and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice.

3. Whenever any of the following conditions are found to exist either from observations by the licensed hearing aid dispenser or person holding a temporary permit or on the basis of information furnished by a prospective hearing aid user, the hearing aid dispenser or person holding a temporary permit shall, prior to fitting and selling a hearing aid to any individual, suggest to that individual in writing that the individual's best interests would be served if the individual would consult a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then a duly licensed physician:

a. Visible congenital or traumatic deformity of the ear.

- b. History of, or active drainage from the ear within the previous ninety days.
- c. History of sudden or rapidly progressive hearing loss within the previous ninety days.
- d. Acute or chronic dizziness.
- e. Unilateral hearing loss of sudden or recent onset within the previous ninety days.
- f. Significant air-bone gap (greater than or equal to 15dB ANSI 500, 1000 and 2000 Hz. average).
- g. Obstruction of the ear canal, by structures of undetermined origin, such as foreign bodies, impacted cerumen, redness, swelling, or tenderness from localized infections of the otherwise normal ear canal.

4. A copy of the written recommendation shall be retained by the licensed hearing aid dispenser for the period of seven years. A person receiving the written recommendation who elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with the other papers retained by the licensed hearing aid dispenser for the period of seven years. Nothing in this section required to be performed by a licensed hearing aid dispenser shall mean that the hearing aid dispenser is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by this chapter.

5. No hearing aid shall be sold by any individual licensed under this chapter to a person twelve years of age or younger, unless within the preceding six months a recommendation for a hearing aid has been made by a physician specializing in otolaryngology. A replacement of an identical hearing aid within one year shall be an exception to this requirement.

6. A licensed hearing aid dispenser shall, upon the consummation of a sale of a hearing aid, keep and maintain records in the dispenser's office or place of business at all times and each such record shall be kept and maintained for a seven-year period. These records shall include:

- a. Results of test techniques as they pertain to fitting of the hearing aids.
- b. A copy of the written receipt and the written recommendation.

[C75, 77, 79, 81, §154A.20]

2001 Acts, ch 58, §18; 2002 Acts, ch 1119, §17, 18

#### **154A.21 Notice of address.**

A licensee or person holding a temporary permit shall notify the department in writing of the address of the place where the licensee or permittee engages or intends to engage in business as a hearing aid dispenser. The department shall keep a record of the place of business of licensees and persons holding temporary permits.

Any notice required to be given by the department to a licensee shall be adequately served if sent by certified mail to the address of the last place of business recorded.

[C75, 77, 79, 81, §154A.21]

2001 Acts, ch 58, §18

**154A.22 Receipt of fees.** Repealed by 2006 Acts, ch 1155, § 13, 15.

#### **154A.23 Disciplinary orders — attorney general.**

The board shall forward a copy of all final disciplinary orders, with associated complaints, to the attorney general for consideration for prosecution or enforcement when warranted. The attorney general and all county attorneys shall assist the board and the department in the enforcement of the provisions of this chapter.

[C75, 77, 79, 81, §154A.23]

2001 Acts, ch 58, §18; 2002 Acts, ch 1119, §19; 2012 Acts, ch 1113, §14

Referred to in §272C.5

#### **154A.24 Suspension or revocation.**

The board may revoke or suspend a license or temporary permit permanently or for a fixed period for any of the following causes:

1. Conviction of a felony. The record of conviction, or a certified copy, shall be conclusive evidence of conviction.
2. Procuring a license or temporary permit by fraud or deceit.

3. Unethical conduct in any of the following forms:
  - a. Obtaining a fee or making a sale by fraud or misrepresentation.
  - b. Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter.
  - c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.
  - d. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.
  - e. Representing that the service or advice of a person licensed to practice medicine, or one who is certificated as a clinical audiologist by the board of speech pathology and audiology or its equivalent, will be used or made available in the fitting or selection, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words “doctor”, “clinic”, “clinical audiologist”, “state approved”, or similar words, abbreviations, or symbols which tend to connote the medical or other professions, except where the title “certified hearing aid audiologist” has been granted by the national hearing aid society, or that the hearing aid dispenser has been recommended by this state or the board when such is not accurate.
  - f. Habitual intemperance.
  - g. Permitting another person to use the license or temporary permit.
  - h. Advertising a manufacturer’s product or using a manufacturer’s name or trademark to imply a relationship with the manufacturer that does not exist.
  - i. Directly or indirectly giving or offering to give, or permitting or causing to be given, money or anything of value to a person who advises another in a professional capacity, as an inducement to influence the person or cause the person to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence others to refrain from dealing in the products of competitors.
  - j. Conducting business while suffering from a contagious or infectious disease.
  - k. Engaging in the fitting or selection and sale of hearing aids under a false name or alias, with fraudulent intent.
  - l. Selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting or selection of hearing aids, except in cases of selling replacement hearing aids of the same make or model within one year of the original sale.
  - m. Gross incompetence or negligence in fitting or selection and selling of hearing aids.
  - n. Using an advertisement or other representation which has the effect of misleading or deceiving purchasers or prospective purchasers into the belief that any hearing aid or device, or part or accessory thereof, is a new invention or involves a new mechanical or scientific principle when such is not the fact.
  - o. Representing, directly or by implication, that a hearing aid utilizing bone conduction has certain specified features, such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone conduction principle, and that in many cases of hearing loss, this type of instrument may not be suitable.
  - p. Stating or implying that the use of a hearing aid will restore normal hearing or preserve hearing or prevent or retard progressions of hearing impairment or any other false or misleading claim regarding the use or benefit of a hearing aid.
  - q. Representing or implying that a hearing aid is or will be “custom-made”, “made to order”, “prescription made”, or in any other sense especially fabricated for an individual person when such is not the case.
  - r. Violating any of the provisions of section 714.16.

s. Such other acts or omissions as the board may determine to be unethical conduct.

[C75, 77, 79, 81, §154A.24]

90 Acts, ch 1073, §1; 2001 Acts, ch 58, §18; 2007 Acts, ch 10, §146; 2011 Acts, ch 129, §87, 156

Referred to in §272C.3, 272C.4

**154A.25 Prohibitions.**

A person shall not:

1. Sell, barter, or offer to sell or barter a license or temporary permit.
2. Purchase or procure by barter a license or temporary permit with intent to use it as evidence of the holder’s qualifications to engage in business as a hearing aid dispenser.
3. Alter a license or temporary permit with fraudulent intent.
4. Use or attempt to use as a valid license a license or temporary permit which has been purchased, fraudulently obtained, counterfeited, or materially altered.
5. Willfully make a false statement in an application for a license or temporary permit or for renewal of a license or temporary permit.

[C75, 77, 79, 81, §154A.25]

2001 Acts, ch 58, §18

**154A.26 Consumer protection.**

Nothing in this chapter shall be construed to limit the right of a person who desires to file a complaint against a licensee or holder of a temporary permit from filing a complaint with the attorney general pursuant to the provisions of section 714.16.

[C75, 77, 79, 81, §154A.26]

**154A.27 Penalties.**

A violation of any provisions of this chapter is a simple misdemeanor.

[C75, 77, 79, 81, §154A.27]

**CHAPTER 154B**

**PSYCHOLOGY**

Referred to in §135.24, 135.61, 135L.3, 147.76, 228.9, 622.10, 714H.4, 915.82, 915.86

Enforcement, §147.87, 147.92  
Penalty, §147.86

154B.1	Definition.	154B.6	Requirements for licensure.
154B.2	Practice not authorized.	154B.7	Health service provider in psychology.
154B.3	Persons not required to qualify.	154B.8	Voluntary surrender of license.
154B.4	Acts prohibited.		
154B.5	Scope of chapter.		

**154B.1 Definition.**

“Practice of psychology” means the application of established principles of learning, motivation, perception, thinking, and emotional relations to problems of behavior adjustment, group relations, and behavior modification, by persons trained in psychology for compensation or other personal gain. The application of principles includes, but is not limited to: Counseling and the use of psychological remedial measures with persons, in groups or individually, with adjustment or emotional problems in the areas of work, family, school and personal relationships; measuring and testing personality, intelligence, aptitudes, public opinion, attitudes, and skills; and the teaching of such subject matter, and the conducting of research on the problems relating to human behavior.

[C75, 77, 79, 81, §154B.1]

**154B.2 Practice not authorized.**

This chapter shall not authorize the practice of medicine and surgery or the practice of osteopathic medicine and surgery by any person not licensed pursuant to chapter 148.

[C75, 77, 79, 81, §154B.2]  
2008 Acts, ch 1088, §108

**154B.3 Persons not required to qualify.**

The provisions of this chapter shall not apply to the following persons:

1. School psychologists certified by the department of education practicing and functioning within the scope of their employment in either a public or private school or performing as certified school psychologists at any time in either private practice or the public sector, provided they use the title “certified school psychologist”.

2. An employee of an accredited academic institution while performing the employee’s teaching, training, and research duties.

3. An employee of a federal, state, county or local governmental institution or agency or nonprofit institution or agency, or a research facility, while performing duties of the office or position with such institution, agency, or facility.

4. A student of psychology, psychological intern or person preparing for the practice of psychology in a training institution or facility approved by the board, provided the person is designated by the title “psychological trainee” or any similar title, clearly indicating training status.

5. A practicing psychologist for a period not to exceed ten consecutive business days or fifteen business days in any ninety-day period, if the person’s residence and major practice are outside the state, and the person gives the board a summary of the person’s intention to practice in the state of Iowa, if the person is certified or licensed in the state in which the person resides under requirements the board considers to be equivalent of requirements for licensing under this chapter, or the person resides in a state which does not certify or license psychologists and the board considers the person’s professional qualifications to be the equivalent of requirements for licensing under this chapter.

[C75, 77, 79, 81, §154B.3]

**154B.4 Acts prohibited.**

Commencing July 1, 1975, a person who is not licensed under this chapter shall not claim to be a licensed practicing psychologist, use a title or description, including the term “psychology” or any of its derivatives, such as “psychologist”, “psychological”, “psychotherapist” or modifiers such as “practicing” or “licensed” in a manner which implies that the person is certified under this chapter, or offer to practice or practice psychology, except as otherwise permitted in this chapter. The use by a person who is not licensed under this chapter of such terms is not prohibited by this chapter, except when such terms are used in connection with an offer to practice or the practice of psychology.

[C75, 77, 79, 81, §154B.4]

**154B.5 Scope of chapter.**

Nothing in this chapter shall be construed to prevent qualified members of other professional groups such as physicians, osteopathic physicians, optometrists, chiropractors, members of the clergy, authorized Christian Science practitioners, attorneys at law, social workers, or guidance counselors from performing functions of a psychological nature consistent with the accepted standards of their respective professions, if they do not use any title or description stating or implying that they are psychologists or are certified to practice psychology.

[C75, 77, 79, 81, §154B.5]  
2009 Acts, ch 133, §59

**154B.6 Requirements for licensure.**

1. Except as provided in this section, an applicant for licensure as a psychologist shall meet the following requirements in addition to those specified in chapter 147:

a. Except as provided in this section, after July 1, 1985, a new applicant for licensure as a psychologist shall possess a doctoral degree in psychology from an institution approved by the board and shall have completed at least one year of supervised professional experience under the supervision of a licensed psychologist.

b. Have passed an examination administered by the board to assure the applicant’s professional competence. The examination of any of its divisions may be given by the board at any time after the applicant has met the degree requirements of this section.

c. Have not failed the examination required in paragraph “b” within sixty days preceding the date of the subsequent examination.

2. The examinations required in this section may, at the discretion of the board, be waived for holders by examination of licenses or certificates from states whose requirements are substantially equivalent to those of this chapter, and for holders by examination of specialty diplomas from the American board of professional psychology.

[C75, 77, 79, 81, §154B.6]

84 Acts, ch 1122, §1; 2006 Acts, ch 1184, §96; 2007 Acts, ch 22, §40

**154B.7 Health service provider in psychology.**

A certified health service provider in psychology means a person licensed to practice psychology who has a doctoral degree in psychology, or prior to July 1, 1984 was licensed at the doctoral level with a degree in psychology or its equivalent, or was prior to January 1, 1984 licensed as a psychologist in this state and prior to January 1, 1985 receives a doctoral degree equivalent to a doctoral degree in psychology, and who has at least two years of clinical experience in a recognized health service setting or meets the standards of a national register of health service providers in psychology. A person certified as a health service provider in psychology shall be deemed qualified to diagnose or evaluate mental illness and nervous disorders, and to treat mental illnesses and nervous disorders, excluding those mental illnesses and nervous disorders which are established as primarily of biological etiology with the exception of the treatment of the psychological and behavioral aspects of those mental illnesses and nervous disorders.

84 Acts, ch 1122, §2

Referred to in §135B.7, 232.78, 232.83

**154B.8 Voluntary surrender of license.**

The director of public health may accept the voluntary surrender of license if accompanied by a written statement of intention. The voluntary surrender, when accepted, shall have the same force and effect as an order of revocation.

[C75, 77, 79, 81, §154B.7]

**CHAPTER 154C**

**SOCIAL WORK**

Referred to in §135.24, 135L.3, 147.74, 147.76, 622.10, 714H.4, 915.82

Enforcement, §147.87, 147.92

Penalty, §147.86

154C.1	Definitions.	154C.4	Rulemaking authority.
154C.2	License required — exception — use of title.	154C.5	Confidentiality of information.
154C.3	Requirements to obtain license or reciprocal license — license renewal — continuing education.	154C.6	Transition provisions — exemption from certain license requirements.
		154C.7	General exemptions.

**154C.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “Board” means the board of social work established in chapter 147.
2. “Licensee” means a person licensed to practice social work.
3. “Practice of social work” means the professional activity of licensees which is directed at enhancing or restoring people’s capacity for social functioning, whether impaired by environmental, emotional, or physical factors, with particular attention to the person-in-situation configuration. The social work profession represents a body of knowledge requiring progressively more sophisticated analytic and intervention skills, and includes the application of psychosocial theory methods to individuals, couples, families, groups, and communities. The practice of social work does not include the making of a medical diagnosis, or the treatment of conditions or disorders of biological etiology except treatment of conditions or disorders which involve psychosocial aspects and conditions. The practice of social work for each of the categories of social work licensure includes the following:

- a. Bachelor social workers provide psychosocial assessment and intervention through direct contact with clients or referral of clients to other qualified resources for assistance, including but not limited to performance of social histories, problem identification, establishment of goals and monitoring of progress, interviewing techniques, counseling, social work administration, supervision, evaluation, interdisciplinary consultation and collaboration, and research of service delivery including development and implementation of organizational policies and procedures in program management.

- b. Master social workers are qualified to perform the practice of bachelor social workers and provide psychosocial assessment, diagnosis, and treatment, including but not limited to performance of psychosocial histories, problem identification and evaluation of symptoms and behavior, assessment of psychosocial and behavioral strengths and weaknesses, effects of the environment on behavior, psychosocial therapy with individuals, couples, families, and groups, establishment of treatment goals and monitoring progress, differential treatment planning, and interdisciplinary consultation and collaboration.

- c. Independent social workers are qualified to perform the practice of master social workers as a private practice.

4. “Private practice” means social work practice conducted only by an independent social worker who is either self-employed or a member of a partnership or of a group practice providing diagnosis and treatment of mental and emotional disorders or conditions.

5. “Supervision” means the direction of social work practice in face-to-face sessions.

84 Acts, ch 1075, §1; 96 Acts, ch 1035, §5; 2007 Acts, ch 10, §147

Referred to in §154C.6

#### **154C.2 License required — exception — use of title.**

1. A person shall not engage in the practice of social work unless the person is licensed pursuant to this chapter. A person who is not licensed pursuant to this chapter shall not use words or titles which imply or represent that the person is a licensed bachelor social worker, licensed master social worker, or licensed independent social worker.

2. Notwithstanding subsection 1, persons trained as bachelor social workers, or employed as bachelor social workers, are not required to be licensed.

3. Section 147.83 does not apply to persons who are not licensed as bachelor social workers and who do not hold themselves out as licensed bachelor social workers.

84 Acts, ch 1075, §2; 96 Acts, ch 1035, §6

#### **154C.3 Requirements to obtain license or reciprocal license — license renewal — continuing education.**

1. *License requirements.* An applicant for a license as a bachelor social worker, master social worker, or independent social worker shall meet the following requirements in addition to paying all fees required by the board:

- a. *Bachelor social worker.* An applicant for a license as a bachelor social worker shall present evidence satisfactory to the board that the applicant:

- (1) Possesses a bachelor’s degree in social work from an accredited college or university approved by the board.

(2) Has passed an examination given by the board.

(3) Will conduct all professional activities as a bachelor social worker in accordance with standards for professional conduct established by the board.

*b. Master social worker.* An applicant for a license as a master social worker shall present evidence satisfactory to the board that the applicant:

(1) Possesses a master's or doctoral degree in social work from an accredited college or university approved by the board.

(2) Has passed an examination given by the board.

(3) Will conduct all professional activities as a master social worker in accordance with standards for professional conduct established by the board.

*c. Independent social worker.* An applicant for a license as an independent social worker shall present evidence satisfactory to the board that the applicant:

(1) Possesses a master's or doctoral degree in social work from an accredited college or university approved by the board.

(2) Has passed an examination given by the board.

(3) Will conduct all professional activities as a social worker in accordance with standards for professional conduct established by the board.

(4) Has engaged in the practice of social work, under supervision, for at least two years as a full-time employee or for four thousand hours prior to taking the examination given by the board.

(5) (a) Supervision shall be provided in any of the following manners:

(i) By a social worker licensed at least at the level of the social worker being supervised and qualified under this section to practice without supervision.

(ii) By another qualified professional, if the board determines that supervision by a social worker as defined in subparagraph subdivision (i) is unobtainable or in other situations considered appropriate by the board.

(b) Additional standards for supervision shall be determined by the board.

2. *Reciprocal license.* The board shall issue an appropriate license to an applicant licensed to practice social work in another state which imposes licensure requirements similar or equal to those imposed under subsection 1.

3. *License renewal and continuing education.* Licenses shall be renewed biennially, and licensees shall pay a fee for renewal as determined by the board and shall present evidence satisfactory to the board that the licensee has satisfied continuing education requirements as determined by the board.

84 Acts, ch 1075, §3; 96 Acts, ch 1035, §7; 2000 Acts, ch 1140, §40; 2007 Acts, ch 10, §148; 2009 Acts, ch 41, §263; 2009 Acts, ch 133, §60

Referred to in §147.14, 154C.6, 249A.15A

#### **154C.4 Rulemaking authority.**

In addition to duties and responsibilities provided in chapters 147 and 272C, the board shall adopt rules relating to:

1. Standards required for licensees engaging in the private practice of licensed social work.

2. Standards for professional conduct of licensees.

3. The administration of this chapter.

4. The status of active and inactive licensure and guidelines for inactive licensure reentry.

5. Educational activities which fulfill continuing education requirements for renewal of licenses.

6. Evaluation of its rules to refine standards of licensure and improve methods of enforcement of the standards.

84 Acts, ch 1075, §4; 96 Acts, ch 1035, §8

#### **154C.5 Confidentiality of information.**

A licensee or a person working under supervision of a licensee shall not disclose or be compelled to disclose information acquired from persons consulting that person in a professional capacity except:

1. If the information reveals the contemplation or commission of a crime.
  2. If the person waives the privilege by bringing charges against the licensee.
  3. With the written consent of the client, or in the case of death or disability with the consent of the client's personal representative, another person authorized to sue, or the beneficiary of an insurance policy on the client's life, health, or physical condition.
  4. To testify in a court hearing concerning matters pertaining to the welfare of children.
  5. To seek collaboration or consultation with professional colleagues or administrative superiors on behalf of the client.
- 84 Acts, ch 1075, §5; 96 Acts, ch 1035, §9

#### **154C.6 Transition provisions — exemption from certain license requirements.**

Notwithstanding section 154C.3, the board shall issue a license as a bachelor social worker, master social worker, or independent social worker to an applicant applying for a license prior to July 1, 1998, who meets the following requirements in addition to paying all fees required by the board:

1. *Bachelor social worker.* An applicant for a license as a bachelor social worker shall present evidence satisfactory to the board of either of the following:
    - a. That the applicant possesses a bachelor's degree in social work from an accredited college or university approved by the board.
    - b. That the applicant possesses an undergraduate degree from an accredited college or university and has four thousand hours of employment experience in the practice of social work.
  2. *Master social worker.* An applicant for a license as a master social worker shall present evidence satisfactory to the board of any of the following:
    - a. That the applicant possesses a master's degree in social work from an accredited college or university approved by the board.
    - b. That the applicant possesses a graduate degree from an accredited college or university and has four thousand hours of employment experience in the practice of social work.
    - c. That the applicant is employed performing master level social work duties as defined in section 154C.1, subsection 3, paragraph "b", as of July 1, 1996, and has four thousand hours of employment experience in the practice of social work as of July 1, 1998.
  3. *Independent social worker.* An applicant for a license as an independent social worker shall present evidence satisfactory to the board of either of the following:
    - a. That the applicant possesses a valid license to practice social work pursuant to this chapter issued prior to July 1, 1996.
    - b. That the applicant possesses a master's or doctoral degree in social work from an accredited college or university approved by the board and has two years or four thousand hours of postgraduate degree employment experience in the practice of social work.
- 96 Acts, ch 1035, §10

#### **154C.7 General exemptions.**

This chapter and chapter 147 do not prevent qualified members of other professions including, but not limited to, nurses, psychologists, marital and family therapists, mental health counselors, physicians, physician assistants, attorneys at law, or members of the clergy, from providing or advertising that they provide services of a social work nature consistent with the accepted standards of their respective professions, provided that these persons do not use a title or description indicating or implying that they are licensed to practice social work under this chapter or that they are practicing social work as defined in this chapter.

This chapter does not apply to students of social work whose activities are conducted within a course of professional education in social work.

96 Acts, ch 1035, §11

## CHAPTER 154D

## BEHAVIORAL SCIENCE

Referred to in §135.24, 135L.3, 147.74, 147.76, 249A.15A, 489.1101, 622.10, 714H.4

Enforcement, §147.87, 147.92  
Penalty, general, §147.86

154D.1	Definitions.	154D.5	Sexual conduct with client.
154D.2	Licensure — marital and family therapy — mental health counseling.	154D.6	Transition provisions. Repealed by 2008 Acts, ch 1088, §79.
154D.3	Board organization and authority.	154D.7	Temporary license — marital and family therapy — mental health counseling — fees.
154D.4	Exemptions.		

**154D.1 Definitions.**

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

1. “*Board*” means the board of behavioral science established in chapter 147.
2. “*Licensed marital and family therapist*” means a person licensed to practice marital and family therapy under chapter 147 and this chapter.
3. “*Licensed mental health counselor*” means a person licensed to practice mental health counseling under chapter 147 and this chapter.
4. “*Licensee*” includes a licensed marital and family therapist and a licensed mental health counselor.
5. “*Marital and family therapy*” means the application of counseling techniques in the assessment and resolution of emotional conditions. This includes the alteration and establishment of attitudes and patterns of interaction relative to marriage, family life, and interpersonal relationships.
6. “*Mental health counseling*” means the provision of counseling services involving assessment, referral, consultation, and the application of counseling, human development principles, learning theory, group dynamics, and the etiology of maladjustment and dysfunctional behavior to individuals, families, and groups.
7. “*Temporary license*” means a license to practice marital and family therapy or mental health counseling under direct supervision of a qualified supervisor as determined by the board by rule to fulfill the postgraduate supervised clinical experience requirement in accordance with this chapter.
8. “*Temporary licensed marital and family therapist*” means a person licensed to practice marital and family therapy under supervision in accordance with section 154D.7.
9. “*Temporary licensed mental health counselor*” means a person licensed to practice mental health counseling under supervision in accordance with section 154D.7.  
91 Acts, ch 229, §6; 2007 Acts, ch 10, §149; 2008 Acts, ch 1088, §65

**154D.2 Licensure — marital and family therapy — mental health counseling.**

An applicant for a license to practice marital and family therapy or mental health counseling shall be granted a license by the board when the applicant satisfies all of the following requirements:

1. Possesses a master’s degree in marital and family therapy or mental health counseling, as applicable, consisting of at least sixty semester hours, or its equivalent, from a nationally accredited institution or from a program approved by the board.
2. Has at least two years of supervised clinical experience or its equivalent as approved by the board. Standards for supervision, including the required qualifications for supervisors, shall be determined by the board by rule.
3. Passes an examination approved by the board.  
91 Acts, ch 229, §7; 94 Acts, ch 1170, §25, 26; 2004 Acts, ch 1090, §2, 3; 2005 Acts, ch 89, §17, 18; 2006 Acts, ch 1184, §97; 2008 Acts, ch 1088, §66

Referred to in §154D.4

**154D.3 Board organization and authority.**

1. In addition to duties and responsibilities provided in chapters 147 and 272C, the board shall adopt rules relating to:

- a. Standards required for licensees engaging in the professions covered by this chapter.
- b. Standards for professional conduct of persons licensed under this chapter.
- c. The administration of this chapter.
- d. The status of active and inactive licensure, and guidelines for reentry of inactive licensees.
- e. Educational activities which fulfill continuing education requirements for license renewals.

2. The board may establish subcommittees. A decision or recommendation of a subcommittee shall not become effective without approval of the board. The board may initiate action relating to either of the professions within its jurisdiction.

91 Acts, ch 229, §8; 98 Acts, ch 1050, §2, 5; 2008 Acts, ch 1088, §67

**154D.4 Exemptions.**

1. This chapter and chapter 147 do not prevent qualified members of other professions, including but not limited to nurses, psychologists, social workers, physicians, physician assistants, attorneys at law, or members of the clergy, from providing or advertising that they provide services of a marital and family therapy or mental health counseling nature consistent with the accepted standards of their respective professions, but these persons shall not use a title or description denoting that they are licensed marital and family therapists or licensed mental health counselors.

2. The licensure requirements of this chapter and chapter 147 do not apply to the following:

a. Students whose activities are conducted within a course of professional education in marital and family therapy or mental health counseling.

b. A person who practices marital and family therapy or mental health counseling under the supervision of a person licensed under this chapter as part of a clinical experience as described in section 154D.2, subsection 2.

c. The provision of children, family, or mental health services through the department of human services or juvenile court, or agencies contracting with the department of human services or juvenile court, by persons who do not represent themselves to be either a marital and family therapist or a mental health counselor.

91 Acts, ch 229, §9; 98 Acts, ch 1050, §3, 5; 2008 Acts, ch 1088, §68

**154D.5 Sexual conduct with client.**

The license of a marital and family therapist or a mental health counselor shall be revoked if the board finds that the licensee engaged in sexual activity with a client as determined by board rule. The revocation shall be in addition to any other penalties provided by law.

91 Acts, ch 229, §10; 2008 Acts, ch 1088, §69

**154D.6 Transition provisions.** Repealed by 2008 Acts, ch 1088, § 79.**154D.7 Temporary license — marital and family therapy — mental health counseling — fees.**

Any person who has fulfilled all of the requirements for licensure under this chapter, except for having completed the postgraduate supervised clinical experience requirement as determined by the board by rule, may apply to the board for a temporary license. The license shall be designated “temporary license in marital and family therapy” or “temporary license in mental health counseling” and shall authorize the licensee to practice marital and family therapy or mental health counseling under the supervision of a qualified supervisor as determined by the board by rule. The license shall be valid for three years and may be renewed at the discretion of the board. The fee for a temporary license shall be set by the

board to cover the administrative costs of issuing the license, and if renewed, a renewal fee as set by the board shall be required.

2008 Acts, ch 1088, §70

Referred to in §154D.1

## CHAPTER 154E

### INTERPRETERS AND TRANSLITERATORS

Referred to in §147.74, 147.76, 272C.1

154E.1	Definitions.	154E.3A	Temporary license.
154E.2	Duties of the board.	154E.4	Exceptions.
154E.3	Requirements for licensure.		

#### 154E.1 Definitions.

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

1. “*Board*” means the board of sign language interpreters and transliterators established in chapter 147.

2. “*Consumer*” means an individual utilizing interpreting services who uses spoken English, American sign language, or a manual form of English.

3. “*Department*” means the Iowa department of public health.

4. “*Interpreter training program*” means a postsecondary education program training individuals to interpret or transliterate.

5. “*Interpreting*” means facilitating communication between individuals who communicate via American sign language and individuals who communicate via spoken English.

6. “*Licensee*” means any person licensed to practice interpreting or transliterating for deaf, hard-of-hearing, and hearing individuals in the state of Iowa.

7. “*Transliterating*” means facilitating communication between individuals who communicate via a manual form of English and individuals who communicate via spoken English.

2004 Acts, ch 1175, §426, 433; 2007 Acts, ch 10, §150

Referred to in §147.14

#### 154E.2 Duties of the board.

The board shall administer this chapter. The board’s duties shall include, but are not limited to, the following:

1. Adopt rules consistent with this chapter and with chapter 147 which are necessary for the performance of its duties.

2. Act on matters concerning licensure and the process of applying for, granting, suspending, imposing supervisory or probationary conditions upon, reinstating, and revoking a license.

3. Administer the provisions of this chapter regarding documentation required to demonstrate competence as an interpreter, and the processing of applications for licenses and license renewals.

4. Establish and maintain as a matter of public record a registry of interpreters licensed pursuant to this chapter.

5. Develop continuing education requirements as a condition of license renewal.

6. Evaluate requirements for licensure in other states to determine if reciprocity may be granted.

2004 Acts, ch 1175, §427, 433; 2006 Acts, ch 1155, §12, 15

Nonreversion of unencumbered or unobligated funds appropriated or received as fees or repayment receipts for the fiscal period beginning July 1, 2006, and ending July 1, 2007, until the close of the next succeeding fiscal year; 2006 Acts, ch 1155, §14, 15

**154E.3 Requirements for licensure.**

On or after July 1, 2005, every person providing interpreting or transliterating services in this state shall be licensed pursuant to this chapter. The board shall adopt rules pursuant to chapters 17A, 147, and 272C establishing procedures for the licensing of new and existing interpreters. Prior to obtaining licensure, an applicant shall successfully pass an examination prescribed and approved by the board, demonstrating the following:

1. *Voice-to-sign interpretation.* An applicant shall demonstrate proficiency at:

a. Message equivalence: producing a true and accurate signed form of the spoken message, maintaining the integrity of content and meaning, and exhibiting few omissions, substitutions, or other errors.

b. Affect: producing nonmanual grammar consistent with the intent and emotion of the speaker, and exhibiting no distracting mannerisms.

c. Vocabulary choice: making correct sign choices appropriate to the setting and consumers, applying facial grammar consistent with sign choice, selecting signs that remain true to speaker's intent, and demonstrating lexical variety.

d. Fluency: displaying confidence in production, exhibiting a strong command of American sign language or manual codes for English, applying nonmanual behaviors consistent with the speaker's intent, and demonstrating understanding of and sensitivity to cultural differences.

2. *Sign-to-voice interpretation.* An applicant shall demonstrate proficiency at:

a. Message equivalence: producing a true and accurate spoken form of the signed message, maintaining the integrity of content and meaning, and exhibiting few omissions, substitutions, or other errors.

b. Affect: producing inflection consistent with the intent and emotion of the speaker, and exhibiting no distracting mannerisms.

c. Vocabulary choice: making correct word choices appropriate to the setting and consumers, using vocal inflection consistent with word choice, selecting words that remain true to the speaker's intent, and demonstrating lexical variety.

d. Fluency: displaying confidence in production, exhibiting a strong command of English in both spoken and written forms, applying vocal inflections consistent with the speaker's intent, and demonstrating understanding of and sensitivity to cultural differences.

3. *Professional conduct.* An applicant shall demonstrate:

a. Proficiency in functioning as a communicator of messages between the sender and receiver and educating consumers of services about the functions and logistics of the interpreting process.

b. An impartial demeanor, refraining from interjecting opinions or advice and from aligning with one party over another. An applicant shall treat all people fairly and respectfully regardless of their relationship to the interpreting assignment, and present a professional appearance that is not visually distracting and is appropriate to the setting. An applicant shall exhibit knowledge and application of federal and state laws pertaining to the interpreting profession.

c. Integrity, and shall be proficient in understanding and applying ethical behavior appropriate for a licensee. An applicant shall demonstrate discretion in accepting and meeting interpreter services requests, and shall engage actively in lifelong learning.

2004 Acts, ch 1175, §428, 433

Referred to in §154E.3A

**154E.3A Temporary license.**

Beginning July 1, 2007, an individual who does not meet the requirements for licensure by examination pursuant to section 154E.3 may apply for or renew a temporary license. The temporary license shall authorize the licensee to practice as a sign language interpreter or transliterator under the direct supervision of a sign language interpreter or transliterator licensed pursuant to section 154E.3. The temporary license shall be valid for two years and may only be renewed one time in accordance with standards established by rule. An individual shall not practice for more than a total of four years under a temporary license. The board may revoke a temporary license if it determines that the temporary licensee has

violated standards established by rule. The board may adopt requirements for temporary licensure to implement this section.

2006 Acts, ch 1184, §98

**154E.4 Exceptions.**

1. A person shall not practice interpreting or transliterating, or represent that the person is an interpreter, unless the person is licensed under this chapter.

2. This chapter does not prohibit any of the following:

a. Any person residing outside of the state of Iowa holding a current license from another state that meets the state of Iowa’s requirements from providing interpreting or transliterating services in this state for up to fourteen days per calendar year without a license issued pursuant to this chapter.

b. Any person from interpreting or transliterating solely in a religious setting with the exception of those working in schools that receive government funding.

c. Volunteers working without compensation, including emergency situations, until a licensed interpreter is obtained.

d. Any person working as a substitute for a licensed interpreter in an early childhood, elementary, or secondary education setting for no more than thirty school days in a calendar year.

e. Students enrolled in a school of interpreting from interpreting only under the direct supervision of a permanently licensed interpreter as part of the student’s course of study.

2004 Acts, ch 1175, §429, 433; 2006 Acts, ch 1184, §99; 2007 Acts, ch 22, §41

**CHAPTER 154F**

**SPEECH PATHOLOGY AND AUDIOLOGY**

Referred to in §85B.9, 135.24, 135.61, 147.76, 216E.7, 249A.15B

Enforcement, §147.87, 147.92

Penalty, general, §147.86

Payment for speech pathology services to medical assistance recipients, §249A.15B

154F.1	Definitions.	154F.4	Waiver of examination requirement.
154F.2	Applicability.	154F.5	Temporary clinical license — fee.
154F.3	Requirements for license.	154F.6	Temporary permit.

**154F.1 Definitions.**

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

1. “Audiologist” means a person who engages in the practice of audiology.

2. “Board” means the board of speech pathology and audiology established pursuant to section 147.14, subsection 1, paragraph “i”.

3. The “*practice of audiology*” means the application of principles, methods, and procedures for measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to hearing and disorders of hearing and associated communication disorders for the purpose of nonmedically evaluating, identifying, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals, including the determination and use of appropriate amplification.

4. The “*practice of speech pathology*” means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to the development and disorders of speech, fluency, voice, or language for the purposes of nonmedically evaluating, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals.

5. “*Speech pathologist*” means a person who engages in the practice of speech pathology. 2008 Acts, ch 1088, §71

#### **154F.2 Applicability.**

1. Nothing contained in this chapter shall be construed to apply to:

a. Licensed physicians and surgeons, licensed osteopathic physicians and surgeons, licensed physician assistants and registered nurses acting under the supervision of a physician or osteopathic physician, persons conducting hearing tests under the direct supervision of a licensed physician and surgeon or licensed osteopathic physician and surgeon, or students of medicine or surgery or osteopathic medicine and surgery pursuing a course of study in a medical school or college of osteopathic medicine and surgery approved by the board of medicine while performing functions incidental to their course of study.

b. Hearing aid fitting, the dispensing or sale of hearing aids, and the providing of hearing aid service and maintenance by a hearing aid dispenser or holder of a temporary permit as defined and licensed under chapter 154A.

c. Students enrolled in an accredited college or university pursuing a course of study leading to a degree in speech pathology or audiology while receiving clinical training as a part of the course of study and acting under the supervision of a licensed speech pathologist or audiologist provided they use the title “trainee” or similar title clearly indicating training status.

d. Nonprofessional aides who perform their services under the supervision of a speech pathologist or audiologist as appropriate and who meet such qualifications as may be established by the board for aides if they use the title “aide”, “assistant”, “technician”, or other similar title clearly indicating their status.

e. Audiometric tests administered pursuant to the United States Occupational Safety and Health Act of 1970 or chapter 88, and in accordance with regulations issued thereunder, by employees of a person engaged in business, including the state of Iowa, its various departments, agencies, and political subdivisions, solely to employees of such employer, while acting within the scope of their employment.

f. Persons certified by the department of education as speech clinicians or hearing clinicians and employed by a school district or area education agency while acting within the scope of their employment.

2. A person exempted from the provisions of this chapter by this section shall not use the title “speech pathologist” or “audiologist” or any title or device indicating or representing in any manner that the person is a speech pathologist or is an audiologist; provided, a hearing aid dispenser licensed under chapter 154A may use the title “certified hearing aid audiologist” when granted by the national hearing aid society; and provided, persons who meet the requirements of section 154F.3, subsection 1, who are certified by the department of education as speech clinicians may use the title “speech pathologist” and persons who meet the requirements of section 154F.3, subsection 2, who are certified by the department of education as hearing clinicians may use the title “audiologist”, while acting within the scope of their employment.

2008 Acts, ch 1088, §72; 2009 Acts, ch 133, §61

#### **154F.3 Requirements for license.**

Each applicant for a license as a speech pathologist or audiologist shall meet all of the following requirements:

1. For a license as a speech pathologist:

a. Possess a master’s degree from an accredited school, college, or university with a major in speech pathology.

b. Show evidence of completion of not less than four hundred hours of supervised clinical training in speech pathology as a student in an accredited school, college, or university.

c. Show evidence of completion of not less than nine months’ clinical experience under the supervision of a licensed speech pathologist following the receipt of the master’s degree.

2. For a license as an audiologist:

a. Possess a master's degree from an accredited school, college, or university with a major in audiology.

b. Show evidence of completion of not less than four hundred hours of supervised clinical training in audiology as a student in an accredited school, college, or university.

c. Show evidence of completion of not less than nine months' clinical experience under the supervision of a licensed audiologist following the receipt of the master's degree.

d. In lieu of paragraphs "a" through "c", hold a doctoral degree in audiology from an accredited school, college, or university which incorporates the academic coursework and the minimum hours of supervised training required by rules adopted by the board.

3. Pass an examination as determined by the board in rule.

2008 Acts, ch 1088, §73

Referred to in §154F2, 154F4, 154F5

#### **154F4 Waiver of examination requirement.**

The examinations required in section 154F3, subsection 3, may be waived by the board for holders by examination of licenses or certificates from states whose requirements are substantially equivalent to those of this chapter.

2008 Acts, ch 1088, §74

#### **154F5 Temporary clinical license — fee.**

Any person who has fulfilled all of the requirements for licensure under this chapter, except for having completed the nine months' clinical experience requirement as provided in section 154F3, subsection 1 or 2, may apply to the board for a temporary clinical license. The license shall be designated "temporary clinical license in speech pathology" or "temporary clinical license in audiology" and shall authorize the licensee to practice speech pathology or audiology under the supervision of a licensed speech pathologist or licensed audiologist, as appropriate. The license shall be valid for one year and may be renewed at the discretion of the board. The fee for a temporary clinical license shall be set by the board to cover the administrative costs of issuing the license, and if renewed, a renewal fee as set by the board shall be required. A temporary clinical license shall be issued only upon evidence satisfactory to the board that the applicant will be supervised by a person licensed as a speech pathologist or audiologist, as appropriate.

2008 Acts, ch 1088, §75

#### **154F6 Temporary permit.**

The board may, at its discretion, issue a temporary permit to a nonresident authorizing the permittee to practice speech pathology or audiology in this state for a period not to exceed three months whenever, in the opinion of the board, a need exists and the permittee, in the opinion of the board, possesses the necessary qualifications which shall be substantially equivalent to those required for licensure by this chapter.

2008 Acts, ch 1088, §76

## CHAPTER 155

## NURSING HOME ADMINISTRATION

Referred to in §135.1, 135.11, 147.14, 147.76, 272C.1, 272C.3, 272C.4, 272C.6

Enforcement, §147.87, 147.92  
Penalty, general, §147.86

155.1	Definitions.	155.12	Conflict with federal law — effect.
155.2	Composition of board. Repealed by 2012 Acts, ch 1113, §9.	155.13	Misdemeanor.
155.3	Qualifications for licensure.	155.14	Applications.
155.4	Licensing function.	155.15	Fees. Repealed by 2012 Acts, ch 1113, §9.
155.5	License fees.	155.16	Public members. Repealed by 2012 Acts, ch 1113, §9.
155.6	Receipt of fees. Repealed by 2006 Acts, ch 1155, §13, 15.	155.17	Disclosure of confidential information. Repealed by 2009 Acts, ch 56, §12.
155.7	Organization of board. Repealed by 2009 Acts, ch 56, §12.	155.18	Revocation or suspension. Repealed by 2009 Acts, ch 56, §12.
155.8	Exclusive jurisdiction of board.	155.19	Voluntary surrender.
155.9	Duties of the board — rules for provisional licenses.		
155.10	Continuing education.		
155.11	Reciprocity with other states.		

**155.1 Definitions.**

For the purposes of this chapter:

1. “*Board*” means the board of nursing home administrators established in chapter 147.

2. “*Nursing home*” means an institution or facility, or part of an institution or facility, whether proprietary or nonprofit, licensed as a nursing facility, but not including an intermediate care facility for persons with an intellectual disability or an intermediate care facility for persons with mental illness, defined as such for licensing purposes under state law or administrative rule adopted pursuant to section 135C.2, including but not limited to, a nursing home owned or administered by the federal or state government or an agency or political subdivision of government.

3. “*Nursing home administrator*” means a person who administers, manages, supervises, or is in general administrative charge of a nursing home whether or not such individual has an ownership interest in such home and whether or not the individual’s functions and duties are shared with one or more individuals. A member of a board of directors, unless also serving in a supervisory or managerial capacity, shall not be considered a nursing home administrator.

[C71, 73, 75, §147.118; C77, 79, 81, §135E.1]

83 Acts, ch 206, §8; 87 Acts, ch 194, §2; 90 Acts, ch 1039, §12; 90 Acts, ch 1204, §18  
C93, §155.1

96 Acts, ch 1129, §113; 2007 Acts, ch 10, §151; 2012 Acts, ch 1019, §19; 2012 Acts, ch 1113,  
§1

**155.2 Composition of board.** Repealed by 2012 Acts, ch 1113, § 9. See § 147.12 – 147.14, 147.16, 147.19, 147.20.

**155.3 Qualifications for licensure.**

The board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators. No license shall be issued to a person as a nursing home administrator unless:

1. The applicant is of sound mental health and physically able to perform the duties.
2. The applicant has presented evidence satisfactory to the board of sufficient education, training, or experience to administer, supervise, and manage a nursing home.
3. The applicant has passed an examination prescribed by the board pursuant to section 147.34.

[C71, 73, 75, §147.120; C77, 79, 81, §135E.3]

C93, §155.3  
2012 Acts, ch 1113, §2

#### **155.4 Licensing function.**

The board shall license nursing home administrators in accordance with this chapter, chapter 147, and rules issued by the board. A nursing home administrator's license shall not be transferable and, if not inactive, shall be valid until revoked pursuant to section 147.55 or voluntarily surrendered.

[C71, 73, 75, §147.121; C77, 79, 81, §135E.4]  
C93, §155.4  
2003 Acts, ch 44, §114; 2012 Acts, ch 1113, §3

#### **155.5 License fees.**

Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board. The license shall expire in multiyear intervals determined by the board and be renewable upon payment of a renewal fee. A person who fails to renew a license by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.

[C71, 73, 75, §147.122; C77, 79, 81, §135E.5]  
C93, §155.5  
2012 Acts, ch 1113, §4

**155.6 Receipt of fees.** Repealed by 2006 Acts, ch 1155, § 13, 15.

**155.7 Organization of board.** Repealed by 2009 Acts, ch 56, § 12.

#### **155.8 Exclusive jurisdiction of board.**

The board shall have authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under the provisions of this chapter, and the holder of a license under the provisions of this chapter shall be deemed qualified to serve as the administrator of a nursing home.

[C71, 73, 75, §147.125; C77, 79, 81, §135E.8]  
C93, §155.8

#### **155.9 Duties of the board — rules for provisional licenses.**

In addition to the duties and responsibilities provided in chapters 147 and 272C, the board shall adopt rules for granting a provisional license to an administrator appointed on a temporary basis by a nursing home's owner or owners in the event the regular administrator of the nursing home is unable to perform the administrator's duties or the nursing home is without a licensed administrator because of death or other cause. Such provisional license shall allow the provisional licensee to perform the duties of a nursing home administrator. An individual shall not hold a provisional license for more than twelve total combined months, and the board may revoke or otherwise discipline a provisional licensee for cause after due notice and a hearing on a charge or complaint filed with the board.

[C71, 73, 75, §147.126; C77, 79, 81, §135E.9]  
C93, §155.9  
2004 Acts, ch 1168, §10; 2012 Acts, ch 1113, §5

#### **155.10 Continuing education.**

Each person licensed as a nursing home administrator shall be required to complete continuing education as a condition of license renewal. Such continuing education requirements shall be determined by the board.

[C71, 73, 75, §147.127; C77, 79, 81, §135E.10]  
C93, §155.10  
2012 Acts, ch 1113, §6

**155.11 Reciprocity with other states.**

The board may issue a nursing home administrator's license, without examination, to any person who holds a current license as a nursing home administrator from another jurisdiction if reciprocal agreements are entered into with another jurisdiction under sections 147.44, 147.48, 147.49, and 147.53.

[C71, 73, 75, §147.128; C77, 79, 81, §135E.11]

C93, §155.11

2008 Acts, ch 1088, §109

**155.12 Conflict with federal law — effect.**

If any provision of this chapter is in conflict with the requirements of section 1908 of the United States Social Security Act codified at 42 U.S.C. § 1396g, relative to a state program for licensing of administrators of nursing homes, and except for such conflict the state would be entitled to receive contributions from the United States for payment of assistance under the program established pursuant to Tit. XIX of the United States Social Security Act, codified at 42 U.S.C. § 1396 – 1396g, such provision of this chapter so in conflict with said statute of the United States shall be considered as suspended and of no effect until sixty days after the convening of the next regular session of the general assembly after such conflict is discovered.

[C71, 73, 75, §147.129; C77, 79, 81, §135E.12]

C93, §155.12

2010 Acts, ch 1061, §31

**155.13 Misdemeanor.**

It shall be a serious misdemeanor for any person to act or serve in the capacity of a nursing home administrator unless the person is the holder of a license as a nursing home administrator issued in accordance with the provisions of this chapter.

[C71, 73, 75, §147.130; C77, 79, 81, §135E.13]

C93, §155.13

**155.14 Applications.**

Applications for licensure and for license renewal shall be in the format prescribed by the board.

[C75, §147.131; C77, 79, 81, §135E.14]

C93, §155.14

2012 Acts, ch 1113, §7

**155.15 Fees.** Repealed by 2012 Acts, ch 1113, § 9. See § 147.80.

**155.16 Public members.** Repealed by 2012 Acts, ch 1113, § 9. See § 147.21(1).

**155.17 Disclosure of confidential information.** Repealed by 2009 Acts, ch 56, § 12.

**155.18 Revocation or suspension.** Repealed by 2009 Acts, ch 56, § 12.

**155.19 Voluntary surrender.**

The board may accept the voluntary surrender of a license if accompanied by a written statement of intention. The voluntary surrender, when accepted, shall have the same force and effect as an order of revocation.

2012 Acts, ch 1113, §8

## CHAPTER 155A

## PHARMACY

Referred to in §124.308, 124B.6, 124B.11, 135.24, 135.61, 147.76, 147.82, 147.108, 152.1, 166.3, 321J.2, 462A.12, 462A.14, 514.5, 714H.4, 911.3

Licensing board, support staff exception;  
location and powers; see §135.11A, 135.31

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155A.2	Legislative declaration — purpose — exceptions.	155A.23	Prohibited acts.
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155A.6B	Pharmacy support person registration.	155A.29	Prescription refills.
155A.7	Pharmacist license.	155A.30	Out-of-state prescription orders.
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155A.13B	Pharmacy internet sites.	155A.38	Dispensing drug samples.
155A.14	Renewal of pharmacy license.	155A.39	Programs to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians — reporting, confidentiality, immunity, funding.
155A.15	Pharmacies — license required — discipline, violations, and penalties.	155A.40	Criminal history record checks.
155A.16	Procedure.	155A.41	Continuous quality improvement program.
155A.17	Wholesale drug license.	155A.42	Limited drug and device distributor license.
155A.18	Penalties.	155A.43	Pharmaceutical collection and disposal program — annual allocation.
155A.19	Notifications to board.	155A.44	Vaccine and immunization administration.
155A.20	Unlawful use of terms and titles — impersonation.		
155A.21	Unlawful possession of prescription drug or device — penalty.		

**155A.1 Short title.**

This chapter may be cited as the “*Iowa Pharmacy Practice Act*”.  
87 Acts, ch 215, §1

**155A.2 Legislative declaration — purpose — exceptions.**

1. It is the purpose of this chapter to promote, preserve, and protect the public health, safety, and welfare through the effective regulation of the practice of pharmacy and the licensing of pharmacies, pharmacists, and others engaged in the sale, delivery, or distribution of prescription drugs and devices or other classes of drugs or devices which may be authorized.

2. Practitioners licensed under a separate chapter of the Code are not regulated by this chapter except when engaged in the operation of a pharmacy for the retailing of prescription drugs.

3. A family planning clinic is not regulated by this chapter when engaged in the dispensing of birth control drugs and devices pursuant to section 147.107, subsection 7.

87 Acts, ch 215, §2; 2009 Acts, ch 69, §2

### 155A.3 Definitions.

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

1. “*Administer*” means the direct application of a prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by one of the following:

- a. A practitioner or the practitioner’s authorized agent.
- b. The patient or research subject at the direction of a practitioner.

2. “*Authorized agent*” means an individual designated by a practitioner who is under the supervision of the practitioner and for whom the practitioner assumes legal responsibility.

3. “*Board*” means the board of pharmacy.

4. “*Brand name*” or “*trade name*” means the registered trademark name given to a drug product or ingredient by its manufacturer, labeler, or distributor.

5. “*College of pharmacy*” means a school, university, or college of pharmacy that satisfies the accreditation standards of the accreditation council for pharmacy education to the extent those standards are adopted by the board, or that has degree requirements which meet the standards of accreditation adopted by the board.

6. “*Controlled substance*” means a drug substance, immediate precursor, or other substance listed in division II of chapter 124.

7. “*Controlled substances Act*” means chapter 124.

8. “*Deliver*” or “*delivery*” means the actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

9. “*Demonstrated bioavailability*” means the rate and extent of absorption of a drug or drug ingredient from a specified dosage form, as reflected by the time-concentration curve of the drug or drug ingredient in the systemic circulation.

10. “*Device*” means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

11. “*Dispense*” means to deliver a prescription drug, device, or controlled substance to an ultimate user or research subject by or pursuant to the lawful prescription drug order or medication order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

12. “*Distribute*” means the delivery of a prescription drug or device.

13. “*Drug*” means one or more of the following:

a. A substance recognized as a drug in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium or any supplement to any of them.

b. A substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

c. A substance, other than food, intended to affect the structure or any function of the body of humans or other animals.

d. A substance intended for use as a component of any substance specified in paragraph “a”, “b”, or “c”.

e. A controlled substance.

14. “*Drug product selection*” means the act of selecting the source of supply of a drug product.

15. “*Drug sample*” means a drug that is distributed without consideration to a pharmacist or practitioner.

16. “*Electronic order*” or “*electronic prescription*” means an order or prescription which is transmitted by a computer device in a secure manner, including computer-to-computer transmission and computer-to-facsimile transmission.

17. “*Electronic signature*” means a confidential personalized digital key, code, or number used for secure electronic transmissions which identifies and authenticates the signatory.

18. “*Facsimile order*” or “*facsimile prescription*” means an order or prescription which is transmitted by a device which sends an exact image to the receiver.

19. “*Generic name*” means the official title of a drug or drug ingredient published in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium published by the United States pharmacopoeial convention or any supplement to any of them.

20. “*Internship*” means a practical experience program approved by the board for persons training to become pharmacists.

21. “*Label*” means written, printed, or graphic matter on the immediate container of a drug or device.

22. “*Labeling*” means the process of preparing and affixing a label including information required by federal or state law or regulation to a drug or device container. The term does not include the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged prescription drug or device or unit dose packaging.

23. “*Limited drug and device distributor*” means a person operating or maintaining, either within or outside this state, a location at which limited noncontrolled prescription drugs, prescription devices, and medical gases, are distributed to patients in this state pursuant to a prescription drug order; or a person operating or maintaining a location at which limited quantities of drugs, devices, or medical gases are distributed at wholesale in this state. A “*limited drug and device distributor*” does not include a pharmacy licensed pursuant to this chapter or a drug wholesaler providing prescription drugs to patients in this state pursuant to a drug manufacturer’s prescription drug assistance program.

24. “*Logistics provider*” means an entity that provides or coordinates warehousing, distribution, or other services on behalf of a manufacturer or other owner of a drug, but does not take title to the drug or have general responsibility to direct its sale or other disposition.

25. “*Medical gas*” means a gas or liquid oxygen intended for human consumption.

26. “*Medication order*” means a written order from a practitioner or an oral order from a practitioner or the practitioner’s authorized agent for administration of a drug or device.

27. “*Pedigree*” means a recording of each distribution of any given drug or device, from the sale by the manufacturer through acquisition and sale by any wholesaler, pursuant to rules adopted by the board.

28. “*Pharmacist*” means a person licensed by the board to practice pharmacy.

29. “*Pharmacist in charge*” means the pharmacist designated on a pharmacy license as the pharmacist who has the authority and responsibility for the pharmacy’s compliance with laws and rules pertaining to the practice of pharmacy.

30. “*Pharmacist-intern*” means an undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the board, or a graduate of a college of pharmacy, who is participating in a board-approved internship under the supervision of a preceptor.

31. “*Pharmacy*” means a location where prescription drugs are compounded, dispensed, or sold by a pharmacist and where prescription drug orders are received or processed in accordance with the pharmacy laws.

32. “*Pharmacy license*” means a license issued to a pharmacy or other place where prescription drugs or devices are dispensed to the general public pursuant to a prescription drug order.

33. “*Pharmacy technician*” means a person registered by the board who is in a technician training program or who is employed by a pharmacy under the responsibility of a licensed pharmacist to assist in the technical functions of the practice of pharmacy.

34. “*Practice of pharmacy*” is a dynamic patient-oriented health service profession that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and related drug therapy.

35. “*Practitioner*” means a physician, dentist, podiatric physician, veterinarian, or other person licensed or registered to distribute or dispense a prescription drug or device in the

course of professional practice in this state or a person licensed by another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

36. “*Preceptor*” means a pharmacist in good standing licensed in this state to practice pharmacy and approved by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in the internship program.

37. “*Prescription drug*” means any of the following:

a. A substance for which federal or state law requires a prescription before it may be legally dispensed to the public.

b. A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with one of the following statements:

(1) Caution: Federal law prohibits dispensing without a prescription.

(2) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) Caution: Federal law restricts this device to sale by, or on the order of, a physician.

(4) Rx only.

c. A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only, or is restricted to use by a practitioner only.

38. “*Prescription drug order*” means a written, electronic, or facsimile order from a practitioner or an oral order from a practitioner or the practitioner’s authorized agent who communicates the practitioner’s instructions for a prescription drug or device to be dispensed.

39. “*Proprietary medicine*” or “*over-the-counter medicine*” means a nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with applicable state or federal law.

40. “*Tech-check-tech program*” means a program formally established by a pharmacist in charge of a pharmacy who has determined that one or more certified pharmacy technicians are qualified to safely check the work of other certified pharmacy technicians and thereby provide final verification for drugs which are dispensed for subsequent administration to patients in an institutional setting.

41. “*Ultimate user*” means a person who has lawfully obtained and possesses a prescription drug or device for the person’s own use or for the use of a member of the person’s household or for administering to an animal owned by the person or by a member of the person’s household.

42. “*Unit dose packaging*” means the packaging of individual doses of a drug in containers which preserve the identity and integrity of the drug from the point of packaging to administration and which are properly labeled pursuant to rules of the board.

43. “*Wholesaler*” means a person operating or maintaining, either within or outside this state, a manufacturing plant, wholesale distribution center, wholesale business, or any other business in which prescription drugs or devices, medicinal chemicals, medicines, or poisons are sold, manufactured, compounded, dispensed, stocked, exposed, distributed from, or offered for sale at wholesale in this state. “*Wholesaler*” does not include those wholesalers who sell only proprietary or over-the-counter medicines. “*Wholesaler*” also does not include a commercial carrier that temporarily stores prescription drugs or devices, medicinal chemicals, medicines, or poisons while in transit.

44. “*Wholesale salesperson*” or “*manufacturer’s representative*” means an individual who takes purchase orders on behalf of a wholesaler for prescription drugs, medicinal chemicals, medicines, or poisons. “*Wholesale salesperson*” or “*manufacturer’s representative*” does not include an individual who sells only proprietary medicines.

87 Acts, ch 215, §3; 88 Acts, ch 1232, §2; 95 Acts, ch 108, §13; 96 Acts, ch 1070, §1; 2002 Acts, ch 1108, §24; 2004 Acts, ch 1036, §11, 12; 2004 Acts, ch 1167, §9; 2005 Acts, ch 179, §172 – 177; 2007 Acts, ch 10, §153; 2007 Acts, ch 19, §1, 2; 2008 Acts, ch 1016, §2

Referred to in §124B.1, 124B.6, 135M.2, 147.107, 155A.39, 321J.2, 423.3, 462A.14, 510B.1, 514L.1, 716A.3

**155A.4 Prohibition against unlicensed persons dispensing or distributing prescription drugs — exceptions.**

1. A person shall not dispense prescription drugs unless that person is a licensed pharmacist or is authorized by section 147.107 to dispense or distribute prescription drugs.

2. Notwithstanding subsection 1, it is not unlawful for:

a. A wholesaler to distribute prescription drugs or devices as provided by state or federal law.

b. A practitioner, licensed by the appropriate state board, to dispense prescription drugs to patients as incident to the practice of the profession, except with respect to the operation of a pharmacy for the retailing of prescription drugs.

c. A practitioner, licensed by the appropriate state board, to administer drugs to patients. This chapter does not prevent a practitioner from delegating the administration of a prescription drug to a nurse, intern, or other qualified individual or, in the case of a veterinarian, to an orderly or assistant, under the practitioner's direction and supervision.

d. A person to sell at retail a proprietary medicine, an insecticide, a fungicide, or a chemical used in the arts, if properly labeled.

e. A person to procure prescription drugs for lawful research, teaching, or testing and not for resale.

f. A pharmacy to distribute a prescription drug to another pharmacy or to a practitioner.

g. A qualified individual authorized to administer prescription drugs and employed by a home health agency or hospice to obtain, possess, and transport emergency prescription drugs as provided by state or federal law or by rules of the board.

h. A limited drug and device distributor, licensed by the board, to distribute limited noncontrolled prescription drugs, prescription devices, and medical gases, to patients in this state pursuant to rules adopted by the board.

87 Acts, ch 215, §4; 97 Acts, ch 39, §1; 2005 Acts, ch 179, §178; 2007 Acts, ch 19, §3

**155A.5 Injunction.**

Notwithstanding the existence or pursuit of any other remedy the board may, in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a pharmacy or wholesaler, without license, or to prevent the violation of provisions of this chapter. Upon request of the board, the attorney general shall institute the proper proceedings and the county attorney, at the request of the attorney general, shall appear and prosecute the action when brought in the county attorney's county.

87 Acts, ch 215, §5

**155A.6 Pharmacist internship program.**

1. A program of pharmacist internships is established. Each internship is subject to approval by the board.

2. A person desiring to be a pharmacist-intern in this state shall apply to the board for registration. The application must be on a form prescribed by the board. A pharmacist-intern shall be registered during internship training and thereafter pursuant to rules adopted by the board.

3. The board shall establish standards for pharmacist-intern registration and may deny, suspend, or revoke a pharmacist-intern registration for failure to meet the standards or for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of this chapter or chapter 124, 124A, 124B, 126, 147, or 205, or any rule of the board.

4. The board shall adopt rules in accordance with chapter 17A on matters pertaining to pharmacist-intern registration standards, registration fees, conditions of registration, termination of registration, and approval of preceptors.

87 Acts, ch 215, §6; 96 Acts, ch 1070, §2, 3; 2007 Acts, ch 20, §1

**155A.6A Pharmacy technician registration.**

1. A registration program for pharmacy technicians is established for the purpose of

establishing technician competency and for the purposes of identification, tracking, and disciplinary action for the violation of federal drug laws or regulations, state drug or pharmacy laws, or board rules. The ultimate responsibility for the actions of a pharmacy technician working under a licensed pharmacist's supervision shall remain with the licensed pharmacist.

2. A person who is or desires to be a pharmacy technician in this state shall apply to the board for registration. The application shall be submitted on a form prescribed by the board. A pharmacy technician must be registered pursuant to rules adopted by the board. Except as provided in subsection 3, beginning July 1, 2010, all applicants for a new pharmacy technician registration or for a pharmacy technician renewal shall provide proof of current certification by a national technician certification authority approved by the board. Notwithstanding section 272C.2, subsection 1, a pharmacy technician registration shall not require continuing education for renewal.

3. a. Beginning July 1, 2009, a person who is in the process of acquiring national certification as a pharmacy technician and who is in training to become a pharmacy technician shall register with the board as a pharmacy technician. The registration shall be issued for a period not to exceed one year and shall not be renewable.

b. A person who is registered as a pharmacy technician or a pharmacy technician trainee prior to January 1, 2010, who has worked as a pharmacy technician or pharmacy technician trainee for a minimum of two thousand hours in the previous eighteen months under the direction of a licensed pharmacist shall have until December 31, 2013, to attain certification pursuant to this section. The supervising pharmacist shall be responsible for verifying with the Iowa board of pharmacy that any person affected by this paragraph continues to have a minimum of two thousand hours of supervised training in any eighteen-month period of time between January 1, 2010, and December 31, 2013.

4. The board shall adopt rules in accordance with chapter 17A on matters pertaining to pharmacy technician registration, application, forms, renewals, fees, termination of registration, tech-check-tech programs, national certification, training, and any other relevant matters.

5. The board may deny, suspend, or revoke the registration of, or otherwise discipline, a registered pharmacy technician for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of this chapter or chapter 124, 124A, 124B, 126, 147, 205, or 272C, or any rule of the board.

2007 Acts, ch 20, §2; 2008 Acts, ch 1016, §3; 2010 Acts, ch 1193, §112, 137, 138

#### **155A.6B Pharmacy support person registration.**

1. The board shall establish a registration program for pharmacy support persons who work in a licensed pharmacy and who are not licensed pharmacists or registered pharmacy technicians for the purposes of identification, tracking, and disciplinary action for the violation of federal drug laws or regulations, state drug or pharmacy laws, or board rules. The registration shall not include any determination of the competency of the registered individual and, notwithstanding section 272C.2, subsection 1, shall not require continuing education for renewal.

2. A person registered with the board as a pharmacy support person may assist pharmacists by performing routine clerical and support functions. Such a person shall not perform any professional duties or any technical or dispensing duties. The ultimate responsibility for the actions of a pharmacy support person working under a licensed pharmacist's supervision shall remain with the licensed pharmacist.

3. Applicants for registration must apply to the board for registration on a form prescribed by the board.

4. The board shall adopt rules in accordance with chapter 17A on matters pertaining to pharmacy support persons, and pharmacy support person exemptions, registration, application, renewals, fees, termination of registration, training, and any other relevant matters.

5. The board may deny, suspend, or revoke the registration of a pharmacy support person

or otherwise discipline the pharmacy support person for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of this chapter or chapter 124, 124A, 124B, 126, 147, 205, or 272C, or any rule of the board.

2009 Acts, ch 69, §3

#### **155A.7 Pharmacist license.**

A person shall not engage in the practice of pharmacy in this state without a license. The license shall be identified as a pharmacist license.

87 Acts, ch 215, §7

#### **155A.8 Requirements for pharmacist license.**

To qualify for a pharmacist license, an applicant shall meet the following requirements:

1. Be a graduate of a school or college of pharmacy or of a department of pharmacy of a university recognized and approved by the board.
2. File proof, satisfactory to the board, of internship for a period of time fixed by the board.
3. Pass an examination prescribed by the board.

87 Acts, ch 215, §8

Referred to in §155A.9, 155A.12

#### **155A.9 Approved colleges — graduates of foreign colleges.**

1. A college of pharmacy shall not be approved by the board unless the college is accredited by the accreditation council for pharmacy education.

2. An applicant who is a graduate of a school or college of pharmacy located outside the United States but who is otherwise qualified to apply for a pharmacist license in this state may be deemed to have satisfied the requirements of section 155A.8, subsection 1, by verification to the board of the applicant's academic record and graduation and by meeting other requirements established by rule of the board. The board may require the applicant to pass an examination or examinations given or approved by the board to establish proficiency in English and equivalency of education as a prerequisite for taking the licensure examination required in section 155A.8, subsection 3.

87 Acts, ch 215, §9; 2007 Acts, ch 19, §4

#### **155A.10 Display of pharmacist license.**

A pharmacist shall publicly display the license to practice pharmacy and the license renewal certificate pursuant to rules adopted by the board.

87 Acts, ch 215, §10

#### **155A.11 Renewal of pharmacist license.**

The board shall specify by rule the procedures to be followed and the fee to be paid for a renewal certificate, and penalties for late renewal or failure to renew a pharmacist license.

87 Acts, ch 215, §11

#### **155A.12 Pharmacist license — grounds for discipline.**

The board shall refuse to issue a pharmacist license for failure to meet the requirements of section 155A.8. The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

1. Violated any provision of this chapter or any rules of the board adopted under this chapter.
2. Engaged in unethical conduct as that term is defined by rules of the board.
3. Violated any of the provisions for licensee discipline set forth in section 147.55.
4. Failed to keep and maintain records required by this chapter or failed to keep and maintain complete and accurate records of purchases and disposal of drugs listed in the controlled substances Act.
5. Violated any provision of the controlled substances Act or rules relating to that Act.

6. Aided or abetted an unlicensed individual to engage in the practice of pharmacy.
7. Refused an entry into any pharmacy for any inspection authorized by this chapter.
8. Violated the pharmacy or drug laws or rules of any other state of the United States while under the other state's jurisdiction.
9. Been convicted of an offense or subjected to a penalty or fine for violation of chapter 124, 126, 147, or the Federal Food, Drug, and Cosmetic Act. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, is deemed to be a conviction within the meaning of this section.
10. Had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in subsections 1 through 9. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

87 Acts, ch 215, §12; 89 Acts, ch 197, §23

Referred to in §155A.16

### **155A.13 Pharmacy license.**

1. A person shall not establish, conduct, or maintain a pharmacy in this state without a license. The license shall be identified as a pharmacy license. A pharmacy license issued pursuant to subsection 4 may be further identified as a hospital pharmacy license.
2. The board shall specify by rule the licensing procedures to be followed, including specifications of forms for use in applying for a pharmacy license and fees for filing an application.
3. The board may issue a special or limited-use pharmacy license based upon special conditions of use imposed pursuant to rules adopted by the board for cases in which the board determines that certain requirements may be waived.
4. *a.* The board shall adopt rules for the issuance of a hospital pharmacy license to a hospital which provides pharmacy services for its own use. The rules shall:
  - (1) Recognize the special needs and circumstances of hospital pharmacies.
  - (2) Give due consideration to the scope of pharmacy services that the hospital's medical staff and governing board elect to provide for the hospital's own use.
  - (3) Consider the size, location, personnel, and financial needs of the hospital.
  - (4) Give recognition to the standards of the joint commission on the accreditation of health care organizations and the American osteopathic association and to the conditions of participation under Medicare.
- b.* To the maximum extent possible, the board shall coordinate the rules with the standards and conditions described in paragraph "a", subparagraph (4), and shall coordinate its inspections of hospital pharmacies with the Medicare surveys of the department of inspections and appeals and with the board's inspections with respect to controlled substances conducted under contract with the federal government.
- c.* A hospital which provides pharmacy services by contracting with a licensed pharmacy is not required to obtain a hospital pharmacy license or a general pharmacy license.
5. A hospital which elects to operate a pharmacy for other than its own use is subject to the requirements for a general pharmacy license. If the hospital's pharmacy services for other than its own use are special or limited, the board may issue a special or limited-use pharmacy license pursuant to subsection 3.
6. To qualify for a pharmacy license, the applicant shall submit to the board a license fee as determined by the board and a completed application on a form prescribed by the board. The application shall include the following and such other information as required by rules of the board and shall be given under oath:
  - a.* Ownership.
  - b.* Location.
  - c.* The license number of each pharmacist employed by the pharmacy at the time of application.
  - d.* The trade or corporate name of the pharmacy.
  - e.* The name of the pharmacist in charge, who has the authority and responsibility for the pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

7. A person who falsely makes the affidavit prescribed in subsection 6 is subject to all penalties prescribed for making a false affidavit.

8. A pharmacy license issued by the board under this chapter shall be issued in the name of the pharmacist in charge and is not transferable or assignable.

9. The board shall specify by rule minimum standards for professional responsibility in the conduct of a pharmacy.

10. A separate license is required for each principal place of practice.

11. The license of the pharmacy shall be displayed.

87 Acts, ch 215, §13; 98 Acts, ch 1100, §20; 2005 Acts, ch 179, §179; 2009 Acts, ch 41, §195

Referred to in §155A.13B, 155A.15

Practice of pharmacy pilot or demonstration research projects relating to authority of prescription verification and the ability of a pharmacist to provide enhanced patient care; 2011 Acts, ch 63, §36; 2012 Acts, ch 1113, §31; 2013 Acts, ch 138, §128

Section not amended; footnote added

### **155A.13A Nonresident pharmacy license — required, renewal, discipline.**

1. *License required.* A pharmacy located outside of this state which delivers, dispenses, or distributes by any method, prescription drugs or devices to an ultimate user in this state shall obtain a nonresident pharmacy license from the board. The board shall make available an application form for a nonresident pharmacy license and shall require such information it deems necessary to fulfill the purposes of this section. A nonresident pharmacy shall do all of the following in order to obtain a nonresident pharmacy license from the board:

a. Submit a completed application form and an application fee as determined by the board.

b. Submit evidence of possession of a valid license, permit, or registration as a pharmacy in compliance with the laws of the state in which it is located, a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located, and evidence of compliance with all legal directions and requests for information issued by the regulatory or licensing agency of the state in which it is located.

c. Submit a list of the names, titles, and locations of all principal owners, partners, or officers of the nonresident pharmacy, all pharmacists employed by the nonresident pharmacy who deliver, dispense, or distribute by any method prescription drugs to an ultimate user in this state, and of the pharmacist in charge of the nonresident pharmacy. A nonresident pharmacy shall update the list within thirty days of any addition, deletion, or other change to the list.

d. Submit evidence that the nonresident pharmacy maintains records of the controlled substances delivered, dispensed, or distributed to ultimate users in this state.

e. Submit evidence that the nonresident pharmacy provides, during its regular hours of operation for at least six days and for at least forty hours per week, toll-free telephone service to facilitate communication between ultimate users in this state and a pharmacist who has access to the ultimate user's records in the nonresident pharmacy, and that the toll-free number is printed on the label affixed to each container of prescription drugs delivered, dispensed, or distributed in this state.

2. *License renewal.* A nonresident pharmacy shall renew its license on or before January 1 annually. In order to renew a nonresident pharmacy license, a nonresident pharmacy shall submit a renewal fee as determined by the board, and shall fulfill all of the requirements of subsection 1, paragraphs "b" through "e". A nonresident pharmacy shall pay an additional fee for late renewal as determined by the board.

3. *Discipline.* The board may deny, suspend, or revoke a nonresident pharmacy license for any violation of this section, section 155A.15, subsection 2, paragraph "a", "b", "d", "e", "f", "g", "h", or "i", chapter 124, 124A, 124B, 126, or 205, or a rule of the board.

91 Acts, ch 233, §1; 94 Acts, ch 1009, §18

Referred to in §155A.13B

### **155A.13B Pharmacy internet sites.**

1. As used in this section:

a. "Electronic mail" means any message transmitted through the internet including but not limited to messages transmitted from or to any address affiliated with an internet site.

b. “Internet broker” means an entity that serves as an agent or intermediary or other capacity that causes the internet to be used to bring together a buyer and seller.

c. “Internet sale” means a transaction, initiated via an internet site, that includes the order of and the payment for a prescription drug product.

2. A pharmacy operating within or outside this state shall not sell, dispense, distribute, deliver, or participate in the sale, dispensing, distribution, or delivery of any prescription drug to any patient in this state through an internet site or by electronic mail unless all of the following are met:

a. All internet sites and electronic mail used by the pharmacy for purposes of sales or delivery of a prescription-only drug are in compliance with all requirements of federal law applicable to the site or electronic mail.

b. (1) The pharmacy that sells, dispenses, distributes, or delivers the prescription-only drugs is in compliance with all requirements of relevant state law.

(2) The pharmacy is properly licensed and regulated by the board to operate a pharmacy pursuant to section 155A.13 or 155A.13A.

c. The pharmacist who fills the prescription drug order is not in violation of subsection 4.

d. (1) The pharmacy is not in violation of subsection 6.

(2) The pharmacy is in compliance with an Iowa prescription drug monitoring program if an Iowa prescription drug monitoring program exists and the pharmacy is subject to reporting or other requirements of the program.

3. A practitioner who writes a prescription drug order through an internet site or electronic mail for a patient physically located in this state must be licensed by the applicable licensing authority and in compliance with all applicable laws.

4. A pharmacist practicing within or outside this state shall not fill a prescription drug order to dispense a prescription drug to a patient if the pharmacist knows or reasonably should have known under the circumstances that the prescription drug order was issued under both of the following:

a. Solely on the basis of an internet questionnaire, an internet consultation, or a telephonic consultation.

b. Without a valid patient-practitioner relationship.

5. An internet broker operating within or outside this state may participate in the sale of a prescription drug in this state only if the internet broker knows that the pharmacist who dispenses the drug is not in violation of subsection 4.

6. A pharmacy shall not sell, dispense, distribute, deliver, or participate in the sale, dispensing, distribution, or delivery of any prescription-only drug to a consumer in this state if any part of the transaction was conducted through an internet site unless the internet site displays in a clear and conspicuous manner all of the following:

a. The name of the pharmacy.

b. The address of the licensed physical location of the pharmacy.

c. The telephone number of the pharmacy.

d. The license number issued by the board to the pharmacy.

e. The certification issued by the national association of boards of pharmacy identifying the pharmacy as a verified internet pharmacy practice sites site, the verified internet pharmacy practice site’s seal, and a link to the national association of boards of pharmacy’s verification site, except that verified internet pharmacy practice sites certification shall not be required of a pharmacy that utilizes an internet site for the convenience of a patient to request a prescription refill or to request or retrieve drug information but requires that the filled prescription be delivered to the patient at the licensed physical location of the pharmacy.

f. The internet site registration number issued by the board.

7. A pharmacy that sells, dispenses, distributes, delivers, prescribes, or participates in the sale, dispensing, distribution, or delivery of any prescription drug to any patient in this state, if the patient submitted the purchase order for the prescription drug through an internet site or by electronic mail, shall not disclaim, limit, or waive any liability to which the pharmacy otherwise is subject under law for the act or practice of selling, dispensing, distributing, or delivering prescription drugs.

8. A disclaimer, limitation, or waiver in violation of this section is void.

9. An attempt to make a disclaimer, limitation, or waiver in violation of this section is a violation of this chapter.

10. For purposes of this section, the board shall adopt rules in accordance with chapter 17A on matters pertaining to internet site registration, application, forms, renewals, fees, termination of registration, and any other relevant matters.

2009 Acts, ch 69, §4

#### **155A.14 Renewal of pharmacy license.**

The board shall specify by rule the procedures to be followed and the fee to be paid for a renewal certificate, and the penalties for late renewal or failure to renew a pharmacy license.

87 Acts, ch 215, §14

#### **155A.15 Pharmacies — license required — discipline, violations, and penalties.**

1. A pharmacy subject to section 155A.13 shall not be operated until a license or renewal certificate has been issued to the pharmacy by the board.

2. The board shall refuse to issue a pharmacy license for failure to meet the requirements of section 155A.13. The board may refuse to issue or renew a license or may impose a fine, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

a. Been convicted of a felony or a misdemeanor involving moral turpitude, or if the applicant is an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor involving moral turpitude, under the law of this state, another state, or the United States.

b. Advertised any prescription drugs or devices in a deceitful, misleading, or fraudulent manner.

c. Violated any provision of this chapter or any rule adopted under this chapter or that any owner or employee of the pharmacy has violated any provision of this chapter or any rule adopted under this chapter.

d. Delivered without legal authorization prescription drugs or devices to a person other than one of the following:

(1) A pharmacy licensed by the board.

(2) A practitioner.

(3) A person who procures prescription drugs or devices for the purpose of lawful research, teaching, or testing, and not for resale.

(4) A manufacturer or wholesaler licensed by the board.

(5) A licensed health care facility which is furnished the drug or device by a pharmacy for storage in secured emergency pharmaceutical supplies containers maintained within the facility in accordance with rules of the department of inspections and appeals and rules of the board.

e. Allowed an employee who is not a licensed pharmacist to practice pharmacy.

f. Delivered mislabeled prescription or nonprescription drugs.

g. Failed to engage in or ceased to engage in the business described in the application for a license.

h. Failed to keep and maintain records as required by this chapter, the controlled substances Act, or rules adopted under the controlled substances Act.

i. Failed to establish effective controls against diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by this chapter and other Iowa or federal laws or rules.

87 Acts, ch 215, §15; 91 Acts, ch 233, §2; 97 Acts, ch 39, §2; 2009 Acts, ch 133, §64

Referred to in §155A.13A, 155A.16

**155A.16 Procedure.**

Unless otherwise provided, any disciplinary action taken by the board under section 155A.12 or 155A.15 is governed by chapter 17A and the rules of practice and procedure before the board.

87 Acts, ch 215, §16

**155A.17 Wholesale drug license.**

1. A person shall not establish, conduct, or maintain a wholesale drug business as defined in this chapter without a license. The license shall be identified as a wholesale drug license.

2. The board shall establish standards for drug wholesaler licensure and may define specific types of wholesaler licenses. The board may deny, suspend, or revoke a drug wholesale license for failure to meet the applicable standards or for a violation of the laws of this state, another state, or the United States relating to prescription drugs, devices, or controlled substances, or for a violation of this chapter, chapter 124, 124A, 124B, 126, or 205, or a rule of the board.

3. The board shall adopt rules pursuant to chapter 17A on matters pertaining to the issuance of a wholesale drug license. The rules shall provide for conditions of licensure, compliance standards, licensure fees, disciplinary action, and other relevant matters. Additionally, the rules shall establish provisions or exceptions for pharmacies, chain pharmacy distribution centers, logistics providers, and other types of wholesalers relating to pedigree requirements, drug or device returns, and other related matters, so as not to prevent or interfere with usual, customary, and necessary business activities.

4. This section does not apply to a manufacturer's representative acting in the usual course of business or employment as a manufacturer's representative.

87 Acts, ch 215, §17; 91 Acts, ch 233, §3; 2005 Acts, ch 179, §180, 181

**155A.18 Penalties.**

The board shall impose penalties as allowed under section 272C.3. In addition, civil penalties not to exceed twenty-five thousand dollars, may be imposed.

87 Acts, ch 215, §18

**155A.19 Notifications to board.**

1. A pharmacy shall report in writing to the board, pursuant to its rules, the following:

- Permanent closing.
- Change of ownership.
- Change of location.
- Change of pharmacist in charge.
- The sale or transfer of prescription drugs, including controlled substances, on the permanent closing or change of ownership of the pharmacy.

f. Change of legal name or doing-business-as name.

g. Theft or significant loss of any controlled substance on discovery of the theft or loss.

h. Disasters, accidents, and emergencies that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of injury, illness, and disease.

2. A pharmacist shall report in writing to the board within ten days a change of name, address, or place of employment.

3. A wholesaler shall report in writing to the board, pursuant to its rules, the following:

a. Permanent closing or discontinuation of wholesale distributions into this state.

b. Change of ownership.

c. Change of location.

d. Change of the wholesaler's responsible individual.

e. Change of legal name or doing-business-as name.

f. Theft or significant loss of any controlled substance on discovery of the theft or loss.

g. Disasters, accidents, and emergencies that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of injury, illness, and disease.

h. Other information or activities as required by rule.

87 Acts, ch 215, §19; 91 Acts, ch 233, §4; 2005 Acts, ch 179, §182, 183

#### **155A.20 Unlawful use of terms and titles — impersonation.**

1. A person, other than a pharmacy or wholesaler licensed under this chapter, shall not display in or on any store, internet site, or place of business, nor use in any advertising or promotional literature, communication, or representation, the word or words: “apothecary”, “drug”, “drug store”, or “pharmacy”, either in English or any other language, any other word or combination of words of the same or similar meaning, or any graphic representation in a manner that would mislead the public.

2. A person shall not do any of the following:

a. Impersonate before the board an applicant applying for licensing under this chapter.

b. Impersonate an Iowa licensed pharmacist.

c. Use the title pharmacist, druggist, apothecary, or words of similar intent unless the person is licensed to practice pharmacy.

3. A pharmacist shall not utilize the title “Dr.” or “Doctor” if that pharmacist has not acquired the doctor of pharmacy degree from an approved college of pharmacy or the doctor of philosophy degree in an area related to pharmacy.

87 Acts, ch 215, §20; 2005 Acts, ch 179, §184

#### **155A.21 Unlawful possession of prescription drug or device — penalty.**

1. A person found in possession of a drug or device limited to dispensation by prescription, unless the drug or device was so lawfully dispensed, commits a serious misdemeanor.

2. Subsection 1 does not apply to a licensed pharmacy, licensed wholesaler, physician, veterinarian, dentist, podiatric physician, optometrist, advanced registered nurse practitioner, physician assistant, a nurse acting under the direction of a physician, or the board of pharmacy, its officers, agents, inspectors, and representatives, or to a common carrier, manufacturer’s representative, or messenger when transporting the drug or device in the same unbroken package in which the drug or device was delivered to that person for transportation.

87 Acts, ch 215, §21; 95 Acts, ch 108, §14; 2005 Acts, ch 179, §185; 2007 Acts, ch 10, §154; 2012 Acts, ch 1004, §4

#### **155A.22 General penalty.**

A person who violates any of the provisions of this chapter or any chapter pertaining to or affecting the practice of pharmacy for which a specific penalty is not provided commits a simple misdemeanor.

87 Acts, ch 215, §22

#### **155A.23 Prohibited acts.**

1. A person shall not perform or cause the performance of or aid and abet any of the following acts:

a. Obtaining or attempting to obtain a prescription drug or device or procuring or attempting to procure the administration of a prescription drug or device by:

(1) Engaging in fraud, deceit, misrepresentation, or subterfuge.

(2) Forging or altering a written, electronic, or facsimile prescription or any written, electronic, or facsimile order.

(3) Concealing a material fact.

(4) Using a false name or giving a false address.

b. Willfully making a false statement in any prescription, report, or record required by this chapter.

c. For the purpose of obtaining a prescription drug or device, falsely assuming the title of or claiming to be a manufacturer, wholesaler, pharmacist, pharmacy owner, physician, dentist, podiatric physician, veterinarian, or other authorized person.

d. Making or uttering any false or forged oral, written, electronic, or facsimile prescription or oral, written, electronic, or facsimile order.

e. Forging, counterfeiting, simulating, or falsely representing any drug or device without the authority of the manufacturer, or using any mark, stamp, tag, label, or other identification device without the authorization of the manufacturer.

f. Manufacturing, repackaging, selling, delivering, or holding or offering for sale any drug or device that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or that has otherwise been rendered unfit for distribution.

g. Adulterating, misbranding, or counterfeiting any drug or device.

h. Receiving any drug or device that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and delivering or proffering delivery of such drug or device for pay or otherwise.

i. Adulterating, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a drug or device or committing any other act with respect to a drug or device that results in the drug or device being misbranded.

j. Purchasing or receiving a drug or device from a person who is not licensed to distribute the drug or device to that purchaser or recipient.

k. Selling or transferring a drug or device to a person who is not authorized under the law of the jurisdiction in which the person receives the drug or device to purchase or possess the drug or device from the person selling or transferring the drug or device.

l. Failing to maintain or provide records as required by this chapter, chapter 124, or rules of the board.

m. Providing the board or any of its representatives or any state or federal official with false or fraudulent records or making false or fraudulent statements regarding any matter within the scope of this chapter, chapter 124, or rules of the board.

n. Distributing at wholesale any drug or device that meets any of the following conditions:

(1) The drug or device was purchased by a public or private hospital or other health care entity.

(2) The drug or device was donated or supplied at a reduced price to a charitable organization.

(3) The drug or device was purchased from a person not licensed to distribute the drug or device.

(4) The drug or device was stolen or obtained by fraud or deceit.

o. Failing to obtain a license or operating without a valid license when a license is required pursuant to this chapter or chapter 147.

p. Engaging in misrepresentation or fraud in the distribution of a drug or device.

q. Distributing a drug or device to a patient without a prescription drug order or medication order from a practitioner licensed by law to use or prescribe the drug or device.

r. Distributing a drug or device that was previously dispensed by a pharmacy or distributed by a practitioner except as provided by rules of the board.

s. Failing to report any prohibited act.

2. Information communicated to a physician in an unlawful effort to procure a prescription drug or device or to procure the administration of a prescription drug shall not be deemed a privileged communication.

3. Subsection 1, paragraphs "f" and "g", shall not apply to the wholesale distribution by a manufacturer of a prescription drug or device that has been delivered into commerce pursuant to an application approved by the federal food and drug administration.

87 Acts, ch 215, §23; 95 Acts, ch 108, §15; 2004 Acts, ch 1036, §13, 14; 2005 Acts, ch 179, §186; 2009 Acts, ch 41, §196

Referred to in §155A.24

#### **155A.24 Penalties.**

1. Except as otherwise provided in this section, a person who violates a provision of section 155A.23 or who sells or offers for sale, gives away, or administers to another person any prescription drug or device in violation of this chapter commits a public offense and shall be punished as follows:

a. If the prescription drug is a controlled substance, the person shall be punished pursuant to section 124.401, subsection 1, and other provisions of chapter 124, division IV.

b. If the prescription drug is not a controlled substance, the person, upon conviction of a first offense, is guilty of a serious misdemeanor. For a second offense, or if in case of a first offense the offender previously has been convicted of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs or devices, the offender is guilty of an aggravated misdemeanor. For a third or subsequent offense or if in the case of a second offense the offender previously has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs or devices, the offender is guilty of a class "D" felony.

2. A person who violates any provision of this chapter by selling, giving away, or administering any prescription drug or device to a minor is guilty of a class "C" felony.

3. A wholesaler who, with intent to defraud or deceive, fails to deliver to another person, when required by rules of the board, complete and accurate pedigree concerning a drug prior to transferring the drug to another person is guilty of a class "C" felony.

4. A wholesaler who, with intent to defraud or deceive, fails to acquire, when required by rules of the board, complete and accurate pedigree concerning a drug prior to obtaining the drug from another person is guilty of a class "C" felony.

5. A wholesaler who knowingly destroys, alters, conceals, or fails to maintain, as required by rules of the board, complete and accurate pedigree concerning any drug in the person's possession is guilty of a class "C" felony.

6. A wholesaler who is in possession of pedigree documents required by rules of the board, and who knowingly fails to authenticate the matters contained in the documents as required, and who nevertheless distributes or attempts to further distribute drugs is guilty of a class "C" felony.

7. A wholesaler who, with intent to defraud or deceive, falsely swears or certifies that the person has authenticated any documents related to the wholesale distribution of drugs or devices is guilty of a class "C" felony.

8. A wholesaler who knowingly forges, counterfeits, or falsely creates any pedigree, who falsely represents any factual matter contained in any pedigree, or who knowingly fails to record material information required to be recorded in a pedigree is guilty of a class "C" felony.

9. A wholesaler who knowingly purchases or receives drugs or devices from a person not authorized to distribute drugs or devices in wholesale distribution is guilty of a class "C" felony.

10. A wholesaler who knowingly sells, barter, brokers, or transfers a drug or device to a person not authorized to purchase the drug or device under the jurisdiction in which the person receives the drug or device in a wholesale distribution is guilty of a class "C" felony.

11. A person who knowingly manufactures, sells, or delivers, or who possesses with intent to sell or deliver, a counterfeit, misbranded, or adulterated drug or device is guilty of the following:

a. If the person manufactures or produces a counterfeit, misbranded, or adulterated drug or device; or if the quantity of a counterfeit, misbranded, or adulterated drug or device being sold, delivered, or possessed with intent to sell or deliver exceeds one thousand units or dosages; or if the violation is a third or subsequent violation of this subsection, the person is guilty of a class "C" felony.

b. If the quantity of a counterfeit, misbranded, or adulterated drug or device being sold, delivered, or possessed with intent to sell or deliver exceeds one hundred units or dosages but does not exceed one thousand units or dosages; or if the violation is a second or subsequent violation of this subsection, the person is guilty of a class "D" felony.

c. All other violations of this subsection shall constitute an aggravated misdemeanor.

12. A person who knowingly forges, counterfeits, or falsely creates any label for a drug or device or who falsely represents any factual matter contained on any label of a drug or device is guilty of a class "C" felony.

13. A person who knowingly possesses, purchases, or brings into the state a counterfeit, misbranded, or adulterated drug or device is guilty of the following:

a. If the quantity of a counterfeit, misbranded, or adulterated drug or device being

possessed, purchased, or brought into the state exceeds one hundred units or dosages; or if the violation is a second or subsequent violation of this subsection, the person is guilty of a class “D” felony.

b. All other violations of this subsection shall constitute an aggravated misdemeanor.

14. This section does not prevent a licensed practitioner of medicine, dentistry, podiatry, nursing, veterinary medicine, optometry, or pharmacy from acts necessary in the ethical and legal performance of the practitioner’s profession.

15. Subsections 1 and 2 shall not apply to a parent or legal guardian administering, in good faith, a prescription drug or device to a child of the parent or a child for whom the individual is designated a legal guardian.

87 Acts, ch 215, §24; 2005 Acts, ch 179, §187; 2007 Acts, ch 22, §42; 2008 Acts, ch 1016, §4

#### **155A.25 Burden of proof.**

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provisions of this chapter, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained in this chapter, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

87 Acts, ch 215, §25

#### **155A.26 Enforcement — agents as peace officers.**

The board, its officers, agents, inspectors, and representatives, and all peace officers within the state, and all county attorneys shall enforce all provisions of this chapter, except those specifically delegated, and shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to prescription drugs. Officers, agents, inspectors, and representatives of the board shall have the powers and status of peace officers when enforcing the provisions of this chapter and chapters 124, 126, and 205. Officers, agents, inspectors, and representatives of the board of pharmacy may:

1. Administer oaths, acknowledge signatures, and take testimony.

2. Make audits of the supply and inventory of controlled substances and prescription drugs in the possession of any and all individuals or institutions authorized to have possession of any controlled substances or prescription drugs.

3. Conduct routine and unannounced inspections of pharmacies, drug wholesalers, and the offices or business locations of all individuals and institutions authorized to have possession of prescription drugs including controlled substances or prescription devices.

4. Conduct inspections and investigations related to the practice of pharmacy and the distribution of prescription drugs and devices in this state.

5. Seize controlled or counterfeit substances or articles used in the manufacture or sale of controlled or counterfeit substances which they have reasonable grounds to believe are held in violation of law.

6. Seize prescription medications which they believe are held in violation of law.

7. Perform other duties as specifically authorized or mandated by law or rule.

87 Acts, ch 215, §26; 2007 Acts, ch 10, §155; 2008 Acts, ch 1088, §77

#### **155A.27 Requirements for prescription.**

To be valid, each prescription drug order issued or dispensed in this state must be based on a valid patient-practitioner relationship, and:

1. If written, electronic, or facsimile, shall contain:

a. The date of issue.

b. The name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed.

c. The name, strength, and quantity of the drug, medicine, or device prescribed.

d. The directions for use of the drug, medicine, or device prescribed.

e. The name, address, and written or electronic signature of the practitioner issuing the prescription.

f. The federal drug enforcement administration number, if required under chapter 124.

2. If electronic:

a. The practitioner shall ensure that the electronic system used to transmit the electronic prescription has adequate security and system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of the prescription.

b. The practitioner shall provide verbal verification of the electronic prescription upon the request of the pharmacy.

3. a. If facsimile, in addition to the requirements of subsection 1, shall contain all of the following:

(1) The identification number of the facsimile machine which is used to transmit the prescription.

(2) The time and date of transmission of the prescription.

(3) The name, address, telephone number, and facsimile number of the pharmacy to which the prescription is being transmitted.

b. A practitioner shall provide verbal verification of the facsimile prescription upon the request of the pharmacy.

4. If oral, the practitioner issuing the prescription shall furnish the same information required for a written prescription, except for the written signature and address of the practitioner. Upon receipt of an oral prescription, the pharmacist shall promptly reduce the oral prescription to a written format by recording the information required in a written prescription.

87 Acts, ch 215, §27; 97 Acts, ch 39, §3, 4; 2004 Acts, ch 1036, §15, 16; 2009 Acts, ch 69, §5  
 Referred to in §124.308, 126.11, 147.107, 155A.29

#### **155A.28 Label of prescription drugs.**

The label of any drug or device sold and dispensed on the prescription of a practitioner shall be in compliance with rules adopted by the board.

87 Acts, ch 215, §28

#### **155A.29 Prescription refills.**

1. Except as specified in subsection 2, a prescription for any prescription drug or device which is not a controlled substance shall not be filled or refilled more than eighteen months after the date on which the prescription was issued and a prescription which is authorized to be refilled shall not be refilled more than twelve times.

2. A pharmacist may exercise professional judgment by refilling a prescription without prescriber authorization if all of the following are true:

a. The pharmacist is unable to contact the prescriber after reasonable effort.

b. Failure to refill the prescription might result in an interruption of therapeutic regimen or create patient suffering.

c. The pharmacist informs the patient or the patient's representative at the time of dispensing, and the practitioner at the earliest convenience that prescriber reauthorization is required.

3. Prescriptions may be refilled once pursuant to subsection 2 for a period of time reasonably necessary for the pharmacist to secure prescriber authorization.

4. An authorization to refill a prescription drug order may be transmitted to a pharmacist by a prescriber or the prescriber's agent through word of mouth, note, telephone, facsimile, or other means of communication initiated by or directed by the practitioner. The transmission shall include the information required pursuant to section 155A.27 and, if not transmitted directly by the practitioner, shall identify by name and title the practitioner's agent completing the transmission.

87 Acts, ch 215, §29; 2007 Acts, ch 19, §5; 2009 Acts, ch 69, §6

#### **155A.30 Out-of-state prescription orders.**

Prescription drug orders issued by out-of-state practitioners who would be authorized to prescribe if they were practicing in Iowa may be filled by licensed pharmacists operating in licensed Iowa pharmacies.

87 Acts, ch 215, §30

**155A.31 Reference library.**

A licensed pharmacy in this state shall maintain a reference library pursuant to rules of the board.

87 Acts, ch 215, §31

**155A.32 Drug product selection — restrictions.**

1. If an authorized prescriber prescribes, in writing, electronically, by facsimile, or orally, a drug by its brand or trade name, the pharmacist may exercise professional judgment in the economic interest of the patient by selecting a drug product with the same generic name and demonstrated bioavailability as the one prescribed for dispensing and sale to the patient. If the cost of the prescription or any part of it will be paid by expenditure of public funds authorized under chapter 249A, the pharmacist shall exercise professional judgment by selecting a drug product with the same generic name and demonstrated bioavailability as the one prescribed for dispensing and sale. If the pharmacist exercises drug product selection, the pharmacist shall inform the patient of the savings which the patient will obtain as a result of the drug product selection and pass on to the patient no less than fifty percent of the difference in actual acquisition costs between the drug prescribed and the drug substituted.

2. The pharmacist shall not exercise the drug product selection described in this section if either of the following is true:

a. The prescriber specifically indicates that no drug product selection shall be made.

b. The person presenting the prescription indicates that only the specific drug product prescribed should be dispensed. However, this paragraph does not apply if the cost of the prescription or any part of it will be paid by expenditure of public funds authorized under chapter 249A.

3. If selection of a generically equivalent product is made under this section, the pharmacist making the selection shall note that fact and the name of the manufacturer of the selected drug on the prescription presented by the patient or the patient's adult representative or transmitted by the prescriber or the prescriber's authorized agent.

87 Acts, ch 215, §32; 2004 Acts, ch 1036, §17

**155A.33 Delegation of technical functions.**

A pharmacist may delegate technical dispensing functions to pharmacy technicians, but only if the pharmacist is physically present to verify the accuracy and completeness of the patient's prescription prior to the delivery of the prescription to the patient or the patient's representative. However, the physical presence requirement does not apply when a pharmacist is utilizing an automated dispensing system or a tech-check-tech program. When using an automated dispensing system or a tech-check-tech program, the pharmacist shall utilize an internal quality control assurance plan that ensures accuracy for dispensing. Verification of automated dispensing and tech-check-tech accuracy and completeness remains the responsibility of the pharmacist and shall be determined in accordance with rules adopted by the board.

87 Acts, ch 215, §33; 96 Acts, ch 1070, §4; 2002 Acts, ch 1108, §25; 2008 Acts, ch 1016, §5

Notwithstanding section 147.107, subsection 2, or this section, board of pharmacy is authorized to approve a pilot or demonstration research project relating to authority of prescription verification and pharmacist ability to provide enhanced patient care; rules adoption and legislative reporting required; see 2011 Acts, ch 63, §36; 2012 Acts, ch 1113, § 31; 2013 Acts, ch 138, §128

Section not amended; footnote revised

**155A.34 Transfer of prescriptions.**

A pharmacist or a pharmacist-intern may transfer a valid prescription order to another pharmacist or a pharmacist-intern pursuant to rules adopted by the board.

87 Acts, ch 215, §34; 2008 Acts, ch 1016, §6

**155A.35 Patient medication records.**

A licensed pharmacy shall maintain patient medication records in accordance with rules adopted by the board.

87 Acts, ch 215, §35

**155A.36 Medication delivery systems.**

Drugs dispensed utilizing unit dose packaging shall comply with labeling and packaging requirements in accordance with rules adopted by the board.

87 Acts, ch 215, §36

**155A.37 Code of professional responsibility for board employees.**

1. The board shall adopt a code of professional responsibility to regulate the conduct of board employees responsible for inspections and surveys of pharmacies.

2. The code shall contain a procedure to be followed by personnel of the board in all of the following:

- a. On entering a pharmacy.
- b. During inspection of the pharmacy.
- c. During the exit conference.

3. The code shall contain standards of conduct that personnel of the board are to follow in dealing with the staff and management of the pharmacy and the general public.

4. The board shall establish a procedure for receiving and investigating complaints of violations of this code. The board shall investigate all complaints of violations.

5. The board may adopt rules establishing sanctions for violations of this code of professional responsibility.

87 Acts, ch 215, §37; 2004 Acts, ch 1167, §10

**155A.38 Dispensing drug samples.**

A person authorized pursuant to this chapter to dispense shall, when dispensing drug samples, do so without additional charge to the patient.

88 Acts, ch 1232, §3

**155A.39 Programs to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians — reporting, confidentiality, immunity, funding.**

1. A person or pharmaceutical peer review committee may report relevant facts to the board relating to the acts of a pharmacist in this state, a pharmacist-intern as defined in section 155A.3, subsection 30, or a pharmacy technician in this state if the person or peer review committee has knowledge relating to the pharmacist, pharmacist-intern, or pharmacy technician which, in the opinion of the person or pharmaceutical peer review committee, might impair competency due to chemical abuse, chemical dependence, or mental or physical illness, or which might endanger the public health and safety, or which provide grounds for disciplinary action as specified in this chapter and in the rules of the board.

2. A committee of a professional pharmaceutical organization, its staff, or a district or local intervenor participating in a program established to aid pharmacists, pharmacist-interns, or pharmacy technicians impaired by chemical abuse, chemical dependence, or mental or physical illness may report in writing to the board the name of the impaired pharmacist, pharmacist-intern, or pharmacy technician together with pertinent information relating to the impairment. The board may report to a committee of a professional pharmaceutical organization or the organization's designated staff information which the board receives with regard to a pharmacist, pharmacist-intern, or pharmacy technician who may be impaired by chemical abuse, chemical dependence, or mental or physical illness.

3. Upon determination by the board that a report submitted by a peer review committee or a professional pharmaceutical organization committee is without merit, the report shall be expunged from the pharmacist's, pharmacist-intern's, or pharmacy technician's individual record in the board's office. A pharmacist, pharmacist-intern, pharmacy technician, or an authorized representative of the pharmacist, pharmacist-intern, or pharmacy technician shall be entitled on request to examine the peer review committee report or the pharmaceutical organization committee report submitted to the board and to place into the record a statement of reasonable length of the pharmacist's, pharmacist-intern's, or pharmacy technician's view with respect to any information existing in the report.

4. Notwithstanding other provisions of the Code, the records and proceedings of the

board, its authorized agents, a peer review committee, or a pharmaceutical organization committee as set out in subsections 1 and 2 shall be privileged and confidential and shall not be considered public records or open records unless the affected pharmacist, pharmacist-intern, or pharmacy technician so requests and shall not be subject to a subpoena or to a discovery proceeding. The board may disclose the records and proceedings only as follows:

- a. In a criminal proceeding.
  - b. In a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order.
  - c. To the pharmacist licensing or disciplinary authorities of other jurisdictions.
  - d. To the pharmacy technician registering, licensing, or disciplinary authorities of other jurisdictions.
  - e. Pursuant to an order of a court of competent jurisdiction.
  - f. Pursuant to subsection 11.
  - g. As otherwise provided by law.
5. An employee or a member of the board, a peer review committee member, a professional pharmaceutical organization committee member, a professional pharmaceutical organization district or local intervenor, or any other person who furnishes information, data, reports, or records in good faith for the purpose of aiding the impaired pharmacist, pharmacist-intern, or pharmacy technician, shall be immune from civil liability. This immunity from civil liability shall be liberally construed to accomplish the purpose of this section and is in addition to other immunity provided by law.
6. An employee or member of the board or a committee or intervenor program is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.
7. The board may contract with professional pharmaceutical associations or societies to provide a program for pharmacists, pharmacist-interns, and pharmacy technicians who are impaired by chemical abuse, chemical dependence, or mental or physical illness. Such programs shall include, but not be limited to, education, intervention, and posttreatment monitoring. A contract with a professional pharmaceutical association or society shall include the following requirements:
- a. Periodic reports to the board regarding education, intervention, and treatment activities.
  - b. Immediate notification to the board's executive secretary or director or the executive secretary's or director's designee of the identity of the pharmacist, pharmacist-intern, or pharmacy technician who is participating in a program to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians.
  - c. Release to the board's executive secretary or director or the executive secretary's or director's designee upon written request of all treatment records of a participant.
  - d. Quarterly reports to the board, by case number, regarding each participant's diagnosis, prognosis, and recommendations for continuing care, treatment, and supervision which maintain the anonymity of the participant.
  - e. Immediate reporting to the board of the name of an impaired pharmacist, pharmacist-intern, or pharmacy technician who the treatment organization believes to be an imminent danger to either the public or to the pharmacist, pharmacist-intern, or pharmacy technician.
  - f. Reporting to the board, as soon as possible, the name of a participant who refuses to cooperate with the program, who refuses to submit to treatment, or whose impairment is not substantially alleviated through intervention and treatment.
  - g. Immediate reporting to the board of the name of a participant where additional information is evident that known distribution of controlled substances or legend drugs to other individuals has taken place.
8. The board may add a surcharge of not more than ten percent of the applicable fee to a pharmacist license fee, pharmacist license renewal fee, pharmacist-intern registration fee, pharmacy technician registration fee, or pharmacy technician registration

renewal fee authorized under this chapter to fund programs to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians.

9. The board may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to be used in programs authorized by this section. The board may contract to provide funding on an annual basis to a professional pharmaceutical association or society for expenses incurred in management and operation of a program to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians. Documentation of the use of these funds shall be provided to the board not less than annually for review and comment.

10. Funds and surcharges collected under this section shall be deposited in an account and may be used by the board to administer programs authorized by this section, including the provision of education, intervention, and posttreatment monitoring to an impaired pharmacist, pharmacist-intern, or pharmacy technician and to pay the administrative costs incurred by the board in connection with that funding and appropriate oversight, but not for costs incurred for a participant's initial evaluation, referral services, treatment, or rehabilitation subsequent to intervention.

11. The board may disclose that the license of a pharmacist, the registration of a pharmacist-intern, or the registration of a pharmacy technician who is the subject of an order of the board that is confidential pursuant to subsection 4 is suspended, revoked, canceled, restricted, or retired; or that the pharmacist, pharmacist-intern, or pharmacy technician is in any manner otherwise limited in the practice of pharmacy; or other relevant information pertaining to the pharmacist, pharmacist-intern, or pharmacy technician which the board deems appropriate.

12. The board may adopt rules necessary for the implementation of this section.  
97 Acts, ch 39, §5

#### **155A.40 Criminal history record checks.**

1. The board may request and obtain, notwithstanding section 692.2, subsection 5, criminal history data for any applicant for an initial or renewal license or registration issued pursuant to this chapter or chapter 147, any applicant for reinstatement of a license or registration issued pursuant to this chapter or chapter 147, or any licensee or registrant who is being monitored as a result of a board order or agreement resolving an administrative disciplinary action, for the purpose of evaluating the applicant's, licensee's, or registrant's eligibility for licensure, registration, or suitability for continued practice of the profession. Criminal history data may be requested for all owners, managers, and principal employees of a pharmacy or drug wholesaler licensed pursuant to this chapter. The board shall adopt rules pursuant to chapter 17A to implement this section. The board shall inform the applicant, licensee, or registrant of the criminal history requirement and obtain a signed waiver from the applicant, licensee, or registrant prior to submitting a criminal history data request.

2. A request for criminal history data shall be submitted to the department of public safety, division of criminal investigation, pursuant to section 692.2, subsection 1. The board may also require such applicants, licensees, and registrants to provide a full set of fingerprints, in a form and manner prescribed by the board. Such fingerprints may be submitted to the federal bureau of investigation through the state criminal history repository for a national criminal history check. The board may authorize alternate methods or sources for obtaining criminal history record information. The board may, in addition to any other fees, charge and collect such amounts as may be incurred by the board, the department of public safety, or the federal bureau of investigation in obtaining criminal history information. Amounts collected shall be considered repayment receipts as defined in section 8.2.

3. Criminal history information relating to an applicant, licensee, or registrant obtained by the board pursuant to this section is confidential. The board may, however, use such information in a license or registration denial proceeding. In a disciplinary proceeding, such information shall constitute investigative information under section 272C.6, subsection 4, and may be used only for purposes consistent with that section.

4. This section shall not apply to a manufacturer of a prescription drug or device that has

been delivered into commerce pursuant to an application approved by the federal food and drug administration.

2005 Acts, ch 35, §31; 2005 Acts, ch 179, §188

**155A.41 Continuous quality improvement program.**

1. Each licensed pharmacy shall implement or participate in a continuous quality improvement program to review pharmacy procedures in order to identify methods for addressing pharmacy medication errors and for improving patient use of medications and patient care services. Under the program, each pharmacy shall assess its practices and identify areas for quality improvement.

2. The board shall adopt rules for the administration of a continuous quality improvement program. The rules shall address all of the following:

- a. Program requirements and procedures.
- b. Program record and reporting requirements.
- c. Any other provisions necessary for the administration of a program.

2005 Acts, ch 179, §189

**155A.42 Limited drug and device distributor license.**

1. A person shall not act as a limited drug and device distributor without a license. The license shall be identified as a limited drug and device distributor license.

2. The board shall establish, by rule, standards for limited drug and device distributors and may define specific types of limited drug and device distributors. The board may identify, by rule, specific prescription drugs or classes of noncontrolled prescription drugs, which may be distributed by a limited drug and device distributor.

3. The board shall adopt rules pursuant to chapter 17A relating to the issuance of a limited drug and device distributor license. The rules shall provide for conditions of licensure, compliance standards, licensure fees, disciplinary action, and other relevant matters.

4. The board may deny, suspend, or revoke a limited drug and device distributor's license for failure to meet the applicable standards or for a violation of the laws of this state, another state, or the United States relating to prescription drugs or controlled substances, or for a violation of this chapter, chapter 124, 124A, 124B, 126, 205, or 272C, or a rule of the board.

2007 Acts, ch 19, §6

**155A.43 Pharmaceutical collection and disposal program — annual allocation.**

Of the fees collected pursuant to sections 124.301 and 147.80 and chapter 155A by the board of pharmacy, and retained by the board pursuant to section 147.82, not more than one hundred twenty-five thousand dollars may be allocated annually by the board for administering the pharmaceutical collection and disposal program originally established pursuant to 2009 Iowa Acts, chapter 175, section 9. The program shall provide for the management and disposal of unused, excess, and expired pharmaceuticals. The board of pharmacy may cooperate with the Iowa pharmacy association and may consult with the department and sanitary landfill operators in administering the program.

2011 Acts, ch 129, §88, 156

**155A.44 Vaccine and immunization administration.**

1. In accordance with rules adopted by the board, a licensed pharmacist may administer vaccines and immunizations pursuant to this section.

2. The board shall adopt rules requiring pharmacists to complete training pursuant to continuing education requirements and establish protocols for the review of prescriptions and administration of vaccines and immunizations. The rules shall allow a licensed pharmacist who has completed the required training to administer vaccines and immunizations in accordance with the rules of the board and shall include the United States centers for disease control and prevention's protocol for the administration of the vaccinations and immunizations.

3. Prior to the administration of a vaccination or immunization authorized by subsection 4, paragraph "b", subparagraphs (2) through (4), pursuant to the required protocols,

a licensed pharmacist shall consult and review the statewide immunization registry or health information network. The board shall adopt rules requiring the reporting of the administration of vaccines and immunizations authorized by subsection 4, paragraph “b”, subparagraphs (2) through (4), to a patient’s primary health care provider, primary physician, and a statewide immunization registry or health information network.

4. A licensed pharmacist shall only administer the following vaccines and immunizations to the designated age categories:

a. Vaccination and immunization of patients ages six years through seventeen years shall be limited to vaccines or immunizations for influenza and other emergency immunizations or vaccines in response to a public health emergency.

b. Patients ages eighteen years and older may receive a vaccination or immunization administered by a licensed pharmacist for any of the following:

(1) An immunization or vaccination described in paragraph “a”, including all forms of the influenza vaccine.

(2) An immunization or vaccination recommended by the United States centers for disease control and prevention advisory committee on immunization practices in its approved vaccination schedule for adults.

(3) An immunization or vaccine recommended by the United States centers for disease control and prevention for international travel.

(4) A Tdap (tetanus, diphtheria, acellular pertussis) vaccination in a booster application.

2013 Acts, ch 8, §1

NEW section

## CHAPTER 156

### FUNERAL DIRECTING, MORTUARY SCIENCE, AND CREMATION

Referred to in §135.11, 144C.3, 144C.11, 147.76, 331.608, 523A.502, 523A.813, 714H.4

Enforcement, §147.87, 147.92

Penalty, §147.86

See chapter 523A for sales of cemetery and funeral merchandise and funeral services

156.1	Definitions.	156.12	Funeral directors — solicitation of business — exceptions — penalty.
156.1A	Provision of services.	156.13	Certificate of national board in lieu of examination. Repealed by 2007 Acts, ch 159, §12.
156.2	Persons excluded.	156.14	Funeral establishment and cremation establishment license.
156.3	Eligibility requirements.	156.15	Funeral establishments and cremation establishments — license required — discipline, violations, and penalties.
156.4	Funeral directors.	156.16	Unlicensed practice — injunctions, civil penalties, consent agreements.
156.5	to 156.7 Repealed by 78 Acts, ch 1075, §19.		
156.8	Internships.		
156.8A	Student practicum.		
156.9	Revocation of license to practice mortuary science.		
156.10	Inspection.		
156.11	Repealed by 78 Acts, ch 1075, §19.		

#### 156.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. “Board” means the board of mortuary science.
2. “Cremation” means the technical process, using heat and flame, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation shall include the processing, and may include the pulverization, of the bone fragments.

3. “*Cremation establishment*” means a place of business as defined by the board which provides any aspect of cremation services.

4. “*Funeral director*” means a person licensed by the board to practice mortuary science.

5. “*Funeral establishment*” means a place of business as defined by the board devoted to providing any aspect of mortuary science.

6. “*Intern*” means a person registered by the board to practice mortuary science under the direct supervision of a preceptor certified by the board.

7. “*Mortuary science*” means the engaging in any of the following:

a. Preparing, for burial or disposal, or directing and supervising burial or disposal of dead human bodies except supervising cremations.

b. Making funeral arrangements or furnishing any funeral services in connection with disposition of dead human bodies or sale of any casket, vault, urn, or other burial receptacle.

c. Using the words “*funeral director*”, “*mortician*”, or any other title implying that the person is engaged as a funeral director as defined in this section.

d. Embalming dead human bodies, entire or in part, by the use of chemical substances, fluids, or gases in the body, or by the introduction of the same into the body by vascular injections, hypodermic injections, or by surface application into the organs or cavities for the purpose of preservation or disinfection.

[S13, §2575-a36; C24, 27, §2584; C31, 35, §2585-c1; C39, §2585.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.1]

96 Acts, ch 1148, §3; 2007 Acts, ch 10, §156; 2007 Acts, ch 159, §5, 6

Referred to in §156.2, 523A.302, 523A.601

Former unnumbered paragraph 2 editorially transferred to §156.1A in Code Supplement 2007

#### **156.1A Provision of services.**

Nothing contained in this chapter shall be construed as prohibiting the operation of any funeral home, funeral establishment, or cremation establishment by any person, heir, fiduciary, firm, cooperative burial association, or corporation. However, each such person, firm, cooperative burial association, or corporation shall ensure that all mortuary science services are provided by a funeral director, and shall keep the Iowa department of public health advised of the name of the funeral director.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.1(unn. 2)]

CS2007, §156.1A

Section transferred from §156.1, unnumbered paragraph 2, in Code Supplement 2007

#### **156.2 Persons excluded.**

Section 156.1 shall not be construed to include the following classes of persons:

1. Manufacturers, wholesalers, distributors, and retailers of caskets, vaults, urns, or other burial receptacles not engaged in the other functions of furnishing of funeral services or embalming as above defined.

2. Those who use bodies for scientific purposes as defined in sections 142.1, 142.2, and 142.5; or those who make scientific examinations of dead bodies; or those who perform autopsies.

3. Physicians or institutions who preserve parts of human bodies either for scientific purposes or for use as evidence in prospective legal cases.

4. Persons who, without compensation, bury their own dead under a burial transit permit secured pursuant to section 144.32.

[C31, 35, §2585-c2; C39, §2585.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.2]

96 Acts, ch 1148, §4

#### **156.3 Eligibility requirements.**

To be eligible to take the examination for a funeral director’s license, a person must have completed two academic years of instruction in a recognized college or university in a course of study approved by the board or have equivalent education as defined by the board and have

satisfactorily completed a course of instruction in mortuary science in an accredited school approved by the board.

[S13, §2575-a37, -a38; C24, 27, §2585; C31, 35, §2585-c3, -c4, -c9; C39, **§2585.03, 2585.04, 2585.09**; C46, 50, §156.3, 156.4, 156.9; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.3]  
90 Acts, ch 1253, §3

#### **156.4 Funeral directors.**

1. The practice of a funeral director must be conducted from a funeral establishment licensed by the board. The board may specify criteria for exceptions to the requirement of this subsection in rules.

2. A person shall not engage in the practice of mortuary science unless licensed.

3. Applications for the examination for a funeral director's license shall be verified on a form furnished by the board.

4. Applicants shall pass an examination prescribed by the board, which shall include the subjects of funeral directing, burial or other disposition of dead human bodies, sanitary science, embalming, restorative art, anatomy, public health, transportation, business ethics, and such other subjects as the board may designate.

5. After the applicant has completed satisfactorily the course of instruction in mortuary science in an accredited school approved by the board, the applicant must pass the examination prescribed by the board as provided in section 147.34. The applicant may then receive an internship certificate and shall then complete a minimum one-year internship as determined by the board.

[C24, 27, §2585; C31, 35, §2585-c3, -c4; C39, **§2585.03, 2585.04**; C46, 50, §156.3, 156.4; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.4]

96 Acts, ch 1148, §5; 2000 Acts, ch 1140, §41; 2005 Acts, ch 89, §19; 2007 Acts, ch 159, §7

**156.5 to 156.7** Repealed by 78 Acts, ch 1075, § 19.

#### **156.8 Internships.**

The board shall, by rule, provide for internships in mortuary science, and shall regulate the registration, training, and fee for internships.

[C31, 35, §2585-c4; C39, **§2585.04**; C46, 50, §156.4; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.8]

96 Acts, ch 1148, §6

#### **156.8A Student practicum.**

The board, by rule, shall provide for practicums in mortuary science for students available through any school accredited by the American board of funeral service education.

2000 Acts, ch 1140, §42; 2007 Acts, ch 159, §8

#### **156.9 Revocation of license to practice mortuary science.**

1. Notwithstanding section 147.87, the board may restrict, suspend, or revoke a license to practice mortuary science or place a licensee on probation. The board shall adopt rules of procedure pursuant to chapter 17A by which to restrict, suspend, or revoke a license. The board may also adopt rules pursuant to chapter 17A relating to conditions of license reinstatement.

2. In addition to the grounds stated in sections 147.55 and 272C.10, the board may revoke or suspend the license of, or otherwise discipline, a funeral director for any one of the following acts:

a. Knowingly misrepresenting any material matter to a prospective purchaser of funeral merchandise, furnishings, or services.

b. A violation of chapter 144 related to the practice of mortuary science.

c. Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice mortuary science.

d. Willful or repeated violations of this chapter, or the rules adopted pursuant to this chapter.

e. Conviction of any crime related to the practice of mortuary science or implicating the licensee's competence to safely perform mortuary science services, including but not limited to a crime involving moral character, dishonesty, fraud, theft, embezzlement, extortion, or controlled substances, in a court of competent jurisdiction in this state, or in another state, territory, or district of the United States, or in a foreign jurisdiction. For purposes of this paragraph, "conviction" includes a guilty plea, deferred judgment, or other finding of guilt. A certified copy of the judgment is prima facie evidence of the conviction.

[C31, 35, §2585-c5; C39, §2585.05; C46, 50, §156.5; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.9]

87 Acts, ch 30, §1; 96 Acts, ch 1148, §7; 2007 Acts, ch 159, §9; 2008 Acts, ch 1088, §110

#### **156.10 Inspection.**

1. The director of public health shall inspect all places where dead human bodies are prepared or held for burial, entombment, or cremation, and shall adopt and enforce such rules and regulations in connection with the inspection as shall be necessary for the preservation of the public health.

2. The Iowa department of public health shall assess an inspection fee for an inspection of a place where dead human bodies are prepared for burial or cremation. The fee shall be determined by the department by rule.

[C31, 35, §2585-c7; C39, §2585.06; C46, 50, §156.6; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.10]

96 Acts, ch 1148, §8; 2007 Acts, ch 159, §10

**156.11** Repealed by 78 Acts, ch 1075, § 19.

#### **156.12 Funeral directors — solicitation of business — exceptions — penalty.**

Every funeral director, or person acting on behalf of a funeral director, who pays or causes to be paid any money or other thing of value as a commission or gratuity for the securing of business for the funeral director, and every person who accepts or offers to accept any money or other thing of value as a commission or gratuity from a funeral director in order to secure business for the funeral director commits a simple misdemeanor. This section does not prohibit any person, firm, cooperative burial association, or corporation, subject to the provisions of this chapter, from using legitimate and honest advertising. This section does not apply to sales made in accordance with chapter 523A.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §156.12]

87 Acts, ch 30, §2

**156.13 Certificate of national board in lieu of examination.** Repealed by 2007 Acts, ch 159, § 12.

#### **156.14 Funeral establishment and cremation establishment license.**

1. A person shall not establish, conduct, or maintain a funeral establishment or a cremation establishment in this state without a license. The license shall be identified as an establishment license.

a. An establishment license issued by the board under this chapter shall be issued for a site and in the name of the individual in charge and is not transferable or assignable.

b. A license is required for each place of practice.

c. The license of the establishment shall be displayed.

2. The board shall specify by rule the licensing procedures to be followed, including specifications of forms for use in applying for an establishment license and fees for filing an application. The board shall specify by rule minimum standards for professional responsibility in the conduct of a funeral establishment or a cremation establishment.

3. To qualify for a funeral establishment or a cremation establishment license, the applicant shall submit to the board a license fee as determined by the board and a completed application on a form prescribed by the board that shall include the following information and be given under oath:

- a. Ownership of the establishment.
  - b. Location of the establishment.
  - c. The license number of each funeral director employed by the establishment at the time of the application.
  - d. The trade or corporate name of the establishment.
  - e. The name of the individual in charge, who has the authority and responsibility for the establishment's compliance with laws and rules pertaining to the operation of the establishment.
4. A person who falsely makes the affidavit prescribed in subsection 3 is subject to all penalties prescribed for making a false affidavit.

96 Acts, ch 1148, §9  
Referred to in §156.15

**156.15 Funeral establishments and cremation establishments — license required — discipline, violations, and penalties.**

1. A funeral establishment or cremation establishment shall not be operated until a license or renewal certificate has been issued to the establishment by the board.
2. The board shall refuse to issue an establishment license when an applicant fails to meet the requirements of section 156.14. The board may refuse to issue or renew a license or may impose a penalty, not to exceed ten thousand dollars, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:
  - a. Been convicted of a felony or any crime related to the practice of mortuary science or implicating the establishment's ability to safely perform mortuary science services, or if the applicant is an association, joint stock company, partnership, or corporation, that a managing officer or owner has been convicted of such a crime, under the laws of this state, another state, or the United States.
  - b. Violated this chapter or any rule adopted under this chapter or that any owner or employee of the establishment has violated this chapter or any rule adopted under this chapter.
  - c. Knowingly aided, assisted, procured, advised, or allowed a person to unlawfully practice mortuary science.
  - d. Failed to engage in or ceased to engage in the business described in the application for a license.
3. Failed to keep and maintain records as required by this chapter or rules adopted under this chapter.

96 Acts, ch 1148, §10; 2007 Acts, ch 159, §11

**156.16 Unlicensed practice — injunctions, civil penalties, consent agreements.**

1. If the board has reasonable grounds to believe that a person or establishment which is not licensed under this chapter has engaged, or is about to engage, in an act or practice which requires licensure under this chapter, or otherwise violates a provision of this chapter, the board may issue an order to require the unlicensed person or establishment to comply with the provisions of this chapter, and may impose a civil penalty not to exceed one thousand dollars for each violation of this chapter by an unlicensed person or establishment. Each day of a continued violation constitutes a separate offense.
2. The board may conduct an investigation as needed to determine whether probable cause exists to initiate the proceedings described in this section. To aid in such an investigation or in connection with any other proceeding under this section, the board may issue subpoenas to compel witnesses to testify or persons to produce evidence consistent with the provisions of section 272C.6, subsection 3.
3. The board, in determining the amount of a civil penalty to be imposed, may consider any of the following:
  - a. Whether the amount imposed will be a substantial economic deterrent to the violation.
  - b. The circumstances leading to the violation.
  - c. The severity of the violation and the risk of harm to the public.

- d. The economic benefits gained by the violator as a result of noncompliance.
- e. The interest of the public.
- 4. The board, before issuing an order under this section, shall provide the person or establishment written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for disciplinary proceedings involving a licensee under this chapter.
- 5. The board may request the attorney general to bring an action to enforce the subpoena.
- 6. A person or establishment aggrieved by the issuance of an order or the imposition of a civil penalty under this section may seek judicial review pursuant to section 17A.19.
- 7. If a person or establishment fails to pay a civil penalty within thirty days after entry of an order imposing the civil penalty, or, if the order is stayed pending an appeal, within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.
- 8. An action to enforce an order under this section may be joined with an action for an injunction pursuant to section 147.83.
- 9. The board, in its discretion and in lieu of issuing or enforcing an order or imposing a civil penalty for an initial violation under this section, may enter into a consent agreement with a violator, or with a person who aided or abetted a violator, which acknowledges the violation and the violator's agreement to refrain from any further violation.

2004 Acts, ch 1168, §11

## CHAPTER 157

### COSMETOLOGY

Referred to in §147.76, 158.6, 158.8, 158.12, 158.14, 261.18

Enforcement, §147.87, 147.92

157.1	Definitions.	157.8	Licensing of schools of cosmetology arts and sciences and instructors.
157.2	Prohibitions — exceptions.		
157.3	License requirements.		
157.3A	License requirements — additional training.	157.9	License suspension and revocation.
157.3B	Examination information.	157.10	Course of study.
157.4	Temporary permits.	157.11	Salon licenses.
157.5	Consent and reporting requirements.	157.12	Supervisors.
157.5A	Manicurists. Repealed by 2006 Acts, ch 1184, §126.	157.12A	Use of laser or light products on minors.
157.6	Sanitary rules — practice in the home.	157.13	Violations.
157.7	Inspectors and clerical assistants.	157.14	Rules.
		157.15	Penalty.

#### 157.1 Definitions.

For purposes of this chapter:

1. “Board” means the board of cosmetology arts and sciences.
2. “Certified laser product” means a product which is certified by a manufacturer pursuant to the requirements of 21 C.F.R. pt. 1040 and as specified by rule.
3. “Chemical exfoliation” means the removal of surface epidermal cells of the skin by using only nonmedical strength cosmetic preparations consistent with labeled instructions and as specified by rule.
4. “Cosmetologist” means a person who performs the practice of cosmetology, or otherwise by the person's occupation claims to have knowledge or skill particular to the practice of cosmetology. Cosmetologists shall not represent themselves to the public as

being primarily in the practice of haircutting unless that function is, in fact, their primary specialty.

5. "Cosmetology" means all of the following practices:

a. Arranging, braiding, dressing, curling, waving, press and curl hair straightening, shampooing, cutting, singeing, bleaching, coloring, or similar works, upon the hair of any person, or upon a wig or hairpiece when done in conjunction with haircutting or hairstyling by any means.

b. Massaging, cleansing, stimulating, exercising, or beautifying the superficial epidermis of the scalp, face, neck, arms, hands, legs, feet, or upper body of any person with the hands or mechanical or electrical apparatus or appliances or with the use of cosmetic preparations, including cleansers, toners, moisturizers, or masques.

c. Removing superfluous hair from the face or body of a person with the use of depilatories, wax, sugars, threading, or tweezing.

d. Applying makeup or eyelashes, tinting of lashes or brows, or lightening of hair on the face or body.

e. Cleansing, shaping, or polishing the fingernails, applying sculptured nails, nail extensions, wraps, overlays, nail art, or any other nail technique to the fingernails or toenails of a person.

6. "Cosmetology arts and sciences" means any or all of the following disciplines, performed with or without compensation by a licensee:

a. Cosmetology.

b. Electrology.

c. Esthetics.

d. Nail technology.

e. Manicuring and pedicuring.

7. "Department" means the Iowa department of public health.

8. "Depilatory" means an agent used for the temporary removal of superfluous hair by dissolving it at the epidermal surface.

9. "Electrologist" means a person who performs the practice of electrology.

10. "Electrology" means the removal of superfluous hair of a person by the use of an electric needle or other electronic process.

11. "Esthetician" means a person who performs the practice of esthetics.

12. "Esthetics" means the following:

a. Beautifying, massaging, cleansing, stimulating, or hydrating the skin of a person, except the scalp, by the use of cosmetic preparations, including cleansers, antiseptics, tonics, lotions, creams, exfoliants, masques, and essential oils, to be applied with the hands or any device, electrical or otherwise, designed for the nonmedical care of the skin.

b. Applying makeup or eyelashes to a person, tinting eyelashes or eyebrows, or lightening hair on the body except the scalp.

c. Removing superfluous hair from the body of a person by the use of depilatories, waxing, sugaring, tweezers, threading, or use of any certified laser products or intense pulsed light devices. This excludes the practice of electrology, whereby hair is removed with an electric needle.

d. The application of permanent makeup or cosmetic micropigmentation.

13. "Exfoliation" means the process whereby the superficial epidermal cells are removed from the skin.

14. "General supervision" means the supervising physician is not on site for laser procedures or use of an intense pulsed light device for hair removal conducted on minors, but is available for direct communication, either in person or by telephone, radio, radiotelephone, television, or similar means.

15. "Instructor" means a person licensed for the purpose of teaching cosmetology arts and sciences.

16. "Intense pulsed light device" means a device that uses incoherent light to destroy the vein of the hair bulb.

17. "Laser" means light amplification by the stimulated emission of radiation.

18. "Manicuring" means the practice of cleansing, shaping, or polishing the fingernails

and massaging the hands and lower arms of a person. “*Manicuring*” does not include the application of sculptured nails or nail extensions to the fingernails or toenails of a person, and does not include the practice of pedicuring.

19. “*Manicurist*” means a person who performs the practice of manicuring.

20. “*Mechanical exfoliation*” means the physical removal of surface epidermal cells by means that include but are not limited to brushing machines, granulated scrubs, peel-off masques, peeling creams or drying preparations that are rubbed off, and microdermabrasion.

21. “*Microdermabrasion*” means mechanical exfoliation using an abrasive material or apparatus to remove surface epidermal cells with a machine which is specified by rule.

22. “*Minor*” means an unmarried person who is under the age of eighteen years.

23. “*Nail technologist*” means a person who performs the practice of nail technology.

24. “*Nail technology*” means all of the following:

a. Applying sculptured nails, nail extensions, wraps, overlays, nail art, or any other nail technique to the fingernails and toenails of a person.

b. Massaging the hands, arms, ankles, and feet of a person.

c. Removing superfluous hair from hands, arms, feet, or legs of a person by the use of wax or a tweezer.

d. Manicuring the nails of a person.

25. “*Physician*” means a person licensed in Iowa to practice medicine and surgery or osteopathic medicine and surgery.

26. “*Salon*” means a fixed establishment or place where one or more persons engage in the practice of cosmetology arts and sciences, including, but not limited to, a retail establishment where cosmetologists engage in the practice of cosmetology arts and sciences.

27. “*School of cosmetology arts and sciences*” means an establishment licensed for the purpose of teaching cosmetology arts and sciences.

[C27, 31, 35, §2585-b1; C39, §2585.10; C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.1]

92 Acts, ch 1205, §1; 93 Acts, ch 61, §1; 2004 Acts, ch 1044, §1 – 6; 2005 Acts, ch 89, §20 – 22; 2007 Acts, ch 10, §157, 158; 2008 Acts, ch 1088, §141; 2010 Acts, ch 1163, §4, 5

Referred to in §157.2, 157.3A, 158.2, 158.13

### 157.2 Prohibitions — exceptions.

1. It is unlawful for a person to practice cosmetology arts and sciences with or without compensation unless the person possesses a license issued under section 157.3. However, practices listed in section 157.1 when performed by the following persons are not defined as the practice of cosmetology arts and sciences:

a. Licensed physicians and surgeons, osteopathic physicians and surgeons, nurses, dentists, podiatric physicians, optometrists, chiropractors, and physical therapists, when exclusively engaged in the practice of their respective professions.

b. Licensed barbers who practice barbering as defined in section 158.1.

c. Students enrolled in licensed schools of cosmetology arts and sciences or barber schools who are practicing under the instruction or immediate supervision of an instructor.

d. Persons who perform without compensation any of the practices listed in section 157.1 on an emergency basis or on a casual basis.

e. Employees of hospitals, health care facilities, orphans’ homes, juvenile homes, and other similar facilities who perform cosmetology services for any resident without receiving direct compensation from the person receiving the service.

f. Volunteers for and residents of health care facilities, orphans’ homes, juvenile homes, and other similar facilities who shampoo, arrange, dress, or curl the hair, apply makeup, or polish the nails of any resident without receiving compensation from the person receiving the service.

g. Persons who perform any of the practices listed in section 157.1 on themselves or on a member of the person’s immediate family.

h. Employees of a licensed barbershop when manicuring fingernails, if permitted under section 158.14, subsection 2.

i. Persons who apply samples of makeup, nail polish or other nail care products,

cosmetics, or other cosmetology or esthetics preparations to persons to demonstrate the products in the regular course of business.

2. Cosmetologists shall not represent themselves to the public as electrologists, estheticians, or nail technologists unless the cosmetologist has completed the additional course study for the respective practice as prescribed by the board pursuant to section 157.10.

3. Persons licensed under this chapter shall not administer any practice of removing the skin by means of a razor-edged instrument.

4. With the exception of hair removal, manicuring, and nail technology services, persons licensed under this chapter shall not administer any procedure in which human tissue is cut, shaped, vaporized, or otherwise structurally altered.

5. Persons licensed under this chapter shall only use intense pulsed light devices for purposes of hair removal.

[C27, 31, 35, §2585-b2; C39, §2585.11; C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.2]

89 Acts, ch 240, §2; 92 Acts, ch 1205, §2; 93 Acts, ch 61, §2, 3; 96 Acts, ch 1034, §68; 2004 Acts, ch 1044, §7; 2005 Acts, ch 89, §23; 2006 Acts, ch 1184, §100, 101; 2008 Acts, ch 1088, §141

### **157.3 License requirements.**

1. An applicant who has graduated from high school or its equivalent shall be issued a license to practice any of the cosmetology arts and sciences by the department when the applicant satisfies all of the following:

a. Presents to the department a diploma, or similar evidence, issued by a licensed school of cosmetology arts and sciences indicating that the applicant has completed the course of study for the appropriate practice of the cosmetology arts and sciences prescribed by the board. An applicant may satisfy this requirement upon presenting a diploma or similar evidence issued by a school in another state, recognized by the board, which provides instruction regarding the practice for which licensure is sought, provided that the course of study is equivalent to or greater in length and scope than that required for a school in this state, and is approved by the board.

b. Completes the application form prescribed by the board.

c. Passes an examination prescribed by the board. The examination may include both practical demonstrations and written or oral tests and shall not be confined to any specific system or method. However, a member of the board who is a licensed instructor of cosmetology arts and sciences shall not be involved in the selection or administration of the exam.

2. Notwithstanding subsection 1, a person who completes the application form prescribed by the board and who submits satisfactory proof of having been licensed in a practice of the cosmetology arts and sciences in another state for at least twelve months in the twenty-four month period preceding the submission of the application shall be allowed to take the examination for a license to practice the appropriate practice of the cosmetology arts and sciences. However, the examination requirement shall be waived for those persons who submit evidence of licensure in another state which has a reciprocal agreement with the state of Iowa under sections 147.44, 147.48, and 147.49.

[C27, 31, 35, §2585-b3, -b4; C39, §2585.12, 2585.13; C46, 50, 54, 58, 62, 66, 71, 73, §157.3, 157.4; C77, 79, 81, §157.3]

92 Acts, ch 1097, §5; 92 Acts, ch 1205, §3; 2005 Acts, ch 89, §24

Referred to in §157.2, 157.3A, 158.8, 158.10

### **157.3A License requirements — additional training.**

In addition to the license requirements of section 157.3, a written application and proof of additional training and certification shall be required prior to approval by the board for the provision of the services described in this section.

1. a. A licensed esthetician, who intends to provide services pursuant to section 157.1, subsection 12, paragraphs “a” and “c”, having received additional training on the use of microdermabrasion, a certified laser product, or an intense pulsed light device, shall submit

a written application and proof of additional training and certification for approval by the board. Training shall be specific to the service provided or certified laser product used.

b. A licensed esthetician who applies permanent makeup or cosmetic micropigmentation shall comply with the provisions of section 135.37 and applicable rules.

c. Extractions shall be administered only by a licensed esthetician who has been trained in extraction procedures.

d. Chemical peels shall be administered only by a licensed esthetician who has been certified by the manufacturer of the product being used.

2. a. A licensed cosmetologist having received additional training in the use of chemical peels, microdermabrasion, a certified laser product, or an intense pulsed light device for hair removal shall submit a written application and proof of additional training and certification for approval by the board. A cosmetologist who is licensed after July 1, 2005, shall not be eligible to provide chemical peels, practice microdermabrasion procedures, use certified laser products, or use an intense pulsed light device for hair removal.

b. A licensed cosmetologist who applies permanent makeup or cosmetic micropigmentation shall comply with the provisions of section 135.37 and applicable rules.

3. A licensed electrologist having received additional training on the use of a certified laser product or an intense pulsed light device for the purpose of hair removal shall submit a written application and proof of additional training and certification for approval by the board.

4. Any additional training received by a licensed esthetician, cosmetologist, or electrologist and submitted to the board relating to utilization of a certified laser product or an intense pulsed light device shall include a safety training component which provides a thorough understanding of the procedures being performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

5. A certified laser product shall only be used on surface epidermal layers of the skin except for hair removal.

2004 Acts, ch 1044, §8; 2005 Acts, ch 3, §39; 2005 Acts, ch 89, §25 – 28

Referred to in §157.13

### **157.3B Examination information.**

Notwithstanding section 147.21, individual pass or fail examination results made available from the authorized national testing agency to the board may be disclosed to the board-approved education program from which the applicant for licensure graduated for purposes of verifying accuracy of national data and reporting aggregate licensure examination results as required for a program's continued accreditation.

2009 Acts, ch 182, §129

### **157.4 Temporary permits.**

1. The department may issue a temporary permit which allows the applicant to practice in the cosmetology arts and sciences for purposes determined by rule. The board shall determine and state its recommendations and the length of time the temporary permit issued under this subsection is valid.

2. The fee for a temporary permit shall be established by the board as provided in section 147.80.

[C31, 35, §2585-c10; C39, §2585.20; C46, 50, 54, 58, 62, 66, 71, 73, §157.11; C77, 79, 81, §157.4]

92 Acts, ch 1205, §4; 2005 Acts, ch 89, §29

### **157.5 Consent and reporting requirements.**

1. A licensed cosmetologist, esthetician, or electrologist who provides services relating to the use of a certified laser product, intense pulsed light device for hair removal, chemical peel, or microdermabrasion, shall obtain a consent in writing prior to the administration of the services. A consent in writing shall create a presumption that informed consent was given if the consent:

a. Sets forth in general terms the nature and purpose of the procedure or procedures, together with the known risks associated with the procedure or procedures, if reasonably determinable.

b. Acknowledges that the disclosure of that information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner.

c. Is signed by the client for whom the procedure is to be performed, or if the client for any reason lacks legal capacity to consent, is signed by a person who has legal authority to consent on behalf of that client in those circumstances.

2. A licensed cosmetologist, esthetician, or electrologist who provides services related to the use of a certified laser product, intense pulsed light device for hair removal, chemical peel, or microdermabrasion, shall submit a report to the board within thirty days of any incident involving the provision of such services which results in physical injury requiring medical attention. Failure to comply with this section shall result in disciplinary action being taken by the board.

2004 Acts, ch 1044, §9; 2005 Acts, ch 89, §30, 31

**157.5A Manicurists.** Repealed by 2006 Acts, ch 1184, § 126.

**157.6 Sanitary rules — practice in the home.**

The department shall prescribe sanitary rules for salons and schools of cosmetology arts and sciences which shall include the sanitary conditions necessary for the practice of cosmetology arts and sciences and for the prevention of infectious and contagious diseases. Subject to local zoning ordinances, a salon may be established in a residence if a room other than the living quarters is equipped for that purpose. The department shall enforce this section and make necessary inspections for enforcement purposes.

[C27, 31, 35, §2585-b6; C39, §2585.15; C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.6]

92 Acts, ch 1205, §6

Referred to in §157.8, 157.13

**157.7 Inspectors and clerical assistants.**

The department of inspections and appeals shall employ personnel pursuant to chapter 8A, subchapter IV, to perform duties related to inspection functions under this chapter. The department of inspections and appeals shall, when possible, integrate inspection efforts under this chapter with inspections conducted under chapter 158.

The Iowa department of public health may employ clerical assistants pursuant to chapter 8A, subchapter IV, to administer and enforce this chapter. The costs and expenses of the clerical assistants shall be paid from funds appropriated to the department of public health.

[C27, 31, 35, §2585-b9; C39, §2585.17; C46, 50, 54, 58, 62, 66, 71, 73, §157.8; C77, 79, 81, §157.7]

90 Acts, ch 1204, §23; 2003 Acts, ch 145, §201

Referred to in §10A.104

**157.8 Licensing of schools of cosmetology arts and sciences and instructors.**

1. It is unlawful for a school of cosmetology arts and sciences to operate unless the owner has obtained a license issued by the department. The owner shall file a verified application with the department on forms prescribed by the board.

2. a. The application for a license for a school shall be accompanied by the annual license fee determined pursuant to section 147.80 and shall state the name and location of the school and such other additional information as the board may require. The license is valid for one year and may be renewed.

b. The license shall contain a statement which provides that the licensee is approved by the department as a provider of postsecondary education.

c. A license for a school of cosmetology arts and sciences shall not be issued for any space in any location where the same space is also licensed as a barber school.

d. The school of cosmetology arts and sciences must pass a sanitary inspection under section 157.6. An annual inspection of each school of cosmetology arts and sciences,

including the educational activities of each school, shall be conducted and completed by the board or its designee prior to renewal of the license.

3. *a.* The number of instructors for each school shall be based upon total enrollment, with a minimum of two licensed instructors employed on a full-time basis for up to thirty students and an additional licensed instructor for each fifteen additional students. A student instructor shall not be used to meet licensed instructor-to-student ratios. A school operated by an area community college prior to September 1, 1982, with only one instructor per fifteen students is not subject to this paragraph and may continue to operate with the ratio of one licensed instructor to fifteen students. A student instructor may not be used to meet this requirement.

*b.* A school with less than thirty students enrolled may have one licensed instructor on site in the school if offering only clinic services or only theory instruction in a single classroom and less than fifteen students are present. If a school is offering clinic services and theory instruction simultaneously to less than fifteen students, at least two licensed instructors must be on site. Schools with more than thirty students enrolled shall meet the licensed instructor-to-student ratio as provided in paragraph “a”.

*c.* A person employed as an instructor in the cosmetology arts and sciences by a licensed school shall be licensed in the practice and shall possess a separate instructor’s license which shall be renewed biennially. An instructor shall file an application with the department on forms prescribed by the board. Requirements for licensure as an instructor shall be determined by the board by rule.

*d.* The application for an instructor’s license shall be accompanied by the biennial fee determined pursuant to section 147.80.

[C31, 35, §2585-c9; C39, §2585.18; C46, 50, 54, 58, 62, 66, 71, 73, §157.9; C77, 79, 81, §157.8] 83 Acts, ch 68, §1; 92 Acts, ch 1205, §7; 2004 Acts, ch 1044, §10; 2010 Acts, ch 1163, §6; 2012 Acts, ch 1062, §1

Referred to in §261B.11, 714.18, 714.25

### **157.9 License suspension and revocation.**

Any license issued by the department under the provisions of this chapter may be suspended, revoked, or renewal denied by the board for violation of any provision of this chapter or chapter 158 or rules promulgated by the board under the provisions of chapter 17A.

[C77, 79, 81, §157.9]

### **157.10 Course of study.**

1. The course of study required for licensure for the practice of cosmetology shall be two thousand one hundred clock hours, or seventy semester credit hours or the equivalent thereof as determined pursuant to administrative rule and regulations promulgated by the United States department of education. The clock hours, and equivalent number of semester credit hours or the equivalent thereof as determined pursuant to administrative rule and regulations promulgated by the United States department of education, of a course of study required for licensure for the practices of electrology, esthetics, nail technology, manicuring, and pedicuring shall be established by the board. The board shall adopt rules to define the course and content of study for each practice of cosmetology arts and sciences.

2. A person licensed in or a student of a practice of cosmetology arts and sciences shall be granted full credit for each course successfully completed which meets the requirements for licensure in another practice of cosmetology arts and sciences.

3. A barber licensed under chapter 158 or a student in a barber school who applies for licensure in a practice of cosmetology arts and sciences or who enrolls in a school of cosmetology arts and sciences shall be granted, at the discretion of the school, at least half credit and up to full credit for each course successfully completed for licensure as a barber which meets the requirements for licensure in a practice of cosmetology arts and sciences.

[C77, 79, 81, §157.10]

88 Acts, ch 1110, §1; 92 Acts, ch 1205, §8; 2004 Acts, ch 1100, §2; 2006 Acts, ch 1184, §102

Referred to in §157.2, 261.18

**157.11 Salon licenses.**

A salon shall not operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The department shall perform a sanitary inspection of each salon biennially and may perform a sanitary inspection of a salon prior to the issuance of a license. An inspection of a salon shall also be conducted upon receipt of a complaint by the department.

The application shall be accompanied by the biennial license fee determined pursuant to section 147.80. The license is valid for two years and may be renewed.

A licensed school of cosmetology arts and sciences at which students practice cosmetology arts and sciences is exempt from licensing as a salon.

[C77, 79, 81, §157.11]

83 Acts, ch 206, §10; 91 Acts, ch 268, §431; 92 Acts, ch 1205, §9; 99 Acts, ch 141, §28

**157.12 Supervisors.**

A person who directly supervises the work of practitioners of cosmetology arts and sciences shall be licensed in the practice supervised or a barber licensed under section 158.3.

[C31, 35, §2585-c11; C39, §2585.21; C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.12]

88 Acts, ch 1110, §2; 92 Acts, ch 1205, §10

Referred to in §157.13

**157.12A Use of laser or light products on minors.**

A laser hair removal product or device, or intense pulsed light device, shall not be used on a minor unless the minor is accompanied by a parent or guardian and only under the general supervision of a physician.

2004 Acts, ch 1044, §11; 2005 Acts, ch 89, §32

**157.13 Violations.**

1. It is unlawful for a person to employ an individual to practice cosmetology arts and sciences unless that individual is licensed or has obtained a temporary permit under this chapter. It is unlawful for a licensee to practice with or without compensation in any place other than a licensed salon, a licensed school of cosmetology arts and sciences, or a licensed barbershop as defined in section 158.1. The following exceptions to this subsection shall apply:

a. A licensee may practice at a location which is not a licensed salon, school of cosmetology arts and sciences, or licensed barbershop under extenuating circumstances arising from physical or mental disability or death of a customer.

b. Notwithstanding section 157.12, when the licensee is employed by a physician and provides cosmetology services at the place of practice of a physician and is under the supervision of a physician licensed to practice pursuant to chapter 148.

c. When the practice occurs in a facility licensed pursuant to chapter 135B or 135C.

2. It is unlawful for a licensee to claim to be a licensed barber, however a licensed cosmetologist may work in a licensed barbershop. It is unlawful for a person to employ a licensed cosmetologist, esthetician, or electrologist to perform the services described in section 157.3A if the licensee has not received the additional training and met the other requirements specified in section 157.3A.

3. If the owner or manager of a salon does not comply with the sanitary rules adopted under section 157.6 or fails to maintain the salon as prescribed by rules of the department, the department may notify the owner or manager in writing of the failure to comply. If the rules are not complied with within five days after receipt of the written notice by the owner or manager, the department shall in writing order the salon closed until the rules are complied with. It is unlawful for a person to practice in a salon which has been closed under this section. The county attorney in each county shall assist the department in enforcing this section.

4. If the board has reasonable grounds to believe that a person or establishment which is not licensed under this chapter has engaged, or is about to engage, in an act or practice which requires licensure under this chapter, or otherwise violates a provision of this chapter, the board may issue an order to require the unlicensed person or establishment to comply with

the provisions of this chapter, and may impose a civil penalty not to exceed one thousand dollars for each violation of this chapter by an unlicensed person or establishment. Each day of a continued violation after an order or citation by the board constitutes a separate offense, with the maximum penalty not to exceed ten thousand dollars.

- a. In determining the amount of a civil penalty, the board may consider the following:
  - (1) Whether the amount imposed will be a substantial economic deterrent to the violation.
  - (2) The circumstances leading to or resulting in the violation.
  - (3) The severity of the violation and the risk of harm to the public.
  - (4) The economic benefits gained by the violator as a result of noncompliance.
  - (5) The welfare or best interest of the public.

- b. The board may conduct an investigation as needed to determine whether probable cause exists to initiate the proceedings described in this subsection. Before issuing an order or citation under this section, the board shall provide written notice and the opportunity to request a hearing on the record. The hearing must be requested within thirty days of the issuance of the notice and shall be conducted as provided in chapter 17A. The board may, in connection with a proceeding under this section, issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence and may request the attorney general to bring an action to enforce the subpoena.

- c. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review in accordance with section 17A.19. The board shall notify the attorney general of the failure to pay a civil penalty within thirty days after entry of an order pursuant to this subsection, or within ten days following final judgment in favor of the board if an order has been stayed pending appeal. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs. An action to enforce an order under this subsection may be joined with an action for an injunction.

[C31, 35, §2585-c12; C39, §2585.22; C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.13]

88 Acts, ch 1110, §3; 92 Acts, ch 1205, §11; 2004 Acts, ch 1044, §12, 13; 2005 Acts, ch 89, §33; 2006 Acts, ch 1184, §103, 104; 2008 Acts, ch 1088, §111

#### **157.14 Rules.**

The board shall adopt rules pursuant to chapter 17A to administer the provisions of this chapter.

[C77, 79, 81, §157.14]

89 Acts, ch 3, §1

#### **157.15 Penalty.**

A person convicted of violating any of the provisions of this chapter or rules adopted pursuant to this chapter is guilty of a serious misdemeanor.

[C35, §2522; C39, §2585.24; C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §157.15]

92 Acts, ch 1205, §12

## CHAPTER 158

## BARBERING

Referred to in §147.76, 157.7, 157.9, 157.10

Enforcement, §147.87, 147.92

158.1	Definitions.	158.10	Supervisors of barbers.
158.2	Prohibition — exceptions.	158.11	Repealed by 2001 Acts, ch 58, §17.
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158.5	Sanitary rules.	158.14	Manicurists.
158.6	Inspectors and clerical assistants.	158.15	Rules.
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158.8	Course of study.		
158.9	Barbershop licenses.		

**158.1 Definitions.**

For the purpose of this chapter:

1. “*Barbering*” means the practices listed in this subsection performed with or without compensation. “*Barbering*” includes but is not limited to the following practices performed upon the upper part of the human body of any person for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

- a. Shaving or trimming the beard or cutting the hair.
- b. Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand, or by electrical or mechanical appliances.
- c. Singeing, shampooing, hair body processing, arranging, dressing, curling, blow waving, hair relaxing, bleaching or coloring the hair, or applying hair tonics.
- d. Applying cosmetic preparations, antiseptics, powders, oils, clays, waxes, or lotions to scalp, face, or neck.
- e. Styling, cutting or shampooing hairpieces or wigs when done in conjunction with haircutting or hairstyling.

2. “*Barber*” means a person who performs practices of barbering or otherwise by the person’s occupation claims to have knowledge or skill peculiar to the practice of barbering.

3. “*Barbershop*” means an establishment in a fixed location where one or more persons engage in the practice of barbering.

4. “*Barber school*” means an establishment operated by a person for the purpose of teaching barbering.

5. “*Board*” means the board of barbering.

6. “*Department*” means the Iowa department of public health.

[C27, 31, 35, §2585-b11; C39, §2585.25; C46, 50, 54, 58, 62, 66, 71, 73, §158.1, 158.11(1,2); C77, 79, 81, §158.1]

2007 Acts, ch 10, §159; 2009 Acts, ch 56, §6; 2009 Acts, ch 133, §65

Referred to in §157.2, 157.13, 158.2, 158.8

**158.2 Prohibition — exceptions.**

A person shall not practice barbering with or without compensation unless the person possesses a license issued under the provisions of section 158.3. A person licensed under section 158.3 shall not represent to the public that the person is primarily engaged in practices other than haircutting unless the functions are in fact the person’s primary function or specialty. Practices listed in section 158.1 when performed by the following persons do not constitute barbering:

1. Licensed physicians and surgeons, osteopathic physicians and surgeons, nurses, dentists, podiatric physicians, optometrists, chiropractors, and physical therapists, when exclusively engaged in the practice of their respective professions.

2. Licensed practitioners of cosmetology arts and sciences as defined in section 157.1.

3. Students enrolled in licensed barber schools or schools of cosmetology arts and sciences who are practicing under the instruction or immediate supervision of an instructor.

4. Persons who, without compensation, perform any of the practices on an emergency basis or on a casual basis.

5. Employees and residents of hospitals, health care facilities, orphans' homes, juvenile homes, and other similar facilities who shampoo, arrange, dress, or curl the hair of any resident, or who shave or trim the beard of any resident, without receiving direct compensation from the person receiving the service.

6. Persons who perform any of the practices listed in section 158.1 on themselves or on a member of the person's immediate family.

7. Offenders committed to the custody of the director of the department of corrections who cut the hair or trim or shave the beard of any other offender within a correctional facility, without receiving direct compensation from the person receiving the service.

8. Persons committed pursuant to chapter 229A to the custody of the director of the department of human services in the unit for sexually violent predators who cut the hair or trim or shave the beard of any other person within the unit, without receiving direct compensation from the person receiving the service.

[C27, 31, 35, §2585-b12; C39, §2585.26; C46, 50, 54, 58, 62, 66, 71, 73, 77, 79, 81, §158.2]

92 Acts, ch 1205, §18; 96 Acts, ch 1034, §68; 2005 Acts, ch 174, §20; 2008 Acts, ch 1088, §141; 2009 Acts, ch 133, §66; 2011 Acts, ch 98, §4

### **158.3 License requirements.**

1. An applicant shall be issued a license to practice barbering by the department when the applicant satisfies all of the following:

a. Presents to the department a diploma, or other like evidence, issued by a licensed barber school indicating that the applicant has completed the course of study prescribed by the board.

b. Completes the application form prescribed by the board.

c. Passes an examination prescribed by the board. The examination shall include both practical demonstrations and written or oral tests and shall not be confined to any specific system or method.

d. Presents a certificate, or satisfactory evidence, to the department that the applicant has successfully completed tenth grade, or the equivalent. The provisions of this subsection shall not apply to students enrolled in a barber school maintained at an institution under the control of a director of a division of the department of human services.

2. Notwithstanding the provisions of subsection 1, any person who completes the application form prescribed by the board and who submits satisfactory proof of having been a licensed barber in another state for at least twelve months in the twenty-four month period preceding the submission of the application shall be allowed to take the examination for a license to practice barbering. However, the examination requirement shall be waived for those persons who submit evidence of licensure in another state which has a reciprocal agreement with the state of Iowa under the provisions of sections 147.44, 147.48, and 147.49.

[C27, 31, 35, §2585-b13, -b14; C39, §2585.27, 2585.28; C46, 50, 54, 58, 62, 66, 71, 73, §158.3, 158.4; C77, 79, 81, §158.3]

83 Acts, ch 96, §157, 159; 92 Acts, ch 1097, §6; 2009 Acts, ch 56, §7

Referred to in §157.12, 158.2, 158.4

### **158.4 Temporary permits.**

1. A person who completes the requirements for licensure listed in section 158.3, except for the examination, shall be known as a trainee and shall be issued a temporary permit by the department which allows the applicant to practice barbering from the date of application until passage of the examination subject to this subsection. An applicant shall take the first available examination administered by the board, and may retain the temporary permit if the applicant does not pass the examination. An applicant who does not pass the first examination shall take the next available examination administered by the board. The temporary permit of an applicant who does not pass the second examination shall be revoked. An applicant who passes either examination shall be issued a license pursuant to

section 158.3. The board shall adopt rules providing for a waiver of the requirement to take the first available examination for good cause.

2. The department may issue a temporary permit which allows the applicant to practice barbering for purposes determined by rule. The board shall determine and state its recommendations and the length of time the temporary permit issued under this subsection is valid.

3. The fee for a temporary permit shall be established by the board as provided in section 147.80.

[C77, 79, 81, §158.4]

92 Acts, ch 1205, §19; 2010 Acts, ch 1163, §7

### **158.5 Sanitary rules.**

The department shall prescribe sanitary rules for barbershops and barber schools which shall include the sanitary conditions necessary for the practice of barbering and for the prevention of infectious and contagious diseases. Subject to local zoning ordinances, a barbershop may be established in a residence if a room other than the living quarters is equipped for that purpose. The department shall enforce the provisions of this section and make necessary inspections for enforcement.

[C27, 31, 35, §2585-b15; C39, §2585.31; C46, 50, 54, 58, 62, 66, 71, 73, §158.7; C77, 79, 81, §158.5]

Referred to in §158.13

### **158.6 Inspectors and clerical assistants.**

The department of inspections and appeals shall employ personnel pursuant to chapter 8A, subchapter IV, to perform duties related to inspection functions under this chapter. The department of inspections and appeals shall, when possible, integrate inspection efforts under this chapter with inspections conducted under chapter 157.

The Iowa department of public health may employ clerical assistants pursuant to chapter 8A, subchapter IV, to administer and enforce this chapter. The costs and expenses of the clerical assistants shall be paid from funds appropriated to the department of public health.

[C27, 31, 35, §2585-b18; C39, §2585.33; C46, 50, 54, 58, 62, 66, 71, 73, §158.9; C77, 79, 81, §158.6]

90 Acts, ch 1204, §24; 2003 Acts, ch 145, §202

Referred to in §10A.104

### **158.7 Licensing barber schools.**

1. It is unlawful for a barber school to operate unless the owner has obtained a license issued by the department. The owner shall file a verified application with the department on forms prescribed by the board.

2. Any person employed as a barbering instructor in a licensed barber school shall be a licensed barber and shall possess a separate instructor's license which shall be renewed biennially. An instructor shall file an application with the department on forms prescribed by the board.

3. The barber school must pass a sanitary inspection, and the course of study of the school must be approved by the board under the provisions of section 158.8.

4. An annual inspection of each barber school, including the educational activities of each school, shall be conducted and completed by the board prior to renewal of the license.

5. a. The application shall be accompanied by the annual license fee determined under the provisions of section 147.80 and shall state the name and location of the school, name of the owner, name of the manager, and such other additional information as the board may require. The license is valid for one year and may be renewed.

b. The license shall contain a statement which provides that the licensee is approved by the department as a provider of postsecondary education.

6. A license for a barber school shall not be issued for any space in any location where the same space is licensed as a school of cosmetology.

[C46, 50, 54, 58, 62, 66, 71, 73, §158.11; C77, 79, 81, §158.7]

2009 Acts, ch 56, §8; 2012 Acts, ch 1062, §2

Referred to in §261.18, 261B.11, 714.18, 714.25

### **158.8 Course of study.**

1. The course of study of a barber school shall consist of at least two thousand one hundred hours of instruction as prescribed by the board and shall include instruction in all phases of the practice of barbering as defined in section 158.1, subsection 1. The course shall require at least ten months of instruction for completion. The course shall include not less than three hundred hours of demonstrations and lectures in the following areas: law; ethics; equipment; shop management; history of barbering; sanitation; sterilization; personal hygiene; first aid; bacteriology; anatomy; scalp, skin, hair and their common disorders; electricity as applied to barbering; chemistry and pharmacology; scalp care; hair body processing; hairpieces; honing and stropping; shaving; facials, massage and packs; haircutting; hair tonics; dyeing and bleaching; instruments; soaps; and shampoos, creams, lotions, waxes, and tonics. It shall include not less than one thousand four hundred hours of supervised practical instruction in the following areas: scalp care and shampooing, honing and stropping, shaving, haircutting, hairstyling and blow waving, dyeing and bleaching, hair body processing, facials, waxing, massage and packs, beard and mustache trimming, and hairpieces.

2. A person licensed under section 157.3 who enrolls in a barber school shall be granted full credit for each course successfully completed which meets the requirements of the barber school, which shall be credited toward the two thousand one hundred hour requirement, and the ten-month period does not apply. A person who has been a student in a school of cosmetology arts and sciences licensed under chapter 157 may enroll in a barber school and shall be granted, at the discretion of the school, at least half credit and up to full credit for each course successfully completed which meets the requirements of the barber school.

[C77, 79, 81, §158.8]

88 Acts, ch 1110, §4; 92 Acts, ch 1205, §20; 2009 Acts, ch 56, §9

Referred to in §158.7, 261.18

### **158.9 Barbershop licenses.**

A barbershop shall not operate unless the owner has obtained a license issued by the department. The owner shall apply to the department on forms prescribed by the board. The department shall perform a sanitary inspection of each barbershop biennially and may perform a sanitary inspection of a barbershop prior to the issuance of a license. An inspection of a barbershop shall also be conducted upon receipt of a complaint by the department.

The application shall be accompanied by the biennial license fee determined pursuant to section 147.80. The license is valid for two years and may be renewed.

A licensed barber school at which students practice barbering is exempt from licensing as a barbershop.

[C46, 50, 54, 58, 62, 66, 71, 73, §158.11; C77, 79, 81, §158.9]

83 Acts, ch 206, §11; 91 Acts, ch 268, §432; 99 Acts, ch 141, §29; 2001 Acts, ch 58, §14

### **158.10 Supervisors of barbers.**

A person who directly supervises the work of barbers shall be either a barber licensed under this chapter or a cosmetologist licensed under section 157.3.

[C77, 79, 81, §158.10]

88 Acts, ch 1110, §5

**158.11** Repealed by 2001 Acts, ch 58, § 17.

**158.12 License suspension and revocation.**

Any license issued by the department under the provisions of this chapter may be suspended, revoked, or renewal denied by the board for violation of any provision of chapter 157 or this chapter or rules promulgated by the board under the provisions of chapter 17A.

[C46, 50, 54, 58, 62, 66, 71, 73, §158.11; C77, 79, 81, §158.12]

**158.13 Violations.**

1. It is unlawful for a person to employ an individual to practice barbering unless that individual is a licensed barber or has obtained a temporary permit. It is unlawful for a licensed barber to practice barbering with or without compensation in any place other than a licensed barbershop or barber school, or a licensed salon as defined in section 157.1, except that a licensed barber may practice barbering at a location which is not a licensed barbershop or barber school under extenuating circumstances arising from physical or mental disability or death of a customer. It is unlawful for a licensed barber to claim to be a licensed cosmetologist, but it is lawful for a licensed barber to work in a licensed salon.

2. If the owner or manager of a barbershop does not comply with the sanitary rules adopted under the provisions of section 158.5 or fails to maintain the barbershop as prescribed by rules of the department, the department may notify the owner or manager in writing of the failure to comply. If the rules are not complied with within five days after receipt of the written notice by the owner or manager, the department shall in writing order the shop closed until the rules are complied with. It is unlawful for a person to practice barbering in a shop which has been closed under the provisions of this section. The county attorney in each county shall assist the department in enforcing the provisions of this section.

[C27, 31, 35, §2585-b12, -c14; C39, §2585.26, 2585.30; C46, 50, 54, 58, 62, 66, 71, 73, §158.1, 158.6; C77, 79, 81, §158.13]

88 Acts, ch 1110, §6; 92 Acts, ch 1205, §22

**158.14 Manicurists.**

1. A licensed barbershop may employ a licensed manicurist to manicure the fingernails of any person.

2. An unlicensed person who was employed by a licensed barbershop to manicure fingernails prior to July 1, 1989, may continue such employment without meeting licensing requirements under chapter 157.

[C77, 79, 81, §158.14]

89 Acts, ch 240, §5

Referred to in §157.2

**158.15 Rules.**

The board shall adopt rules pursuant to chapter 17A to administer the provisions of this chapter.

[C77, 79, 81, §158.15]

89 Acts, ch 3, §2

**158.16 Penalty.**

A person convicted of violating any of the provisions of this chapter shall be fined an amount not to exceed one thousand dollars.

[C35, §2522; C39, §2585.24; C46, §157.15; C50, 54, 58, 62, 66, 71, 73, §158.12; C77, 79, 81, §158.16]

2009 Acts, ch 56, §10; 2010 Acts, ch 1061, §32



# TITLE V

## AGRICULTURE

### SUBTITLE 1

#### AGRICULTURE AND CONSERVATION OF AGRICULTURAL RESOURCES

Referred to in §159.1, 159.5

### CHAPTER 159

#### DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

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#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### 159.1 Definitions.

For the purposes of subtitles 1 through 3 of this title, excluding chapters 161A and 161C, unless otherwise provided:

1. “*Agricultural drainage well*” means the same as defined in section 460.101.
2. “*Agricultural drainage well area*” means the same as defined in section 460.101.
3. “*Department*” means the department of agriculture and land stewardship and if the

department is required or authorized to do an act, unless otherwise provided, the act may be performed by an officer, regular assistant, or duly authorized agent of the department.

4. “*Designated agricultural drainage well area*” means the same as defined in section 460.101.

5. “*Person*” includes an individual, a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in such capacity shall also be liable for violation of subtitles 1 through 3 of this title, excluding chapters 161A and 161C.

6. “*Secretary*” means the secretary of agriculture.

[S13, §1657-b; C24, 27, 31, 35, 39, §2586; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.1]

86 Acts, ch 1245, §604; 91 Acts, ch 74, §1; 92 Acts, ch 1163, § 38; 94 Acts, ch 1023, §13; 97 Acts, ch 193, §1; 2010 Acts, ch 1061, §33, 34

### **159.2 Object of department.**

The object of the department of agriculture and land stewardship shall be:

1. To encourage, promote, and advance the interests of agriculture, including horticulture, livestock industry, dairying, cheese making, poultry raising, biofuels, beekeeping, production of wool, production of domesticated fur-bearing animals, and other kindred and allied industries.

2. To encourage a relationship between people and the land that recognizes land as a resource to be managed in a manner that avoids irreparable harm.

3. To develop and implement policies that inspire public confidence in the long-term future of agriculture as an economic activity as well as a way of life.

4. To administer efficiently and impartially the inspection service of the state as is now or may hereafter be placed under its supervision.

[S13, §1657-b, -g; C24, 27, 31, 35, 39, §2587; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.2]

86 Acts, ch 1245, §605; 2012 Acts, ch 1095, §1

Referred to in §7E.5

### **159.3 Cooperation.**

The department and the Iowa state university of science and technology shall cooperate in all ways that may be beneficial to the agricultural interests of the state, but without duplicating research or educational work conducted by the university. This section does not subordinate either the department or the university in their spheres of action.

The department may cooperate with the United States department of agriculture as the department deems wise and just.

[C97, §1677; S13, §1657-g; C24, 27, 31, 35, 39, §2588; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.3]

86 Acts, ch 1245, §606

### **159.4 Location.**

The department of agriculture and land stewardship shall be located at the seat of government.

[C97, §1678; SS15, §2507; C24, 27, 31, 35, 39, §2589; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.4]

### **159.5 Powers and duties.**

The secretary of agriculture is the head of the department of agriculture and land stewardship which shall:

1. Carry out the objects for which the department is created and maintained.

2. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it.

3. Consolidate the inspection service of the state in respect to the laws administered by the department so as to eliminate duplication of inspection insofar as practicable.

4. Maintain a weather bureau which shall, in cooperation with the national weather service, collect and disseminate weather and phenological statistics and meteorological data, and promote knowledge of meteorology, phenology, and climatology of the state. The bureau shall be headed by the state climatologist who shall be appointed by the secretary of agriculture, and shall be an officer of the national weather service, if one is detailed for that purpose by the federal government.

5. Issue weekly weather and crop bulletins from April 1 to October 1 of each year, and edit and cause to be published monthly weather reports, containing meteorological matter in its relationship to agriculture, transportation, commerce, and the general public.

6. Cooperate with the United States department of agriculture statistical reporting service, to gather, compile, and publish statistical information concerning the condition and progress of crops, the production of crops, livestock, livestock products, poultry, and other such related agricultural statistics, as will generally promote knowledge of the agricultural industry in the state of Iowa. The statistics, when published, constitute official agricultural statistics for the state of Iowa.

7. Establish and maintain a marketing news service bureau in the department which shall, in cooperation with the federal market news and grading division of the United States department of agriculture, collect and disseminate data and information relative to the market prices and conditions of agricultural products raised, produced, and handled in the state.

8. Inspect and supervise all meat, poultry, or dairy producing or distributing establishments including the furniture, fixtures, utensils, machinery, and other equipment so as to prevent the production, preparation, packing, storage, or transportation of meat, poultry, or dairy products in a manner detrimental to the character or quality of those products.

9. Approve all methods of probing for foreign material content of any type of grain.

10. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of subtitles 1 through 3 of this title, excluding chapters 161A and 161C, and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

11. a. Establish a swine tuberculosis eradication program including but not limited to all of the following:

(1) The inspection of swine herds in this state when the department finds that an animal from a swine herd has, or is believed to have, tuberculosis.

(2) Ear tagging or otherwise physically marking all swine reacting positively to tests for tuberculosis.

(3) Condemning any swine which has tuberculosis.

(4) Depopulating any swine herd where tuberculosis is found to be generally present.

(5) Compensate the owners of condemned swine as provided under section 165.18, following the general procedures for filing claims and paying indemnities as provided in chapter 165.

b. If the department finds that the source of the tuberculosis in a swine herd is from another species of animal, except bovine, located on or near the premises on which the affected swine herd is located, the department may destroy those animals and indemnify the owners of the condemned animals as provided in chapter 163.

12. Establish and maintain a division of soil conservation. The division administrator shall be appointed by the secretary from a list of names of persons recommended by the soil conservation committee, pursuant to section 161A.4, subsection 6, paragraph "c", and shall serve at the pleasure of the secretary.

13. Establish and administer programs for the inspection and control of disease among livestock as defined in section 717.1.

14. In the administration of programs relating to water quality improvement and

watershed improvements, cooperate with the department of natural resources in order to maximize the receipt of federal funds.

1. [C24, 27, 31, 35, 39, §2590; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]
2. [S13, §1657-g; C24, 27, 31, 35, 39, §2590; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]
3. [C24, 27, 31, 35, 39, §2590; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]
4. [C97, §1677, 1678; C24, 27, 31, 35, 39, §2590; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]
5. [C97, §1679, 1680; S13, §1679; C24, 27, 31, 35, 39, §2590; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]
6. [C97, §1679; S13, §1679; C24, 27, 31, 35, 39, §2590; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]
7. [C97, §1680; S13, §1363; C24, 27, 31, 35, 39, §2590; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]
8. [C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]
9. [S13, §2527-d5, 4527-m; C24, 27, 31, 35, 39, §2590; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §159.5]
10. [C79, 81, S81, §159.5(10)]
11. [S13, §2528-d10; C24, 27, 31, 35, 39, §2590; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §159.5(10); C79, 81, S81, §159.5(11)]
12. [C46, 50, 54, 58, 62, 66, §185.2; C71, 73, 75, 77, §159.5(11); C79, 81, S81, §159.5(12)]
13. [C75, 77, §159.5(12); C79, 81, S81, §159.5(13); 81 Acts, ch 117, §1019; 82 Acts, ch 1104, §4]  
83 Acts, ch 96, §60, 157, 159; 83 Acts, ch 123, §69, 209; 84 Acts, ch 1067, §22; 86 Acts, ch 1137, §1; 86 Acts, ch 1245, §607, 608; 87 Acts, ch 115, §26; 88 Acts, ch 1134, §32; 89 Acts, ch 83, §29; 89 Acts, ch 106, §1; 94 Acts, ch 1023, §14; 99 Acts, ch 96, §15; 2000 Acts, ch 1038, §1; 2003 Acts, ch 74, §1; 2006 Acts, ch 1030, §16; 2007 Acts, ch 211, §36; 2009 Acts, ch 41, §57; 2010 Acts, ch 1061, §35; 2012 Acts, ch 1095, §2 – 5

Referred to in §159.6, 159.7, 165.18

### 159.6 Additional duties.

In addition to the duties imposed by section 159.5 the department shall enforce the law relative to:

1. Forest and fruit-tree reservations, chapter 427C.
  2. Infectious and contagious diseases among animals, chapter 163.
  3. Eradication of bovine tuberculosis, chapter 165.
  4. Classical-swine-fever virus and classical-swine-fever serum, chapter 166.
  5. Use and disposal of dead animals, chapter 167.
  6. Practice of veterinary medicine and surgery, chapter 169.
  7. Regulation and inspection of foods, drugs, and other articles, as provided in Title V, subtitle 4, but chapter 205 of that subtitle shall be enforced as provided in that chapter.
  8. State aid received by certain associations as provided in chapters 176A through 182, 186, and 352.
  9. Coal mining and mines as set forth in chapters 207 and 208.
  10. Soil and water conservation as set forth in chapters 161A, 161C, 161E, and 161F.
  11. Grain dealers as set forth in chapter 203.
  12. Bonded warehouses for agricultural products as set forth in chapter 203C.
  13. The grain depositors and sellers indemnity fund as set forth in chapter 203D.
- [C24, 27, 31, 35, 39, §2591; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.6]  
86 Acts, ch 1245, §609; 88 Acts, ch 1053, §1; 88 Acts, ch 1134, §33, 34; 89 Acts, ch 83, §30; 89 Acts, ch 197, §24; 90 Acts, ch 1009, §1; 94 Acts, ch 1023, §15; 98 Acts, ch 1032, §1, 2; 2002 Acts, ch 1017, §2, 8; 2003 Acts, ch 44, §40, 116; 2003 Acts, ch 69, §23; 2004 Acts, ch 1082, §4; 2012 Acts, ch 1095, §33

**159.6A Contributions.**

The department may accept contributions, including gifts and grants, in order to carry out and administer the provisions of this chapter and chapter 460, subchapter III. The department shall maintain an itemized accounting of the contributions. At the end of each fiscal year, the department shall prepare a list recognizing private contributors.

92 Acts, ch 1239, §25

**159.7 Intake airprobes not approved.**

The secretary shall not approve the use of end intake airprobes, which use a vacuum to collect a sample from a load of grain, pursuant to section 159.5, subsection 9. A person who uses a method of probing for foreign material content of grain which is not approved by the secretary is guilty of a simple misdemeanor.

[C81, §159.7]

**159.8 Comprehensive management plan — highly erodible acres.**

1. The department shall request cooperation from the federal government, including the United States department of agriculture consolidated farm service agency and the United States department of agriculture natural resources conservation service, to investigate methods to preserve land which is highly erodible, as provided in the federal Food Security Act of 1985, 16 U.S.C. § 3801 et seq., for the purpose of developing with owners of the land a comprehensive management plan for the land. The plan may be based on the soil conservation plan of the natural resources conservation service and may include a farm unit conservation plan and a comprehensive agreement as provided in chapter 161A. The extension services at Iowa state university of science and technology shall cooperate with the department in developing the comprehensive plan.

2. The investigation shall include methods which help to preserve highly erodible land from row crop production through production of alternative commodities, and financial incentives.

89 Acts, ch 188, §1; 95 Acts, ch 216, §25; 2012 Acts, ch 1095, §8

**159.9 Internet access to statutes and rules.**

The statutes relating to and rules adopted by the department shall be made available on the internet.

[C24, 27, 31, 35, 39, §2594; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.9]

2012 Acts, ch 1095, §6

**159.10 through 159.13 Reserved.****159.14 Bonds.** Repealed by 2012 Acts, ch 1095, § 7.**159.15** Repealed by 2001 Acts, ch 129, § 7.**159.16 Duty of peace officers.**

All peace officers of the state when called upon by the secretary or any officer or authorized agent of the department shall enforce its rules and execute its lawful orders within their respective jurisdictions, and upon the request of the secretary such officers shall make such inspections as directed by the secretary and report the results thereof to the secretary.

[C24, 27, 31, 35, 39, §2601; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.16]

**159.17 Interference with department.**

Any person resisting or interfering with the department, its employees or authorized agents, in the discharge of any duty imposed by law shall be guilty of a simple misdemeanor.

[C97, §2526; S13, §2528-c, -f3, 4999-a25, -a39, 5077-a23; SS15, §3009-r; C24, 27, 31, 35, 39, §2602; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.17]

**159.18 Publicizing of farm programs.**

1. As used in this section, “*farm programs*” includes, but is not limited to, financial incentive programs established within the division of soil conservation of the department of agriculture and land stewardship as provided in section 161A.70 and the beginning farmer loan program administered by the Iowa finance authority as provided in section 175.12.

2. The department shall publicize the availability of farm programs to women and minority persons. The department shall disseminate the information electronically or by publishing printed brochures for distribution to locations and institutions serving farmers, including departmental offices, financial institutions participating in farm programs, and soil and water conservation district offices.

3. The department shall cooperate with private institutions and public agencies in order to carry out this section, including the economic development authority and the United States department of agriculture.

2000 Acts, ch 1224, §25; 2011 Acts, ch 118, §85, 89; 2013 Acts, ch 100, §22, 27

Subsection 1 amended

**159.19 Salary.**

The salary of the secretary of agriculture shall be as fixed by the general assembly.

[C31, 35, §2603-c1; C39, §2603.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §159.19]

## SUBCHAPTER II

## AGRICULTURAL MARKETING

**159.20 Powers of department.**

1. The department shall perform duties designed to lead to more advantageous marketing of Iowa agricultural commodities. The department may do any of the following:

- a. Investigate the marketing of agricultural commodities.
  - b. Promote the sale, distribution, and merchandising of agricultural commodities.
  - c. Furnish information and assistance concerning agricultural commodities to the public.
  - d. Cooperate with the college of agriculture and life sciences of the Iowa state university of science and technology in encouraging agricultural marketing education and research.
  - e. Accumulate and diffuse information concerning the marketing of agricultural commodities in cooperation with persons, agencies, or the federal government.
  - f. Investigate methods and practices related to the processing, handling, grading, classifying, sorting, weighing, packing, transportation, storage, inspection, or merchandising of agricultural commodities within this state.
  - g. Ascertain sources of supply for Iowa agricultural commodities. The department shall prepare and periodically publish lists of names and addresses of producers and consignors of agricultural commodities.
  - h. Perform inspection or grading of an agricultural commodity if requested by a person engaged in the production, marketing, or processing of the agricultural commodity. However, the person must pay for the services as provided by rules adopted by the department.
  - i. Cooperate with the economic development authority to avoid duplication of efforts between the department and the agricultural marketing program operated by the economic development authority.
  - j. Provide for the promotion and expansion of renewable fuels and coproducts, by doing all of the following:
    - (1) Assist the office of renewable fuels and coproducts in administering the provisions of chapter 159A, subchapter II.
    - (2) Assist the renewable fuel infrastructure board, provide for the administration of the renewable fuel infrastructure programs, and provide for the management of the renewable fuel infrastructure fund, as provided in chapter 159A, subchapter III.
2. As used in this subchapter:
- a. “*Agricultural commodity*” means any unprocessed agricultural product, including

animals, agricultural crops, and forestry products grown, raised, produced, or fed in Iowa for sale in commercial channels.

b. “Commercial channels” means the processes for sale of an agricultural commodity or unprocessed product from the agricultural commodity to any person, public or private, who resells the agricultural commodity for breeding, processing, slaughter, or distribution.

[C62, 66, 71, 73, 75, 77, 79, 81, §159.20]

86 Acts, ch 1245, §610; 91 Acts, ch 254, §4; 92 Acts, ch 1163, §39; 92 Acts, ch 1239, §26 – 28; 94 Acts, ch 1119, §10; 98 Acts, ch 1032, §3; 2008 Acts, ch 1032, §27; 2009 Acts, ch 41, §58; 2010 Acts, ch 1031, §237; 2011 Acts, ch 113, §45, 56; 2011 Acts, ch 118, §85, 89; 2012 Acts, ch 1021, §121, 141, 144

#### **159.21 International relations fund.**

1. An international relations fund is created in the state treasury under the control of the department. The fund is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund.

2. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants written by the director of the department of administrative services, drawn upon the written requisition of the department.

3. Moneys in the fund are appropriated exclusively to support costs incurred by the department related to promoting the sale of Iowa agricultural commodities and agricultural products to government officials and business leaders of other nations. The department may use moneys in the fund to support travel, including international travel, for the secretary of agriculture or the secretary’s designee, and hosting or attending trade missions, functions, or events.

4. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income or interest from the fund shall remain in the fund until expended as provided in this section.

2000 Acts, ch 1224, §26; 2003 Acts, ch 145, §286

#### **159.22 Grants and gifts of funds.**

The secretary may accept grants and allotments of funds from the federal government and enter into cooperative agreements with the United States department of agriculture for projects to effectuate a purpose described in this subchapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §159.22]

91 Acts, ch 254, §5; 92 Acts, ch 1239, §29

#### **159.23 Special fund.**

All fees collected as a result of the inspection and grading provisions set out herein shall be paid into the state treasury, there to be set aside in a separate fund which is hereby appropriated for the use of the department except as indicated. Withdrawals therefrom shall be by warrant of the director of the department of administrative services upon requisition by the secretary of agriculture. Such fund shall be continued from year to year, provided, however, that if there be any balance remaining at the end of the biennium which, in the opinion of the governor, director of management and secretary of agriculture, is greater than necessary for the proper administration of the inspection and grading program referred to herein, the treasurer of state is hereby authorized on the recommendation and with the approval of the governor, director of management and secretary of agriculture, to transfer to the general fund of the state that portion of such account as they shall deem advisable.

[C62, 66, 71, 73, 75, 77, 79, 81, §159.23]

92 Acts, ch 1239, §30; 2003 Acts, ch 145, §286

**159.24 Grades or classifications of farm products.**

A certificate of the grade, or other classification, of any farm products issued under this chapter shall be accepted in any court of this state as prima facie evidence of the true grade or classification of such farm products as the same existed at the time of their classification.

[C62, 66, 71, 73, 75, 77, 79, 81, §159.24]

92 Acts, ch 1239, §31

**159.25 and 159.26** Repealed by 86 Acts, ch 1245, § 852.

**159.27 Iowa seal.**

A seal for agricultural products shall be created under the direction of the department of agriculture and land stewardship to identify agricultural products that have been produced or processed in the state. The department shall certify that agricultural products marked with the Iowa seal are of the quality and specifications warranted by the sellers of those products.

The department of agriculture and land stewardship shall adopt rules under chapter 17A to provide methods of identifying, marking, and grading agricultural products, to prevent any misleading use of the Iowa seal, and as necessary or advisable to fully implement this section.

A violation of a rule adopted by the department of agriculture and land stewardship to implement this section is a simple misdemeanor. A fraudulent use of the term “Iowa Seal” or of the identifying mark for the Iowa seal, or a deliberately misleading or unwarranted use of the term or identifying mark is a serious misdemeanor.

87 Acts, ch 107, §1

CS87, §159.31

2003 Acts, ch 48, §7

CS2003, §159.27

**159.28 through 159.29B** Transferred to chapter 460; 2002 Acts, ch 1137, § 68, 71; 2002 Acts, 2nd Ex, ch 1003, § 260, 262.

**159.30** Repealed by 2001 Acts, ch 129, § 7.

**159.31 Iowa seal.** Transferred to § 159.27; 2003 Acts, ch 48, § 7.

## SUBCHAPTER III

DEPOSITARIES — ASSISTANCE  
SERVICES**159.32 Definitions.**

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

1. “*Depository*” means a qualified person who executes a contract with the department pursuant to section 159.33 to provide assistance services as provided in this subchapter.

2. “*Electronic funds transfer*” means a remote electronic transmission used for ordering, instructing, or authorizing a financial institution to apply money to or credit the account of the payee and debit the account of the payer. The remote electronic transmission may be initiated by telephone, computer, or similar device.

3. “*Filing document*” means any of the following:

a. An application for a license, permit, or certification, required to be submitted to the department as provided in this title.

b. A registration required to be submitted to the department as provided in this title.

4. “*Filing document fee*” means a fee or other charge established by statute or rule which is required to accompany a filing document submitted to the department as provided in this title.

2003 Acts, ch 48, §2

**159.33 Assistance services — authority to contract with depository.**

Whenever practical, the department may execute a contract with a person qualified to provide assistance services under this subchapter, if the contract for the assistance services is cost-effective and the quality of the services ensures compliance with state and any applicable federal law. A person executing a contract with the department for the purpose of providing the assistance services shall be deemed to be a depository of the state and an agent of the department only for purposes expressly provided in this subchapter. The department shall periodically review assistance services performed by a person under the contract to ensure that quality, cost-effective service is being provided.

2003 Acts, ch 48, §3

Referred to in §159.32

**159.34 Assistance services — filing documents.**

1. A contract executed under this subchapter may require that a depository provide for the receipt, acceptance, and storage of filing documents that are sent in an electronic format to the depository by persons who would otherwise be required to submit filing documents to the department under other provisions of this title. The contract shall be governed under the same provisions as provided in section 8A.106.

2. *a.* A depository must send filing documents that it receives to the department for processing, including for the approval or disapproval of an application or the acknowledgment of a registration. The receipt of the filing document by the depository shall be deemed receipt of the filing document but not an approval of an application or acknowledgment of a registration by the department.

*b.* A depository may send a person notice of the department's approval or disapproval of an application or acknowledgment of a registration. The department and not a depository shall be considered the lawful custodian of the department's filing documents which shall be public records as provided in chapter 22.

3. A filing document that is transmitted electronically to a depository or from a depository to another person is an electronic record for purposes of chapter 554D. An application or registration required to be signed must be authenticated by an electronic signature as provided by the department in conformance with chapter 554D.

2003 Acts, ch 48, §4; 2004 Acts, ch 1101, §25

**159.35 Assistance services — collection of moneys.**

1. A contract executed under this subchapter may require that a depository provide for the receipt, acceptance, and transmission of moneys owed to the department by a person in order to satisfy a liability arising from the operation of law which is limited to filing document fees and civil penalties. These moneys are public funds or public deposits as provided in chapter 12. The depository shall transfer the moneys to the department for deposit into the general fund of the state unless the disposition of the moneys is specifically provided for under other law.

2. A depository may commit its assets to lines of credit pursuant to credit arrangements, including but not limited to agreements with credit and debit cardholders and with other credit or debit card issuers. The depository may accept forms of payment including credit cards, debit cards, or electronic funds transfer.

3. The moneys owed to the department shall not exceed the amount required to satisfy the liability arising from the operation of law. However, the contract executed under this subchapter may provide for assistance service charges, including service delivery fees, credit card fees, debit card fees, and electronic funds transfer charges payable to the depository or another party and not to the state. An assistance service charge shall not exceed that permitted by statute. The contract may also provide for the retention of interest earned on moneys under the control of the depository. These moneys are not considered public funds or public deposits as provided in chapter 12.

4. The depository, as required by the department for purposes of determining compliance, shall send information to the department including payment information for an identified filing document fee or the payment of a specific civil penalty.

5. Each calendar year, the auditor of state shall conduct an annual audit of the activities of the depository.

2003 Acts, ch 48, §5  
 Referred to in §12C.1

**159.36 Filing documents and payment of moneys to department.**

Nothing in this subchapter shall prevent a person from submitting a filing document or making a payment to the department as otherwise provided in this title.

2003 Acts, ch 48, §6

SUBCHAPTER IV  
 SPECIAL QUALITY GRAINS

**159.37** Repealed by 2001 Acts, ch 129, § 7.

CHAPTER 159A

RENEWABLE FUELS AND COPRODUCTS

For transition provisions relating to the administration of the renewable fuel infrastructure program by the department of agriculture and land stewardship, including but not limited to the effect of the transition on pending enforcement actions and outstanding cost-share agreements executed by the department of economic development, see 2011 Acts, ch 113, §48-54, 56

	SUBCHAPTER I	159A.7	Renewable fuels and coproducts fund.
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159A.1	Findings.		
			SUBCHAPTER III
			RENEWABLE FUEL INFRASTRUCTURE
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159A.2	Definitions.	159A.13	Renewable fuel infrastructure board.
159A.3	Office of renewable fuels and coproducts.	159A.14	Renewable fuel infrastructure program for retail motor fuel sites.
159A.4	and 159A.5 Repealed by 2010 Acts, ch 1031, §250, 251.	159A.15	Renewable fuel infrastructure program for biodiesel terminal facilities.
159A.6	Education, promotion, and advertising.	159A.16	Renewable fuel infrastructure fund.
159A.6A	Renewable fuels and coproducts research.		
159A.6B	Technical assistance.		

SUBCHAPTER I  
 FINDINGS AND POLICY

**159A.1 Findings.**

The general assembly finds and declares the following:

1. The production and processing of agricultural commodities and products represents the foundation of this state's economy, and the economic viability of this nation is contingent upon the production of wealth generated primarily from materials, including food and fiber, produced on this nation's family farms.

2. It is necessary to support industries using agricultural commodities to increase the demand for and production and consumption of sources of energy in order to reduce the

state's dependency upon petroleum products; to reduce atmospheric contamination of this state's environment from the combustion of fossil fuels; and to produce coproducts, such as corn gluten feed, distillers grain, and solubles, which can be used to increase livestock production in this state.

3. This state adopts a policy of enhancing agricultural production by encouraging the development and use of fuels and coproducts derived from agricultural commodities as provided in this chapter, including rules adopted by the office of renewable fuels and coproducts.

91 Acts, ch 254, §6; 94 Acts, ch 1119, §11; 2010 Acts, ch 1031, §238

## SUBCHAPTER II

### OFFICE OF RENEWABLE FUELS AND COPRODUCTS

Referred to in §159.20

#### 159A.2 Definitions.

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

1. "Biodiesel" and "biodiesel blended fuel" mean the same as defined in section 214A.1.
2. "Coordinator" means the administrative head of the office of renewable fuels and coproducts appointed by the department as provided in section 159A.3.
3. "Coproduct" means a product other than a renewable fuel which at least in part is derived from the processing of agricultural commodities, and which may include corn gluten feed, distillers grain, or solubles, or can be used as livestock feed or a feed supplement.
4. "Department" means the department of agriculture and land stewardship.
5. "Ethanol blended gasoline" means the same as defined in section 214A.1.
6. "Fund" means the renewable fuels and coproducts fund established pursuant to section 159A.7.
7. "Office" means the office of renewable fuels and coproducts created pursuant to section 159A.3.
8. "Renewable fuel" means the same as defined in section 214A.1.
9. "Renewable fuels and coproducts activities" means either of the following:
  - a. The research, development, production, promotion, marketing, or consumption of renewable fuels and coproducts.
  - b. The research, development, transfer, or use of technologies which directly or indirectly increase the supply or demand of renewable fuels and coproducts.

91 Acts, ch 254, §7; 94 Acts, ch 1119, §12; 2000 Acts, ch 1018, §1; 2004 Acts, ch 1086, §106; 2006 Acts, ch 1142, §73 – 75; 2010 Acts, ch 1031, §239; 2011 Acts, ch 113, §46, 56

Further definitions, see §159.1

#### 159A.3 Office of renewable fuels and coproducts.

1. An office of renewable fuels and coproducts is created within the department and shall be staffed by a coordinator who shall be appointed by the secretary. It shall be the policy of the office to further renewable fuels and coproducts activities. The office shall first further renewable fuels and coproducts activities based on the following considerations:

- a. The price competitiveness of the renewable fuel or coproduct.
  - b. The production capacity and supply of the renewable fuel or coproduct.
  - c. The ease and safety of transporting and storing the renewable fuel or coproduct.
  - d. The degree to which the renewable fuel or coproduct is currently developed for ready transfer to current engine technology.
  - e. The degree to which the renewable fuel or coproduct is environmentally protective.
  - f. The degree to which the renewable fuel or coproduct provides economic development opportunities.
2. The duties of the office include, but are not limited to, the following:
- a. Serving as advisor to the department regarding regulations, including federal and state standards, relating to oxygenates, as defined in section 214A.1.

b. Serving as advisor to the department regarding renewable fuels and coproducts programs.

c. Serving as monitor of regulations administered in the state, in other states, or by the federal government. The office shall collect information and data prepared by state agencies related to these regulations, and provide referral and assistance to interested persons and agencies.

d. Cooperating with persons and agencies involved in renewable fuels and coproducts activities, including other states and the federal government, to standardize regulations and coordinate programs, in order to increase administrative effectiveness and reduce administrative duplication.

e. Implementing policies and procedures designed to facilitate communication between persons involved in renewable fuels and coproducts activities.

f. Assisting state or federal agencies, or assisting commercial enterprises or commodity organizations which are located in or desiring to locate in the state. The assistance may include support of public research relating to renewable fuels and coproducts activities.

g. Conducting studies relating to the viability of producing or using renewable fuels and coproducts, and methods and schedules required to ensure a practicable transition to the use of renewable fuels and coproducts.

h. Approving a renewable fuel which may be used as a flexible fuel powering a motor vehicle required to be purchased by state agencies.

3. a. A chief purpose of the office is to further the production and consumption of ethanol blended gasoline in this state. The office shall be the primary state agency charged with the responsibility to promote public consumption of ethanol blended gasoline.

b. The office shall promote the production and consumption of biodiesel and biodiesel blended fuel in this state.

4. The office and state entities, including the department, the economic development authority, the state department of transportation, and the state board of regents institutions, shall cooperate to implement this section.

91 Acts, ch 254, §8; 92 Acts, ch 1239, §33; 94 Acts, ch 1119, §13; 2003 Acts, ch 44, §41, 42; 2006 Acts, ch 1142, §76, 83; 2009 Acts, ch 108, §8, 41; 2010 Acts, ch 1031, §240 – 242; 2011 Acts, ch 25, §19; 2011 Acts, ch 118, §50, 85, 89

Referred to in §8A.412, 20.4, 159A.2, 159A.7, 216B.3, 260C.19A, 262.25A, 307.21, 422.11N, 904.312A

**159A.4 and 159A.5** Repealed by 2010 Acts, ch 1031, § 250, 251.

#### **159A.6 Education, promotion, and advertising.**

1. The office shall do all of the following:

a. Support education regarding, and promotion and advertising of, renewable fuels and coproducts. The office shall consult with the petroleum marketers and convenience stores of Iowa, the Iowa renewable fuels association, the Iowa corn growers association, and the Iowa soybean association.

b. Promote the advantages related to the use of renewable fuels as an alternative to nonrenewable fuels. Promotions shall be designed to inform the ultimate consumer of advantages associated with using renewable fuels, and emphasize the benefits to the natural environment. The promotion shall inform consumers at the businesses of retail dealers of motor vehicle fuels.

c. Develop standards for decals required pursuant to section 214A.16, which shall be designed to promote the advantages of using renewable fuels. The standards may be incorporated within a model decal adopted by the office.

d. Promote the advantages related to the use of coproducts derived from the production of renewable fuels, including the use of coproducts used as livestock feed or meal. Promotions shall be designed to inform the potential purchasers of the advantages associated with using coproducts. The office shall promote advantages associated with using coproducts of ethanol production as livestock feed or meal to cattle producers in this state.

2. The office may contract to provide all or part of the services described in subsection 1. 91 Acts, ch 254, §11; 92 Acts, ch 1099, §3; 92 Acts, ch 1163, §41; 94 Acts, ch 1119, §19; 2009 Acts, ch 41, §197; 2010 Acts, ch 1031, §243; 2010 Acts, ch 1193, §145

Referred to in §159A.7, 214A.16

#### **159A.6A Renewable fuels and coproducts research.**

The office shall support research relating to renewable fuels and coproducts, including methods to increase efficiency and reduce costs associated with production. The office shall consult with the Iowa corn growers association and the Iowa soybean association. The office shall support research activities at the university of Iowa, Iowa state university of science and technology, and the university of northern Iowa. The office may contract to provide all or part of these services.

94 Acts, ch 1119, §20

Referred to in §159A.7

#### **159A.6B Technical assistance.**

1. The office shall assist persons in revitalizing rural regions of this state, by providing technical assistance to new or existing renewable fuel production facilities, including the establishment and operation of facilities, and specifically facilities which create coproducts, including coproducts which support livestock production operations. The office shall consult with the Iowa corn growers association and the Iowa soybean association. The office shall provide planning assistance which may include evaluations of methods to most profitably manage these operations. The business planning assistance shall provide for adequate environmental protection of this state's natural resources from the operation of the facility.

2. The office may execute contracts in order to provide technical support and outreach services for purposes of assisting and educating interested persons as provided in this section. The office may also contract with a consultant to provide part or all of these services. The office may require that a person receiving assistance pursuant to this section contribute up to fifty percent of the amount required to support the costs of contracting with the consultant to provide assistance to the person. The office shall assist the person in completing any technical information required in order to receive assistance by the economic development authority pursuant to section 15.335B.

3. The office shall cooperate with the economic development authority and regents institutions or other universities and colleges in order to carry out this section.

94 Acts, ch 1119, §21; 2009 Acts, ch 41, §198; 2009 Acts, ch 108, §11, 41; 2009 Acts, ch 123, §29; 2011 Acts, ch 118, §50, 85, 86, 89; 2012 Acts, ch 1126, §23

Referred to in §159A.7

#### **159A.7 Renewable fuels and coproducts fund.**

1. A renewable fuels and coproducts fund is created in the state treasury under the control of the office of renewable fuels and coproducts. The fund may include moneys available to and obtained or accepted by the office, including moneys from the United States, other states in the union, foreign nations, state agencies, political subdivisions, and private sources.

2. Moneys in the fund shall be used only to carry out the provisions of this section and sections 159A.3, 159A.6, 159A.6A, and 159A.6B within the state of Iowa.

3. Moneys in the fund shall be allocated during each fiscal year as follows:

a. At least forty percent shall be dedicated to support education, promotion, and advertising of renewable fuels and coproducts as provided in section 159A.6.

b. Up to thirty percent may be dedicated to support research at the university of Iowa, Iowa state university of science and technology, and the university of northern Iowa, as provided in section 159A.6A.

c. Any remaining balance shall be used by the office to support technical assistance as provided in section 159A.6B and any other projects or programs developed by the office.

4. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants by the director of the department of administrative services, drawn upon the written requisition of the coordinator.

5. In administering the fund, the office may do all of the following:

a. Contract, sue and be sued, and adopt procedures necessary to administer this section. However, the office shall not in any manner, directly or indirectly, pledge the credit of the state.

b. Authorize payment from the fund for commissions, attorney and accountant fees, and other reasonable expenses related to and necessary for administering the fund.

6. Section 8.33 does not apply to moneys in the fund. Income received by investment of moneys in the fund shall remain in the fund.

91 Acts, ch 254, §12; 92 Acts, ch 1099, §4, 10; 93 Acts, ch 180, §74; 94 Acts, ch 1119, §22; 97 Acts, ch 207, §7 – 9, 15; 2000 Acts, ch 1230, §21, 22; 2002 Acts, 2nd Ex, ch 1003, §67, 79; 2003 Acts, ch 145, §286; 2009 Acts, ch 41, §199; 2010 Acts, ch 1031, §244

Referred to in §159A.2

**159A.8 through 159A.10** Reserved.

### SUBCHAPTER III

#### RENEWABLE FUEL INFRASTRUCTURE

Referred to in §159.20, 321.145

#### **159A.11 Definitions.**

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

1. “*Biodiesel*”, “*biodiesel blended fuel*”, “*biodiesel fuel*”, “*E-85 gasoline*”, “*ethanol*”, “*ethanol blended gasoline*”, “*gasoline*”, “*motor fuel*”, “*retail dealer*”, and “*retail motor fuel site*” mean the same as defined in section 214A.1.

2. “*Department*” means the department of agriculture and land stewardship.

3. “*Infrastructure board*” means the renewable fuel infrastructure board as created in section 159A.13.

4. “*Infrastructure fund*” means the renewable fuel infrastructure fund created in section 159A.16.

5. “*Motor fuel pump*” and “*motor fuel blender pump*” or “*blender pump*” mean the same as defined in section 214.1.

6. “*Motor fuel storage and dispensing infrastructure*” or “*infrastructure*” means a tank and motor fuel pumps necessary to keep and dispense motor fuel at a retail motor fuel site, including but not limited to all associated equipment, dispensers, pumps, pipes, hoses, tubes, lines, fittings, valves, filters, seals, and covers.

7. “*Tank vehicle*” means the same as defined in section 321.1.

8. “*Terminal*” means a storage and distribution facility for motor fuel or a blend stock such as ethanol or biodiesel that is stored on-site or off-site in bulk and that is supplied to a motor vehicle, pipeline, or a marine vessel and from which storage and distribution facility the motor fuel or blend stock may be removed at a rack. “*Terminal*” does not include any of the following:

a. A retail motor fuel site.

b. A facility at which motor fuel, special fuel, or blend stocks are used in the manufacture of products other than motor fuel and from which no motor fuel or special fuel is removed.

9. “*Terminal operator*” means a person who has responsibility for, or physical control over, the operation of a terminal, including by ownership, contractual agreement, or appointment.

10. “*Underground storage tank fund board*” means the Iowa comprehensive petroleum underground storage tank fund board established pursuant to section 455G.4.

2006 Acts, ch 1142, §28; 2006 Acts, ch 1175, §3, 23

C2007, §15G.201

2008 Acts, ch 1169, §1, 2, 30; 2011 Acts, ch 113, §42, 55, 56; 2011 Acts, ch 118, §74, 75

CS2011, §159A.11

**159A.12 Classification of renewable fuel.**

For purposes of this subchapter, ethanol blended fuel and biodiesel fuel shall be classified in the same manner as provided in section 214A.2.

2008 Acts, ch 1169, §3, 30

C2009, §15G.201A

2009 Acts, ch 41, §17; 2011 Acts, ch 113, §55, 56

CS2011, §159A.12

**159A.13 Renewable fuel infrastructure board.**

A renewable fuel infrastructure board is established within the department.

1. The department shall provide the infrastructure board with necessary facilities, items, and clerical support. The department shall perform administrative functions necessary for the management of the infrastructure board and the renewable fuel infrastructure programs as provided in sections 159A.14 and 159A.15, all under the direction of the infrastructure board.

2. The infrastructure board shall be composed of eleven members who shall be appointed by the governor as follows:

a. One person representing insurers who is knowledgeable about issues relating to underground storage tanks.

b. One person representing the petroleum industry who is knowledgeable about issues relating to petroleum refining, terminal operations, and petroleum or motor fuel distribution.

c. Nine persons based on nominations made by the titular heads of all of the following:

(1) The agribusiness association of Iowa.

(2) The Iowa corn growers association.

(3) The Iowa farm bureau federation.

(4) The Iowa biodiesel board.

(5) The Iowa soybean association.

(6) The petroleum marketers and convenience stores of Iowa.

(7) The Iowa petroleum equipment contractors association.

(8) The Iowa renewable fuels association.

(9) The Iowa grocery industry association.

3. Appointments of voting members to the infrastructure board are subject to the requirements of sections 69.16 and 69.16A. In addition, the appointments shall be geographically balanced. The governor's appointees shall be confirmed by the senate, pursuant to section 2.32.

4. The members of the infrastructure board shall serve five-year terms beginning and ending as provided in section 69.19. However, the governor shall appoint initial members to serve for less than five years to ensure members serve staggered terms. A member is eligible for reappointment. A vacancy on the board shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

5. The infrastructure board shall elect a chairperson from among its members each year on a rotating basis as provided by the infrastructure board. The infrastructure board shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of six or more members.

6. The infrastructure board shall meet with three or more members of the underground storage tank fund board who shall represent the underground storage tank fund board. The representatives shall be available to advise the infrastructure board when the infrastructure board makes decisions regarding the awarding of financial incentives to a person under a renewable fuel infrastructure program provided in section 159A.14 or 159A.15.

7. Members of the infrastructure board are not entitled to receive compensation but shall receive reimbursement of expenses from the department as provided in section 7E.6.

8. Six members of the infrastructure board constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the infrastructure board. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive

for this purpose. A vacancy in the membership does not impair the duties of the infrastructure board.

2006 Acts, ch 1142, §29

C2007, §15G.202

2011 Acts, ch 113, §43, 55, 56

CS2011, §159A.13

Referred to in §159A.11, 159A.14, 159A.15, 159A.16

#### **159A.14 Renewable fuel infrastructure program for retail motor fuel sites.**

A renewable fuel infrastructure program for retail motor fuel sites is established in the department under the direction of the renewable fuel infrastructure board created pursuant to section 159A.13.

1. The purpose of the program is to improve retail motor fuel sites by installing, replacing, or converting infrastructure to be used to store, blend, or dispense renewable fuel. The infrastructure shall be ethanol infrastructure or biodiesel infrastructure.

a. (1) Ethanol infrastructure shall be designed and used exclusively to do any of the following:

(a) Store and dispense E-85 gasoline.

(b) Store, blend, and dispense motor fuel from a motor fuel blender pump, as required in this subparagraph division. The ethanol infrastructure must provide for the storage of ethanol or ethanol blended gasoline, or for blending ethanol with gasoline. The ethanol infrastructure must at least include a motor fuel blender pump which dispenses different classifications of ethanol blended gasoline and allows E-85 gasoline to be dispensed at all times that the blender pump is operating.

(2) Biodiesel infrastructure shall be designed and used exclusively to do any of the following:

(a) Store and dispense biodiesel or biodiesel blended fuel.

(b) Blend or dispense biodiesel fuel from a motor fuel blender pump.

b. The infrastructure must be part of the premises of a retail motor fuel site operated by a retail dealer. The infrastructure shall not include a tank vehicle.

2. A person may apply to the department to receive financial incentives on a cost-share basis. The department shall forward the applications to the underground storage tank fund board as required by that board for evaluation and recommendation. The underground storage tank fund board may rank the applications with comments and shall forward them to the infrastructure board for approval or disapproval. The department shall award financial incentives on a cost-share basis to an eligible person whose application was approved by the infrastructure board.

3. The infrastructure board shall approve cost-share agreements executed by the department and persons that the infrastructure board determines are eligible as provided in this section, according to terms and conditions required by the infrastructure board. The infrastructure board shall determine the amount of the financial incentives to be awarded to a person participating in the program. In order to be eligible to participate in the program all of the following must apply:

a. The person must be an owner or operator of the retail motor fuel site.

b. The person must apply to the department in a manner and according to procedures required by the infrastructure board. The application must contain all information required by the infrastructure board and shall at least include all of the following:

(1) The name of the person and the address of the retail motor fuel site to be improved.

(2) A detailed description of the infrastructure to be installed, replaced, or converted, including but not limited to the model number of each installed, replaced, or converted motor fuel storage tank if available.

(3) A statement describing how the retail motor fuel site is to be improved, the total estimated cost of the planned improvement, and the date when the infrastructure will be first used.

(4) A statement certifying that the infrastructure shall only be used to comply with the

provisions of this section and as specified in the cost-share agreement, unless granted a waiver by the infrastructure board pursuant to this section.

4. A retail motor fuel site which is improved using financial incentives must comply with federal and state standards governing new or upgraded motor fuel storage tanks used to store and dispense the renewable fuel. A site classified as a no further action site pursuant to a certificate issued by the department of natural resources under section 455B.474 shall retain its classification following modifications necessary to store and dispense the renewable fuel and the owner or operator shall not be required to perform a new site assessment unless a new release occurs or if a previously unknown or unforeseen risk condition should arise.

5. An award of financial incentives to a participating person shall be on a cost-share basis in the form of a grant. To participate in the program, an eligible person must execute a cost-share agreement with the department as approved by the infrastructure board in which the person contributes a percentage of the total costs related to improving the retail motor fuel site. A cost-share agreement shall be for a three-year period or a five-year period. A cost-share agreement shall include provisions for standard financial incentives or standard financial incentives and supplemental financial incentives as provided in this subsection. The infrastructure board may approve multiple improvements to the same retail motor fuel site for the full amount available for both ethanol infrastructure and biodiesel infrastructure so long as the improvements for ethanol infrastructure and for biodiesel infrastructure are made under separate cost-share agreements.

a. (1) Except as provided in paragraph “b”, a participating person may be awarded standard financial incentives to make improvements to a retail motor fuel site. The standard financial incentives awarded to a participating person shall not exceed the following:

(a) For a three-year cost-share agreement, fifty percent of the actual cost of making the improvement or thirty thousand dollars, whichever is less.

(b) For a five-year cost-share agreement, seventy percent of the actual cost of making the improvement or fifty thousand dollars, whichever is less.

(2) The infrastructure board may approve multiple awards of standard financial incentives to make improvements to a retail motor fuel site so long as the total amount of the awards for ethanol infrastructure or biodiesel infrastructure does not exceed the limitations provided in subparagraph (1).

b. In addition to any standard financial incentives awarded to a participating person under paragraph “a”, the participating person may be awarded supplemental financial incentives to make improvements to a retail motor fuel site to do any of the following:

(1) Upgrade or replace a dispenser which is part of gasoline storage and dispensing infrastructure used to store and dispense E-85 gasoline as provided in section 455G.31. The participating person is only eligible to be awarded the supplemental financial incentives if the person installed the dispenser not later than sixty days after the date of the publication in the Iowa administrative bulletin of the state fire marshal’s order providing that a commercially available dispenser is listed as compatible for use with E-85 gasoline by an independent testing laboratory as provided in section 455G.31. The supplemental financial incentives awarded to the participating person shall not exceed seventy-five percent of the actual cost of making the improvement or thirty thousand dollars, whichever is less.

(2) To improve additional retail motor fuel sites owned or operated by a participating person within a twelve-month period as provided in the cost-share agreement. The supplemental financial incentives shall be used for the installation of an additional tank and associated infrastructure at each such retail motor fuel site. A participating person may be awarded supplemental financial incentives under this subparagraph and standard financial incentives under paragraph “a” to improve the same motor fuel site. The supplemental financial incentives awarded to the participating person shall not exceed twenty-four thousand dollars. The participating person shall be awarded the supplemental financial incentives on a cumulative basis according to the schedule provided in this subparagraph, which shall not exceed the following:

(a) For the second retail motor fuel site, six thousand dollars.

(b) For the third retail motor fuel site, six thousand dollars.

(c) For the fourth retail motor fuel site, six thousand dollars.

(d) For the fifth retail motor fuel site, six thousand dollars.

6. A participating person shall not use the infrastructure to store and dispense motor fuel other than the type of renewable fuel approved by the board in the cost-share agreement, unless one of the following applies:

a. The participating person is granted a waiver by the infrastructure board. The participating person shall store or dispense the motor fuel according to the terms and conditions of the waiver.

b. The renewable fuel infrastructure fund created in section 159A.16 is immediately repaid the total amount of moneys awarded to the participating person together with a monetary penalty equal to twenty-five percent of that awarded amount. The amount shall be deposited in the renewable fuel infrastructure fund created in section 159A.16.

7. A participating person who acts in violation of an agreement executed with the department pursuant to this section is subject to a civil penalty of not more than one thousand dollars a day for each day of the violation. The civil penalty shall be deposited into the general fund of the state.

2006 Acts, ch 1142, §30

C2007, §15G.203

2007 Acts, ch 126, §9; 2007 Acts, ch 211, §46; 2008 Acts, ch 1032, §128; 2008 Acts, ch 1169, §4 - 9, 30; 2009 Acts, ch 41, §263; 2011 Acts, ch 113, §55, 56

CS2011, §159A.14

Referred to in §159A.13, 159A.16

#### **159A.15 Renewable fuel infrastructure program for biodiesel terminal facilities.**

The department, under the direction of the renewable fuel infrastructure board created in section 159A.13, shall establish and administer a renewable fuel infrastructure program for terminal facilities that store and dispense biodiesel or biodiesel blended fuel. The infrastructure must be designed and shall be used exclusively to store and distribute biodiesel or biodiesel blended fuel. The department as directed by the infrastructure board shall provide a cost-share program for financial incentives.

1. A person may apply to the department to receive financial incentives on a cost-share basis. The department shall forward the applications to the underground storage tank fund board as required by that board for evaluation and recommendation. The underground storage tank fund board may rank the applications with comments and shall forward them to the infrastructure board for approval or disapproval. The department shall award financial incentives on a cost-share basis to an eligible person whose application was approved by the infrastructure board.

2. The department shall award financial incentives to a terminal operator participating in the program as directed by the infrastructure board. In order to be eligible to participate in the program, the terminal operator must apply to the department in a manner and according to procedures required by the infrastructure board. The application must contain information required by the infrastructure board and shall at least include all of the following:

a. The name of the terminal operator and the address of the terminal to be improved.

b. A detailed description of the infrastructure to be installed, replaced, or converted.

c. A statement describing how the terminal is to be improved, the total estimated cost of the planned improvement, and the date when the infrastructure will be first used to store and distribute biodiesel or biodiesel blended fuel.

d. A statement certifying that the infrastructure shall not be used to store or dispense motor fuel other than biodiesel or biodiesel blended fuel, unless granted a waiver by the infrastructure board pursuant to this section.

3. a. An award of financial incentives to a participating person shall be in the form of a grant. In order to participate in the program, an eligible person must execute a cost-share agreement with the department as approved by the infrastructure board in which the person contributes a percentage of the total costs related to improving the terminal. The financial incentives awarded to the participating person shall not exceed the following:

(1) For improvements to store, blend, or dispense biodiesel fuel from B-2 or higher but not

as high as B-99, fifty percent of the actual cost of making the improvements or fifty thousand dollars, whichever is less.

(2) For improvements to store, blend, and dispense biodiesel fuel from B-99 to B-100, fifty percent of the actual cost of making the improvements or one hundred thousand dollars, whichever is less. However, a person shall not be awarded moneys under this subparagraph if the person has been awarded a total of eight hundred thousand dollars under this subparagraph during any period of time and pursuant to all cost-share agreements in which the person participates.

b. The infrastructure board may approve multiple awards to make improvements to a terminal so long as the total amount of the awards does not exceed the limitations provided in paragraph "a".

4. A participating terminal operator shall not use the infrastructure to store or dispense motor fuel other than biodiesel or biodiesel blended fuel, unless one of the following applies:

a. The participating terminal operator is granted a waiver by the infrastructure board. The participating terminal operator shall store or dispense the motor fuel according to the terms and conditions of the waiver.

b. The renewable fuel infrastructure fund created in section 159A.16 is immediately repaid the total amount of moneys awarded to the participating terminal operator together with a monetary penalty equal to twenty-five percent of that awarded amount. The amount shall be deposited in the renewable fuel infrastructure fund created in section 159A.16.

c. A participating terminal operator who acts in violation of an agreement executed with the department pursuant to this section is subject to a civil penalty of not more than one thousand dollars a day for each day of the violation. The civil penalty shall be deposited into the general fund of the state.

2006 Acts, ch 1142, §31

C2007, §15G.204

2007 Acts, ch 126, §10; 2008 Acts, ch 1169, §10, 11, 30; 2011 Acts, ch 113, §55, 56

CS2011, §159A.15

Referred to in §159A.13, 159A.16

#### **159A.16 Renewable fuel infrastructure fund.**

1. A renewable fuel infrastructure fund is created in the state treasury under the control of the department. The infrastructure fund is separate from the general fund of the state.

2. The renewable fuel infrastructure fund is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the infrastructure fund.

3. Moneys in the renewable fuel infrastructure fund are appropriated to the department exclusively to support and market the renewable fuel infrastructure programs as provided in sections 159A.14 and 159A.15, and as allocated in financial incentives by the renewable fuel infrastructure board created in section 159A.13. Up to fifty thousand dollars shall be allocated each fiscal year to the department to support the administration of the programs. The department may use up to one and one-half percent of the program funds to market the programs. Otherwise the moneys shall not be transferred, used, obligated, appropriated, or otherwise encumbered except to allocate as financial incentives under the programs.

4. a. The recapture of awards or penalties, or other repayments of moneys originating from the renewable fuel infrastructure fund shall be deposited into the infrastructure fund.

b. Notwithstanding section 12C.7, interest or earnings on moneys in the infrastructure fund shall be credited to the infrastructure fund.

c. Notwithstanding section 8.33, unencumbered and unobligated moneys remaining in the infrastructure fund at the close of each fiscal year shall not revert but shall remain available in the infrastructure fund.

2006 Acts, ch 1175, §6, 23; 2006 Acts, ch 1185, §56

C2007, §15G.205

2008 Acts, ch 1122, §2; 2009 Acts, ch 41, §18; 2011 Acts, ch 113, §44, 55, 56

CS2011, §159A.16

Referred to in §159A.11, 159A.14, 159A.15, 321.145

## CHAPTER 160

## STATE APIARIST

160.1	Appointment by secretary of agriculture.	160.8	Costs certified — collected as tax.
160.1A	Definitions.	160.9	Rules.
160.2	Duties.	160.10	Repealed by 93 Acts, ch 21, §10.
160.3	Right to enter premises.	160.11	Repealed by 98 Acts, ch 1032, §10.
160.4	Repealed by 65 Acts, ch 170, §2.	160.12	Repealed by 65 Acts, ch 170, §5.
160.5	Instructions — hives — imported bees.	160.13	Annual report.
160.6	Notice to treat, disinfect, remove, or destroy.	160.14	Penalties — injunctions.
160.7	Apiarist to disinfect or destroy — costs.	160.15	Payment of expenses.
		160.16	Repealed by 98 Acts, ch 1032, §10.

**160.1 Appointment by secretary of agriculture.**

There is hereby created and established within the department the office of state apiarist. The state apiarist shall be appointed by and be responsible to and under the authority of the secretary of agriculture in the issuance of all rules, the establishment of quarantines and other official acts.

[C24, 27, 31, 35, 39, §4036; C46, 50, 54, 58, §266.8, 266.9; C62, 66, 71, 73, 75, 77, 79, 81, §160.1]

**160.1A Definitions.**

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

1. “*Apiary*” means a place where one or more bee colonies are maintained.
2. “*Bee*” means a honeybee belonging to the genus *apis*.
3. “*Colony*” means a queen bee and more than one worker bee located on beeswax combs and enclosed in a container.
4. “*Package*” means a shipping cage exclusively containing adult bees, without beeswax combs.

90 Acts, ch 1104, §1; 93 Acts, ch 21, §1, 2

Further definitions, see §159.1

**160.2 Duties.**

The state apiarist shall do all of the following:

1. Give lectures and demonstrations in the state on the production of honey, the care of the apiary, the marketing of honey, and upon other kindred subjects relative to the care of bees and the profitable production of honey.
2. Examine bees, combs, and equipment in any locality which the apiarist may suspect of being African in origin or infested with a parasite or foulbrood or any other contagious or infectious disease common to bees.

3. Regulate bees, combs, and used equipment moving across state borders.

[C24, 27, 31, 35, 39, §4037; C46, 50, 54, 58, §266.10; C62, 66, 71, 73, 75, 77, 79, 81, §160.2]

88 Acts, ch 1051, §1; 90 Acts, ch 1104, §2; 93 Acts, ch 21, §3

**160.3 Right to enter premises.**

In the performance of the apiarist’s duties, the state apiarist or the apiarist’s assistants shall have the right to enter any premises, enclosure, or buildings containing bees or bee supplies.

[C27, 31, 35, §4037-a1; C39, §4037.1; C46, 50, 54, 58, §266.11; C62, 66, 71, 73, 75, 77, 79, 81, §160.3]

**160.4** Repealed by 65 Acts, ch 170, § 2.

**160.5 Instructions — hives — imported bees.**

1. If upon examination the apiarist finds bees to be diseased or infested with parasites, the apiarist shall furnish the owner or person in charge of the apiary with full written

instructions as to the nature of the disease or infestation and the best methods of treatment, which information shall be furnished without cost to the owner.

2. It shall be unlawful to keep bees in any containers except hives with movable frames permitting ready examination in those counties where area clean-up inspection is in progress as may be proclaimed in official regulation.

3. A person who desires to move a colony, package, or used equipment with combs into this state shall apply to the state apiarist for a written entry permit at least sixty days prior to the proposed entry date. A statement must accompany each application for an entry permit describing each offense related to beekeeping for which the person has been subject to a penalty by a state, federal, or foreign government. The written entry permit must accompany all such shipments when they enter the state. Entry into this state without a permit is unlawful and is punishable pursuant to section 160.14. However, entry requirements of this section shall not apply to a package shipped by the United States postal service.

4. At least ten days before entry a person who has applied for an entry permit must meet both of the following conditions:

a. A valid Iowa certificate of inspection must be on file with the department or a valid certificate of inspection or certificate of health dated within the last sixty days must have been submitted by the state apiarist or inspector of the state of origin. A certificate must indicate the absence of any contagious diseases, parasites, or Africanized bees in the colony or package to be shipped.

b. A completed apiary registration form with locations of apiaries in Iowa indicated along with any fees required for nonresidents must have been submitted. Descriptions of locations shall include all of the following:

(1) The name of the landowner.

(2) Number of colonies to be kept at that location.

(3) The county, township, section number and quarter section, or street address if located within the city limits.

[C24, 27, 31, 35, 39, §4039; C46, 50, 54, 58, §266.13; C62, 66, 71, 73, 75, 77, 79, 81, §160.5]

88 Acts, ch 1051, §2; 90 Acts, ch 1104, §3; 93 Acts, ch 21, §4, 5; 2009 Acts, ch 41, §263

Referred to in §160.14

#### **160.6 Notice to treat, disinfect, remove, or destroy.**

The state apiarist shall provide a notice in writing to an owner of bees or bee equipment infested with contagious diseases, parasites, or Africanized bees to treat, disinfect, destroy, or remove a colony or equipment in a manner and by a time specified by the state apiarist in the order.

[C27, 31, 35, §4039-a1; C39, §4039.1; C46, 50, 54, 58, §266.14; C62, 66, 71, 73, 75, 77, 79, 81, §160.6]

93 Acts, ch 21, §6

Referred to in §160.7

#### **160.7 Apiarist to disinfect or destroy — costs.**

If the owner fails to comply with the notice provided in section 160.6, the state apiarist shall declare the diseased, parasite-infested or Africanized colonies a nuisance, and administer the destruction or disinfection of the bee colonies or equipment required to eliminate the source of the disease, parasites, or Africanized bees. The state apiarist shall keep an account of costs related to the destruction.

[C27, 31, 35, §4039-a2; C39, §4039.2; C46, 50, 54, 58, §266.15; C62, 66, 71, 73, 75, 77, 79, 81, §160.7]

93 Acts, ch 21, §7

Nuisances in general, chapter 657

#### **160.8 Costs certified — collected as tax.**

The state apiarist shall certify the amount of such cost to the owner and if the same is not paid to the state apiarist within sixty days, the amount shall be certified to the county auditor of the county in which the premises are located, who shall spread the same upon the tax

books which shall be a lien upon the property of the bee owner and be collected as other taxes are collected.

[C27, 31, 35, §4039-a3; C39, §4039.3; C46, 50, 54, 58, §266.16; C62, 66, 71, 73, 75, 77, 79, 81, §160.8]

Referred to in §331.512  
Collection of taxes, chapter 445

#### **160.9 Rules.**

The state apiarist shall adopt rules relating to the inspection, regulation of movement, sale, and cleanup of bee colonies and used beekeeping equipment that is infested with a contagious disease, harmful parasites, or an undesirable subspecies of honey bees.

[C27, 31, 35, §4039-a4; C39, §4039.4; C46, 50, 54, 58, §266.17; C62, 66, 71, 73, 75, 77, 79, 81, §160.9]

88 Acts, ch 1051, §3; 93 Acts, ch 21, §8

**160.10** Repealed by 93 Acts, ch 21, § 10.

**160.11** Repealed by 98 Acts, ch 1032, § 10.

**160.12** Repealed by 65 Acts, ch 170, § 5.

#### **160.13 Annual report.**

Said apiarist shall also make an annual report to the secretary of agriculture, stating the number of apiaries visited, number of demonstrations held, number of lectures given, the number of examinations and inspections made, together with such other matters of general interest concerning the business of beekeeping as in the apiarist's judgment shall be of value to the public.

[C24, 27, 31, 35, 39, §4040; C46, 50, 54, 58, §266.21; C62, 66, 71, 73, 75, 77, 79, 81, §160.13]

#### **160.14 Penalties — injunctions.**

1. A person who knowingly sells, barter, gives away, moves, or allows to be moved, a diseased or parasite-infested colony, package, equipment, or combs without the consent of the state apiarist, or exposes infected honey or infected equipment to the bees, or who willfully fails or neglects to give proper treatment to a diseased or parasite-infested colony, or who interferes with the state apiarist or the apiarist's assistants in the performance of official duties or who refuses to permit the examination of bees or their destruction as provided in this chapter or violates another provision of this chapter, except as provided in subsection 2, is guilty of a simple misdemeanor.

2. A person who knowingly moves or causes to be moved into this state a colony, package, used equipment, or combs in violation of section 160.5, is guilty of a serious misdemeanor.

3. Each day a colony, package, used equipment, or combs moved into this state in violation of section 160.5 remain in this state constitutes a separate offense. A colony, package, used equipment, or combs brought into this state in violation of section 160.5 may be declared a nuisance. The department shall provide written notice to the person owning the land where the colony, package, used equipment, or combs are located, and, if known, to the person owning the colony, package, used equipment, or combs. The notice shall state that the owner of the colony, package, used equipment, or combs must remove the colony, package, used equipment, or combs from this state within five days of the notification. After the five days have lapsed the department may seize the colony, package, used equipment, or combs. The department may secure a warrant if the owner of the land objects to the seizure. The department shall maintain the seized property until a court, upon petition by the department, determines the disposition of the property. The court shall render a decision concerning the disposition of the property by the court within ten days of the filing of the petition. Upon conviction of a violation of section 160.5, a person shall forfeit all interest in property moved in violation of that section and the department may immediately destroy the property.

4. The attorney general or persons designated by the attorney general may institute suits

on behalf of the state apiarist to obtain injunctive relief to restrain and prevent violations of this chapter.

[C24, 27, 31, 35, 39, §4041; C46, 50, 54, 58, §266.22; C62, 66, 71, 73, 75, 77, 79, 81, §160.14] 85 Acts, ch 48, §1; 88 Acts, ch 1051, §5; 90 Acts, ch 1104, §4, 5; 93 Acts, ch 21, §9  
 Referred to in §160.5

**160.15 Payment of expenses.**

All expenses, except salaries, incurred by the state apiarist or the apiarist’s assistants in the performance of their duties within a county shall be paid not to exceed two hundred dollars per annum for the purpose of eradication of diseases and parasites among bees. Such work of eradication shall be done in such county under the supervision of the state apiarist.

[C31, 35, §4041-c1; C39, §4041.1; C46, 50, 54, 58, §266.23; C62, 66, 71, 73, 75, 77, 79, 81, §160.15] 83 Acts, ch 123, §70, 209; 88 Acts, ch 1051, §6

**160.16** Repealed by 98 Acts, ch 1032, § 10.

**CHAPTER 161**

**AGRICHEMICAL REMEDIATION**

Repealed by 2011 Acts, ch 46, §6  
 Executive council to allocate moneys for payment of any outstanding claim for remediation of a contaminated site as provided in former chapter 161 as it existed when agrichemical remediation board executed a remediation agreement with the claimant; 2011 Acts, ch 46, §5

**CHAPTER 161A**

**SOIL AND WATER CONSERVATION**

Referred to in §159.1, 159.5, 159.6, 159.8, 161C.1, 161E5, 175.34, 456A.33A, 457A.1, 461.33, 466B.48

This chapter not enacted as a part of this title; transferred from chapter 467A in Code 1993

	DIVISION I		161A.11	Report to governor. Repealed by 2003 Acts, ch 74, §2; 2003 Acts, ch 128, §2.
	DIVISION OF SOIL CONSERVATION			
161A.1	Short title.		161A.12	Statement to department of management.
161A.2	Declaration of policy.			
161A.3	Definitions.			
161A.4	Soil conservation division — committee.			
				DIVISION III
				SUBDISTRICTS
	DIVISION II		161A.13	Purpose of subdistricts.
	SOIL AND WATER CONSERVATION DISTRICTS		161A.14	Petition to form.
			161A.15	Notice and hearing.
161A.5	Soil and water conservation districts.		161A.16	Publication of notice.
161A.6	Commissioners — general provisions.		161A.17	Subdistrict in more than one district.
161A.7	Powers of districts and commissioners.		161A.18	Certification.
			161A.19	Governing body.
161A.8	Cooperation between districts.		161A.20	Special annual tax.
161A.9	State agencies to cooperate.		161A.21	Condemnation by subdistrict.
161A.10	Discontinuance of districts.		161A.22	General powers applicable — warrants or bonds.



the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and promote the health, safety and public welfare of the people of this state.

[C39, §2603.03; C46, §160.2; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.2]

86 Acts, ch 1245, §645

C93, §161A.2

Referred to in §161A.7, 161A.42

### 161A.3 Definitions.

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. “*Agency of this state*” includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

2. “*Book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. “*Commissioner*” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

4. “*Committee*” or “*state soil conservation committee*” means the committee established by section 161A.4.

5. “*Department*” means the department of agriculture and land stewardship.

6. “*District*” or “*soil and water conservation district*” means a governmental subdivision of this state, and a public body corporate and politic, organized for the purposes, with the powers, and subject to the restrictions in this chapter set forth.

7. “*Division*” means the division of soil conservation created within the department.

8. “*Due notice*” means notice published at least twice, with an interval of at least six days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area; or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

9. “*Government*” or “*governmental*” includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, or either of them.

10. “*Landowner*” includes any person, firm, or corporation or any federal agency, this state or any of its political subdivisions, who shall hold title to land lying within a proposed district or a district organized under the provisions of this chapter.

11. “*Nominating petition*” means a petition filed under the provisions of section 161A.5 to nominate candidates for the office of commissioner of a soil and water conservation district.

12. “*Petition*” means a petition filed under the provisions of subsection 1 of section 161A.5 for the creation of a district.

13. “*State*” means the state of Iowa.

14. “*United States*” or “*agencies of the United States*” includes the United States of America, the United States department of agriculture natural resources conservation service, and any other agency or instrumentality, corporate or otherwise, of the United States.

[C39, §2603.04; C46, §160.3; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.3; 82 Acts, ch 1199, §72, 96]

86 Acts, ch 1238, §61; 86 Acts, ch 1245, §646, 647; 87 Acts, ch 23, §16; 89 Acts, ch 83, §55

C93, §161A.3

95 Acts, ch 216, §25; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

Referred to in §161A.42, 669.2, 670.1

### 161A.4 Soil conservation division — committee.

1. The soil conservation division is established within the department to perform the functions conferred upon it in this chapter and chapters 161C, 161E, 161F, 207, and 208. The division shall be administered in accordance with the policies of the state soil conservation

committee, which shall advise the division and which shall approve administrative rules proposed by the division for the administration of this chapter and chapters 161C, 161E, 161F, 207, and 208 before the rules are adopted pursuant to section 17A.5. If a difference exists between the committee and secretary regarding the content of a proposed rule, the secretary shall notify the chairperson of the committee of the difference within thirty days from the committee's action on the rule. The secretary and the committee shall meet to resolve the difference within thirty days after the secretary provides the committee with notice of the difference.

2. In addition to other duties and powers conferred upon the division of soil conservation, the division has the following duties and powers:

a. To offer assistance as appropriate to the commissioners of soil and water conservation districts in carrying out any of their powers and programs.

b. To take notice of each district's long-range resource conservation plan established under section 161A.7, in order to keep the commissioners of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

c. To coordinate the programs of the soil and water conservation districts so far as this may be done by advice and consultation.

d. To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

e. To disseminate information throughout the state concerning the activities and program of the soil and water conservation districts.

f. To render financial aid and assistance to soil and water conservation districts for the purpose of carrying out the policy stated in this chapter.

g. To assist each soil and water conservation district in developing a district soil and water resource conservation plan as provided under section 161A.7. The plan shall be developed according to rules adopted by the division to preserve and protect the public interest in the soil and water resources of this state for future generations and for this purpose to encourage, promote, facilitate, and where such public interest requires, to mandate the conservation and proper control of and use of the soil and water resources of this state, by measures including but not limited to the control of floods, the control of erosion by water or by wind, the preservation of the quality of water for its optimum use for agricultural, irrigation, recreational, industrial, and domestic purposes, all of which shall be presumed to be conducive to the public health, convenience, and welfare, both present and future.

h. To file the district soil and water resource conservation plans as part of a state soil and water resource conservation plan. The state plan shall contain on a statewide basis the information required for a district plan under this section.

i. To establish a position of state drainage coordinator for drainage districts and drainage and levee districts which will keep the management of those districts informed of the activities and experience of all other such districts and facilitate an interchange of advice, experience and cooperation among the districts, coordinate by advice and consultation the programs of the districts, secure the cooperation and assistance of the United States and its agencies and of the agencies of this state and other states in the work of the districts, disseminate information throughout the state concerning the activities and programs of the districts, and provide other appropriate assistance to the districts.

3. The division, in consultation with the commissioners of the soil and water conservation districts, shall conduct a biennial review to survey the availability of private soil and water conservation control contractors in each district. A report containing the results of the review shall be prepared and posted on the department's internet site.

4. A state soil conservation committee is established within the department.

a. The nine voting members of the committee shall be appointed by the governor subject to confirmation by the senate pursuant to section 2.32, and shall include the following:

(1) Six of the members shall be persons engaged in actual farming operations, one of whom shall be a resident of each of six geographic regions in the state, including northwest, southwest, north central, south central, northeast, and southeast Iowa, and no more than one

of whom shall be a resident of any one county. The boundaries of the geographic regions shall be established by rule.

(2) The seventh, eighth, and ninth appointive members shall be chosen by the governor from the state at large, with one appointed to be a representative of cities, one appointed to be a representative of the mining industry, and one appointee who is a farmer actively engaged in tree farming.

b. The committee may invite the secretary of agriculture of the United States to appoint one person to serve with the other members, and the president of the Iowa county engineers association may designate a member of the association to serve in the same manner, but these persons have no vote and shall serve in an advisory capacity only.

c. The following shall serve as ex officio nonvoting members of the committee:

(1) The director of the Iowa cooperative extension service in agriculture and home economics, or the director's designee.

(2) The director of the department of natural resources or the director's designee.

5. a. The committee shall designate its chairperson, and may change the designation. The members appointed by the governor shall serve for a period of six years. Members shall be appointed in each odd-numbered year to succeed members whose terms expire as provided by section 69.19. Appointments may be made at other times and for other periods as necessary to fill vacancies on the committee. Members shall not be appointed to serve more than two complete six-year terms. Members designated to represent the director of the department of natural resources and the director of the Iowa cooperative extension service in agriculture and home economics shall serve at the pleasure of the officer making the designation.

b. A majority of the voting members of the committee constitutes a quorum, and the concurrence of a majority of the voting members of the committee in any matter within their duties is required for its determination.

c. Members are entitled to actual expenses necessarily incurred in the discharge of their duties as members of the committee. The expenses paid to the committee members shall be paid from funds appropriated to the department. Each member of the committee may also be eligible to receive compensation as provided in section 7E.6. The committee shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements.

6. a. The committee may perform acts, hold public hearings, and propose and approve rules pursuant to chapter 17A as necessary for the execution of its functions.

b. The committee shall recommend to the secretary each year a budget for the division. The secretary, at the earliest opportunity and prior to formulating a budget, shall meet with representatives of the committee to discuss the committee's recommendation.

c. The committee shall recommend three persons to the secretary of agriculture who shall appoint from the persons recommended an administrative director to head the division and serve at the pleasure of the secretary. After reviewing the names submitted, the secretary may request that the soil conservation committee submit additional names for consideration.

7. The committee or division may call upon the attorney general of the state for necessary legal services. The committee may delegate to its chairperson, to one or more of its members, or to one or more agents or employees, powers and duties as it deems proper. Upon request of the committee, for the purpose of carrying out any of the functions assigned the committee or the department by law, the supervising officer of any state agency, or of any state institution of learning shall, insofar as possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail the request to the staff or personnel of the agency or institution of learning, and make the special reports, surveys, or studies as the committee requests.

[C39, §2603.05; C46, §160.4; C50, 54, 58, 62, 66, 71, §467A.4; C73, §455A.40(3), 467A.4; C75, 77, 79, 81, §467A.4; 82 Acts, ch 1199, §73, 74, 96]

83 Acts, ch 101, §102; 85 Acts, ch 163, §13; 86 Acts, ch 1245, §648 – 650, 668; 87 Acts, ch 23, §17; 88 Acts, ch 1198, §1, 2; 89 Acts, ch 83, §56; 89 Acts, ch 106, §2

C93, §161A.4

2004 Acts, ch 1143, §1; 2007 Acts, ch 22, §43; 2009 Acts, ch 41, §59

Referred to in §159.5, 161A.3, 161A.7, 161C.1, 460.303, 461.11, 466A.1, 466B.41

## DIVISION II

### SOIL AND WATER CONSERVATION DISTRICTS

#### **161A.5 Soil and water conservation districts.**

1. The one hundred soil and water conservation districts\* established in the manner which was prescribed by law prior to July 1, 1975 shall continue in existence with the boundaries and the names\* in effect on July 1, 1975. If the existence of a district so established is discontinued pursuant to section 161A.10, a petition for reestablishment of the district or for annexation of the former district's territory to any other abutting district may be submitted to, and shall be acted upon by, the state soil conservation committee in substantially the manner provided by section 467A.5, Code 1975.

2. The governing body of each district shall consist of five commissioners elected on a nonpartisan basis for staggered four-year terms commencing on the first day of January that is not a Sunday or holiday following their election. Any eligible elector residing in the district is eligible to the office of commissioner, except that no more than one commissioner shall at any one time be a resident of any one township. A vacancy is created in the office of any commissioner who changes residence into a township where another commissioner then resides. If a commissioner is absent for sixty or more percent of monthly meetings during any twelve-month period, the other commissioners by their unanimous vote may declare the member's office vacant. A vacancy in the office of commissioner shall be filled by appointment of the state soil conservation committee until the next succeeding general election, at which time the balance of the unexpired term shall be filled as provided by section 69.12.

3. At each general election a successor shall be chosen for each commissioner whose term will expire in the succeeding January.

a. Nomination of candidates for the office of commissioner shall be made by petition in accordance with chapter 45, except that each candidate's nominating petition shall be signed by at least twenty-five eligible electors of the district. The petition form shall be furnished by the county commissioner of elections.

b. Every candidate shall file with the nomination papers an affidavit stating the candidate's name, the candidate's residence, that the person is a candidate and is eligible for the office of commissioner, and that if elected the candidate will qualify for the office. The affidavit shall also state that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

c. The signed petitions shall be filed with the county commissioner of elections not later than 5:00 p.m. on the sixty-ninth day before the general election.

d. The votes for the office of district commissioner shall be canvassed in the same manner as the votes for county officers, and the returns shall be certified to the commissioners of the district. A plurality is sufficient to elect commissioners, and a primary election for the office shall not be held.

e. If the canvass shows that the two candidates receiving the highest and the second highest number of votes for the office of district commissioner are both residents of the same township, the board shall certify as elected the candidate who received the highest number of votes for the office and the candidate receiving the next highest number of votes for the office who is not a resident of the same township as the candidate receiving the highest number of votes.

[C39, §2603.06; C46, §160.5; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.5]

87 Acts, ch 23, §18; 89 Acts, ch 136, §73; 90 Acts, ch 1238, §41

C93, §161A.5

94 Acts, ch 1180, §41; 96 Acts, ch 1083, §1; 98 Acts, ch 1052, §5; 2009 Acts, ch 41, §201

Referred to in §39.21, 161A.3, 161A.15

\*Established as "soil conservation districts"

#### **161A.6 Commissioners — general provisions.**

The commissioners of each soil and water conservation district shall convene on the first day of January that is not a Sunday or holiday in each odd-numbered year. Those commissioners whose term of office begins on that day shall take the oath of office prescribed by section 63.10. The commissioners shall then organize by election of a chairperson and a vice chairperson.

The commissioners of the respective districts shall submit to the department such statements, estimates, budgets, and other information at such times and in such manner as the department may require.

A commissioner shall not receive compensation for the commissioner's services. However, to the extent funds are available, a commissioner is entitled to receive actual expenses necessarily incurred in the discharge of the commissioner's duties, including reimbursement for mileage at the rate provided under section 70A.9 for state business use.

The commissioners may call upon the attorney general of the state for such legal services as they may require. The commissioners may delegate to their chairperson, to one or more commissioners or to one or more agents, or employees, such powers and duties as they may deem proper. The commissioners shall furnish to the division of soil conservation, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall regularly report to the division a summary of financial information regarding moneys controlled by the commissioners, which are not audited by the state, according to rules adopted by the division.

The commissioners may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

[C39, §2603.08; C46, §160.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.6]

87 Acts, ch 23, §19

C93, §161A.6

93 Acts, ch 176, §33; 96 Acts, ch 1083, §2

#### **161A.7 Powers of districts and commissioners.**

1. A soil and water conservation district organized under this chapter has the following powers, in addition to others granted in other sections of this chapter:

a. To conduct surveys, investigations, and research relating to the character of soil erosion and erosion, floodwater, and sediment damages, and the preventive and control measures needed, to publish the results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the Iowa agricultural experiment station located at Ames, Iowa, and pursuant to a cooperative agreement entered into between the Iowa agricultural experiment station and such district.

b. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which

soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled; provided, however, that in order to avoid duplication of agricultural extension activities, no district shall initiate any demonstrational projects, except in cooperation with the Iowa agricultural extension service whose offices are located at Ames, Iowa, and pursuant to a cooperative agreement entered into between the Iowa agricultural extension service and such district.

c. To carry out preventive and control measures within the district, including but not limited to crop rotations, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in section 161A.2, on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

d. To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion-control and watershed protection and flood prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter.

e. To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

f. To make available on such terms as it shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, lime, and such other material or equipment as will assist such landowners or occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for the prevention of erosion, floodwater, and sediment damages.

g. To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter. Any approval or permits from the council required under other provisions of law shall be obtained by the district prior to initiation of any construction activity.

h. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for the prevention of erosion, floodwater, and sediment damages within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district.

i. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules not inconsistent with this chapter, to carry into effect its purposes and powers.

j. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

k. Subject to the approval of the state soil conservation committee, to change the name of the soil and water conservation district.

l. To provide for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency as provided in section 161A.75.

m. To encourage local school districts to provide instruction in the importance of and in some of the basic methods of soil conservation, as a part of course work relating to conservation of natural resources and environmental awareness required in rules adopted by the state board of education pursuant to section 256.11, subsections 3 and 4, and to offer technical assistance to schools in developing such instructional programs.

n. To develop a soil and water resource conservation plan for the district.

(1) The district plan shall contain a comprehensive long-range assessment of soil and surface water resources in the district consistent with rules approved by the committee under section 161A.4. In developing the plan the district may receive technical support from the United States department of agriculture natural resources conservation service and the county board of supervisors in the county where the district is located. The division and the Iowa cooperative extension service in agriculture and home economics may provide technical support to the district. The support may include but is not limited to the following:

(a) Assessing the condition of soil and surface water in the district, including an evaluation of the type, amount, and quality of soil and water, the threat of soil erosion and erosion, floodwater, and sediment damages, and necessary preventative and control measures.

(b) Developing methods to maintain or improve soil and water condition.

(c) Cooperating with other state and federal agencies to carry out this support.

(2) The title page of the district plan and a notification stating where the plan may be reviewed shall be recorded with the recorder in the county in which the district is located, and updated as necessary, after the committee approves and the administrator of the division signs the district plan. The commissioners shall provide notice of the recording and may provide a copy of the approved district plan to the county board of supervisors in the county where the district is located. The district plan shall be filed with the division as part of the state soil and water resource conservation plan provided in section 161A.4.

o. To enter into agreements pursuant to chapter 161C with the owner or occupier of land within the district or cooperating districts, or any other private entity or public agency, in carrying out water protection practices, including district and multidistrict projects to protect this state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants.

2. As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

3. The commissioners, as a condition for the receipt of any state cost-sharing funds for permanent soil conservation practices, shall require the owner of the land on which the practices are to be established to covenant and file, in the office of the soil and water conservation district of the county in which the land is located, an agreement identifying the particular lands upon which the practices for which state cost-sharing funds are to be received will be established, and providing that the project will not be removed, altered, or modified so as to lessen its effectiveness without the consent of the commissioners, obtained in advance and based on guidelines drawn up by the state soil conservation committee, for a period not to exceed twenty years after the date of receiving payment. The commissioners shall assist the division in the enforcement of this subsection. The agreement does not create a lien on the land, but is a charge personally against the owner of the land at the time of removal, alteration, or modification if an administrative order is made under section 161A.61, subsection 3.

4. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the general assembly shall specifically so state.

5. After the formation of any district under the provisions of this chapter, all participation hereunder shall be purely voluntary, except as specifically stated herein.

[C39, §2603.09; C46, §160.7; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.7; 82 Acts, ch 1083, §1, ch 1220, §1]

86 Acts, ch 1238, §61; 86 Acts, ch 1245, §651; 87 Acts, ch 23, §20; 88 Acts, ch 1189, §1; 88 Acts, ch 1198, §3; 88 Acts, ch 1262, §9; 89 Acts, ch 83, §57; 92 Acts, ch 1108, §1; 92 Acts, ch 1239, §49

C93, §161A.7

93 Acts, ch 109, §1; 95 Acts, ch 216, §25; 97 Acts, ch 59, §1; 2009 Acts, ch 41, §60; 2012 Acts, ch 1095, §9

Referred to in §161A.4, 161A.61, 161A.71

Review of road construction projects, §306.50 – 306.54

#### **161A.8 Cooperation between districts.**

The commissioners of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

[C39, §2603.10; C46, §160.8; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.8]

C93, §161A.8

#### **161A.9 State agencies to cooperate.**

Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, may cooperate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this chapter.

[C39, §2603.11; C46, §160.9; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.9]

C93, §161A.9

#### **161A.10 Discontinuance of districts.**

At any time after five years after the organization of a district under this chapter, any twenty-five owners of land lying within the boundaries of the district, but in no case less than twenty percent of the owners of land lying within the district, may file a petition with the committee asking that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct public meetings and public hearings upon the petition as necessary to assist in the consideration of the petition. Within sixty days after a petition has been received by the committee, the division shall give due notice of the holding of a referendum, shall supervise the referendum, and shall issue appropriate rules governing the conduct of the referendum. The question is to be submitted by ballots upon which the words “For terminating the existence of the ..... (name of the soil and water conservation district to be here inserted)” and “Against terminating the existence of the ..... (name of the soil and water conservation district to be here inserted)” shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of the propositions as the voter favors or opposes discontinuance of the district. All owners of lands lying within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relating to the referendum invalidate the referendum or the result of the referendum if notice was given substantially as provided in this section and if the referendum was fairly conducted.

When sixty-five percent of the landowners vote to terminate the existence of the district, the committee shall advise the commissioners to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of the sale to be deposited into the state treasury. The commissioners shall then file an application, duly verified, with the secretary of state for the discontinuance of the district, and shall transmit with the application the certificate of the

committee setting forth the determination of the committee that the continued operation of the district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as provided in this section, and shall set forth a full accounting of the properties and proceeds of the sale. The secretary of state shall issue to the commissioners a certificate of dissolution and shall record the certificate in an appropriate book of record in the secretary of state's office.

Upon issuance of a certificate of dissolution under this section, all ordinances and regulations previously adopted and in force within the districts are of no further force and effect. All contracts previously entered into, to which the district or commissioners are parties, remain in force and effect for the period provided in the contracts. The committee is substituted for the district or commissioners as party to the contracts. The committee is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued, and to modify or terminate the contracts by mutual consent or otherwise, as the commissioners of the district would have had.

The committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon discontinuance petitions nor make determinations pursuant to the petitions in accordance with this chapter, more often than once in five years.

[C39, §2603.12; C46, §160.10; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.10]

86 Acts, ch 1245, §652; 87 Acts, ch 23, §21; 89 Acts, ch 106, §3

C93, §161A.10

Referred to in §161A.5

**161A.11 Report to governor.** Repealed by 2003 Acts, ch 74, § 2; 2003 Acts, ch 128, § 2.

**161A.12 Statement to department of management.**

On or before October 1 next preceding each annual legislative session, the department shall submit to the department of management, on official estimate blanks furnished for those purposes, statements and estimates of the expenditure requirements for each fiscal year, and a statement of the balance of funds, if any, available to the division, and the estimates of the division as to the sums needed for the administrative and other expenses of the division for the purposes of this chapter.

[C46, §160.12; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.12]

86 Acts, ch 1245, §654

C93, §161A.12

96 Acts, ch 1034, §6; 2012 Acts, ch 1095, §10

### DIVISION III

#### SUBDISTRICTS

**161A.13 Purpose of subdistricts.**

Subdistricts of a soil and water conservation district may be formed as provided in this chapter for the purposes of carrying out watershed protection and flood prevention programs within the subdistrict but shall not be formed solely for the purpose of establishing or taking over the operation of an existing drainage district.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.13]

86 Acts, ch 1238, §61; 87 Acts, ch 23, §22; 89 Acts, ch 83, §58

C93, §161A.13

**161A.14 Petition to form.**

When the landowners in a proposed subdistrict desire that a subdistrict be organized, they shall file a petition with the commissioners of the soil and water conservation district. The area must be contiguous and in the same watershed but it shall not include any area located within the boundaries of an incorporated city. The petition shall set forth an intelligible

description by congressional subdivision, or otherwise, of the land suggested for inclusion in the subdistrict and shall state whether the special annual tax or special benefit assessments will be used, or whether the use of both is contemplated. The petition shall contain a brief statement giving the reasons for organization, and requesting that the proposed area be organized as a subdistrict, and must be signed by sixty-five percent of the landowners in the proposed subdistrict. Land already in one subdistrict cannot be included in another. The soil and water conservation district commissioners shall review the petition and if it is found adequate shall arrange for a hearing on it.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.14]

87 Acts, ch 23, §23

C93, §161A.14

#### **161A.15 Notice and hearing.**

Within thirty days after a petition has been filed with the soil and water conservation district commissioners, they shall fix a date, hour, and place for a hearing and direct the secretary to cause notice to be given to the owners of each tract of land, or lot, within the proposed subdistrict as shown by the transfer books of the auditor's office, and to each lienholder, or encumbrancer, of any such lands as shown by the county records, and to all other persons whom it may concern, and without naming individuals all actual occupants of land in the proposed subdistrict, of the pendency and purpose of the petition and that all objections to establishment of the subdistrict for any reason must be made in writing and filed with the secretary of the soil and water conservation district at, or before, the time set for hearing. The soil and water conservation district commissioners shall consider and determine whether the operation of the subdistrict within the defined boundaries as proposed is desirable, practicable, feasible, and of necessity in the interest of health, safety, and public welfare. All interested parties may attend the hearing and be heard. The soil and water conservation district commissioners may for good cause adjourn the hearing to a day certain which shall be announced at the time of adjournment and made a matter of record. If the soil and water conservation district commissioners determine that the petition meets the requirements set forth in this section and in section 161A.5, they shall declare that the subdistrict is duly organized and shall record such action in their official minutes together with an appropriate official name or designation for the subdistrict.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.15]

87 Acts, ch 23, §24

C93, §161A.15

2001 Acts, ch 24, §32

#### **161A.16 Publication of notice.**

The notice of hearing on the formation of a subdistrict shall be by publication once each week for two consecutive weeks in some newspaper of general circulation published in the county or district, the last of which shall be not less than ten days prior to the day set for the hearing on the petition. Proof of such service shall be made by affidavit of the publisher, and be on file with the secretary of the district at the time the hearing begins.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.16]

87 Acts, ch 115, §61

C93, §161A.16

#### **161A.17 Subdistrict in more than one district.**

If the proposed subdistrict lies in more than one soil and water conservation district, the petition may be presented to the commissioners of any one of such districts, and the commissioners of all such districts shall act jointly as a board of commissioners with respect to all matters concerning the subdistrict, including its formation. They shall organize as a single board for such purposes and shall designate its chairperson, vice chairperson, and secretary-treasurer to serve for terms of one year. Such a subdistrict shall be formed in the

same manner and has the same powers and duties as a subdistrict formed in one soil and water conservation district.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.17]  
87 Acts, ch 23, §25  
C93, §161A.17

#### **161A.18 Certification.**

Following the entry in the official minutes of the soil and water conservation district commissioners of the creation of the subdistrict, the commissioners shall certify this fact on a separate form, authentic copies of which shall be recorded with the county recorder of each county in which any portion of the subdistrict lies, and with the division of soil conservation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.18]  
87 Acts, ch 23, §26  
C93, §161A.18  
2001 Acts, ch 24, §33

#### **161A.19 Governing body.**

The commissioners of a soil and water conservation district in which the subdistrict is formed are the governing body of the subdistrict. When a subdistrict lies in more than one soil and water conservation district, the combined board of commissioners is the governing body. The governing body of the subdistrict shall appoint three trustees living within the subdistrict to assist with the administration of the subdistrict.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.19]  
87 Acts, ch 23, §27  
C93, §161A.19

#### **161A.20 Special annual tax.**

After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, a subdistrict shall have the authority to impose a special annual tax, the proceeds of which shall be used for the repayment of actual and necessary expenses incurred to organize the subdistrict, to acquire land or rights or interests therein by purchase or condemnation, repair, alteration, maintenance and operation of the present and future works of improvement within its boundaries.

On or before January 10 of each year its governing body shall make an estimate of the amount it deems necessary to be raised by such special tax for the ensuing year and transmit said estimate in dollars to the board of supervisors of the county in which the subdistrict lies.

If portions of the subdistrict are in more than one county, then the governing body, as hereinbefore designated in such event, after arriving at the estimate in dollars deemed necessary for the entire subdistrict shall ratably apportion such amount between the counties and transmit and certify the prorated portion to the respective boards of supervisors of each of the counties.

The board or boards of supervisors shall upon receipt of certification from the governing body of the district make the necessary levy on the assessed valuation of all real estate within the boundaries of the subdistrict lying within their respective county to raise said amounts, but in no event to exceed one dollar and eight cents per thousand dollars of assessed value.

The special tax levied under this section shall be collected in the same manner as other taxes with a penalty for delinquency. The moneys collected from the special tax and any delinquency penalty shall be deposited in a fund established by the governing body as provided by a resolution adopted by the governing body and delivered for filing with each appropriate county treasurer. Moneys earned as income from moneys in the fund, including as interest, shall remain in the fund until expended by the governing body according to procedures specified in the resolution. If the governing body does not adopt a resolution or deliver the resolution to the county treasurer, the moneys shall be deposited into a separate account in the county's general fund by that county treasurer. The account shall be identified

by the official name of the subdistrict and expenditures from the account shall be made on requisition of the chairperson and secretary of the governing body of the subdistrict.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467A.20]

C93, §161A.20

2005 Acts, ch 116, §1

Referred to in §161A.22, 161A.41

#### **161A.21 Condemnation by subdistrict.**

A subdistrict of a soil and water conservation district may condemn land or rights or interests in the subdistrict to carry out the authorized purposes of the subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.21]

87 Acts, ch 23, §28

C93, §161A.21

#### **161A.22 General powers applicable — warrants or bonds.**

A subdistrict organized under this chapter has all of the powers of a soil and water conservation district in addition to other powers granted to the subdistrict in other sections of this chapter.

The governing body of the subdistrict, upon determination that benefits from works of improvement as set forth in the watershed work plan to be installed will exceed costs thereof, and that funds needed for purposes of the subdistrict require levy of a special benefit assessment as provided in section 161A.23, in lieu of the special annual tax as provided in section 161A.20, shall record its decision to use its taxing authority and, upon majority vote of the governing body and with the approval of the state soil conservation committee, may issue warrants or bonds payable in not more than forty semiannual installments in connection with the special benefit assessment, and pledge and assign the proceeds of the special benefit assessment and other revenues of the subdistrict as security for the warrants or bonds. The warrants and bonds of indebtedness are general obligations of the subdistrict, exempt from all taxes, state and local, and are not indebtedness of the soil and water conservation district or the state of Iowa.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.22]

87 Acts, ch 23, §29

C93, §161A.22

Referred to in §422.7

### DIVISION IV

#### ALTERNATE METHOD OF TAXATION FOR WATERSHED PROTECTION AND FLOOD PREVENTION

#### **161A.23 Agreement by fifty percent of landowners.**

1. After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, the governing body of the subdistrict shall have the authority to establish a special tax for the purpose of organization, construction, repair, alteration, enlargement, extension, and operation of present and future works of improvement within the boundaries of said subdistrict.

2. The governing body shall appoint three appraisers to assess benefits and classify the land affected by such improvements. One of such appraisers shall be a competent licensed professional engineer and two of them shall be resident landowners of the county or counties in which the subdistrict is located but not living within nor owning or operating any lands included in said subdistrict.

3. The appraisers shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages, benefits and apportion and assess the costs and expenses of construction of the said improvement according to law and their

best judgment, skill, and ability. If said appraisers or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the governing body of the subdistrict shall appoint others with like qualifications to take their places and perform said duties.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.23]

C93, §161A.23

2007 Acts, ch 126, §38

Referred to in §161A.22, 161A.38, 161A.41

#### **161A.24 Assessment for improvements.**

At the time of appointing said appraisers, the governing body shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the governing body. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto.

The amount of benefit appraised to each forty acres of land within the subdistrict shall be determined by the improvements within said subdistrict based upon the work plan as agreed upon by the subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.24]

C93, §161A.24

Referred to in §161A.41

#### **161A.25 Report of appraisers.**

In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.25]

C93, §161A.25

Referred to in §161A.41

#### **161A.26 Hearing.**

The governing body shall fix a time for a hearing within sixty days upon receiving the report of the appraisers, and the governing body shall cause notice to be served upon each person not less than ten days before said hearing whose name appears as owner, naming that person, and also upon the person or persons in actual occupancy of any tract of land without naming them of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a subdistrict, and shall state the amount of assessment of costs and expenses of organizing and construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the governing body at or before the time set for such hearing.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.26]

C93, §161A.26

Referred to in §161A.41

#### **161A.27 Determination by board.**

At the time fixed or at an adjourned hearing, the governing body shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses

made in said report against any body or tract of land in said subdistrict as may appear to the board to be just and equitable.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.27]

C93, §161A.27

Referred to in §161A.41

#### **161A.28 Appeal.**

Any person aggrieved may appeal from any final action of the governing body in relation to any matter involving the person's rights, to the district court of the county in which the proceeding was held.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.28]

C93, §161A.28

Referred to in §161A.41

#### **161A.29 Intercounty subdistricts.**

In subdistricts extending into two or more counties, appeals from final orders resulting from the joint action of the several governing bodies of such subdistrict may be taken to the district court of any county into which the district extends.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.29]

C93, §161A.29

Referred to in §161A.41

#### **161A.30 Notice of appeal.**

All appeals shall be taken within twenty days after the date of final action or order of the governing body from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken, the order or action appealed from, and stating that the appeal will come on for hearing thirty days following perfection of the appeal with allowances of additional time for good cause shown. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.30]

C93, §161A.30

Referred to in §161A.41

#### **161A.31 Petition filed.**

Within twenty days after perfection of notice, the appellant shall file a petition setting forth the order or final action of the governing body appealed from and the grounds of the appellant's objections and the appellant's complaint, with a copy of the appellant's claim for damages or objections filed by the appellant with the auditor. The appellant shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.31]

C93, §161A.31

Referred to in §161A.41

#### **161A.32 Assessment certified.**

When the board or boards of supervisors shall receive a certification from the governing body of the district to make the necessary assessment on the real estate within the boundaries of the subdistrict lying within their respective county, this shall be construed as final action by the governing body.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.32]

C93, §161A.32

Referred to in §161A.41

#### **161A.33 Assessments transmitted.**

1. The governing body upon receiving the reports from three appointed appraisers and after holding the hearings shall transmit and certify the amounts of assessments to the

respective boards of supervisors which, upon receipt of certification from the governing body of the district, make the necessary levy of such assessments as fixed by the governing body upon the land within such subdistrict. The assessments shall be levied at that time as a tax and shall bear interest at a rate not exceeding that permitted by chapter 74A from that date payable annually except as hereafter provided as to cash payments therefor within a specified time.

2. The assessment levied under this section together with any accrued interest or delinquency penalty as provided in this chapter shall be deposited in a fund established by the governing body as provided by a resolution adopted by the governing body and delivered for filing with each appropriate county treasurer. Moneys earned as income from moneys in the fund, including as interest, shall remain in the fund until expended by the governing body according to procedures specified in the resolution. If the governing body does not adopt a resolution or deliver the resolution to the county treasurer, the moneys shall be deposited into a separate account in the county's general fund by that county treasurer. The account shall be identified by the official name of the subdistrict and expenditures from the account shall be made on requisition of the chairperson and secretary of the governing body of the subdistrict.

3. At no time shall an assessment be made where the benefits accrued to the subdistrict do not exceed the cost of the improvements within the subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.33]

C93, §161A.33

2005 Acts, ch 116, §2

Referred to in §161A.34, 161A.41, 331.552

#### **161A.34 Payment to county treasurer.**

1. All assessments for benefits shall be levied at one time against the property benefited and when levied and certified by the board or boards of supervisors shall be paid at the office of the county treasurer. Each person shall have the right within twenty days after the levy of assessments to pay the person's assessment in full without interest. The county treasurer shall pay the collected moneys into a fund established by the governing body or an account of the county's general fund as provided in section 161A.33.

2. If any levy of assessments is not sufficient to meet the cost and expenses of organizing and construction apportioned to each owner upon each forty-acre tract or less, additional assessments may be made on the same classification as the previous ones.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.34]

C93, §161A.34

2005 Acts, ch 116, §3

Referred to in §161A.41, 331.552

#### **161A.35 Installments.**

If the owner of any premises against which a levy exceeding five hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing in a separate agreement, that in consideration of having a right to pay the owner's assessment in installments, the owner will not make any objection as to the legality of the assessment for benefit, or the levy of the taxes against the owner's property, then such owner shall have the following options:

1. To pay one half of the amount of such assessment at the time of filing such agreement and the remaining one half shall become due and payable one year from the date of filing such agreement. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at a rate fixed by the governing body of the subdistrict, but not exceeding that permitted by chapter 74A, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than forty equal installments, the number to be fixed by the governing body of the subdistrict and interest at the rate fixed by the governing body of the subdistrict, not exceeding that permitted by chapter 74A. The first installment of each assessment shall become due and payable at the September semiannual

tax paying date after the date of filing such agreement, unless the agreement is filed with the county treasurer less than ninety days prior to such September semiannual tax paying date, in that event, the first installment shall become due and payable at the next succeeding September semiannual tax paying date. The second and each subsequent installment shall become due and payable at the September semiannual tax paying date each year thereafter. All such installments shall be collected with interest accrued on the unpaid balance to the September semiannual tax paying date and as other taxes on real estate, with like penalty for delinquency.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.35]

C93, §161A.35

98 Acts, ch 1107, §1; 99 Acts, ch 83, §1; 2012 Acts, ch 1138, §94

Referred to in §161A.41

#### **161A.36 Option by appellant.**

When an owner takes an appeal from the assessment against any of the owner's land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal the owner shall file in the office of the auditor the owner's written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.36]

C93, §161A.36

Referred to in §161A.41

#### **161A.37 Status of classification.**

A classification of land for watershed purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of said subdistrict, except as provided in section 161A.38.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.37]

C93, §161A.37

Referred to in §161A.41

#### **161A.38 New classification.**

After a subdistrict has been established and the improvements thereof constructed and put in operation, if the governing body shall find that the original assessments are not equitable as a basis for the expenses of any enlargement or extension thereof which may have become necessary, they shall order a new classification of all lands in said subdistrict by resolution, and appoint three appraisers, which shall meet the same requirements as set forth in section 161A.23.

Upon the completion of the reclassification, those affected by such reclassification shall have the right to appeal as hereinabove set forth.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.38]

C93, §161A.38

Referred to in §161A.37, 161A.41

#### **161A.39 Benefit of whole subdistrict.**

Assessments for repair, alteration, enlargement, extension, and operation of works of improvement within the watershed district shall be a benefit to the entire subdistrict and levied as such.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.39]

C93, §161A.39

Referred to in §161A.41

#### **161A.40 Compensation of appraisers.**

Persons appointed to appraise and make classifications of lands shall receive such compensation as the governing body may fix and in addition thereto, the necessary expenses of transportation of said persons while engaged in their work; such compensation and

expenses shall be construed as part of the cost of the subdistrict which shall be included when considering classifications of lands within a subdistrict.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.40]

C93, §161A.40

Referred to in §161A.41

#### **161A.41 Election of taxing methods.**

Subdistricts organized under the provisions of this chapter shall designate in the petition which of the taxing methods will be used or may stipulate that both methods are contemplated for use. Should the governing body of the subdistrict find it desirable to change from a special annual tax to special benefit assessments it may elect to do so and shall institute proceedings described in sections 161A.23 through 161A.40 and may divert any moneys already collected under section 161A.20, for the purposes authorized in this chapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §467A.41]

C93, §161A.41

## DIVISION V

### SOIL AND WATER CONSERVATION PRACTICES

#### PART 1

#### DUTIES AND OBLIGATIONS

#### **161A.42 Definitions.**

In addition to the definitions established by section 161A.3, as used in this division, unless the context otherwise requires:

1. "*Agricultural land*" has the meaning assigned that term by section 9H.1.
2. "*Conservation agreement*" means a commitment by the owner or operator of a farm unit to implement a farm unit soil conservation plan or, with the approval of the commissioners of the soil and water conservation district within which the farm unit is located, a portion of a farm unit soil conservation plan. The commitment shall be conditioned on the furnishing by the soil and water conservation district of technical or planning assistance in the establishment of, and cost sharing or other financial assistance for establishment and maintenance of the soil and water conservation practices necessary to implement the plan, or a portion of the plan.
3. "*Cost-share*" or "*cost-sharing*" means a contribution of money made by the state in order to pay a percentage of the costs related to the establishment of voluntary or mandatory practices as provided under this chapter, including but not limited to soil and water conservation practices and erosion control practices.
4. "*Erosion control practices*" means:
  - a. The construction or installation, and maintenance, of such structures or devices as are necessary to carry to a suitable outlet from the site of any building housing four or more residential units, any commercial or industrial development or any publicly or privately owned recreational or service facility of any kind, not served by a central storm sewer system, any water which:
    - (1) Would otherwise cause erosion in excess of the applicable soil loss limit; and
    - (2) Does not carry nor constitute sewage, industrial waste, or other waste as defined by section 455B.171.
  - b. The employment of temporary devices or structures, temporary seeding, fibre mats, plastic, straw, or other measures adequate to prevent erosion in excess of the applicable soil loss limits from the site of, or land directly affected by, the construction of any public or private street, road or highway, any residential, commercial, or industrial building or development, or any publicly or privately owned recreational or service facility of any kind, at all times prior to completion of such construction.

c. The establishment and maintenance of vegetation upon the right-of-way of any completed portion of any public street, road, or highway, or the construction or installation thereon of structures or devices, or other measures adequate to prevent erosion from the right-of-way in excess of the applicable soil loss limits.

5. “*Farm unit*” means a single contiguous tract of agricultural land, or two or more adjacent tracts of agricultural land, located within a single soil and water conservation district, upon which farming operations are being conducted by a person who owns or is purchasing or renting all of the land, or by that person’s tenant or tenants. If a landowner has multiple farm tenants, the land on which farming operations are being conducted by each tenant is a separate farm unit. This definition does not prohibit land which is within a single soil and water conservation district and is owned or being purchased by the same person, or is being rented by the same tenant, from being treated as two or more farm units if the commissioners of the soil and water conservation district deem it preferable to do so.

6. “*Farm unit soil conservation plan*” means a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the commissioners of the soil and water conservation district within which that farm unit is located, identifying those permanent soil and water conservation practices and temporary soil and water conservation practices the use of which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil loss limit or limits. The plan shall if practicable identify alternative practices by which this objective may be attained.

7. “*Forest*” means stands of native or introduced trees containing at least two hundred trees per acre and located on privately owned land. However, a stand of fruit trees is not a forest.

8. “*Professional forester*” means a forestry graduate of an institution of higher learning, who has a minimum of two years of forest management experience.

9. “*Soil and water conservation practices*” means any of the practices designated in or pursuant to this subsection which serve to prevent erosion of soil by wind or water, in excess of applicable soil loss limits, from land used for agricultural or horticultural purposes only.

a. “*Permanent soil and water conservation practices*” means planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, and the construction of terraces, or other permanent soil and water practices approved by the committee.

b. “*Temporary soil and water conservation practices*” means planting of annual or biennial crops, use of strip-cropping, contour planting, or minimum or mulch tillage, and any other cultural practices approved by the committee.

10. “*Soil loss limit*” means the maximum amount of soil loss due to erosion by water or wind, expressed in terms of tons per acre per year, which the commissioners of the respective soil and water conservation districts determine is acceptable in order to meet the objectives expressed in section 161A.2.

11. “*State forester*” means a person employed by the department of natural resources as required by section 456A.13.

[C73, 75, 77, 79, 81, §467A.42]

86 Acts, ch 1238, §40; 86 Acts, ch 1245, §655, 656; 87 Acts, ch 23, §30; 88 Acts, ch 1134, §88; 89 Acts, ch 106, §4; 92 Acts, ch 1184, §2, 3

C93, §161A.42

94 Acts, ch 1107, §8; 2012 Acts, ch 1095, §11, 12

Referred to in §161A.44, 161A.71, 175.2, 175.36

#### **161A.43 Duty of property owners — liability.**

To conserve the fertility, general usefulness, and value of the soil and soil resources of this state, and to prevent the injurious effects of soil erosion, it is hereby made the duty of the owners of real property in this state to establish and maintain soil and water conservation practices or erosion control practices, as required by the regulations of the commissioners of the respective soil and water conservation districts. As used in this section, “*owners of real property in this state*” includes each state government agency, each political subdivision of the state and each agency of such a political subdivision which has under its control publicly owned land, including but not limited to agricultural land, forests, parks, the grounds of state

educational, penal and human service institutions, public highways, roads and streets, and other public rights-of-way.

A landowner shall not be liable for a claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent installation, construction, or reconstruction of a soil and water conservation practice or an erosion control practice that was installed, constructed, or reconstructed in accordance with generally recognized engineering or safety standards, criteria, or design theory in existence at the time of the installation, construction, or reconstruction. A soil and water conservation practice or an erosion control practice installed, constructed, or reconstructed in compliance with rules adopted by the division and currently in effect shall be deemed to be installed, constructed, or reconstructed according to generally recognized engineering or safety standards, criteria, or design theory in existence at the time of the installation, construction, or reconstruction. A claim shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing soil and water conservation practice or erosion control practice to a new, changed, or altered design standard. This paragraph does not apply to a claim based on a failure of a landowner to upgrade, improve, or alter a soil and water conservation practice or erosion control practice in violation of law. This paragraph does not apply to claims based upon gross negligence.

[C73, 75, 77, 79, 81, §467A.43]

92 Acts, ch 1184, §4; 92 Acts, ch 1239, §50

C93, §161A.43

94 Acts, ch 1023, §16

Referred to in §161A.48, 161A.74

#### **161A.44 Rules by commissioners — scope.**

The commissioners of each soil and water conservation district shall, with approval of and within time limits set by administrative order of the state soil conservation committee, adopt reasonable regulations as are deemed necessary to establish a soil loss limit or limits for the district and provide for the implementation of the limit or limits, and may subsequently amend or repeal their regulations as they deem necessary. The committee shall review the soil loss limit regulations adopted by the soil and water conservation districts at least once every five years, and shall recommend changes in the regulations of a soil and water conservation district which the committee deems necessary to assure that the district's soil loss limits are reasonable and attainable. The commissioners may:

1. Classify land in the district on the basis of topography, soil characteristics, current use, and other factors affecting propensity to soil erosion.
2. Establish different soil loss limits for different classes of land in the district if in their judgment and that of the state soil conservation committee a lower soil loss limit should be applied to some land than can reasonably be applied to other land in the district, it being the intent of the general assembly that no land in the state be assigned a soil loss limit that cannot reasonably be applied to such land.
3. Require the owners of real property in the district to employ either soil and water conservation practices or erosion control practices, and:
  - a. May not specify the particular practices to be employed so long as such owners voluntarily comply with the applicable soil loss limits established for the district.
  - b. May specify two or more approved soil and water conservation practices or erosion control practices, one of which shall be employed by the landowner to bring erosion from land under the landowner's control within the applicable soil loss limit of the district when an administrative order is issued to the landowner.
  - c. In no case may the commissioners require:
    - (1) The employment of erosion control practices as defined in section 161A.42, subsection 4, on land used in good faith for agricultural or horticultural purposes only.
    - (2) The employment of soil and water conservation practices or erosion control practices on that portion of any public street, road or highway completed or under construction within the corporate limits of any city, which is or will become the traveled or surfaced portion of such street, road, or highway.

(3) That any owner or operator of agricultural land refrain from fall plowing of land on which the owner or operator intends to raise a crop during the next succeeding growing season, however on those lands which are prone to excessive wind erosion the commissioners may require that reasonable temporary measures be taken to minimize the likelihood of wind erosion so long as such measures do not unduly increase the cost of operation of the farm on which the land is located. However, fall plowing of soil which is commonly known as gumbo shall always be permitted.

d. May require that a person under an order to employ soil and water conservation practices or erosion control practices submit up to three bids to the commissioners for the work and provide an explanation to the commissioners if a bid other than the lowest bid has been selected by that person.

[C73, 75, 77, 79, 81, §467A.44]

83 Acts, ch 45, §1; 86 Acts, ch 1245, §657; 87 Acts, ch 23, §31; 89 Acts, ch 106, §5  
C93, §161A.44

Referred to in §161A.48, 161A.51, 161A.74, 461.33

#### **161A.45 Submission of regulations to committee — hearing.**

Regulations which the commissioners propose to adopt, amend, or repeal shall be submitted to the committee, in a form prescribed by the committee, for its approval. The committee may approve the regulations as submitted, or with amendments as it deems necessary. The commissioners shall, after approval, publish notice of hearing on the proposed regulations, as approved, in a newspaper of general circulation in the district, setting a date and time not less than ten nor more than thirty days after the publication when a hearing on the proposed regulations will be held at a specified place. The notice shall include the full text of the proposed regulations or shall state that the proposed regulations are on file and available for review at the office of the affected soil and water conservation district.

[C73, 75, 77, 79, 81, §467A.45]

86 Acts, ch 1245, §658; 87 Acts, ch 23, §32; 89 Acts, ch 106, §6  
C93, §161A.45

Referred to in §161A.48, 161A.74

#### **161A.46 Conduct of hearing.**

At the hearing, the commissioners or their designees shall explain, in reasonable detail, the reasons why adoption, amendment, or repeal of the regulations is deemed necessary or advisable. Any landowner, or any occupant of land who would be affected by the regulations, shall be afforded an opportunity to be heard for or against the proposed regulations. At the conclusion of the hearing, the commissioners shall announce and enter of record their decision whether to adopt or modify the proposed regulations. Any modification must be approved by the committee, which may at its discretion order the commissioners to republish the regulations and hold another hearing in the manner prescribed by this chapter.

[C73, 75, 77, 79, 81, §467A.46]

86 Acts, ch 1245, §659; 89 Acts, ch 106, §7  
C93, §161A.46

Referred to in §161A.48, 161A.74

#### **161A.47 Inspection of land on complaint.**

1. The commissioners shall inspect or cause to be inspected any land within the district to determine if land is being damaged by sediment, from soil erosion occurring on neighboring land in excess of the limits established by the district's soil erosion control regulations. If the land is privately owned, the commissioners shall make or cause to be made the inspection, upon receiving a written complaint signed by an owner or occupant of land claiming that the owner's or occupant's land is being damaged by sediment. If the land is subject to a public interest, the commissioners shall make or cause to be made the inspection upon a majority vote of commissioners at an open meeting held pursuant to chapter 21. Land is subject to a public interest if the land is publicly held, subject to an easement held by the public, or the subject of an improvement made at public expense.

2. If, after the inspection, the commissioners find that sediment damages are occurring to land which is owned or occupied by the person filing the complaint or subject to a public interest, and that excess soil erosion is occurring on neighboring land, the commissioners shall issue an administrative order to the landowner or landowners of record, and to the occupant of the land if known to the commissioners. The order shall describe the land and state as nearly as possible the extent to which soil erosion on the land exceeds the limits established by the district's regulations.

3. The order shall be delivered either by personal service or by restricted certified mail to each of the persons to whom it is directed, and shall:

a. In the case of erosion occurring on the site of any construction project or similar undertaking involving the removal of all or a major portion of the vegetation or other cover, exposing bare soil directly to water or wind, state a time not more than five days after service or mailing of the notice of the order when work necessary to establish or maintain erosion control practices must be commenced, and a time not more than thirty days after service or mailing of the notice of the order when the work is to be satisfactorily completed.

b. In all other cases, state a time not more than six months after service or mailing of the notice of the order, by which work needed to establish or maintain the necessary soil and water conservation practices or erosion control measures must be commenced, and a time not more than one year after the service or mailing of the notice of the order when the work is to be satisfactorily completed, unless the requirements of the order are superseded by the provisions of section 161A.48.

[C73, 75, 77, 79, 81, §467A.47]

87 Acts, ch 23, §33; 92 Acts, ch 1057, §1

C93, §161A.47

2009 Acts, ch 41, §202

Referred to in §161A.48, 161A.49, 161A.61, 161A.64, 161A.66, 161A.71, 161A.74

#### **161A.48 Mandatory establishment of soil and water conservation practices.**

1. An owner or occupant of agricultural land in this state is not required to establish any new permanent or temporary soil and water conservation practice unless cost-share or other public moneys have been specifically approved for that land and made available to the owner or occupant pursuant to section 161A.74.

2. Evidence that an application for cost-share or other public moneys, from a source or sources having authority to pay a portion of the cost of work needed to comply with an administrative order issued pursuant to section 161A.47, has been submitted to the proper officer or agency constitutes commencement of the work within the meaning of sections 161A.43 through 161A.53.

3. Upon receiving evidence of the submission of an application, the commissioners shall forward to the officer or agency to which the application was made a written request to receive notification of the disposition of the application. When notified of the approval of the application, the commissioners shall issue to the same parties who received the original administrative order, or their successors in interest, a supplementary order, to be delivered in the same manner as provided by sections 161A.43 to 161A.53 for delivery of original administrative orders. The supplementary order shall state a time, not more than six months after approval of the application for public cost-sharing funds, by which the work needed to comply with the original administrative order shall actually be commenced, and a time thereafter when the work is to be satisfactorily completed. If feasible, that time shall be within one year after the date of the supplementary order, but the owner of land on which a soil and water conservation practice is being established under this section is not required to incur a cost for the practice in any one calendar year which exceeds ten dollars per acre for each acre of land belonging to that owner and located in the county containing the land on which the required practice is being established or in counties contiguous to that county.

[C73, 75, 77, 79, 81, §467A.48]

84 Acts, ch 1192, §1; 86 Acts, ch 1245, §660; 87 Acts, ch 23, §34; 89 Acts, ch 106, §8; 90 Acts, ch 1255, §35; 90 Acts, ch 1260, §29; 91 Acts, ch 268, §238; 92 Acts, ch 1184, §5

C93, §161A.48

96 Acts, ch 1083, §3

Referred to in §161A.47, 161A.49, 161A.61, 161A.71, 161A.74

#### **161A.49 Petition for court order.**

The commissioners shall petition the district court for a court order requiring immediate compliance with an administrative order previously issued by the commissioners as provided in section 161A.47, if:

1. The work necessary to comply with the administrative order is not commenced on or before the date specified in such order, or in any supplementary order subsequently issued as provided in section 161A.48, unless in the judgment of the commissioners the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person or persons to whom such order is directed and the person or persons can be relied upon to commence and complete the necessary work at the earliest possible time.

2. Such work is not being performed with due diligence, or is not satisfactorily completed by the date specified in the administrative order, or when completed does not reduce soil erosion from such land below the limits established by the soil and water conservation district's regulations.

3. The person or persons to whom the administrative order is directed advise the commissioners that they do not intend to commence or complete such work.

[C73, 75, 77, 79, 81, §467A.49]

C93, §161A.49

Referred to in §161A.48, 161A.50, 161A.74

#### **161A.50 Burden — court order.**

In any action brought under section 161A.49, the burden of proof shall be upon the commissioners to show that soil erosion is in fact occurring in excess of the applicable soil loss limits and that the defendant has not established or maintained soil and water conservation practices or erosion control practices in compliance with the soil and water conservation district's regulations. With respect to construction, repair, or maintenance of any public street, road, or highway, evidence that soil erosion control standards equivalent to or in excess of those currently imposed by the United States government on the project or like projects involving use of federal funds shall create a presumption of compliance with the applicable soil loss limit. Upon receiving satisfactory proof, the court shall issue an order directing the landowner or landowners to comply with the administrative order previously issued by the commissioners. The court may modify such administrative order if deemed necessary. Notice of the court order shall be given either by personal service or by restricted certified mail to each of the persons to whom the order is directed, who may within thirty days from the date of the court order appeal to the supreme court. Any person who fails to comply with a court order issued pursuant to this section within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and may be punished accordingly.

[C73, 75, 77, 79, 81, §467A.50]

C93, §161A.50

Referred to in §161A.48, 161A.61, 161A.74

#### **161A.51 Entering on land.**

The commissioners and their authorized agents or employees may enter upon any private or public property, except private dwellings, at any reasonable time to classify land by soil sampling or other appropriate methods or to determine whether soil erosion is occurring on the property in violation of the district's regulations.

1. If the owner or occupant of any property refuses admittance, or if prior to such refusal the commissioners demonstrate the need for a warrant, the commissioners may make an application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

2. In the application the commissioners shall state that entry on the premises is mandated

by the laws of this state or that entry is needed to conduct soil sampling necessary to classify soil in the district as specified in section 161A.44, subsection 1, or to determine whether soil erosion is occurring on the property in violation of the district's regulations. The application shall describe the area or premises, give the date of the last known investigation or sampling, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance or regulation pursuant to which the inspection is to be made.

3. The court may issue a search warrant, after examination of the applicant and any witnesses, if the court is satisfied that there is probable cause to believe the existence of the allegations in the application.

4. In soil sampling and making investigations pursuant to a warrant, the commissioners must execute the warrant in a reasonable manner within the time period specified in the warrant.

[C73, 75, 77, 79, 81, §467A.51]

C93, §161A.51

Referred to in §161A.48, 161A.74

**161A.52** Reserved.

**161A.53 Cooperation with other agencies.**

Soil and water conservation districts may enter into agreements with the federal government or an agency of the federal government, as provided by state law, or with the state of Iowa or an agency of the state, any other soil and water conservation district, or any other political subdivision of this state, for cooperation in preventing, controlling, or attempting to prevent or control soil erosion. Soil and water conservation districts may accept, as provided by state law, money disbursed for soil erosion control purposes by the federal government or an agency of the federal government, and expend the money for the purposes for which it was received.

[C73, 75, 77, 79, 81, §467A.53]

86 Acts, ch 1238, §61; 87 Acts, ch 23, §35; 89 Acts, ch 83, §59

C93, §161A.53

Referred to in §161A.48, 161A.74

**161A.54 State agency conservation plans — exemptions.**

Each state agency shall enter into an agreement with the soil and water conservation district in which the state agency has public land under its control in cultivation. The agreement shall contain a plan of the state agency to prevent soil erosion in excess of soil loss limits by the use of soil and water conservation practices and erosion control practices. This section applies to all public land which is used for horticultural or agricultural purposes. State soil conservation cost-sharing funds shall not be used on these public lands. Conservation plans required by this section shall be completed by July 1, 1986, and implementation shall occur consistent with the schedule contained in the conservation plan. Application for exemption from this section may be submitted to the appropriate soil and water conservation district. The exemption shall be granted for land upon which soil management research for the purposes of the study, evaluation, understanding and control of erosion, sedimentation and run-off water is conducted by or in conjunction with institutions governed by the board of regents.

85 Acts, ch 133, §1

CS85, §467A.54

87 Acts, ch 23, §36

C93, §161A.54

**161A.55 through 161A.60** Reserved.

**161A.61 Discretionary inspection by commissioners — actions upon certain findings.**

1. In addition to the authority granted by section 161A.47, the commissioners of a soil and water conservation district may inspect or cause to be inspected any land within the district on which they have reasonable grounds to believe that soil erosion is occurring in excess of the limits established by the district's soil erosion control regulations. If the commissioners find from an inspection conducted under authority of either section 161A.47 or this section that soil erosion is occurring on that land in excess of the applicable soil loss limits established by the district's soil erosion control regulations, they shall send notice of that finding to the landowner or landowners of record, and to the occupant of the land if known to the commissioners. The notice shall describe the land affected and shall state as nearly as possible the extent to which soil erosion from that land exceeds the applicable soil loss limits.

a. If the commissioners find that the excessive erosion described in the notice is not causing sediment damage to property owned or occupied by any person other than the owner or occupant of the land on which the excessive soil erosion is occurring, and that the rate of the excessive erosion is less than twice the applicable soil loss limit, the notice required by this subsection shall include or be accompanied by information regarding financial or other assistance which the commissioners are able to make available to the owner or occupant of the land to aid in achieving compliance with the applicable soil loss limits.

b. If the commissioners find that the excessive soil erosion described in the notice is not causing sediment damage to property owned or occupied by any person other than the owner or occupant of the land on which it is occurring, but that the erosion is occurring at a rate equal to or greater than twice the applicable soil loss limit, the notice shall so state, shall include or be accompanied by the information required by paragraph "a" of this subsection, and shall be delivered by personal service or by restricted certified mail to each of the persons to whom the notice is directed. A notice given under this paragraph shall also include or be accompanied by information explaining the provisions of subsection 2.

2. The commissioners of the soil and water conservation district in which a farm unit is located may petition the district court for an appropriate order with respect to that farm unit if its owner or occupant has been sent a notice by the commissioners under subsection 1, paragraph "b", for three or more consecutive years. The commissioners' petition shall seek a court order which states a time not more than six months after the date of the order when the owner or occupant must commence, and a time when the owner or occupant must complete the steps necessary to comply with the order. The time allowed to complete the establishment of a temporary soil and water conservation practice employed to comply or advance toward compliance with the court's order shall be not more than one year after the date of that order, and the time allowed to complete the establishment of a permanent soil and water conservation practice employed to comply with the court's order shall be not more than five years after the date of that order. Section 161A.48 applies to a court order issued under this subsection. The steps required of the farm unit owner or operator by the court order are those which are necessary to do one of the following:

a. Bring the farm unit which is the subject of the order into compliance with its farm unit soil conservation plan, if such a plan had been agreed upon prior to the time the commissioners petitioned for the order.

b. Bring the farm unit which is the subject of the order into compliance with a plan developed for that farm unit by the commissioners, in accordance with guidelines established by the division of soil conservation, and presented to the court as a part of the commissioners' petition, if a farm unit soil conservation plan has not previously been agreed upon for that farm unit. A plan presented to the court by the commissioners under this paragraph shall specify as many alternative approved soil and water conservation practices as feasible, among which the owner or occupant of the farm unit may choose in taking the steps necessary to comply with the court's order.

c. Bring the farm unit which is the subject of the order into compliance with a soil conservation plan developed by the owner or occupant of that farm unit as an alternative to the proposed soil conservation plan developed by the commissioners, if the owner or

occupant so petitions the court and the court finds that the owner or occupant's plan will bring the farm unit into conformity with the applicable soil loss limits of the district.

3. The commissioners may also cause an inspection of land within the district on which they have reasonable grounds to believe that a permanent soil and water conservation practice established with public cost-sharing funds is not being properly maintained or is being altered in violation of section 161A.7, subsection 3. If the commissioners find that the practices are not being maintained or have been altered in violation of section 161A.7, subsection 3, the commissioners shall issue an administrative order to the landowner who made the unauthorized removal, alteration or modification to maintain, repair, or reconstruct the permanent soil and water conservation practices. The requirement for maintenance and repair is for the length of life as defined in section 161A.7, subsection 3. Public cost-sharing funds are not available for the work under this order. If the landowner fails to comply with the administrative order, the commissioners may petition the district court for an order compelling compliance with the order. Upon receiving satisfactory proof, the court shall issue an order directing compliance with the administrative order and may modify the administrative order. The provisions of section 161A.50 relating to notice, appeals, and contempt of court shall apply to proceedings under this subsection.

[C81, §467A.61; 82 Acts, ch 1220, §2]

87 Acts, ch 23, §37, 38

C93, §161A.61

2009 Acts, ch 41, §61; 2012 Acts, ch 1095, §13; 2013 Acts, ch 90, §32

Referred to in §161A.7

Subsection 2, unnumbered paragraph 1 amended

**161A.62 Duties of commissioners and of owners and occupants of agricultural land — restrictions on use of cost-sharing funds.**

The commissioners of each soil and water conservation district shall seek to implement or to assist in implementing the following requirements:

1. The commissioners of each soil and water conservation district shall complete preparation of a farm unit soil conservation plan for each farm unit within the district as soon as adequate funding is available to permit compliance with this requirement.

a. Technical assistance in the development of the farm unit soil conservation plan may be provided by the United States department of agriculture natural resources conservation service through the memorandum of understanding with the district or by the department. The commissioners shall make every reasonable effort to consult with the owner and, if appropriate, with the operator of that farm unit, and to prepare the plan in a form which is acceptable to that person or those persons.

b. The farm unit soil conservation plan shall be drawn up and completed without expense to the owner or operator of the farm unit, except that the owner or operator shall not be reimbursed for the value of the owner's or occupant's own time devoted to participation in the preparation of the plan.

c. If the commissioners' farm unit soil conservation plan is unacceptable to the owner or operator of the farm unit, that person or those persons may prepare an alternative farm unit soil conservation plan identifying permanent or temporary soil and water conservation practices which may be expected to achieve compliance with the soil loss limit or limits applicable to that farm unit, and submit that plan to the soil and water conservation district commissioners for their review.

2. Within one year after completion of a farm unit soil conservation plan for a particular farm unit which is acceptable both to the commissioners of the soil and water conservation district within which the farm unit is located and to the owner and, if appropriate, to the operator of that farm unit, the commissioners shall offer to enter into a soil conservation agreement with the owner, and also with the operator if appropriate, based on the mutually acceptable farm unit soil conservation plan.

[C81, §467A.62; 81 Acts, ch 153, §1]

86 Acts, ch 1238, §22; 87 Acts, ch 17, §10; 87 Acts, ch 23, §39

C93, §161A.62

95 Acts, ch 216, §25; 2012 Acts, ch 1095, §14, 15

Referred to in §161A.63

**161A.63 Right of purchaser of agricultural land to obtain information.**

A prospective purchaser of an interest in agricultural land located in this state is entitled to obtain from the seller, or from the office of the soil and water conservation district in which the land is located, a copy of the most recently updated farm unit soil conservation plan, developed pursuant to section 161A.62, subsection 1, which is applicable to the agricultural land proposed to be purchased. A prospective purchaser of an interest in agricultural land located in this state is entitled to obtain additional copies of the document referred to in this section from the office of the soil and water conservation district in which the land is located, promptly upon request, at a fee not to exceed the cost of reproducing them. All persons who identify themselves to the commissioners or staff of a soil and water conservation district as prospective purchasers of agricultural land in the district shall be given information, prepared in accordance with rules of the department, which clearly explains the provisions of section 161A.76.

[C81, §467A.63]

87 Acts, ch 23, §40

C93, §161A.63

2012 Acts, ch 1095, §16; 2012 Acts, ch 1138, §55

**161A.64 Erosion control plans required for certain projects.**

1. If a political subdivision has adopted a sediment control ordinance which the commissioners and the political subdivision jointly agree is at least as equally effective as the commissioners' rules in preventing erosion from exceeding the established soil loss limits, the commissioners and the political subdivision shall execute an agreement under chapter 28E allowing an agency authorized by the political subdivision to receive and file an affidavit from a person, prior to initiating a land disturbing activity in that subdivision, stating that the proposed activity will not exceed the established soil loss limits. A copy of the affidavit shall be mailed to the district as a part of the terms of the agreement. The affidavit shall be in a form prescribed by the department and made available by the district.

2. Prior to initiating a land disturbing activity in a political subdivision which has not adopted sediment control ordinances as described in subsection 1, a person engaged in the land disturbing activity shall file a signed affidavit with the soil and water conservation district that the project will not exceed the soil loss limits. The affidavit shall be in a form prescribed by the department and made available by the district.

3. For the purposes of this section, "*land disturbing activity*" means a land change such as the tilling, clearing, grading, excavating, transporting or filling of land which may result in soil erosion from water or wind and the movement of sediment and sediment related pollutants into the waters of the state or onto lands in the state but does not include the following:

- a. Tilling, planting or harvesting of agricultural, horticultural or forest crops.
- b. Preparation for single-family residences separately built unless in conjunction with multiple construction in subdivision development.
- c. Minor activities such as home gardens, landscaping, repairs and maintenance work.
- d. Surface or deep mining.
- e. Installation of public utility lines and connections, fence posts, sign posts, telephone poles, electric poles and other kinds of posts or poles.
- f. Septic tanks and drainage fields unless they are to serve a building whose construction is a land disturbing activity.
- g. Construction and repair of the tracks, right-of-way, bridges, communication facilities and other related structures of a railroad.
- h. Emergency work to protect life or property.
- i. Disturbed land areas of less than twenty-five thousand square feet unless a political subdivision by ordinance establishes a smaller exception or establishes conditions for this exception.

j. The construction, relocation, alteration or maintenance of public roads by a public body.

4. If the agency authorized under subsection 1 determines that a land disturbing activity is not being conducted in compliance with the soil loss limits, it shall file a written and signed complaint with the soil and water conservation district commissioners. The complaint shall have the same effect and validity as a complaint filed by an owner or occupant of land being damaged by sediment pursuant to section 161A.47. If the affidavit is filed with the district or the political subdivision, the commissioners may proceed on their own complaint. The soil and water conservation district commissioners may issue an administrative order as provided in that section to the person conducting the land disturbing activity.

[C81, §467A.64; 81 Acts, ch 154, §1, 2]

87 Acts, ch 23, §41

C93, §161A.64

**161A.65** Reserved.

**161A.66 Procedure when commissioner is complainant.**

A soil and water conservation district commissioner who is an owner or occupant of land being damaged by sediment has the same right as any other person in like circumstances to file a complaint under section 161A.47; however, a commissioner who is the complainant shall not vote on the question whether, on the basis of the inspection made pursuant to the complaint, the commissioners shall issue an administrative order under section 161A.47.

[C81, §467A.66]

87 Acts, ch 23, §43

C93, §161A.66

**161A.67 through 161A.69** Reserved.

PART 2

FINANCIAL INCENTIVES

**161A.70 Establishment and purpose.**

Financial incentive programs are established within the division in order to protect the long-term productivity of the soil and water resources of the state from erosion and sediment damage, and to encourage the adoption of farm management and agricultural practices which are consistent with the capability of the land to sustain agriculture and preserve this state's natural resources.

92 Acts, ch 1184, §6

Referred to in §159.18, 161A.72

**161A.71 Conservation practices revolving loan fund.**

1. The division may establish a conservation practices revolving loan fund composed of any money appropriated by the general assembly for that purpose, and of any other moneys available to and obtained or accepted by the committee from the federal government or private sources for placement in that fund. Except as otherwise provided by subsection 3, the assets of the conservation practices revolving loan fund shall be used only to make loans directly to owners of land in this state for the purpose of establishing on that land any new permanent soil and water conservation practice which the commissioners of the soil and water conservation district in which the land is located have found is necessary or advisable to meet the soil loss limits established for that land. A loan shall not be made for establishing a permanent soil and water conservation practice on land that is subject to the restriction on state cost-sharing funds of section 161A.76. Revolving loan funds and public cost-sharing funds may be used in combination for funding a particular soil and water conservation practice. Each loan made under this section shall be for a period not to exceed ten years, shall bear no interest, and shall be repayable to the conservation

practices revolving loan fund in equal yearly installments due March 1 of each year the loan is in effect. The interest rate upon loans for which payment is delinquent shall accelerate immediately to the current legal usury limit. Applicants are eligible for no more than twenty thousand dollars in loans outstanding at any time under this program. “*Permanent soil and water conservation practices*” has the same meaning as defined in section 161A.42 and those established under this program are subject to the requirements of section 161A.7, subsection 3. Loans made under this program shall come due for payment upon sale of the land on which those practices are established.

2. The general assembly finds and declares the following:

a. The erosion of topsoil on agricultural land by wind and water is a serious problem within the state and one which threatens to destroy the natural resource most responsible for Iowa’s prosperity.

b. It is necessary to the preservation of the economy and well-being of the state to encourage soil conservation practices by providing loans for permanent soil and water conservation practices on agricultural land within the state.

c. The use of state funds for the conservation practices revolving loan fund established under subsection 1 is in the public interest, and the purposes of this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted.

3. The division may:

a. Contract, sue and be sued, and promulgate administrative rules necessary to carry out the provisions of this section, but the committee shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

b. Authorize payment from the conservation practices revolving loan fund and from fees for costs, commissions, attorney fees and other reasonable expenses related to and necessary for making and protecting direct loans under this section, and for the recovery of moneys loaned or the management of property acquired in connection with such loans.

4. This section does not negate the provisions of section 161A.48 that an owner or occupant of land in this state shall not be required to establish any new soil and water conservation practice unless public cost-sharing funds have been approved and are available for the land affected. However, the owner of land with respect to which an administrative order to establish soil and water conservation practices has been issued under section 161A.47 but not complied with for lack of public cost-sharing funds, may waive the right to await availability of such funds and instead apply for a loan under this section to establish any permanent soil and water conservation practices necessary to comply with the order. If a landowner does so, that loan application shall be given reasonable preference by the state soil conservation committee if there are applications for more loans under this section than can be made from the money available in the conservation practices revolving loan fund. If it is found necessary to deny an application for a soil and water conservation practices loan to a landowner who has waived the right to availability of public cost-sharing funds before complying with an administrative order issued under section 161A.47, the landowner’s waiver is void.

83 Acts, ch 207, §53, 93

CS83, §467A.71

85 Acts, ch 67, §46; 85 Acts, ch 170, §1; 86 Acts, ch 1244, §58; 86 Acts, ch 1245, §661; 87 Acts, ch 23, §44; 91 Acts, ch 260, §1234

C93, §161A.71

2013 Acts, ch 15, §1

Subsection 1 amended

#### **161A.72 Administration.**

1. Financial incentives provided under this chapter shall be administered by the division. The incentives shall be supported with funds appropriated by the general assembly, and moneys available to or obtained by the division or the committee from public or private sources, including but not limited to the United States, other states, or private organizations.

The division shall adopt all rules consistent with chapter 17A necessary to carry out the purpose of this division as provided in section 161A.70.

2. The commissioners of a district shall, to the extent funding is available, contract with a person who is an owner or occupant of land within the district applying to establish soil and water conservation practices as provided in this chapter. Under the agreement, the person shall receive financial incentives to establish permanent soil and water conservation practices and management practices, in consideration for promising to maintain the practices according to rules adopted by the division. If the land subject to an agreement is converted to a nonagricultural use that does not require a permanent soil and water conservation practice which has been established with financial incentives, the permanent soil and water conservation practice shall not be removed until the owner pays an amount to the district, which shall be deposited into a fund established by the district for use in providing financial incentives under this chapter. The amount shall be a prorated share of the amount paid in financial incentives to establish the practice, as provided in rules adopted by the division.

92 Acts, ch 1184, §7; 96 Acts, ch 1083, §4

**161A.73 Voluntary establishment of soil and water conservation practices.**

1. The division shall establish voluntary financial incentive programs which shall provide for the following:

a. The allocation of cost-share moneys as financial incentives provided for the purpose of establishing permanent soil and water conservation practices, including but not limited to terraces, diversions, grade stabilization structures, grassed waterways, and critical area planting. The financial incentives shall not exceed fifty percent of the estimated cost of establishing the practices, or fifty percent of the actual cost, whichever is less.

b. The allocation of moneys as financial incentives provided for the purpose of establishing management practices to control soil erosion on land that is row cropped, including but not limited to no-till planting, ridge-till planting, contouring, and contour strip-cropping. The division shall by rule establish limits on the amount of incentives which shall be authorized for payment to landowners upon establishment of the practice.

c. The allocation of cost-share moneys as financial incentives provided to establish practices to protect watersheds above publicly owned lakes of the state from soil erosion and sediment. The financial incentives shall be awarded to watersheds which are of the highest importance based on soil loss as established by the natural resource commission pursuant to section 456A.33A. The financial incentives shall not exceed seventy-five percent of the estimated cost of establishing the practices as determined by the commissioners or seventy-five percent of the actual cost of establishing the practices, whichever is less.

d. The allocation of cost-share moneys as financial incentives to establish permanent grass and buffer zones, including an erosion control structure or an erosion control practice to mitigate the effects of concentrated runoff on surface water quality. The financial incentives shall not exceed one hundred percent of the estimated cost of establishing a zone, as determined by the commissioners, or one hundred percent of the actual cost of establishing the zone, whichever is less.

e. The allocation of cost-share moneys as financial incentives for the same purposes that are supported from the soil and water enhancement account of the resources enhancement and protection fund as provided in section 455A.19, or by the water protection practices account of the water protection fund established pursuant to section 161C.4. The financial incentives shall not exceed fifty percent of the estimated cost of establishing the practices, or fifty percent of the actual cost, whichever is less.

2. The commissioners of a district may establish voluntary financial incentive programs which shall provide for the following:

a. The allocation of cost-share moneys as financial incentives under a special agreement with owners of land in the district who promise to adopt a watershed conservation plan as provided by rules which shall be adopted by the division. The watershed conservation plan shall be in conjunction with the owners' respective farm unit soil conservation plans. The funding agreement must provide for the funding of a project which includes five or more

contiguous farm units which have at least five hundred acres of agricultural land and which constitutes at least seventy-five percent of the agricultural land located within a watershed or subwatershed. The financial incentives shall not exceed sixty percent of the estimated cost of the project as determined by the commissioners or sixty percent of the actual cost, whichever is less.

b. The allocation of cost-share moneys as financial incentives to encourage summer construction of permanent soil and water conservation practices. The practices must be constructed on or after June 15 but not later than October 15. The commissioners may also provide for the payment of moneys on a prorated basis to compensate persons for the production loss on an area disturbed by construction, according to rules which shall be adopted by the division.

3. a. The division may reimburse private landowners for a portion of the cost of fencing materials and installation for permanent fence used to protect forest land from domestic livestock grazing, if the division determines that the grazing has caused excessive soil loss. For purposes of this subsection, forests shall be considered as agricultural land eligible for cost-share moneys. The total expenditure of reimbursement moneys shall not exceed fifty percent of the total landowner expenditures. Expenditures for boundary and road fence construction and for repair and replacement of existing fences are not eligible for reimbursement unless the complete fence is replaced.

b. A landowner shall sign an agreement with the division as a condition for receiving cost-share moneys. The agreement shall provide that the landowner shall maintain the fence for a minimum of ten years and shall follow written professional forester recommendations relating to land protected by fencing. The recommendations must be approved by the state forester or the forester's designee.

c. A landowner who violates the maintenance agreement shall maintain, repair, or reconstruct the damaged fence, or shall pay the division an amount equal to the amount of cost-share moneys reimbursed.

d. The division shall adopt rules to administer this subsection, including rules relating to procedures required to receive reimbursement, and eligibility requirements such as the minimum forest acreage required, and the maximum reimbursement amount allowed.

92 Acts, ch 1184, §8; 92 Acts, ch 1239, §51, 52; 96 Acts, ch 1083, §5; 98 Acts, ch 1040, §1; 2012 Acts, ch 1095, §17

Referred to in §161A.75

#### **161A.74 Mandatory establishment of soil and water conservation practices — allocations.**

1. The commissioners shall allocate cost-share moneys to establish mandatory soil and water conservation practices, as provided in sections 161A.43 through 161A.53, according to the following requirements:

a. The financial incentives shall not exceed more than fifty percent of the estimated cost of establishing the practices as determined by the commissioners, or fifty percent of the actual cost of establishing the practices, whichever is less. However, the commissioners may allocate an amount determined by the committee for management of soil and water conservation practices, except as otherwise provided regarding land classified as agricultural land under conservation cover.

b. The commissioners shall establish the estimated cost of the permanent soil and water conservation practices in the district based upon one and two-tenths of the average cost of the practices installed in the district during the previous year. The average costs shall be reviewed and approved by the commissioners each year.

2. The committee shall review requirements of this section once each year. The committee may authorize commissioners in districts to condition the establishment of a mandatory soil and water conservation practice in a specific case on a higher proportion of public cost-sharing than is required by this section. The commissioners shall determine the amount of cost-sharing moneys allocated to establish a specific soil and water conservation practice in accordance with an administrative order issued pursuant to section 161A.47 by

considering the extent to which the practice will contribute benefits to the individual owner or occupant of the land on which the practice is to be established.

92 Acts, ch 1184, §9; 92 Acts, ch 1239, §53, 54

Referred to in §161A.48

#### **161A.75 Use of moneys for emergency repairs.**

1. The commissioners of a district may allocate moneys otherwise available for voluntary financial incentive programs as provided in section 161A.73 to provide for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency. In providing for the restoration, the commissioners may allocate moneys under this section for construction, reconstruction, installation, or repair projects. For each project the commissioners must determine that the allocation is necessary in order to restore permanent soil and water conservation practices in order to prevent erosion in excess of the applicable soil loss limits caused by the disaster emergency.

2. In order to allocate moneys under this section, the disaster emergency must have occurred in an area subject to a state of disaster emergency pursuant to a proclamation made by the governor as provided in section 29C.6. The commissioners shall use the moneys only to the extent that moneys from other sources, including any moneys provided by the state or federal government in response to the disaster emergency, are not adequate. The commissioners are not required to allocate the moneys on a cost-share basis.

3. Following the disaster emergency, the commissioners shall submit a report to the committee providing information regarding restoration projects and moneys allocated under this section for the projects.

97 Acts, ch 59, §2

Referred to in §161A.7

#### **161A.76 Cost sharing for certain lands restricted.**

1. It is the intent of this chapter that each tract of agricultural land which has not been plowed or used for growing row crops at any time within the prior fifteen years shall for purposes of this section be considered classified as agricultural land under conservation cover. If a tract of land so classified is thereafter plowed or used for growing row crops, the commissioners of the soil and water conservation district in which the land is located shall not approve use of state cost-sharing funds for establishing permanent or temporary soil and water conservation practices on that tract of land in an amount greater than one-half the amount of cost-sharing funds which would be available for that land if it were not considered classified as agricultural land under conservation cover. The restriction imposed by this section applies even if an administrative order or court order has been issued requiring establishment of soil and water conservation practices on that land. The commissioners may waive the restriction imposed by this section if they determine in advance that the purpose of plowing or row cropping land classified as land under conservation cover is to revitalize permanent pasture and that the land will revert to permanent pasture within two years after it is plowed.

2. When receiving an application for state cost-sharing funds to pay a part of the cost of establishing a permanent or temporary soil and water conservation practice, the commissioners of the soil and water conservation district to which the application is submitted shall require the applicant to state in writing whether, to the best of the applicant's knowledge, the land on which the proposed practice will be established is land considered to be classified as agricultural land under conservation cover, as defined in subsection 1. An applicant who knowingly makes a false statement of material facts or who falsely denies knowledge of material facts in completing the written statement required by this subsection commits a simple misdemeanor and, in addition to the penalty prescribed therefor by law, shall be required to repay to the department any cost-sharing funds made available to the applicant in reliance on the false statement or false denial.

[C81, §467A.65]

87 Acts, ch 23, §42

C93, §161A.76  
2012 Acts, ch 1095, §18  
Referred to in §161A.63, 161A.71

**161A.77 through 161A.79** Reserved.

DIVISION VI  
BLUFFLANDS PROTECTION

**161A.80 Blufflands protection program and revolving fund.**

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

a. For purposes of this section only, “*bluffland*” means a cliff, headland, or hill with a broad, steep face along the channel or floodplain of the Missouri or Mississippi river and their tributaries.

b. “*Conservation organization*” means a nonprofit corporation incorporated in Iowa or an entity organized and operated primarily to enhance and protect natural resources in this state.

2. A blufflands protection revolving fund is created in the state treasury. All proceeds shall be divided into two equal accounts. One account shall be used for the purchase of blufflands along the Mississippi river and its tributaries and the other account shall be used for the purchase of blufflands along the Missouri river and its tributaries. The proceeds of the revolving fund are appropriated to make loans to conservation organizations which agree to purchase bluffland properties adjacent to state public lands. The department of agriculture and land stewardship, in conjunction with the department of natural resources, shall adopt rules pursuant to chapter 17A to administer the disbursement of funds. Notwithstanding section 12C.7, interest or earnings on investments made pursuant to this section or as provided in section 12B.10 shall be credited to the blufflands protection revolving fund. Notwithstanding section 8.33, unobligated or unencumbered funds credited to the blufflands protection revolving fund shall not revert at the close of a fiscal year. However, the maximum balance in the blufflands protection revolving fund shall not exceed two million five hundred thousand dollars. Any funds in excess of two million five hundred thousand dollars shall be credited to the rebuild Iowa infrastructure fund.

a. This section is repealed on July 1, 2015.

b. The principal and interest from any blufflands protection loan outstanding on July 1, 2015, and payable to the blufflands protection revolving fund, shall be paid to the administrative director of the division of soil conservation on or after July 1, 2015, pursuant to the terms of the loan agreement and shall be credited to the rebuild Iowa infrastructure fund.

98 Acts, ch 1219, §17; 99 Acts, ch 96, §16; 99 Acts, ch 204, §26, 42; 2005 Acts, ch 178, §17  
Coordination with programs and projects of the loess hills alliance, §161D.7

CHAPTER 161B  
AGRICULTURAL ENERGY MANAGEMENT

Repealed by 2004 Acts, ch 1082, §6

CHAPTER 161C

WATER PROTECTION PROJECTS AND PRACTICES

Referred to in §159.1, 159.5, 159.6, 161A.4, 161A.7, 461.33

This chapter not enacted as a part of this title;  
transferred from chapter 467F in Code 1993

161C.1	Definitions.	161C.5	Organic nutrient management fund. Repealed by 2011 Acts, ch 46, §1.
161C.2	Water protection projects and practices.	161C.6	Organic nutrient management program. Repealed by 2011 Acts, ch 46, §1.
161C.3	Cooperation with other agencies.	161C.7	Watershed protection.
161C.4	Water protection fund.		

**161C.1 Definitions.**

As used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. “Committee” or “state soil conservation committee” means the committee established by section 161A.4.
2. “Department” means the department of agriculture and land stewardship.
3. “District” means a soil and water conservation district established in chapter 161A.
4. “Division” means the division of soil conservation created within the department.
5. “Landowner” includes any person, including a federal agency, this state or any of its political subdivisions, who holds title to land lying within a proposed district.
6. “United States” or “agencies of the United States” includes the United States of America, the United States department of agriculture natural resources conservation service, and any other agency or instrumentality, corporate or otherwise, of the United States.  
88 Acts, ch 1189, §2  
C89, §467F.1  
C93, §161C.1  
95 Acts, ch 216, §25

**161C.2 Water protection projects and practices.**

1. a. Each soil and water conservation district, alone and whenever practical in conjunction with other districts, shall carry out district-wide and multiple-district projects to support water protection practices in the district or districts, including projects to protect this state’s groundwater and surface water from point and nonpoint sources of contamination, including but not limited to contamination by agricultural drainage wells, sinkholes, sedimentation, or chemical pollutants.

b. Any work project with an estimated cost in excess of the competitive bid threshold in section 26.3, or as established in section 314.1B, shall be undertaken as a public contract as provided in chapters 73A and 573. The local contracting organization shall designate a contracting officer and shall establish procedures to manage the contract, approve bills for payment, and review proposed change orders or amendments to the contract.

2. An owner of or occupant of land within a district may establish a water protection practice under this chapter by entering into an agreement with the district in which the owner or occupant receives financial assistance to establish water protection practices in consideration for promising to maintain the practices according to rules adopted by the division. The financial assistance may be in the form of grants, loans, or cost-sharing arrangements. An agreement shall not be binding until the assistance is specifically approved for that land and made available to the owner or occupant.

3. The division shall approve an award of financial assistance based on an application submitted by the owner or occupant of the land. The division may require a copy of the application with an evaluation of the application by the district. Each application for financial assistance shall be considered under a priority system adopted by the district for disbursement of unallocated funds. The district, under the supervision of a district

technician, shall design proposed clean water practices for which financial assistance has been obligated. The district shall determine compliance with applicable design standards and specifications. The landowner shall construct and is liable for the performance of the water protection practices on the land.

4. The division shall adopt rules necessary for the administration of this chapter, including rules relating to the approval of programs and projects, designing a project or water protection practices, the estimation of costs of a project or program, and the inspection of projects or practices being placed or maintained on the land.

88 Acts, ch 1189, §3

C89, §467F.2

C93, §161C.2

2000 Acts, ch 1068, §8; 2006 Acts, ch 1017, §22, 42, 43

### **161C.3 Cooperation with other agencies.**

Soil and water conservation districts may enter into agreements with the United States, as provided by state law, or with the state of Iowa or any agency of the state, any other soil and water conservation district, or other political subdivision of this state, for cooperation in preventing, controlling, or attempting to prevent or control contamination of groundwater or surface water by point and nonpoint sources of pollution. Soil and water conservation districts may accept, as provided by state law, any money disbursed for water quality preservation purposes by the federal government or any agency of the federal government, and expend the money for the purposes for which it was received.

88 Acts, ch 1189, §4

C89, §467F.3

C93, §161C.3

### **161C.4 Water protection fund.**

1. A water protection fund is created within the division. The fund is composed of money appropriated by the general assembly for that purpose, and moneys available to and obtained or accepted by the state soil conservation committee from the United States or private sources for placement in the fund. The fund shall be a revolving fund from which moneys may be used for loans, grants, administrative costs, and cost-sharing.

2. The fund shall be divided into two accounts, the water quality protection projects account and the water protection practices account. The first account shall be used to carry out water quality protection projects to protect the state's surface and groundwater from point and nonpoint sources of contamination. The second account shall be used to establish water protection practices with individual landowners including but not limited to woodland establishment and protection, establishment of native grasses and forbs, sinkhole management, agricultural drainage well management, streambank stabilization, grass waterway establishment, stream buffer strip establishment, and erosion control structure construction. Twenty-five percent of funds appropriated to the water protection practices account shall be used for woodland establishment and protection, and establishment of native grasses and forbs. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan.

3. In administering the fund the division may:

a. Contract, sue and be sued, and adopt rules necessary to carry out the provisions of this section, but the division or committee shall not in any manner directly or indirectly pledge the credit of this state.

b. Authorize payment from the water protection fund and from fees for costs, commissions, and other reasonable expenses.

88 Acts, ch 1189, §5

C89, §467F.4

89 Acts, ch 236, §16; 91 Acts, ch 260, §1235

C93, §161C.4

95 Acts, ch 216, §36; 2009 Acts, ch 41, §62

Referred to in §161A.73, 161C.7, 455A.19

**161C.5 Organic nutrient management fund.** Repealed by 2011 Acts, ch 46, §1.

Moneys in organic nutrient management fund shall be retained by the department of agriculture and land stewardship for purposes of supporting its soil conservation division for the fiscal year beginning July 1, 2011, and ending June 30, 2012; 2011 Acts, ch 46, §2

**161C.6 Organic nutrient management program.** Repealed by 2011 Acts, ch 46, §1.

**161C.7 Watershed protection.**

1. The department of agriculture and land stewardship shall implement and administer a watershed protection program. The department of agriculture and land stewardship, in consultation with the department of natural resources, shall annually establish a prioritized list of watersheds that are of the highest importance to the state's water quality. The watershed protection program shall, to the extent practical, target for assistance those watersheds on the prioritized list. A soil and water conservation district, in cooperation with state agencies, local units of government, and private organizations, may submit an application for assistance to the department which provides a strategy for protecting soil, water quality, and other natural resources, and improving flood control in the watershed. Upon approval of an application, the department may provide a grant to the soil and water conservation district for purposes of carrying out the strategy provided in the application.

2. A watershed protection account is created within the water protection fund created in section 161C.4. Moneys credited to the account shall be distributed under the watershed protection program.

3. Administrative rules used for water quality protection projects under the water protection fund shall be used to administer the watershed protection program.

99 Acts, ch 204, §27; 2003 Acts, ch 179, §157; 2004 Acts, ch 1101, §26

CHAPTER 161D

LOESS HILLS AND SOUTHERN IOWA  
DEVELOPMENT AND CONSERVATION

	SUBCHAPTER 1	161D.8	Annual report — audit.
	LOESS HILLS DEVELOPMENT AND CONSERVATION	161D.9	and 161D.10 Reserved.
161D.1	Loess hills development and conservation authority created — membership and duties.		SUBCHAPTER 2
161D.2	Loess hills development and conservation fund.		SOUTHERN IOWA DEVELOPMENT AND CONSERVATION AUTHORITY
161D.3	Definitions.	161D.11	Southern Iowa development and conservation authority created — membership and duties.
161D.4	Mission statement.		
161D.5	Loess hills alliance created.	161D.12	Southern Iowa development and conservation fund.
161D.6	Responsibilities.		
161D.7	Program coordination.	161D.13	Annual report — audit.

SUBCHAPTER 1

LOESS HILLS DEVELOPMENT AND  
CONSERVATION

**161D.1 Loess hills development and conservation authority created — membership and duties.**

1. A loess hills development and conservation authority is created. The counties of Adams,

Adair, Audubon, Carroll, Cass, Cherokee, Crawford, Fremont, Guthrie, Harrison, Ida, Lyon, Mills, Monona, Montgomery, Page, Plymouth, Pottawattamie, Sac, Shelby, Sioux, Taylor, and Woodbury, are entitled to one voting member each on the authority, but membership or participation in projects of the authority is not required. Each member of the authority shall be appointed by the respective board of supervisors for a term to be determined by each board of supervisors, but the term shall not be for less than one year. An appointee shall serve without compensation, but an appointee may be reimbursed for actual expenses incurred while performing the duties of the authority as determined by each board of supervisors. The authority shall meet, organize, and adopt rules of procedures as deemed necessary to carry out its duties. The authority may appoint working committees that include other individuals in addition to voting members.

2. The mission of the authority is to develop and coordinate plans for projects related to the unique natural resource, rural development, and infrastructure problems of counties in the deep loess region of western Iowa. The erosion and degradation of stream channels in the deep loess soils has occurred due to historic channelization of the Missouri river and straightening stream channels of its tributaries. This erosion of land has damaged the rural infrastructure of this area, destroyed public roads and bridges, adversely impacted stream water quality and riparian habitat, and affected other public and private improvements. Stabilization of stream channels is necessary to protect the rural infrastructure in the deep loess soils area of the state. The authority shall cooperate with the division of soil conservation of the department of agriculture and land stewardship, the affected soil and water conservation districts, the department of natural resources, and the state department of transportation in carrying out its mission and duties. The authority shall also cooperate with appropriate federal agencies, including the United States environmental protection agency, the United States department of interior, and the United States department of agriculture natural resources conservation service. The authority shall make use of technical resources available through member counties and cooperating agencies.

3. The authority shall administer the loess hills development and conservation fund created under section 161D.2 and shall deposit and expend moneys in the fund for the planning, development, and implementation of development and conservation activities or measures in the member counties.

4. A hungry canyons alliance is created. The hungry canyons alliance shall be governed by a board of directors appointed as provided in its bylaws and the board shall carry out its responsibilities under the general direction of the loess hills development and conservation authority. The bylaws of the hungry canyons alliance are subject to review and approval of the loess hills development and conservation authority.

5. This subchapter is not intended to affect the authority of the department of natural resources in its acquisition, development, and management of public lands within the counties represented by the authority.

6. In matters relating to the conservation, preservation, or development of the loess hills, state agencies shall coordinate, cooperate, and consult with the loess hills development and conservation authority and its associated alliances.

93 Acts, ch 136, §1; 95 Acts, ch 216, §25; 99 Acts, ch 119, §1; 2000 Acts, ch 1111, §1, 2; 2000 Acts, ch 1154, §14; 2007 Acts, ch 211, §43

Referred to in §161D.2, 161D.3, 161D.5

**161D.2 Loess hills development and conservation fund.**

A loess hills development and conservation fund is created in the state treasury. The fund shall include a hungry canyons account and a loess hills alliance account which shall be administered by the loess hills development and conservation authority. The proceeds of the respective accounts shall be used for the purposes specified in section 161D.1 or 161D.6 as applicable. The loess hills development and conservation authority may accept gifts, bequests, other moneys including, but not limited to, state or federal moneys, and in-kind contributions for deposit in the fund. The gifts, grants, bequests from public and private sources, state and federal moneys, and other moneys received by the authority shall be deposited in the respective accounts and any interest earned shall be credited to

the respective accounts to be used for the purposes specified in section 161D.1 or 161D.6 as applicable. Notwithstanding section 8.33, any unexpended or unencumbered moneys remaining in the fund at the end of the fiscal year shall not revert to the general fund of the state, but the moneys shall remain available for expenditure by the authority in succeeding fiscal years.

93 Acts, ch 136, §2; 99 Acts, ch 119, §2  
Referred to in §161D.1, 161D.3

### **161D.3 Definitions.**

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

1. “Alliance” means the loess hills alliance created in section 161D.5.
  2. “Authority” means the loess hills development and conservation authority created in section 161D.1.
  3. “Fund” means the loess hills development and conservation fund created in section 161D.2.
- 99 Acts, ch 119, §3; 2000 Acts, ch 1154, §15

### **161D.4 Mission statement.**

The mission of the loess hills alliance is to create a common vision for Iowa’s loess hills, protecting special natural and cultural resources while ensuring economic viability and private property rights of the region.

99 Acts, ch 119, §4

### **161D.5 Loess hills alliance created.**

1. A loess hills alliance is created. The alliance shall carry out its responsibilities under the general direction of the loess hills development and conservation authority. The alliance shall encompass the geographic region including the counties of Plymouth, Woodbury, Monona, Harrison, Pottawattamie, Mills, and Fremont. Membership and participation in projects of the alliance is not required. The alliance shall be governed by a board of directors appointed as follows:

- a. Three members appointed by the board of supervisors of each county participating in the alliance and at least one of the appointees shall be a member of the board of supervisors of a county participating in the alliance.
- b. Seven additional voting members who shall be persons with experience in the fields of environmental affairs, conservation, finance, development, tourism, or related fields, and who shall be appointed by the authority.
- c. The voting members of the board of directors appointed pursuant to paragraphs “a” and “b” shall include agricultural producers owning real property within the loess hills landform.

2. Each voting member of the board of directors shall be a resident of a county which is eligible for membership in the authority pursuant to section 161D.1 and shall be appointed to a term of office as determined by the authority. The directors of the alliance shall carry out their responsibilities pursuant to bylaws approved by the authority.

99 Acts, ch 119, §5; 2000 Acts, ch 1111, §3  
Referred to in §161D.3

### **161D.6 Responsibilities.**

The board of directors of the alliance shall have the following responsibilities:

1. To prepare and adopt a comprehensive plan for the development and conservation of the loess hills area subject to the approval of the authority. The plan shall provide for the designation of significant scenic areas, the protection of native vegetation, the education of the public on the need for and methods of preserving the natural resources of the loess hills area, and the promotion of tourism and related business and industry in the loess hills area.
2. To apply for, accept, and expend public and private funds for planning and implementing projects, programs, and other components of the mission of the alliance subject to approval of the authority.
3. To study different options for the protection and preservation of significant historic, scenic, geologic, and recreational areas of the loess hills including but not limited to a

federal or state park, preserve, or monument designation, fee title acquisition, or restrictive easement.

4. To make recommendations to and coordinate the planning and projects of the alliance with the authority.

5. To develop and implement pilot projects for the protection of loess hills areas with the use of restrictive easements from willing sellers and fee title ownership from willing sellers subject to approval of the authority.

6. To report annually not later than January 15 to the general assembly the activities of the alliance during the preceding fiscal year including, but not limited to, its projects, funding, and expenditures.

99 Acts, ch 119, §6, 7, 9  
Referred to in §161D.2

**161D.7 Program coordination.**

The department of natural resources shall coordinate the blufflands protection program with the program and projects of the loess hills alliance.

99 Acts, ch 119, §8  
Blufflands protection; §161A.80

**161D.8 Annual report — audit.**

1. The authority shall submit to the department of management, the legislative services agency, and the division of soil conservation of the department of agriculture and land stewardship, on or before December 31 annually, a report including information regarding all of the following:

- a. Its operations and accomplishments.
- b. Its budget, receipts, and actual expenditures during the previous fiscal year, in accordance with classifications it establishes for its operating and capital accounts.
- c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.
- d. A statement of its proposed and projected activities.
- e. Recommendations to the governor and the general assembly, as deemed necessary.
- f. Any other information deemed necessary.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period in attaining these goals.

3. The fund shall be subject to an annual audit by the auditor of state.  
2001 Acts, ch 185, §45; 2003 Acts, ch 35, §45, 49

**161D.9 and 161D.10** Reserved.

SUBCHAPTER 2

SOUTHERN IOWA DEVELOPMENT AND  
CONSERVATION AUTHORITY

**161D.11 Southern Iowa development and conservation authority created — membership and duties.**

1. A southern Iowa development and conservation authority is created. The counties of Appanoose, Clarke, Davis, Decatur, Jefferson, Lucas, Monroe, Van Buren, Wapello, and Wayne are entitled to one voting member each on the authority, but membership or participation in projects of the authority is not required. Each member of the authority shall be appointed by the respective board of supervisors for a term to be determined by each board of supervisors, but the term shall not be for less than one year. An appointee shall serve without compensation, but an appointee may be reimbursed for actual expenses incurred while performing the duties of the authority as determined by each board of supervisors. The authority shall meet, organize, and adopt rules of procedures as deemed

necessary to carry out its duties. The authority may appoint working committees that include other individuals in addition to voting members.

2. The mission of the authority is to develop and coordinate plans for projects related to the unique natural resources, rural development, and infrastructure problems of counties in the most fragile areas of the southern Iowa drift plain. The authority's mission is established in part as a response to the erosion of soils, degradation of water resources, and the destabilization of stream channels in the fragile glacial till soils of southern Iowa that have occurred in a large part due to unchecked conversion of grassland to cropland. This land use conversion was brought about by the economic pressures of past federal agricultural policies that disregarded the fragile nature of the southern Iowa soil resource and the incompatibility of these soils with the subsidized commodities. The resulting erosion of the land has damaged the rural infrastructure of this area, destroyed public roads and bridges, adversely impacted stream water quality and riparian habitat, affected other public and private improvements, and severely threatens the potable water supply of the region. Reducing soil erosion, preventing sedimentation, and stopping nutrients and pesticides from entering water resources are all necessary to protect the rural infrastructure in the southern area of the state. Important protection measures include structural improvements and the reestablishment of grasslands for sustainable economic uses.

3. The authority shall cooperate with the division of soil conservation of the department of agriculture and land stewardship, the affected soil and water conservation districts, the department of natural resources, and the state department of transportation in carrying out its mission and duties. The authority shall also cooperate with appropriate federal agencies, including the United States environmental protection agency, the United States department of interior, and the United States department of agriculture natural resources conservation service. The authority shall make use of technical resources available through member counties and cooperating agencies.

4. The authority shall administer the southern Iowa development and conservation fund created under section 161D.12 and shall deposit and expend moneys in the fund for the planning, development, and implementation of development and conservation activities or measures in the member counties.

5. This section is not intended to affect the authority of the department of natural resources in its acquisition, development, and management of public lands within the counties represented by the authority.

99 Acts, ch 30, §1

Referred to in §161D.12

#### **161D.12 Southern Iowa development and conservation fund.**

A southern Iowa development and conservation fund is created in the state treasury, to be administered by the southern Iowa development and conservation authority. The proceeds of the fund shall be used for the purposes specified in section 161D.11. The southern Iowa development and conservation authority may accept gifts, bequests, other moneys including, but not limited to, state or federal moneys, and in-kind contributions for deposit in the fund. The gifts, grants, bequests from public and private sources, state and federal moneys, and other moneys received by the authority shall be deposited in the fund and any interest earned on moneys in the fund shall be credited to the fund to be used for the purposes specified in section 161D.11. Notwithstanding section 8.33, any unexpended or unencumbered moneys remaining in the fund at the end of the fiscal year shall not revert to the general fund of the state, but the moneys shall remain available for expenditure by the authority in succeeding fiscal years.

99 Acts, ch 30, §2

Referred to in §161D.11

#### **161D.13 Annual report — audit.**

1. The southern Iowa development and conservation authority shall submit to the department of management, the legislative services agency, and the division of soil

conservation of the department of agriculture and land stewardship, on or before December 31 annually, a report including information regarding all of the following:

- a. Its operations and accomplishments.
  - b. Its budget, receipts, and actual expenditures during the previous fiscal year, in accordance with classifications it establishes for its operating and capital accounts.
  - c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.
  - d. A statement of its proposed and projected activities.
  - e. Recommendations to the governor and the general assembly, as deemed necessary.
  - f. Any other information deemed necessary.
2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period in attaining these goals.
3. The southern Iowa development and conservation fund shall be subject to an annual audit by the auditor of state.

2001 Acts, ch 185, §46; 2003 Acts, ch 35, §45, 49

## CHAPTER 161E

### FLOOD AND EROSION CONTROL

Referred to in §159.6, 161A.4

This chapter not enacted as a part of this title;  
transferred from chapter 467B in Code 1995

161E.1	Authority of board.	161E.10	Assumption of obligations.
161E.2	Federal aid.	161E.11	Highway law applicable.
161E.3	Cooperation.	161E.12	Payments from federal government.
161E.4	Structures or levees.	161E.13	Allocation to secondary road funds.
161E.5	Maintenance cost.	161E.14	Allocation.
161E.6	Estimate.	161E.15	Taxes canceled.
161E.7	Projects on private land.		
161E.8	Conservation commissioners.		
161E.9	Tax levy.		

#### **161E.1 Authority of board.**

If a county, soil and water conservation district, subdistrict of a soil and water conservation district, political subdivision of the state, or other local agency engages or participates in a project for flood or erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, in cooperation with the federal government, or a department or agency of the federal government, the counties in which the project is carried on may, through the board of supervisors, construct, operate, and maintain the project on lands under the control or jurisdiction of the county dedicated to county use, or furnish financial and other assistance in connection with the projects. Flood, soil erosion control, and watershed improvement projects are presumed to be for the protection of the tax base of the county, for the protection of public roads and lands, and for the protection of the public health, sanitation, safety, and general welfare.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.1]  
86 Acts, ch 1238, §61; 87 Acts, ch 23, §45; 89 Acts, ch 83, §60  
C95, §161E.1

#### **161E.2 Federal aid.**

A county may, in accordance with this chapter, accept federal funds for aid in a project for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, and may cooperate with the federal government or a department or agency of the federal government, a soil and water conservation district, subdistrict of a soil and water conservation district, political subdivision of the state, or other local agency, and

the county may assume a proportion of the cost of the project as deemed appropriate, and may assume the maintenance cost of the project on lands under the control or jurisdiction of the county which will not be discharged by federal aid or grant.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.2]

86 Acts, ch 1238, §61; 87 Acts, ch 23, §46; 89 Acts, ch 83, §61

C95, §161E.2

See also §161E.12

### **161E.3 Cooperation.**

The counties, soil and water conservation districts, and subdistricts of soil and water conservation districts concerned, shall advise and consult with each other, upon the request of any of them or any affected landowners, and may cooperate with each other or with other state subdivisions or instrumentalities, and affected landowners, as well as with the federal government or a department or agency of the federal government, to construct, operate, and maintain suitable projects for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water on public roads or other public lands or other land granted county use.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.3]

86 Acts, ch 1238, §61; 87 Acts, ch 23, §47; 89 Acts, ch 83, §62

C95, §161E.3

### **161E.4 Structures or levees.**

When structures or levees necessary for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, are constructed on county roads, the cost in total or in part shall be considered a part of the cost of road construction.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.4]

C95, §161E.4

### **161E.5 Maintenance cost.**

If construction of projects has been completed by the soil and water conservation district, subdistricts of soil and water conservation districts, political subdivisions of the state, or other local agencies, or the federal government, or a department or agency of the federal government, on private lands under the easement granted to the county, only the cost of maintenance may be assumed by the county.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.5]

86 Acts, ch 1238, §61; 87 Acts, ch 23, §48; 89 Acts, ch 83, §63

C95, §161E.5

### **161E.6 Estimate.**

In the proceedings to establish such a project the government engineer shall set forth in the engineer's report separately from other items, the amount of the cost of construction on county property and on private lands, and the engineer's estimate of the cost of the maintenance of the same.

If the plan is approved by all cooperating agencies and the project established as a flood or erosion control project the board of supervisors shall make a written record of any such cooperative arrangement and may use such part of the funds of the county now authorized by law and by this chapter as may be necessary to pay the amount agreed upon toward the construction, maintenance and cost of such project.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.6]

C95, §161E.6

### **161E.7 Projects on private land.**

Any flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, projects built on private land with federal or other funds

when dedicated to the county use, shall be maintained in the same manner as its own county-owned or controlled property.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.7]  
C95, §161E.7

**161E.8 Conservation commissioners.**

In counties where soil and water conservation districts exist the commissioners in said county shall be responsible for the inspection of all flood and erosion control structures built on private land under easement to the county, shall furnish such technical assistance as they may have available in making estimates of needed repairs without cost to the county, and shall report any needed repair and the nature thereof to the county board of supervisors.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.8]  
C95, §161E.8

**161E.9 Tax levy.**

The county board of supervisors may annually levy a tax not to exceed six and three-fourths cents per thousand dollars of assessed value of all agricultural lands in the county, to be used for flood and erosion control, including acquisition of land or interests in land, and repair, alteration, maintenance, and operation of works of improvement on lands under the control or jurisdiction of the county as provided in this chapter.

83 Acts, ch 123, §188, 209  
CS83, §467B.9  
C95, §161E.9

**161E.10 Assumption of obligations.**

This chapter contemplates that actual direction of the project, or projects, and the actual work done in connection with them, will be assumed by the soil and water conservation district, a subdistrict of a soil and water conservation district, or the federal government, and that the county or other state subdivisions or instrumentalities jointly will meet the obligation required for federal cooperation and may make proper commitment for the care and maintenance of the project after its completion for the general welfare of the public and residents of the respective counties.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.10]  
86 Acts, ch 1238, §61; 87 Acts, ch 23, §49; 89 Acts, ch 83, §64  
C95, §161E.10

**161E.11 Highway law applicable.**

The counties in maintaining the structures or improvements made under such a project shall do so in a like manner and under like procedure as that used in the maintenance of its highways. Any cooperative agreements with other state subdivisions or instrumentalities shall conform with such an agreement as to the proportion of maintenance cost.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.11]  
C95, §161E.11

**161E.12 Payments from federal government.**

Whenever there shall be payable by the federal government to counties or school districts of the state any sums of money because of the fact that such school districts or counties are entitled to a share of the receipts from the operation of the federal government of flood control projects within any county of the state, such payments shall be payable to the county treasurer of any county in which such payments become due.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.12]  
C95, §161E.12  
See also §161E.2

**161E.13 Allocation to secondary road funds.**

Upon receipt of any such payments or payment by the county treasurer twenty-five percent of such amount shall be credited to the secondary road funds of the counties which are principally affected by the construction of such federal flood control projects, and the board of supervisors shall determine which roads of the county are deemed to be principally affected and the amounts which shall be expended from these funds derived from the federal government on such roads.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.13]  
 C95, §161E.13  
 Referred to in §331.401

**161E.14 Allocation.**

Sixty-five percent of any such payments or payment received from the federal government shall be distributed to the general fund of the school districts of the county after the county auditor has determined the districts which are principally affected by the federal flood control project involved in an amount deemed to be the equitable share of each such district and the amount allocated to each school district shall be paid over to the treasurer of such school district.

The county auditor shall certify to the executive council of the state the amounts allocated to each school district in the previous year, on January 2 of each year. The remaining ten percent of a payment received by the county treasurer from the federal government, or as much thereof as is deemed necessary by the board of supervisors, shall be allocated to the local fire departments of the unincorporated villages, townships, and cities of the county which are principally affected by the federal flood control project involved, to be paid and prorated among them as determined by the board of supervisors. If the funds prorated to local fire departments in a county are less than ten percent of the total county share of such federal payments for a year, the amount which exceeds the prorations shall revert back to and be divided equally between the secondary road fund and the local school district fund.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.14]  
 88 Acts, ch 1134, §89  
 C95, §161E.14  
 Referred to in §331.401

**161E.15 Taxes canceled.**

The treasurer of any county wherein is situated any land acquired by the federal government for flood control projects is hereby authorized to cancel any taxes or tax assessments against any such land so acquired where the tax has been extended but has not become a lien thereon at the time of the acquisition thereof.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §467B.15]  
 C95, §161E.15

**CHAPTER 161F**

**SOIL CONSERVATION AND FLOOD CONTROL DISTRICTS**

Referred to in §159.6, 161A.4, 331.382, 350.4

This chapter not enacted as a part of this title;  
 transferred from chapter 467C in Code 1995

161F1	Presumption of benefit.	161F4	Old districts combined.
161F2	Board of supervisors to establish districts — strip coal mining.	161F5	Approval of commissioners.
161F3	Combination of functions.	161F6	Chapters made applicable — definitions.

**161F.1 Presumption of benefit.**

The conservation of the soil resources of the state of Iowa, the proper control of water resources of the state and the prevention of damage to property and lands through the control of floods, the drainage of surface waters or the protection of lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience and welfare and essential to the economic well-being of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.1]  
C95, §161F.1

**161F.2 Board of supervisors to establish districts — strip coal mining.**

The board of supervisors of any county shall have jurisdiction, power and authority at any regular, special or adjourned session to establish, subject to the provisions of this chapter, districts having for their purpose soil conservation and the control of flood waters and to cause to be constructed as hereinafter provided, such improvements and facilities as shall be deemed essential for the accomplishment of the purpose of soil conservation and flood control. Such board shall also have jurisdiction, power and authority at any regular, special or adjourned session to establish, in the same manner that the districts hereinabove referred to are established, districts having for their purpose soil conservation in mining areas within the county, and provide that anyone engaged in removing the surface soil over any bed or strata of coal in such district for the purpose of obtaining such coal shall replace the surface soil as nearly as practicable to its original position, and provide that, upon abandonment of such removal operation, all surface soil shall be so replaced. This section shall apply only to surface soil so removed after July 4, 1949, and then only if it is essential for the accomplishment of the purpose of soil conservation and flood control within the purview of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.2]  
C95, §161F.2

**161F.3 Combination of functions.**

Such districts shall have the power to combine in their functions activities affecting soil conservation, flood control and drainage, or any of these objects, singly or in combination with another.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.3]  
C95, §161F.3

**161F.4 Old districts combined.**

If any levee or drainage district or improvement established either by legal proceedings or by private parties shall desire to include in the activities of such district soil conservation or flood control projects, the board upon petition, as for the establishment of an original levee or drainage district, shall establish a new district covering and including such old district and improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.4]  
C95, §161F.4

**161F.5 Approval of commissioners.**

A district shall not be established by a board of supervisors under this chapter unless the organization of the district is approved by the commissioners of a soil and water conservation district established under chapter 161A and which is included all or in part within the district, nor shall a district be established without the approval of the department of natural resources.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.5; 82 Acts, ch 1199, §75, 96]  
87 Acts, ch 23, §50  
C95, §161F.5

**161F.6 Chapters made applicable — definitions.**

1. In the organization, operation, and financing of districts established under this chapter,

the provisions of chapter 468 shall apply and any procedure provided under chapter 468 in connection with the organization, financing, and operation of any drainage district shall apply to the organization, financing, and operation of districts organized under this chapter.

2. As used in this chapter or chapter 468:

a. “*Drainage*” shall be deemed to include in its meaning soil erosion and flood control or any combination of drainage, flood control, and soil erosion control.

b. “*Drainage certificates*” or “*drainage bonds*” shall be deemed to include certificates or bonds issued in behalf of any district organized under the provisions of this chapter.

c. “*Drainage district*” shall be considered to include districts having as their purpose soil conservancy or flood control or any combination thereof.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467C.6]

C95, §161F.6

2009 Acts, ch 133, §69

## CHAPTER 161G

### MISSISSIPPI RIVER BASIN HEALTHY WATERSHEDS INITIATIVE

161G.1	Definitions.	161G.3	Mississippi river basin healthy watersheds initiative.
161G.2	Mississippi river basin healthy watersheds initiative fund.		

**161G.1 Definitions.**

1. “*Department*” means the department of agriculture and land stewardship.
2. “*Fund*” means the Mississippi river basin healthy watersheds initiative fund created pursuant to section 161G.2.

2010 Acts, ch 1191, §21

**161G.2 Mississippi river basin healthy watersheds initiative fund.**

1. A Mississippi river basin healthy watersheds initiative fund is created within the department.
2. The fund is composed of money appropriated by the general assembly to the fund and moneys available to and obtained or accepted by the department from the United States, the state, or any other source for placement in the fund.
3. The fund shall be used by the department to support the Mississippi river basin healthy watersheds initiative as provided in section 161G.3.
4. The moneys in the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

2010 Acts, ch 1191, §22

Referred to in §161G.1

**161G.3 Mississippi river basin healthy watersheds initiative.**

1. The department shall implement a voluntary program to assist in improving the health of the Mississippi river basin, including water quality and wildlife habitat.
2. The department shall implement the program consistent with requirements of the United States department of agriculture in its administration of the Mississippi river basin healthy watersheds initiative.
3. To the extent allowed by the United States department of agriculture, the department of agriculture and land stewardship may do all of the following:
  - a. Provide for conservation systems that manage and optimize nitrogen and phosphorus within fields to minimize runoff and reduce downstream nutrient loading.
  - b. Assist agricultural producers with a system of practices that will control soil erosion,

improve soil quality, restore and enhance wildlife habitat, and manage runoff and drainage water for improved water quality.

- c. Avoid, control, and trap nutrient runoff and maintain agricultural productivity.
- d. Partner with landowners to implement a range of land stewardship practices, including but not limited to conservation tillage, nutrient management, and other innovative practices.

2010 Acts, ch 1191, §23; 2012 Acts, ch 1023, §26

Referred to in §161G.2

**SUBTITLE 2**

**ANIMAL INDUSTRY**

Referred to in §159.1, 159.5

**CHAPTER 162**

**CARE OF ANIMALS IN COMMERCIAL ESTABLISHMENTS**

Referred to in §717F.4

162.1	Purpose and scope.	162.10	Research facility registration.
162.2	Definitions.		Repealed by 2010 Acts, ch 1030, §26, 29.
162.2A	Application, issuance, and renewal of authorizations.	162.10A	Commercial establishments — standard of care.
162.2B	Fees.	162.10B	Commercial establishments — inspecting state licensees and registrants.
162.2C	Commercial establishment fund.	162.10C	Commercial establishments — monitoring permittees.
162.3	Operation of a pound — certificate of registration.	162.10D	Commercial establishments — disciplinary actions.
162.4	Operation of an animal shelter — certificate of registration.	162.11	Exceptions.
162.4A	Operation of a research facility — certificate of registration.	162.12	Denial or revocation of license or registration.
162.5	Operation of a pet shop — state license.	162.12A	Civil penalties.
162.5A	Operation of a boarding kennel — state license.	162.13	Criminal penalties — confiscation.
162.6	Operation of a commercial kennel — state license.	162.14	Custody by animal warden.
162.7	Operation of a dealer — state license or permit.	162.15	Violation by animal warden.
162.8	Operation of a commercial breeder — state license or permit.	162.16	Rules.
162.9	Boarding kennel operator’s license. Repealed by 2010 Acts, ch 1030, §26, 29.	162.17	Repealed by 88 Acts, ch 1186, §16.
162.9A	Operation of a public auction — state license or permit.	162.18	Fees. Repealed by 2010 Acts, ch 1030, §26, 29.
		162.19	Abandoned animals destroyed.
		162.20	Sterilization.

**162.1 Purpose and scope.**

1. The purpose of this chapter is to accomplish all of the following:
  - a. Insure that all dogs and cats handled by commercial establishments are provided with humane care and treatment.
  - b. Regulate the transportation, sale, purchase, housing, care, handling, and treatment of dogs and cats by persons engaged in transporting, buying, or selling them.
  - c. Provide that all vertebrate animals consigned to pet shops are provided humane care and treatment by regulating the transportation, sale, purchase, housing, care, handling, and treatment of such animals by pet shops.
  - d. Authorize the sale, trade, or adoption of only those animals which appear to be free of infectious or communicable disease.
  - e. Protect the public from zoonotic disease.

2. This chapter does not apply to livestock as defined in section 717.1 or any other agricultural animal used in agricultural production as provided in chapter 717A.

[C75, 77, 79, 81, §162.1]

96 Acts, ch 1034, §7; 2010 Acts, ch 1030, §1, 29

Referred to in §162.11

**162.2 Definitions.**

As used in this chapter, except as otherwise expressly provided:

1. “*Adequate feed*” means the provision at suitable intervals of not more than twenty-four hours or longer if the dietary requirements of the species so require, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. The foodstuff shall be served in a clean receptacle, dish or container.

2. “*Adequate water*” means reasonable access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed twenty-four hours at any interval.

3. “*Animal shelter*” means a facility which is used to house or contain dogs or cats, or both, and which is owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of such animals.

4. “*Animal warden*” means any person employed, contracted, or appointed by the state, municipal corporation, or any political subdivision of the state, for the purpose of aiding in the enforcement of the provisions of this chapter or any other law or ordinance relating to the licensing of animals, control of animals or seizure and impoundment of animals and includes any peace officer, animal control officer, or other employee whose duties in whole or in part include assignments which involve the seizure or taking into custody of any animal.

5. “*Animal Welfare Act*” means the federal Animal Welfare Act, 7 U.S.C. ch. 54, and regulations promulgated by the United States department of agriculture and published in 9 C.F.R. ch. 1.

6. “*Authorization*” means a state license, certificate of registration, or permit issued or renewed by the department to a commercial establishment as provided in section 162.2A.

7. “*Boarding kennel*” means a place or establishment other than a pound or animal shelter where dogs or cats not owned by the proprietor are sheltered, fed, and watered in return for a consideration.

8. “*Commercial breeder*” means a person, engaged in the business of breeding dogs or cats, who sells, exchanges, or leases dogs or cats in return for consideration, or who offers to do so, whether or not the animals are raised, trained, groomed, or boarded by the person. A person who owns or harbors three or fewer breeding males or females is not a commercial breeder. However, a person who breeds any number of breeding male or female greyhounds for the purposes of using them for pari-mutuel wagering at a racetrack as provided in chapter 99D shall be considered a commercial breeder irrespective of whether the person sells, leases, or exchanges the greyhounds for consideration or offers to do so.

9. “*Commercial establishment*” or “*establishment*” means an animal shelter, boarding kennel, commercial breeder, commercial kennel, dealer, pet shop, pound, public auction, or research facility.

10. “*Commercial kennel*” means a kennel which performs grooming, boarding, or training services for dogs or cats in return for a consideration.

11. “*Dealer*” means any person who is engaged in the business of buying for resale or selling or exchanging dogs or cats, or both, as a principal or agent, or who claims to be so engaged.

12. “*Department*” means the department of agriculture and land stewardship.

13. “*Euthanasia*” means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during the loss of consciousness.

14. “*Federal license*” means a license issued by the United States department of agriculture to a person classified as a dealer or exhibitor pursuant to the federal Animal Welfare Act.

15. “*Federal licensee*” means a person to whom a federal license as a dealer or exhibitor is issued.

16. “*Housing facilities*” means any room, building, or area used to contain a primary enclosure or enclosures.

17. “*Permittee*” means a commercial breeder, dealer, or public auction to whom a permit is issued by the department as a federal licensee pursuant to section 162.2A.

18. “*Person*” means person as defined in chapter 4.

19. “*Pet shop*” means an establishment where a dog, cat, rabbit, rodent, nonhuman primate, fish other than live bait, bird, or other vertebrate animal is bought, sold, exchanged, or offered for sale. However, a pet shop does not include an establishment if one of the following applies:

a. The establishment receives less than five hundred dollars from the sale or exchange of vertebrate animals during a twelve-month period.

b. The establishment sells or exchanges less than six animals during a twelve-month period.

20. “*Pound*” means a facility for the prevention of cruelty to animals operated by the state, a municipal corporation, or other political subdivision of the state for the purpose of impounding or harboring seized stray, homeless, abandoned, or unwanted dogs, cats, or other animals; or a facility operated for such a purpose under a contract with any municipal corporation or incorporated society.

21. “*Primary enclosure*” means any structure used to immediately restrict an animal to a limited amount of space, such as a room, pen, cage, or compartment.

22. “*Public auction*” means any place or location where dogs or cats, or both, are sold at auction to the highest bidder regardless of whether the dogs or cats are offered as individuals, as a group, or by weight.

23. “*Registrant*” means a pound, animal shelter, or research facility to whom a certificate of registration is issued by the department pursuant to section 162.2A.

24. “*Research facility*” means any school or college of medicine, veterinary medicine, pharmacy, dentistry, or osteopathic medicine, or hospital, diagnostic or research laboratories, or other educational or scientific establishment situated in this state concerned with the investigation of, or instruction concerning the structure or function of living organisms, the cause, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

25. “*State fiscal year*” means the fiscal year described in section 3.12.

26. “*State licensee*” means any of the following:

a. A boarding kennel, commercial kennel, or pet shop to whom a state license is issued by the department pursuant to section 162.2A.

b. A commercial breeder, dealer, or public auction to whom a state license is issued in lieu of a permit by the department pursuant to section 162.2A.

27. “*Vertebrate animal*” means those vertebrate animals other than members of the equine, bovine, ovine, and porcine species, and ostriches, rheas, or emus.

[C75, 77, 79, 81, §162.2]

86 Acts, ch 1245, §611; 88 Acts, ch 1186, §1 – 4; 92 Acts, ch 1094, §1; 92 Acts, ch 1212, §6; 95 Acts, ch 43, §4; 2005 Acts, ch 3, §40; 2009 Acts, ch 133, §70; 2010 Acts, ch 1030, §2, 3, 29

Referred to in §162.11, 162.20, 165B.5, 169.5, 351.37, 717.1A, 717.2, 717.5, 717A.1, 717B.2, 717B.3, 717B.3A, 717B.4, 717B.8, 717D.3, 717F.2, 717F.7, 717F.10

Further definitions, see §159.1

### **162.2A Application, issuance, and renewal of authorizations.**

1. The department shall provide for the operation of a commercial establishment by issuing or renewing an authorization, including any of the following:

a. A certificate of registration for a pound, animal shelter, or research facility.

b. A state license for a boarding kennel, commercial kennel, or pet shop.

c. A state license or permit for a commercial breeder, dealer, or public auction. A federal licensee must apply for and be issued either a permit or a state license in lieu of a permit.

2. A person must be issued a separate state license, certificate of registration, or permit for each commercial establishment owned or operated by the person.

3. A person must apply for the issuance or renewal of an authorization on forms and according to procedures required by rules adopted by the department. The application shall contain information required by the department, including but not limited to all of the following:

a. The person’s name.

b. The person’s principal office or place of business.

c. The name, address, and type of establishment covered by the authorization.

d. The person's identification number. Notwithstanding chapter 22, the department shall keep the person's tax identification number confidential except for purposes of tax administration by the department of revenue, including as provided in section 421.18.

4. The authorization expires on an annual basis as provided by the department, and must be renewed by the commercial establishment on an annual basis on or before the authorization's expiration date.

5. a. A commercial establishment applying for the issuance or renewal of a permit shall provide the department with proof that the person is a federal licensee.

b. The department shall not require that it must enter onto the premises of a commercial establishment in order to issue a permit. The department shall not require that it must enter onto the premises of a commercial establishment in order to renew a permit, unless it has reasonable cause to monitor the commercial establishment as provided in section 162.10C.

2010 Acts, ch 1030, §4, 29

Referred to in §162.2, 162.3, 162.4, 162.4A, 162.5, 162.5A, 162.6, 162.7, 162.8, 162.9A, 162.11, 162.13, 717F.1

### **162.2B Fees.**

The department shall establish, assess, and collect fees as provided in this section.

1. A commercial establishment shall pay authorization fees to the department for the issuance or renewal of a certificate of registration, state license, or permit.

a. For the issuance or renewal of a certificate of registration, seventy-five dollars.

b. For the issuance or renewal of a state license or permit, one hundred seventy-five dollars. However, a commercial breeder who owns, keeps, breeds, or transports a greyhound dog for pari-mutuel wagering at a racetrack as provided in chapter 99D shall pay a different fee for the issuance or renewal of a state license as provided in rules adopted by the department.

2. The department shall retain all fees that it collects under this section for the exclusive purpose of administering and enforcing the provisions of this chapter. The fees shall be considered repayment receipts as defined in section 8.2. The general assembly shall appropriate moneys to the department each state fiscal year necessary for the administration and enforcement of this chapter.

2010 Acts, ch 1030, §5, 29

Referred to in §162.2C, 162.11

### **162.2C Commercial establishment fund.**

1. A commercial establishment fund is created in the state treasury under the management and control of the department.

2. The fund shall include moneys collected by the department in fees as provided in section 162.2B and moneys appropriated by the general assembly. The fund may include other moneys available to and obtained or accepted by the department, including moneys from public or private sources.

3. Moneys in the fund are appropriated to the department and shall be used exclusively to carry out the provisions of this chapter as determined and directed by the department, and shall not require further special authorization by the general assembly.

4. a. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund.

b. Notwithstanding section 8.33, moneys credited to the fund that remain unexpended or unobligated at the end of a fiscal year shall not revert to any other fund.

2010 Acts, ch 1191, §25, 26

### **162.3 Operation of a pound — certificate of registration.**

A pound shall only operate pursuant to a certificate of registration issued or renewed by the department as provided in section 162.2A. A pound may sell dogs or cats under its control if sales are allowed by the department. The pound shall maintain records as required by the department in order for the department to ensure the pound's compliance with the provisions of this chapter.

[C75, 77, 79, 81, §162.3]

88 Acts, ch 1186, §5; 88 Acts, ch 1272, §12; 89 Acts, ch 296, §17; 2010 Acts, ch 1030, §6, 29

**162.4 Operation of an animal shelter — certificate of registration.**

An animal shelter shall only operate pursuant to a certificate of registration issued or renewed by the department as provided in section 162.2A. An animal shelter may sell dogs or cats if sales are allowed by the department. The animal shelter facility shall maintain records as required by the department in order for the department to ensure the animal shelter's compliance with the provisions of this chapter.

[C75, 77, 79, 81, §162.4]

88 Acts, ch 1186, §6; 2010 Acts, ch 1030, §7, 29

**162.4A Operation of a research facility — certificate of registration.**

A research facility shall only operate pursuant to a certificate of registration issued by the department as provided in section 162.2A. The research facility shall maintain records as required by the department in order for the department to ensure the research facility's compliance with the provisions of this chapter. A research facility shall not purchase a dog or cat from a commercial establishment that does not have a valid authorization issued or renewed under this chapter or a similar authorization issued or renewed by another state.

2010 Acts, ch 1030, §8, 29

Referred to in §717F.1

**162.5 Operation of a pet shop — state license.**

A pet shop shall only operate pursuant to a state license issued or renewed by the department pursuant to section 162.2A. The pet shop shall maintain records as required by the department in order for the department to ensure the pet shop's compliance with the provisions of this chapter. A pet shop shall not purchase a dog or cat from a commercial establishment that does not have a valid authorization issued or renewed under this chapter or a similar authorization issued or renewed by another state.

[C75, 77, 79, 81, §162.5]

88 Acts, ch 1186, §7; 88 Acts, ch 1272, §13; 89 Acts, ch 296, §17; 2010 Acts, ch 1030, §9, 29

Referred to in §717E.3

**162.5A Operation of a boarding kennel — state license.**

A boarding kennel shall only operate pursuant to a state license issued by the department as provided in section 162.2A. The boarding kennel shall maintain records as required by the department in order for the department to ensure the boarding kennel's compliance with the provisions of this chapter. A boarding kennel shall not purchase a dog or cat from a commercial establishment that does not have a valid authorization issued or renewed under this chapter or a similar authorization issued or renewed by another state.

2010 Acts, ch 1030, §10, 29

**162.6 Operation of a commercial kennel — state license.**

A commercial kennel shall only operate pursuant to a state license issued or renewed by the department as provided in section 162.2A. A commercial kennel shall maintain records as required by the department in order for the department to ensure the commercial kennel's compliance with the provisions of this chapter. A commercial kennel shall not purchase a dog or cat from a commercial establishment that does not have a valid authorization issued or renewed under this chapter or a similar authorization issued or renewed by another state.

[C75, 77, 79, 81, §162.6]

88 Acts, ch 1186, §8; 88 Acts, ch 1272, §14; 89 Acts, ch 15, §1; 89 Acts, ch 296, §17; 2010 Acts, ch 1030, §11, 29

**162.7 Operation of a dealer — state license or permit.**

A dealer shall only operate pursuant to a state license, or a permit, issued or renewed by the department as provided in section 162.2A. A dealer who is a state licensee shall maintain records as required by the department in order for the department to ensure compliance with the provisions of this chapter. A dealer who is a permittee may but is not required to maintain records. A dealer shall not purchase a dog or cat from a commercial establishment that does

not have a valid authorization issued or renewed under this chapter or a similar authorization issued or renewed by another state.

[C75, 77, 79, 81, §162.7]

88 Acts, ch 1186, §9; 88 Acts, ch 1272, §15; 89 Acts, ch 15, §2; 89 Acts, ch 296, §17; 2010 Acts, ch 1030, §12, 29

Referred to in §162.11

#### **162.8 Operation of a commercial breeder — state license or permit.**

A commercial breeder shall only operate pursuant to a state license, or a permit, issued or renewed by the department as provided in section 162.2A. A commercial breeder who is a state licensee shall maintain records as required by the department in order for the department to ensure the commercial breeder's compliance with the provisions of this chapter. A commercial breeder who is a permittee may but is not required to maintain records. A commercial breeder shall not purchase a dog or cat from a commercial establishment that does not have a valid authorization issued or renewed under this chapter or a similar authorization issued or renewed by another state.

[C75, 77, 79, 81, §162.8]

88 Acts, ch 1186, §10; 88 Acts, ch 1272, §16; 89 Acts, ch 296, §18; 2010 Acts, ch 1030, §13, 29

Referred to in §162.11

**162.9 Boarding kennel operator's license.** Repealed by 2010 Acts, ch 1030, § 26, 29. See § 162.5A.

#### **162.9A Operation of a public auction — state license or permit.**

A public auction shall only operate pursuant to a state license, or a permit, issued or renewed by the department as provided in section 162.2A. A public auction which is a state licensee shall maintain records as required by the department in order for the department to ensure the public auction's compliance with the provisions of this chapter. A public auction which is a permittee may but is not required to maintain records. A public auction shall not purchase a dog or cat from a commercial establishment that does not have a valid authorization issued or renewed under this chapter or a similar authorization issued or renewed by another state.

2010 Acts, ch 1030, §14, 29

Referred to in §162.11

**162.10 Research facility registration.** Repealed by 2010 Acts, ch 1030, § 26, 29. See § 162.4A.

#### **162.10A Commercial establishments — standard of care.**

1. *a.* A commercial establishment shall provide for a standard of care that ensures that an animal in its possession or under its control is not lacking any of the following:

(1) Adequate feed, adequate water, housing facilities, sanitary control, or grooming practices, if such lack causes adverse health or suffering.

(2) Veterinary care.

*b.* A commercial establishment, other than a research facility or pet shop, shall provide for the standard of care for dogs and cats in its possession or under its control, and a research facility or pet shop shall provide for the standard of care for vertebrate animals in its possession or under its control.

2. *a.* Except as provided in paragraph "b" or "c", a commercial establishment shall comply with rules that the department adopts to implement subsection 1. A commercial establishment shall be regulated under this paragraph "a" unless the person is a state licensee as provided in paragraph "b" or a permittee as provided in paragraph "c".

*b.* A state licensee who is a commercial breeder owning, breeding, transporting, or keeping a greyhound dog for pari-mutuel wagering at a racetrack as provided in chapter 99D may be required to comply with different rules adopted by the department.

*c.* A permittee is not required to comply with rules that the department adopts to

implement a standard of care as provided in subsection 1 for state licensees and registrants. The department may adopt rules regulating a standard of care for a permittee, so long as the rules are not more restrictive than required for a permittee under the Animal Welfare Act. However, the department may adopt prescriptive rules relating to the standard of care. Regardless of whether the department adopts such rules, a permittee meets the standard of care required in subsection 1 if it voluntarily complies with rules applicable to state licensees or registrants. A finding by the United States department of agriculture that a permittee complies with the Animal Welfare Act is not conclusive when determining that the permittee provides a standard of care required in subsection 1.

3. A commercial establishment fails to provide for a standard of care as provided in subsection 1 if the commercial establishment commits abuse as described in section 717B.2, neglect as described in section 717B.3, or torture as provided in section 717B.3A.

2010 Acts, ch 1030, §15, 29

Referred to in §162.10C, 162.11, 162.12A, 162.13

#### **162.10B Commercial establishments — inspecting state licensees and registrants.**

The department may inspect the commercial establishment of a registrant or state licensee by entering onto its business premises at any time during normal working hours. The department may inspect records required to be maintained by the state licensee or registrant as provided in this chapter. If the owner or person in charge of the commercial establishment refuses admittance, the department may obtain an administrative search warrant issued under section 808.14.

2010 Acts, ch 1030, §16, 29

#### **162.10C Commercial establishments — monitoring permittees.**

1. The department may monitor the commercial establishment of a permittee by entering onto its business premises at any time during normal working hours. The department shall monitor the commercial establishment for the limited purpose of determining whether the permittee is providing for a standard of care required for permittees under section 162.10A. If the owner or person in charge of the commercial establishment refuses admittance, the department may obtain an administrative search warrant issued under section 808.14.

2. In order to enter onto the business premises of a permittee's commercial establishment, the department must have reasonable cause to suspect that the permittee is not providing for the standard of care required for permittees under section 162.10A. Reasonable cause must be supported by any of the following:

a. An oral or written complaint received by the department by a person. The complainant must provide the complainant's name and address and telephone number. Notwithstanding chapter 22, the department's record of a complaint is confidential, unless any of the following apply:

(1) The results of the monitoring are used in a contested case proceeding as provided in chapter 17A or in a judicial proceeding.

(2) The record is sought in discovery in any administrative, civil, or criminal case.

(3) The department's record of a complaint is filed by a person other than an individual.

b. A report prepared by a person employed by the United States department of agriculture that requires a permittee to take action necessary to correct a breach of standard of care required of federal licensees by the Animal Welfare Act or of permittees by section 162.10A. The department is not required to dedicate any number of hours to viewing or analyzing such reports.

3. When carrying out this section, the department may cooperate with the United States department of agriculture. The department shall report any findings resulting in an enforcement action under section 162.10D to the United States department of agriculture.

2010 Acts, ch 1030, §17, 29

Referred to in §162.2A, 162.11

#### **162.10D Commercial establishments — disciplinary actions.**

1. The department may take disciplinary action against a person by suspending or

revoking the person's authorization for violating a provision of this chapter or chapter 717B, or who commits an unlawful practice under section 714.16.

2. The department may require an owner, operator, or employee of a commercial establishment subject to disciplinary action under subsection 1 to complete a continuing education program as a condition for retaining an authorization. This section does not prevent a person from voluntarily participating in a continuing education program.

3. The department shall administer the continuing education program by either providing direct instruction or selecting persons to provide such instruction. The department is not required to compensate persons for providing the instruction, and may require attendees to pay reasonable fees necessary to compensate the department providing the instruction or a person selected by the department to provide the instruction. The department shall, to every extent possible, select persons to provide the instruction by consulting with organizations that represent commercial establishments, including but not limited to the Iowa pet breeders association.

4. The department shall establish the criteria for a continuing education program which shall include at least three and not more than eight hours of instruction. The department shall provide for the program's beginning and ending dates. However, a person must complete the program in twelve months or less.

2010 Acts, ch 1030, §18, 29; 2010 Acts, ch 1193, §41, 80

Referred to in §162.10C, 162.11, 162.13

#### **162.11 Exceptions.**

1. This chapter does not apply to a federal licensee except as provided in the following:

a. Section 162.1, subsection 2, and sections 162.2, 162.2A, 162.2B, 162.7, 162.8, 162.9A, 162.10A, 162.10C, 162.10D, 162.12A, and 162.13.

b. Section 162.1, subsection 1, but only to the extent required to implement sections described in paragraph "a".

c. Section 162.16 but only to the extent required to implement sections described in paragraph "a".

2. This chapter does not apply to a place or establishment which operates under the immediate supervision of a duly licensed veterinarian as a hospital where animals are harbored, hospitalized, and cared for incidental to the treatment, prevention, or alleviation of disease processes during the routine practice of the profession of veterinary medicine. However, if animals are accepted by such a place, establishment, or hospital for boarding or grooming for a consideration, the place, establishment, or hospital is subject to the licensing or registration requirements applicable to a boarding kennel or commercial kennel under this chapter and the rules adopted by the secretary.

3. This chapter does not apply to a noncommercial kennel at, in, or adjoining a private residence where dogs or cats are kept for the hobby of the householder, if the dogs or cats are used for hunting, for practice training, for exhibition at shows or field or obedience trials, or for guarding or protecting the householder's property. However, the dogs or cats must not be kept for breeding if a person receives consideration for providing the breeding.

[C75, 77, 79, 81, §162.11]

88 Acts, ch 1186, §13; 2010 Acts, ch 1030, §19, 20, 29

#### **162.12 Denial or revocation of license or registration.**

A certificate of registration may be denied to any animal shelter, pound, or research facility and a state license may be denied to any public auction, boarding kennel, commercial kennel, pet shop, commercial breeder, or dealer, or an existing certificate of registration or state license may be revoked by the secretary if, after public hearing, it is determined that the housing facilities or primary enclosures are inadequate under this chapter or if the feeding, watering, cleaning, and housing practices at the pound, animal shelter, public auction, pet shop, boarding kennel, commercial kennel, research facility, or those practices by the commercial breeder or dealer, are not in compliance with this chapter or with the

rules adopted pursuant to this chapter. The premises of each registrant or state licensee shall be open for inspection during normal business hours.

[C75, 77, 79, 81, §162.12]

88 Acts, ch 1186, §14; 2010 Acts, ch 1030, §21, 29

Referred to in §717F.7

#### **162.12A Civil penalties.**

The department shall establish, impose, and assess civil penalties for violations of this chapter. The department may by rule establish a schedule of civil penalties for violations of this chapter. All civil penalties collected under this section shall be deposited into the general fund of the state.

1. *a.* A commercial establishment that operates pursuant to an authorization issued or renewed under this chapter is subject to a civil penalty of not more than five hundred dollars, regardless of the number of animals possessed or controlled by the commercial establishment, for violating this chapter. Except as provided in paragraph “*b*”, each day that a violation continues shall be deemed a separate offense.

*b.* This paragraph applies to a commercial establishment that violates a standard of care involving housing as provided in section 162.10A. The departmental official who makes a determination that a violation exists shall provide a corrective plan to the commercial establishment describing how the violation will be corrected within a compliance period of not more than fifteen days from the date of approval by the official of the corrective plan. The civil penalty shall not exceed five hundred dollars for the first day of the violation. After that day, the department shall not impose a civil penalty for the violation during the compliance period. The department shall not impose an additional civil penalty, unless the commercial establishment fails to correct the violation by the end of the compliance period. If the commercial establishment fails to correct the violation by the end of the compliance period, each day that the violation continues shall be deemed a separate offense.

2. A commercial establishment that does not operate pursuant to an authorization issued or renewed under this chapter is subject to a civil penalty of not more than one thousand dollars, regardless of the number of animals possessed or controlled by the commercial establishment, for violating this chapter. Each day that a violation continues shall be deemed a separate offense.

2010 Acts, ch 1030, §22, 29

Referred to in §162.11

#### **162.13 Criminal penalties — confiscation.**

1. A person who operates a commercial establishment without an authorization issued or renewed by the department as required in section 162.2A is guilty of a simple misdemeanor and each day of operation is a separate offense.

2. The failure of a person who owns or operates a commercial establishment to meet the standard of care required in section 162.10A, subsection 1, is a simple misdemeanor. The animals are subject to seizure and impoundment and may be sold or destroyed as provided by rules which shall be adopted by the department pursuant to chapter 17A. The rules shall provide for the destruction of an animal by a humane method, including by euthanasia.

3. The failure of a person who owns or operates a commercial establishment to meet the requirements of this section is also cause for the suspension or revocation of the person’s authorization as provided in section 162.10D.

4. Dogs, cats, and other vertebrate animals upon which euthanasia is permitted by law may be destroyed by a person subject to this chapter or chapter 169, by a humane method, including euthanasia, as provided by rules which shall be adopted by the department pursuant to chapter 17A.

5. It is unlawful for a dealer to knowingly ship a diseased animal. A dealer violating this subsection is subject to a fine not exceeding one hundred dollars. Each diseased animal shipped in violation of this subsection is a separate offense.

[C75, 77, 79, 81, §162.13]

83 Acts, ch 149, §1; 88 Acts, ch 1186, §15; 94 Acts, ch 1103, §1; 2010 Acts, ch 1030, §23, 29

Referred to in §162.11

**162.14 Custody by animal warden.**

An animal warden, upon taking custody of any animal in the course of the warden's official duties, shall immediately make a record of the matter in the manner prescribed by the secretary and the record shall include a complete description of the animal, reason for seizure, location of seizure, the owner's name and address if known, and all license or other identification numbers, if any. Complete information relating to the disposition of the animal shall be added in the manner provided by the secretary immediately after disposition.

[C75, 77, 79, 81, §162.14]

**162.15 Violation by animal warden.**

Violation of any provision of this chapter which relates to the seizing, impoundment, and custody of an animal by an animal warden shall constitute a simple misdemeanor and each animal handled in violation shall constitute a separate offense.

[C75, 77, 79, 81, §162.15]

**162.16 Rules.**

The department shall adopt rules and promulgate forms necessary to administer and enforce the provisions of this chapter.

[C75, 77, 79, 81, §162.16]

2010 Acts, ch 1030, §24, 29

Referred to in §162.11

**162.17** Repealed by 88 Acts, ch 1186, § 16.

**162.18 Fees.** Repealed by 2010 Acts, ch 1030, § 26, 29.

**162.19 Abandoned animals destroyed.**

Whenever any animal is left with a veterinarian, boarding kennel or commercial kennel pursuant to a written agreement and the owner does not claim the animal by the agreed date, the animal shall be deemed abandoned, and a notice of abandonment and its consequences shall be sent within seven days by certified mail to the last known address of the owner. For fourteen days after mailing of the notice the owner shall have the right to reclaim the animal upon payment of all reasonable charges, and after the fourteen days the owner shall be deemed to have waived all rights to the abandoned animal. If despite diligent effort an owner cannot be found for the abandoned animal within another seven days, the veterinarian, boarding kennel, or commercial kennel may humanely destroy the abandoned animal.

Each veterinarian, boarding kennel or commercial kennel shall warn its patrons of the provisions of this section by a conspicuously posted notice or by conspicuous type in a written receipt.

[C77, 79, 81, §162.19]

**162.20 Sterilization.**

1. A pound or animal shelter shall not transfer ownership of a dog or cat by sale or adoption, unless the dog or cat is subject to sterilization. The sterilization shall involve a procedure which permanently destroys the capacity of a dog or cat to reproduce, either by the surgical removal or alteration of its reproductive organs, or by the injection or ingestion of a serum. The pound or animal shelter shall not relinquish custody until it provides for one of the following:

a. Sterilization performed by a veterinarian licensed pursuant to chapter 169.

b. The execution of an agreement with a person intended to be the permanent custodian of the dog or cat. The agreement must provide that the custodian shall have the dog or cat sterilized by a veterinarian licensed pursuant to chapter 169.

2. The pound or animal shelter maintaining custody of the dog or cat may require that a person being transferred ownership of the dog or cat reimburse the pound or animal shelter for the amount in expenses incurred by the pound or animal shelter in sterilizing the dog or

cat, if the dog or cat is sterilized prior to the transfer of ownership of the dog or cat to the person.

3. *a.* The sterilization agreement may be on a form which shall be prescribed by the department. The agreement shall contain the signature and address of the person receiving custody of the dog or cat, and the signature of the representative of the pound or animal shelter.

*b.* The sterilization shall be completed as soon as practicable, but prior to the transfer of the ownership of the dog or cat by the pound or animal shelter. The pound or animal shelter may grant an extension of the period required for the completion of the sterilization if the extension is based on a reasonable determination by a licensed veterinarian.

*c.* A pound or animal shelter shall transfer ownership of a dog or cat, conditioned upon the confirmation that the sterilization has been completed by a licensed veterinarian who performed the procedure. The confirmation shall be a receipt furnished by the office of the attending veterinarian.

*d.* A person who fails to satisfy the terms of the sterilization agreement shall return the dog or cat within twenty-four hours following receipt of a demand letter which shall be delivered to the person by the pound or animal shelter personally or by certified mail.

4. *a.* A person who does not comply with the provisions of a sterilization agreement is guilty of a simple misdemeanor.

*b.* A person who fails to return a dog or cat upon receipt of a demand letter is guilty of a simple misdemeanor.

*c.* A pound or animal shelter which knowingly fails to provide for the sterilization of a dog or cat is subject to a civil penalty of up to two hundred dollars. The department may enforce and collect civil penalties according to rules which shall be adopted by the department. Each violation shall constitute a separate offense. Moneys collected from civil penalties shall be deposited into the general fund of the state and are appropriated on July 1 of each year in equal amounts to each track licensed to race dogs to support the racing dog adoption program as provided in section 99D.27. Upon the third offense, the department may suspend or revoke a certificate of registration issued to the pound or animal shelter pursuant to this chapter. The department may bring an action in district court to enjoin a pound or animal shelter from transferring animals in violation of this section. In bringing the action, the department shall not be required to allege facts necessary to show, or tending to show, a lack of adequate remedy at law, that irreparable damage or loss will result if the action is brought at law, or that unique or special circumstances exist.

5. This section shall not apply to the following:

*a.* The return of a dog or cat to its owner by a pound or animal shelter.

*b.* The transfer of a dog or cat by a pound or animal shelter which has obtained an enforcement waiver issued by the department. The pound or shelter may apply for an annual waiver each year as provided by rules adopted by the department. The department shall grant a waiver, if it determines that the pound or animal shelter is subject to an ordinance by a city or county which includes stricter requirements than provided in this section. The department shall not charge more than ten dollars as a waiver application fee. The fees collected by the department shall be deposited in the general fund of the state.

*c.* The transfer of a dog or cat to a research facility as defined in section 162.2 or a person licensed by the United States department of agriculture as a class B dealer pursuant to 9 C.F.R. ch. 1, subch. A, pt. 2. However, a class B dealer who receives an unsterilized dog or cat from a pound or animal shelter shall either sterilize the dog or cat or transfer the unsterilized dog or cat to a research facility provided in this paragraph. The class B dealer shall not transfer a dog to a research facility if the dog is a greyhound registered with the national greyhound association and the dog raced at a track associated with pari-mutuel racing unless the class B dealer receives written approval of the transfer from a person who owned an interest in the dog while the dog was racing.

93 Acts, ch 134, §1; 2008 Acts, ch 1058, §16; 2010 Acts, ch 1061, §180; 2012 Acts, ch 1023, §27

## CHAPTER 163

## INFECTIOUS AND CONTAGIOUS DISEASES AMONG ANIMALS

Referred to in §159.5, 159.6, 165B.2, 166A.4

Definitions applicable to chapter; see §159.1

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## SUBCHAPTER I

## GENERAL PROVISIONS

**163.1 Powers of department.**

The department shall administer and enforce the provisions of this chapter and rules adopted by the department pursuant to this chapter. In administering the provisions of this chapter, the department shall have power to do all of the following:

1. Adopt any necessary rule for the control of an infectious or contagious disease affecting animals within the state.
2. Provide for quarantining animals afflicted with an infectious or contagious disease, or that have been exposed to such disease, whether within or without the state.
3. Determine and employ the most efficient and practical means for the control of an infectious or contagious disease afflicting animals.
4. Establish, maintain, enforce, and regulate quarantine and other measures relating to the movement and care of animals that may be exposed or afflicted with an infectious or contagious disease.
5. Provide for the disinfection of suspected yards, buildings, or articles, and for the destruction of animals as may be deemed necessary by the department.
6. Enter any place where any animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is exposed to or afflicted with an infectious or contagious disease.
7. Regulate or prohibit the arrival in, departure from, and passage through the state of animals exposed to or afflicted with an infectious or contagious disease; and in case of a violation of any such regulation or prohibition, to detain any animal at the owner's expense.
8. Regulate or prohibit the movement of animals into the state which, in the department's determination, for any reason, may be detrimental to the health of animals in the state.
9. Cooperate with and arrange for assistance from the United States department of agriculture in performing its duties under this chapter.
10. Impose civil penalties as provided in this chapter. The department may refer cases for prosecution to the attorney general.

[S13, §2538-s; C24, 27, 31, 35, 39, §2643; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.1]

91 Acts, ch 32, §1; 2001 Acts, ch 136, §1; 2004 Acts, ch 1163, §1

### **163.2 Infectious or contagious diseases.**

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

1. "*Certificate of veterinary inspection*" or "*certificate*" means a legible record, made on an official form of the state of origin or the animal and plant health inspection service of the United States department of agriculture, and issued by an accredited veterinarian of the state of origin or a veterinarian in the employ of the animal and plant health inspection service, which shows that an animal listed on the form meets the health requirements of the state of destination.
2. "*Control*" means the prevention, suppression, or eradication of an infectious or contagious disease afflicting an animal within the state.
3. "*Department*" means the department of agriculture and land stewardship.
4. "*Foot and mouth disease*" means a virus of the family picornaviridae, genus aphthovirus, including any immunologically distinct serotypes.
5. "*Infectious or contagious disease*" means glanders, farcy, maladie du coit (dourine), anthrax, foot and mouth disease, scabies, classical swine fever, tuberculosis, brucellosis, vesicular exanthema, scrapie, rinderpest, avian influenza or Newcastle disease as provided in chapter 165B, pseudorabies as provided in chapter 166D, or any other transmissible, transferable, or communicable disease so designated by the department.
6. "*Move*" or "*movement*", except as provided in subchapter III, means to ship, transport, or deliver an animal.

[C24, 27, 31, 35, 39, §2644; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.2]

2001 Acts, ch 170, §1, 3; 2004 Acts, ch 1089, §1; 2004 Acts, ch 1163, §2; 2009 Acts, ch 133, §202; 2011 Acts, ch 84, §1, 5; 2012 Acts, ch 1095, §34

Referred to in §163A.1, 164.1, 165.1A, 166A.1, 166D.2, 172E.2, 717A.2

### **163.3 Veterinary assistants.**

The secretary or the secretary's designee may appoint one or more veterinarians licensed pursuant to chapter 169 in each county as assistant veterinarians. The secretary may also

appoint such special assistants as may be necessary in cases of emergency, including as provided in section 163.3A.

[C24, 27, 31, 35, 39, §2645; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.3]  
2005 Acts, ch 151, §1

### **163.3A Veterinary emergency preparedness and response.**

1. The department may provide veterinary emergency preparedness and response services necessary to prevent or control a serious threat to the public health, public safety, or the state's economy caused by the transmission of disease among livestock as defined in section 717.1 or agricultural animals as defined in section 717A.1. The services may include measures necessary to ensure that all such animals carrying disease are properly identified, segregated, treated, or destroyed as provided in this Code.

2. The services shall be performed under the direction of the department and may be part of measures authorized by the governor under a declaration or proclamation issued pursuant to chapter 29C. In such case, the department shall cooperate with the Iowa department of public health under chapter 135, and the department of homeland security and emergency management, and local emergency management agencies as provided in chapter 29C.

3. The secretary or the secretary's designee shall appoint veterinarians licensed pursuant to chapter 169 or persons in related professions or occupations who are qualified, as determined by the secretary, to serve on a voluntary basis as members of one or more veterinary emergency response teams. The secretary shall provide for the registration of persons as part of the appointment process. The secretary may cooperate with the Iowa board of veterinary medicine in implementing this section.

4. a. A registered member of an emergency response team who acts under the authority of the secretary shall be considered an employee of the state for purposes of defending a claim on account of damage to or loss of property or on account of personal injury or death under chapter 669. The registered member shall be afforded protection under section 669.21. The registered member shall also be considered an employee of the state for purposes of disability, workers' compensation, and death benefits under chapter 85.

b. The department shall provide and update a list of the registered members of each emergency response team, including the members' names and identifying information, to the department of administrative services. Upon notification of a compensable loss suffered by a registered member, the department of administrative services shall seek authorization from the executive council to pay as an expense from the appropriations addressed in section 7D.29 those costs associated with covered benefits.

2005 Acts, ch 151, §2; 2011 Acts, ch 131, §27, 158; 2013 Acts, ch 29, §47

Referred to in §163.3  
Subsection 2 amended

### **163.4 Powers of assistants.**

Such assistant veterinarians shall have power, under the direction of the department, to perform all acts necessary to carry out the provisions of law relating to infectious and contagious diseases among animals, and shall be furnished by the department with the necessary supplies and materials which shall be paid for out of the appropriation for the eradication of infectious and contagious diseases among animals.

[C24, 27, 31, 35, 39, §2646; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.4]

### **163.5 Oaths.**

Such assistant veterinarians shall have power to administer oaths and affirmations to appraisers acting under this and the following chapters of this subtitle.

[C24, 27, 31, 35, 39, §2647; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.5]

Analogous provisions, §63A.2

### **163.6 Slaughter facilities — blood samples.**

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

a. "Department" means the department of agriculture and land stewardship unless the United States department of agriculture is otherwise specified.

b. “Slaughtering establishment” means a person engaged in the business of slaughtering animals, if the person is an establishment subject to the provisions of chapter 189A which slaughters animals for meat food products as defined in section 189A.2.

2. The department may require that samples of blood be collected from animals at a slaughtering establishment in order to determine if the animals are infected with an infectious or contagious disease, according to rules adopted by the department of agriculture and land stewardship. Upon approval by the department, the collection shall be performed by either of the following:

a. A slaughtering establishment under an agreement executed by the department and the slaughtering establishment.

b. A person authorized by the department.

3. An authorized person collecting samples shall have access to areas where the animals are confined in order to collect blood samples. The department shall notify the slaughtering establishment in writing that samples of blood must be collected for analysis. The notice shall be provided in a manner required by the department.

4. In carrying out this section, a person authorized by the department to collect blood samples from animals as provided in this section shall have the right to enter and remain on the premises of the slaughtering establishment in the same manner and on the same terms as a meat inspector authorized by the department, including the right to access facilities routinely available to employees of the slaughtering establishment such as toilet and lavatory facilities, lockers, cafeterias, areas reserved for work breaks or dining, and storage facilities.

5. The slaughtering establishment shall provide a secure area for the permanent storage of equipment used to collect blood, an area reserved for collecting the blood, including the storage of blood during the collection, and a refrigerated area used to store blood samples prior to analysis. The area reserved for collecting the blood shall be adjacent to the area where the animals are killed, unless the authorized person and the slaughtering establishment select another area.

6. The department is not required to compensate a slaughtering establishment for allowing a person authorized by the department to carry out this section.

98 Acts, ch 1056, §1; 2001 Acts, ch 136, §2; 2002 Acts, ch 1119, §21; 2009 Acts, ch 41, §203

#### **163.7 State and federal rules.**

The rules adopted by the department regarding interstate shipments of animals shall not be in conflict with the rules of the United States department of agriculture, unless there is an outbreak of a malignant contagious disease in any locality, state, or territory, in which event the department of agriculture and land stewardship may place an embargo on such locality, state, or territory.

[C24, 27, 31, 35, 39, §2649; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.7]

2012 Acts, ch 1095, §19

#### **163.8 Enforcement of rules.**

The assistant veterinarians appointed under this chapter shall enforce all rules of the department, and in so doing may call to their assistance any peace officer.

[S13, §2538-s; C24, 27, 31, 35, 39, §2650; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.8]

#### **163.9 College at Ames to assist.**

The dean of the veterinary college of the Iowa state university of science and technology is authorized to use the equipment and facilities of the college in assisting the department in carrying out the provisions of this chapter.

[C24, 27, 31, 35, 39, §2651; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.9]

#### **163.10 Quarantining or destroying animals.**

The department may quarantine or destroy any animal exposed to or afflicted with an infectious or contagious disease. However, cattle exposed to or infected with tuberculosis shall not be destroyed without the owner’s consent, unless there are sufficient moneys to

reimburse the owner for the cattle, which may be paid as an expense authorized as provided in section 163.15, from moneys in the brucellosis and tuberculosis eradication fund created in section 165.18, or from moneys made available by the United States department of agriculture.

[C24, 27, 31, 35, 39, §2652; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.10]  
2004 Acts, ch 1163, §3; 2011 Acts, ch 131, §28, 158

#### **163.11 Imported animals.**

A person shall not move an animal into this state, except to a public livestock market where federal inspection of livestock is maintained, for work, breeding, or dairy purposes, unless such animal has been examined and found free from all infectious or contagious diseases.

No person shall bring in any manner into this state any cattle for dairy or breeding purposes unless such cattle have been tested within thirty days prior to date of importation by the agglutination test for contagious abortion or abortion disease, and shown to be free from such disease.

Animals for feeding purposes, however, may be brought into the state without inspection, under such regulations as the department may prescribe except that this sentence shall not apply to swine.

[C24, 27, 31, 35, 39, §2653; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.11]  
2004 Acts, ch 1163, §4  
Referred to in §163.12  
Additional provision, §165.36

#### **163.12 Freedom from disease — certificate.**

Freedom from disease as specified in section 163.11 shall be established by a certificate of veterinary inspection signed by a veterinarian acting under either the authority of the department of agriculture and land stewardship, or of the United States department of agriculture. A copy of the certificate shall be attached to the waybill accompanying a shipment, and a copy of the certificate shall be delivered to the department.

[C24, 27, 31, 35, 39, §2654; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.12]  
2004 Acts, ch 1163, §5  
Referred to in §163.14

**163.13** Repealed by 2005 Acts, ch 19, § 125. See § 163.12.

#### **163.14 Intrastate movement.**

An animal, other than an animal to be moved for immediate slaughter, shall be inspected when required by the department, and accompanied by the certificate of veterinary inspection provided in section 163.12 when moved from a point in this state to another point within the state where federal inspection is not maintained.

[C24, 27, 31, 35, 39, §2656; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.14]  
2004 Acts, ch 1163, §6

#### **163.15 Indemnifying owner.**

1. If the secretary of agriculture determines that the outbreak of an infectious or contagious disease among an animal population constitutes a threat to the general welfare or the public health of the inhabitants of this state, the secretary shall formulate a program of eradication which shall include the condemnation and destroying of the animals exposed to or afflicted with the disease. The program of eradication shall provide for the indemnification of owners of the livestock under this section, if there are no other sources of indemnification. The program shall not be effective until the program has been approved by the executive council.

2. If an animal afflicted with an infectious or contagious disease is destroyed under a program of eradication as provided in this section, the owner shall be compensated according to one of the following methods:

a. (1) A determination of an indemnity amount as agreed to by appraisal. The determination shall be made by appraisers who shall be three competent and disinterested

persons, including one who is appointed by the department, one who is appointed by the owner, and one who is appointed by agreement of the department and the owner. The appraisers shall report their appraisal under oath to the department. The appraisers shall receive compensation and expenses as provided for by the program.

(2) A claim for an indemnity filed by the owner shall not exceed the amount agreed upon by the majority decision of the appraisers. For an animal other than registered purebred stock the indemnity amount shall be based on current market prices. For registered purebred stock, the indemnity amount may exceed market prices by not more than fifty percent. The indemnity amount shall be less any amount of indemnification that the owner might be allowed from the United States department of agriculture. An indemnity shall not be allowed for an animal if the department of agriculture and land stewardship determines that the animal has been fed raw garbage as provided in section 163.26.

(3) A claim for an indemnity by the owner and a claim for compensation and expenses by the appraisers shall be filed with the department and submitted by the secretary of agriculture to the executive council for authorization of payment of the claim as an expense from the appropriations addressed in section 7D.29.

b. A formula established by rule adopted by the department that is effective as determined by the department in accordance with chapter 17A and applicable upon approval of the program of eradication by the executive council. The formula shall be applicable to indemnify owners if the executive council, upon recommendation by the secretary of agriculture, determines that an animal population in this state is threatened with infection from an exceptionally contagious disease.

(1) An owner shall be paid an indemnity amount based on the formula, only if the owner elects to be paid under the formula in lieu of the determination by appointed appraisers as otherwise provided in this section.

(2) The formula shall provide for the payment of the fair market value of an animal based on market prices paid for similar animals according to categories or criteria established by the department, which may include payment based on the species, breed, type, weight, sex, age, purebred status, and condition of the animal. The department may provide for deductions based on other compensation received by the owner for the destruction of the animals. The department may exclude a claim if the person would be ineligible to receive compensation by three appointed appraisers as provided in this section.

(3) If an owner elects to be paid an indemnity amount based on a method that provides either a determination by appointed appraisers or pursuant to a formula, the owner shall not be entitled to revoke the election, unless otherwise provided by the department. An owner's decision to delay or refuse to make an election under this section shall not affect the condemnation and destruction of afflicted animals under the program of eradication.

(4) The executive council may authorize payment under the provisions of this paragraph "b" as an expense from the appropriations addressed in section 7D.29.

[SS15, §2538-1a – 8a; C24, 27, 31, 35, 39, §2657; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.15]

2002 Acts, ch 1101, §1; 2004 Acts, ch 1163, §7, 8; 2011 Acts, ch 131, §29 – 32, 158  
Referred to in §163.10, 163.16, 163.51

### **163.16 Limitation on right to receive pay.**

Unless an animal was examined at the time of importation into the state and found free from contagious or infectious diseases as provided in this chapter, no person importing the same and no transferee who receives such animal knowing that the provisions of this chapter have been violated shall receive any compensation under section 163.15 for the destruction of such animal by the department.

[C24, 27, 31, 35, 39, §2658; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.16]  
Inspection of imported animals, §163.11

**163.17 Local boards of health.**

All local boards of health shall assist the department in the prevention, suppression, control, and eradication of contagious and infectious diseases among animals, whenever requested to do so.

[C24, 27, 31, 35, 39, §2659; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.17]  
Local boards of health, chapter 137

**163.18 False representation.**

A person shall not knowingly make a false representation about the shipment of an animal that is being or will be made, with the intent to avoid or prevent the animal's inspection that is conducted in order to determine whether the animal is free from disease.

[C24, 27, 31, 35, 39, §2660; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.18]  
2001 Acts, ch 136, §3

**163.19 Sale or exposure of infected animals.**

No owner or person having charge of any animal, knowing the same to have any infectious or contagious disease, shall sell or barter the same for breeding, dairy, work, or feeding purposes, or permit such animal to run at large or come in contact with any other animal.

[C97, §5018; C24, 27, 31, 35, 39, §2661; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.19]

**163.20 Glanders.**

No owner or person having charge of any animal, knowing the same to be affected with glanders, shall permit such animal to be driven upon any highway, and no keeper of a public barn shall knowingly permit any animal having such disease to be stabled in such barn.

[C24, 27, 31, 35, 39, §2662; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.20]

**163.21** Repealed by 2001 Acts, ch 136, § 10. See § 163.61.

**163.22** Repealed by 2005 Acts, ch 19, § 125.

**163.23 False certificates of veterinary inspection.**

A veterinarian shall not issue a certificate of veterinary inspection for an animal knowing that the animal described in the certificate was not the same animal from which tests were made as a basis for issuing the certificate. A veterinarian shall not otherwise falsify a certificate.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.23]  
2001 Acts, ch 136, §4; 2004 Acts, ch 1163, §9

**163.24 Using false certificate.**

A person shall not conduct a transaction to import, export, or transport an animal within this state or sell or offer for sale an animal if the person uses a certificate of veterinary inspection in connection with the transaction knowing that the animal described in the certificate was not the animal from which tests were made as a basis for issuing the certificate. A person shall not otherwise use an altered or otherwise false certificate in connection with such transaction.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.24]  
2001 Acts, ch 136, §5; 2004 Acts, ch 1163, §10

**163.25 Altering certificate.**

1. A person shall not remove or alter a tag or mark of identification appearing on an animal, tested or being tested for disease, if the tag or mark of identification is authorized by the department or inserted by any qualified veterinarian.

2. A person shall not falsify any of the following:

a. A certificate of vaccination, issued by a person authorized to vaccinate the animal.

b. A certificate of veterinary inspection.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.25]  
2001 Acts, ch 136, §6; 2012 Acts, ch 1095, §20

## SUBCHAPTER II

## FEEDING GARBAGE TO ANIMALS

**163.26 Definition.**

For the purposes of this subchapter, “garbage” means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts. “Garbage” includes all waste material, by-products of a kitchen, restaurant, hotel, or slaughterhouse, every refuse accumulation of animal, fruit, or vegetable matter, liquids or otherwise, or grain not consumed, that is collected from hog sales pen floors in public stockyards. Animals or parts of animals, which are processed by slaughterhouses or rendering establishments, and which as part of the processing are heated to not less than 212 degrees Fahrenheit for thirty minutes, are not garbage for purposes of this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.26]

86 Acts, ch 1245, §612; 87 Acts, ch 115, §27; 2001 Acts, ch 136, §9; 2012 Acts, ch 1095, §21; 2013 Acts, ch 30, §38

Referred to in §163.15

Section amended

**163.27 Boiling garbage — feeding restrictions.**

1. Garbage shall not be fed to an animal unless such garbage has been heated to a temperature of two hundred twelve degrees Fahrenheit for thirty minutes, or other acceptable method, as provided by rules adopted by the department. However, this requirement shall not apply to an individual who feeds to the individual’s own animals only the garbage obtained from the individual’s own household.

2. A person shall not feed public or commercial garbage to swine .

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §163.27]

2006 Acts, ch 1010, §56; 2012 Acts, ch 1095, §22

**163.28 Licenses.** Repealed by 2013 Acts, ch 90, § 216.

**163.29** Repealed by 2001 Acts, ch 136, § 10. See § 163.61.

## SUBCHAPTER III

## MOVEMENT OF SWINE

Referred to in §163.2

**163.30 Swine dealer licensing and fees — swine movement.**

1. This section shall apply to all swine moved interstate and intrastate, except swine moved directly to slaughter or to a livestock market for sale directly to a slaughtering establishment for immediate slaughter.

2. When used in this subchapter:

a. “Dealer” means any person who is engaged in the business of buying for resale, or selling, or exchanging swine as a principal or agent or who claims to be so engaged, but does not include the owner or operator of a farm who does not claim to be so engaged and who sells or exchanges only those swine which have been kept by the person solely for feeding or breeding purposes.

b. “Move” or “movement” means to ship, transport, or deliver swine by land, water, or air, except that “move” or “movement” does not mean a relocation.

c. “Relocate” or “relocation” means to ship, transport, or deliver swine by land, water, or air, to different premises, if the ownership of the swine does not change, the prior and new premises are located within the state, and the shipment, transportation, or delivery between the prior and new premises occurs within the state.

d. “*Separate and apart*” means a manner of holding swine so as not to have physical contact with other swine on the premises.

3. A person shall not act as a dealer unless the department issues the person a dealer’s license. The person must be licensed as a dealer regardless of whether the swine originate in this state or another jurisdiction or the person resides in this state or another jurisdiction. The jurisdiction may be in another state or a foreign nation.

a. The fee for a dealer’s license is five dollars each year. A license expires on the first day of July following the date of issue. A license shall be numbered and the dealer shall retain the number from year to year.

b. To be issued a license, an applicant must file a surety bond with the department. The applicant shall file a standard surety bond of ten thousand dollars with the secretary named as trustee, for the use and benefit of anyone damaged by a violation of this section, except that the bond shall not be required for dealers who are bonded in the same or a greater amount than required pursuant to the federal Packers and Stockyards Act. In addition, the department may require that a licensee file evidence of financial responsibility with the department prior to a license being issued or renewed as provided in section 202C.2.

c. Each employee or agent doing business by buying for resale, selling, or exchanging feeder swine in the name of a licensed dealer shall be required to secure a permit issued by the department showing the person is employed by or represents a licensed dealer. All such permits shall be issued upon application forms furnished by the department at a cost of three dollars per annum, and shall expire on the first day of July following the date of issue.

d. A permittee shall not represent more than one dealer. Failure of a licensee or permittee to comply with this chapter or a rule made pursuant to this chapter is cause for revocation by the secretary of the permit or license after notice to the alleged offender and the holding of a hearing by the secretary. Rules shall be made in accordance with chapter 17A. A rule, the violation of which is made the basis for revocation, except temporary emergency rules, shall first have been approved after public hearing as provided in section 17A.4 after giving twenty days’ notice of the hearing by mailing the notice, by ordinary mail, to every person filing a request for notice accompanied by an addressed envelope with prepaid postage. Any person may file such a request to be listed with any agency for notice for the time and place for all hearings on proposed rules, which request shall be accompanied by a remittance of five dollars. Such fee shall be added to the operating fund of the department. The listing shall expire semiannually on January 1 and July 1.

4. a. All swine moved shall be individually identified with a distinctive and easily discernible ear tag affixed in either ear of the animal or other identification acceptable to the department, which has been specified by rule promulgated under the department’s rulemaking authority. The department shall make ear tags available at convenient locations within each county and shall sell such tags at a price not exceeding the cost to producers and others to comply with this section.

b. Every seller, dealer and market operator shall keep a record of the ear tag numbers, or other approved identification, and the farm of origin of swine moved by or through that person, which records shall be made available by that person to any appropriate representative of the department or the United States department of agriculture.

5. All swine moved shall be accompanied by a certificate of veterinary inspection issued by the state of origin and prepared and signed by a veterinarian. The certificate shall show the point of origin, the point of destination, individual identification, immunization status, and, when required, any movement permit number assigned to the shipment by the department. All such movement of swine shall be completed within seventy-two hours unless an extension of time for movement is granted by the department.

a. However, swine may be moved intrastate directly to an approved state, federal, or auction market without identification or certification, if the swine are to be identified and certificated at the state, federal, or auction market.

b. Registered swine for exhibition or breeding purposes which can be individually identified by an ear notch or tattoo or other method approved by the department are excepted from the identification requirement.

c. Native Iowa swine moved from farm to farm shall be excepted from the identification

requirement if the owner transferring possession of the feeder pigs executes a written agreement with the person taking possession of the feeder pigs. The agreement shall provide that the feeder pigs shall not be commingled with other swine for a period of thirty days. The owner transferring possession shall be responsible for making certain that the agreement is executed and for providing a copy of the agreement to the person taking possession.

6. The department may combine a certificate of veterinary inspection with a certificate of inspection required under chapter 166D.

7. The department may require issuance of movement permits on certain categories of swine moved, prior to their movement, pursuant to rules adopted by the department. The rules shall be adopted when in the judgment of the secretary, such movement would otherwise threaten or imperil the eradication of classical swine fever in Iowa.

8. All swine moved shall be quarantined separate and apart from other swine located at the Iowa farm of destination for thirty days beginning with their arrival at such premises, or if such incoming swine are not held separate and apart, all swine on such premises shall be thus quarantined, except animals moving from such premises directly to slaughter.

9. There can only be one transfer by a dealer, involving not more than two markets, prior to quarantine.

10. The use of anti-classical-swine-fever serum or antibody concentrate shall be in accordance with rules adopted by the department.

11. Any swine found by a registered veterinarian to have any infectious or contagious disease after delivery to a livestock sale barn or auction market for resale, other than for slaughter, shall be immediately returned to the consignor's premises to be quarantined separate and apart for fifteen days. Such swine shall not be moved from such premises for any purpose unless a certificate of veterinary inspection accompanies the swine's movement or unless the swine are sent to slaughter.

[C62, 66, §163.30; C71, §163.30 – 163.33; C73, 75, 77, 79, 81, §163.30]

87 Acts, ch 115, §28; 91 Acts, ch 32, §2; 97 Acts, ch 183, § 1, 13; 98 Acts, ch 1056, §2; 2003 Acts, ch 90, §1; 2003 Acts, ch 108, §41; 2004 Acts, ch 1101, §27; 2004 Acts, ch 1163, §11, 12; 2009 Acts, ch 133, §203, 204; 2010 Acts, ch 1069, §21; 2011 Acts, ch 34, §37; 2011 Acts, ch 46, §7; 2012 Acts, ch 1095, §24, 35

Referred to in §163.61, 166D.2, 166D.10, 202C.1, 202C.2

**163.31** Repealed by 2001 Acts, ch 136, § 10. See § 163.61.

### **163.32 Exhibitions.**

1. As used in this section, “*exhibition*” means an exhibit, demonstration, show, or competition involving swine which occurs as follows:

a. As part of an event on the Iowa state fairgrounds under the control of the Iowa state fair authority under chapter 173.

b. A fair event under the control of a fair under chapter 174.

c. An event classified as an exhibition by rules adopted by the department.

2. This section applies to a swine which is moved from a premises to the location where an exhibition occurs.

3. The sponsor of an exhibition must retain a veterinarian licensed pursuant to chapter 169 to supervise the health of swine moved to the location of the exhibition. The sponsor of the exhibition shall submit an exhibition report to the department on a form and according to procedures required by the department. The exhibition report must contain information required by the department which must at least include all of the following:

a. The name of the exhibition and the address of its location.

b. The name and address of the veterinarian.

c. The date that the exhibition occurred.

d. The name and address of the owner of the swine.

e. The address of the premises from which the swine was moved to the exhibition. The

exhibition report must also include the address of the premises to which the swine was moved after the exhibition if such premises is a different premises.

2011 Acts, ch 84, §2, 5

Referred to in §166D.2

**163.33** Repealed by 72 Acts, ch 1046, § 4.

#### SUBCHAPTER IV

#### IDENTIFICATION OF SWINE CONSIGNED FOR SLAUGHTER

##### **163.34 Purpose.**

The purpose of this subchapter is to establish a positive means of identifying all boars, sows and stags purchased for slaughter on their arrival at the first point of concentration after such sale. The purpose of such swine identification program is to facilitate eradication of swine diseases.

[C77, §172A.15; C79, 81, §163.34]

2001 Acts, ch 136, §9

##### **163.35 Definitions.**

1. “*Livestock dealer, livestock market operator, or stockyard operator*” means any person engaged in the business of buying for resale, or selling, or exchanging swine as a principal or agent, or one who claims to be so engaged, but does not include the owner or operator of a farm who does not claim to be so engaged, and who sells or exchanges only those swine which have been kept by that person solely for feeding or breeding purposes.

2. “*Person*” means a person as defined in section 4.1, subsection 20.

3. “*Slaughtering establishment*” means any person engaged in the business of slaughtering live animals or receiving or buying live animals for slaughter.

4. “*Stag*” means a male swine that has formerly been used for breeding purposes but that has subsequently been castrated.

[C77, §172A.16; C79, 81, §163.35]

86 Acts, ch 1245, §613

##### **163.36 Identification required.**

1. All boars, sows and stags received for sale or shipment to slaughter by a livestock dealer, livestock market operator or stockyard operator shall be identified at the first point of concentration by such dealer or operator by application of a slap tattoo or other identification approved by the department.

2. All boars, sows and stags consigned directly from a farm to a slaughtering establishment shall be identified at the first point of concentration by the consignee.

[C77, §172A.17; C79, 81, §163.36]

Referred to in §163.37

##### **163.37 Form of identification required.**

1. The slap tattoo or other means of identification required by section 163.36 shall be in accordance with regulations of the department.

2. Each person required by section 163.36 to identify animals shall record such identification on forms specified and furnished by the department. The identification shall include the tattoo specifications, the date of application, and the name, address and county of residence of the person who owned or controlled the herd from which the animals originated.

3. Such records shall be maintained for a length of time as required by and pursuant to

chapter 305 and at the point of concentration and shall be made available for inspection by the department at reasonable times.

[C77, §172A.18; C79, 81, §163.37]  
2003 Acts, ch 92, §2

**163.38 and 163.39** Reserved.

## SUBCHAPTER V BREEDING BULLS

### **163.40 Definitions.**

As used in this subchapter:

1. “*Breeding bull*” means a male animal of dairy or beef bovine genus used for breeding purposes.

2. “*Lease*” when used as a verb means to physically deliver a breeding bull pursuant to a lease agreement.

3. “*Licensee*” means a person required to obtain a license pursuant to section 163.41.

[C79, 81, §163.40]

2000 Acts, ch 1049, §1; 2001 Acts, ch 136, §9

### **163.41 License required.**

A person shall not engage in the business of leasing a breeding bull without having obtained a license from the department and registering each breeding bull as provided in this subchapter. An annual license may be obtained from the department upon application and payment of a ten-dollar fee. Each license shall expire on the first of July following the date of issue. An application shall be made on a form provided by the department and shall contain the name of the person engaged in the business of leasing breeding bulls as lessor, the address of such business, the registration number of each breeding bull, and a description as to breed, color and other distinguishing marks, leased as lessor, and such other information as the secretary of agriculture may specify by rule promulgated pursuant to chapter 17A.

For the purposes of this section, a person is engaged in the business of leasing a breeding bull within this state as lessor if the person leases any breeding bull to an Iowa resident more than once in any calendar year for a fee.

[C79, 81, §163.41]

2001 Acts, ch 136, §9

Referred to in §163.40

### **163.42 Registration of breeding bulls.**

The department shall issue to each licensee a tag or an identifying mark if the lessor desires this method of identification, for each breeding bull to be leased by the licensee. Each tag or identifying mark shall have an identification number which shall be a permanent identification number for such breeding bull and, upon disposition of such animal, the licensee shall notify the department of such disposition and the name and address of the buyer if such animal is sold. When an additional breeding bull to be leased is acquired by a licensee, the department shall issue a tag or approve an identifying mark for such animal without fee. The tag or identifying mark shall be permanently attached to the breeding bull.

[C79, 81, §163.42]

Referred to in §163.43

### **163.43 Certificate required.**

1. A person shall not be a party to a lease of a breeding bull within this state in which the lessor is a licensee, unless the breeding bull is accompanied by a certificate of veterinary inspection. For the purposes of this section, a breeding bull is leased within this state if it is leased to an Iowa resident.

2. The certificate of veterinary inspection shall be issued by a licensed veterinarian who examines the breeding bull and signs the certificate. The certificate shall include all of the following:

- a. A statement that, to the best of the knowledge and belief of the veterinarian, the breeding bull is apparently free from an infectious or contagious disease.
- b. A statement that the breeding bull has reacted negatively to a test for brucellosis conducted within six months prior to the date that the veterinarian signs the certificate.
- c. If the breeding bull does not originate from this state, a statement providing that importing the breeding bull satisfies applicable importation requirements.
- d. The identification number of the breeding bull as required pursuant to section 163.42.
- e. The date that the certificate was issued.

3. The certificate of veterinary inspection shall not be valid after the term of the lease expires or after the breeding bull moves from the lessee's premises. Thereafter, a new certificate must be issued as required in this section.

4. One copy of the certificate of veterinary inspection shall be issued to the licensee who shall maintain the certificate as part of the licensee's business records. One copy of the certificate shall be issued to the lessee when the breeding bull is delivered to the lessee. A licensee shall show the certificate upon request to any person designated by the department to enforce the provisions of this section.

[C79, 81, §163.43]

2000 Acts, ch 1049, §2; 2004 Acts, ch 1163, §13

#### **163.44 Records of breeding bull.**

The licensee shall maintain records of each lease of a breeding bull. The records shall contain the name and address of the person to whom a breeding bull is leased, the date of each lease, and a description and the identification number of the breeding bull involved. A lessee or any agent of the department shall have the right to inspect, upon demand to the licensee, those records concerning the bull presently being leased by the lessee.

[C79, 81, §163.44]

#### **163.45 Denial, revocation or suspension of a license.**

The department of agriculture and land stewardship may refuse to issue or renew and may suspend or revoke a license issued under this subchapter for any violation of the provisions of this subchapter or rules adopted relating to the leasing of a breeding bull.

[C79, 81, §163.45]

2001 Acts, ch 136, §9

#### **163.46 Sale of semen.**

The owner of a breeding bull located within this state shall not sell the semen from that bull for the purpose of artificial insemination unless the owner is in possession of a certificate of veterinary inspection signed and issued by a licensed veterinarian within six months before the date the semen is collected. The certificate shall not be valid if the bull is moved to other premises between the date of examination and the date of collection. The certificate shall show that on the date of issue the breeding bull had been tested negative for brucellosis and, to the best knowledge and belief of the examining veterinarian, was free from any infectious or contagious disease.

[C79, 81, §163.46]

2000 Acts, ch 1049, §3; 2004 Acts, ch 1163, §14

#### **163.47 Exemptions.**

The provisions of this subchapter shall not apply to 4-H or future farmers of America organizations engaged in breeding programs.

[C79, 81, §163.47]

95 Acts, ch 67, §13; 2001 Acts, ch 136, §9

**163.48 through 163.50** Reserved.

SUBCHAPTER VI  
FOOT AND MOUTH DISEASE

**163.51 Security measures.**

1. The department may establish security measures in order to control outbreaks of foot and mouth disease in this state, including by providing for the prevention, suppression, and eradication of foot and mouth disease. In administering and enforcing this section, the department may adopt rules and shall issue orders in a manner consistent with sound veterinary principles and federal law for the control of outbreaks of the disease. The department may implement the security measures by doing any of the following:

a. If the department determines that an animal is infected with or exposed to foot and mouth disease, or the department suspects that an animal is so infected or exposed, the department may provide for all of the following:

(1) The quarantine, condemnation, or destruction of the animal. The department may establish quarantined areas and regulate activities in the quarantined areas, including movement or relocation of animals or other property within, into, or from the quarantined areas. This section does not authorize the department to provide for the destruction of personal property other than an animal.

(2) The inspection or examination of the animal's premises in order to perform an examination or test to determine whether the animal is or was infected or exposed or whether the premises is contaminated. The department may take a blood or tissue sample of any animal on the premises.

(3) The compelling of a person who is the owner or custodian of the animal to provide information regarding the movement or relocation of the animal or the vaccination status of the animal or the herd where the animal originates. The department may issue a subpoena for relevant testimony or records as defined in section 516E.1. In the case of a failure or refusal of the person to provide testimony or records, the district court upon application of the department or the attorney general acting upon behalf of the department, may order the person to show cause why the person should not be held in contempt. The court may order the person to provide testimony or produce the record or be punished for contempt as if the person refused to testify before the court or disobeyed a subpoena issued by the court.

b. The department may provide for the cleaning and disinfection of real or personal property if the department determines that the property is contaminated with foot and mouth disease or suspects that the property is contaminated with foot and mouth disease.

2. a. If the department determines that there is a suspected outbreak of foot and mouth disease in this state, the department shall immediately notify all of the following:

(1) The governor or a designee of the governor. The notification shall contain information regarding actions being implemented or recommended in order to determine if the outbreak is genuine and measures to control a genuine outbreak.

(2) The administrative unit of the United States department of agriculture responsible for controlling outbreaks in this state.

b. If the department confirms an outbreak of foot and mouth disease in this state, the department shall cooperate with the governor; federal agencies, including the United States department of agriculture; and state agencies, including the department of homeland security and emergency management, in order to provide the public with timely and accurate information regarding the outbreak. The department shall cooperate with organizations representing agricultural producers in order to provide all necessary information to agricultural producers required to control the outbreak.

3. The department shall cooperate with federal agencies, including the United States department of agriculture, other state agencies and law enforcement entities, and agencies of other states. Other state agencies and law enforcement entities shall assist the department.

4. a. To the extent that an animal's owner would not otherwise be compensated, section 163.15 shall apply to the owner's loss of any animal destroyed under this section.

b. Upon the request of the executive council, the department shall develop and submit a

plan to the executive council that compensates an owner for property, other than an animal, that is inadvertently destroyed by the department as a result of the department's regulation of activities in a quarantined area. The plan shall not be implemented without the approval of at least three members of the executive council. The payment of the compensation under the plan shall be made in the same manner as provided in section 163.15. The owner may submit a claim for compensation prior to the plan's implementation. The executive council may apply the plan retroactively, but not earlier than June 1, 2001.

5. Nothing in this section limits the department's authority to regulate animals or premises under other provisions of state law, including this chapter.

2001 Acts, ch 170, §2, 3; 2002 Acts, ch 1119, §22; 2003 Acts, ch 179, §157; 2013 Acts, ch 29, §48

Subsection 2, paragraph b amended

**163.52 through 163.60** Reserved.

## SUBCHAPTER VII

### PENALTIES — INJUNCTIVE RELIEF

#### **163.61 Civil penalties.**

1. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed. The attorney general shall cooperate with the department in the assessment and collection of civil penalties.

2. Except as provided in subsection 3, a person violating a provision of this chapter, or a rule adopted pursuant to this chapter, shall be subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars. In the case of a continuing violation, each day of the continuing violation is a separate violation. However, a person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars.

3. Notwithstanding the provisions of subsection 2, all of the following apply:

a. A person who falsifies a certificate of vaccination or certificate of veterinary inspection shall be subject to a civil penalty of not more than five thousand dollars for each reference to an animal falsified on the certificate. However, a person who falsifies a certificate issued pursuant to chapter 166D shall be subject to a civil penalty as provided in this section or section 166D.16, but not both. A person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars for falsifying a certificate, regardless of the number of animals falsified on the certificate.

b. A person required to be licensed as a dealer pursuant to section 163.30 and who is not issued a license by the department pursuant to that section, but does business as a dealer, shall be subject to a civil penalty of at least one thousand dollars but not more than five thousand dollars. Each day that the person does business as a dealer without being issued a license constitutes a separate offense. A person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars during any one year.

4. Moneys collected from civil penalties shall be deposited into the general fund of the state.

2001 Acts, ch 136, §7; 2004 Acts, ch 1095, §1, 6; 2004 Acts, ch 1163, §15; 2012 Acts, ch 1095, §25

#### **163.62 Injunctive relief.**

The department or the attorney general acting on behalf of the department may apply to the district court for injunctive relief in order to restrain a person from acting in violation of this chapter. In order to obtain injunctive relief, the department shall not be required to post a bond or prove the absence of an adequate remedy at law unless the court for good cause otherwise orders. The court may order any form of prohibitory or mandatory relief that is

appropriate under principles of equity, including but not limited to issuing a temporary or permanent restraining order.

2001 Acts, ch 136, §8

Referred to in §165B.4

## CHAPTER 163A

### BRUCELLOSIS CONTROL IN SWINE

Referred to in §165.18

163A.1	Definitions.	163A.9	Rules.
163A.2	through 163A.4 Repealed by 2012 Acts, ch 1095, § 32.	163A.10	Penalty.
163A.5	Interstate shipments.	163A.11	Educational program herds. Repealed by 2012 Acts, ch 1095, §32.
163A.6	Exhibition swine.	163A.12	Owner requesting test.
163A.7	Reactor tag.		
163A.8	Swine for slaughter.		

#### 163A.1 Definitions.

As used in this chapter:

1. “*Accredited veterinarian*” means a veterinarian who is licensed by the state in which the veterinarian practices, is approved by the department of agriculture and land stewardship or the livestock sanitary authority of that state, and is accredited by the United States department of agriculture.

2. “*Brucellosis*” means the disease wherein an animal of the porcine species is infected with brucella microorganisms irrespective of the occurrence or absence of clinical symptoms of infectious abortion.

3. “*Brucellosis test*” means the test for brucellosis which is approved by the department and administered in accordance with the techniques approved by the department.

4. “*Certificate of veterinary inspection*” or “*certificate*” means the same as defined in section 163.2.

5. “*Infected animal*” or “*reactor*” means an animal which has given a positive reaction as determined by departmental standards to the brucellosis test.

6. “*Licensed veterinarian*” means a veterinarian licensed to practice in Iowa.

7. “*Negative animal*” means an animal which does not give a positive reaction to the brucellosis test.

8. “*Official brucellosis test report*” means a legible record made on an official form prescribed by the department.

9. a. “*Validated brucellosis-free herd*” means:

(1) A herd which has had at least one test made on all boars, sows and gilts over six months of age with no positive reactions; or

(2) A herd which has been tested pursuant to a test approved by rule of the Iowa department of agriculture and land stewardship pursuant to chapter 17A, which test is in compliance with the recommended uniform methods and rules of the animal and plant health inspection service of the United States department of agriculture.

b. The validation made pursuant to paragraph “a”, subparagraph (1), shall be in force and effect for one year from the date of the last test and shall be renewable on an annual basis by the completion of a single test on boars, sows and gilts over six months of age with no positive reactions. A validation made pursuant to paragraph “a”, subparagraph (2), shall be in force and effect and shall be renewable in the manner specified in the rule adopted by the Iowa department of agriculture and land stewardship.

c. If the Iowa department of agriculture and land stewardship adopts a rule under paragraph “a”, subparagraph (2), and the recommended uniform methods and rules of the animal and plant health inspection service of the United States department of agriculture are subsequently changed, the Iowa department of agriculture and land stewardship shall

not change its rule if the effect would be to make less restrictive the standards or procedures for validating a brucellosis-free herd.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.1]

86 Acts, ch 1245, §614; 2000 Acts, ch 1058, §20; 2004 Acts, ch 1163, §16

Further definitions; see §159.1

**163A.2 through 163A.4** Repealed by 2012 Acts, ch 1095, § 32.

**163A.5 Interstate shipments.**

1. Except as provided in subsection 2, breeding swine four months of age and over, entering this state for breeding or exhibition purposes, shall be accompanied by a certificate of inspection issued by an accredited veterinarian of the state of origin. The certificate shall show that such swine meet this state's entry requirements and are negative to the test for brucellosis conducted by an official laboratory of the state of origin within thirty days of entry.

2. a. Swine may enter the state or be exhibited without a test for brucellosis if one of the following applies:

(1) The swine are from a brucellosis-free herd as validated according to rules adopted by the department.

(2) The swine are from a state that is declared to be brucellosis-free as recognized by the department.

b. The swine must be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian of the state of origin or a veterinarian employed by the animal and plant inspection service of the United States department of agriculture. The certificate must indicate whether the swine are from a state that is declared to be brucellosis-free. If the swine are from a brucellosis-free herd, the certificate must indicate the herd number and show that the herd has been tested within the past twelve months.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.5]

2004 Acts, ch 1163, §17

**163A.6 Exhibition swine.**

Any breeding swine four months of age and over for exhibition within this state shall meet all requirements for exhibition purposes.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.6]

2012 Acts, ch 1095, §31

**163A.7 Reactor tag.**

All swine showing a positive reaction to the brucellosis test shall be tagged in the left ear with a reactor identification tag and moved to slaughter on such form as shall be designated by the department within a thirty-day period from the date of test. The herd of origin shall be placed under immediate quarantine to be retested no sooner than thirty days or later than sixty days from the date of the test showing the positive reaction. Such quarantine shall remain in effect until a complete negative herd test is conducted on all swine intended or used for breeding purposes.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.7]

**163A.8 Swine for slaughter.**

Swine from herds under quarantine may be moved to slaughter on a form designated for this purpose and issued by the department or an accredited veterinarian.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.8]

**163A.9 Rules.**

The department may make and adopt reasonable rules for the administration and enforcement of the provisions of this chapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.9]

Referred to in §163A.12

**163A.10 Penalty.**

Any person who shall violate any provision of this chapter or any rule adopted thereunder by the department of agriculture and land stewardship shall be guilty of a serious misdemeanor.

[C62, 66, 71, 73, 75, 77, 79, 81, §163A.10]

**163A.11 Educational program herds.** Repealed by 2012 Acts, ch 1095, § 32.

**163A.12 Owner requesting test.**

If the owner requests the department to inspect and test breeding swine for brucellosis, and agrees to comply with the rules made by the department under section 163A.9, the department may designate a veterinarian to make an inspection and test, with the expense to be paid as provided in section 164.6 for cattle brucellosis testing, but only to the extent the funds provided in that section are not required for the cattle testing program.

[C73, 75, 77, 79, 81, S81, §163A.12; 81 Acts, ch 117, §1020]  
83 Acts, ch 123, §71, 209

CHAPTER 164

BRUCELLOSIS — BOVINE AND DESIGNATED ANIMALS

Referred to in §165.18

See §163A.12

164.1	Definitions.	164.17	Quarantined for slaughter permit.
164.2	Eradication area.	164.18	Unlawful sale or purchase.
164.3	Female designated animals vaccinated.	164.19	Quarantine.
164.4	Rules.	164.20	Appraisal of value of bovine animals.
164.5	Request for test.	164.21	Indemnification of owner — determination of amount.
164.6	Expense of test.	164.22	Moneys administered.
164.7	Copy of report provided to owner.	164.23	Repealed by 82 Acts, ch 1104, §61.
164.8	Test at auction premises.	164.24	through 164.27 Repealed by 81 Acts, ch 117, §1097.
164.9	Retest by order or request — expense.	164.28	Repealed by 83 Acts, ch 123, §206, 209.
164.10	Report of laboratory tests to department.	164.29	Reciprocal agreements.
164.11	Identification mark.	164.30	Tagging designated animals received for sale or slaughter.
164.12	Quarantined marking.	164.31	Penalty.
164.13	Unlawful acts.		
164.14	Imported designated animals.		
164.15	Quarantined designated animals.		
164.16	Movement or slaughter permit.		

**164.1 Definitions.**

As used in this chapter:

1. “Animal” means a nonhuman vertebrate.
2. “Bovine animal” means bison or cattle.
3. “Certificate of veterinary inspection” or “certificate” means the same as defined in section 163.2.
4. “Class free state” means there has been no known brucellosis in bovine animals for a period of twelve months. A state is classified as class free, class A, class B, and class C, according to guidelines set forth in 9 C.F.R. § 78.1.
5. “Condemned” or “reactor” applies to a designated animal reacting to an official test conducted to determine if a designated animal is infected with brucellosis.
6. “Designated animal” means a bovine animal or any other species of animal that the

department by rule determines is capable of carrying and spreading brucellosis, including elk or goats.

7. “*Official calfhood vaccination*” means the vaccination of a female calf of any species of bovine animal between the ages of four months and ten months with brucella vaccine approved for that species of bovine animal by the United States department of agriculture, if the vaccination has been administered by a veterinarian according to the rules established by the department.

8. “*Official test*” means a test for brucellosis approved for a species of designated animal by the department and to the extent applicable by the United States department of agriculture which is conducted under the supervision of, or the authorization from, the department.

9. “*Owner*” includes any person owning or leasing a designated animal.

10. “*Quarantine*” means the entire herd of designated animals must be confined to a premises designated by the department, if any reactor is disclosed.

11. “*Registered purebred*” includes cattle with a certificate from herdbooks where registered.

12. “*State-approved premises*” means an area, including a feedlot or grazing area, established at the discretion of the department for the care and feeding of untested designated animals as provided by the department. However, for cattle, “*state-approved premises*” means an area where untested heifers over six months of age but under eighteen months of age are subject to care and feeding.

13. “*Veterinarian*” means a licensed accredited veterinarian authorized by the department.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §164.1]

86 Acts, ch 1036, §1 – 3; 86 Acts, ch 1245, §615; 97 Acts, ch 124, §1; 2004 Acts, ch 1163, §18

Further definitions; see §159.1

#### **164.2 Eradication area.**

This state is declared to be a brucellosis eradication area. An owner shall allow the owner’s designated animals to be tested when ordered by the department or a representative of the department. The owner shall confine and restrain the designated animal in a suitable place so that a test can be conducted. If the owner refuses to confine and restrain the designated animal, after a reasonable time the department may employ sufficient assistance to properly confine and restrain the designated animal. The expense for obtaining assistance shall be paid by the owner.

[C66, 71, 73, 75, 77, 79, 81, §164.2]

97 Acts, ch 124, §2

#### **164.3 Female designated animals vaccinated.**

Native female bovine animals of any breed between the ages of four months and ten months may be officially vaccinated for brucellosis according to procedures approved by the United States department of agriculture. Native female designated animals other than bovine animals may be vaccinated as provided by rules adopted by the department. The expense of the vaccination shall be borne in the same manner as provided in section 164.6.

[C54, §164.11; C58, 62, §164.28; C66, 71, 73, 75, 77, 79, 81, §164.3]

86 Acts, ch 1036, §4; 97 Acts, ch 124, §3

#### **164.4 Rules.**

1. The department may adopt rules as provided in chapter 17A relating to the official testing of designated animals, the disposal by segregation and quarantine or slaughter of condemned designated animals, the operation of state-approved premises, the disinfection of the premises where designated animals are kept, the introduction of designated animals into a herd of other designated animals, the control and eradication of brucellosis, the prevention of the spread of brucellosis to designated animals in this state, and the proper enforcement of this chapter.

2. The department shall not adopt rules relating to cattle that are less restrictive than the uniform methods and rules for brucellosis eradication promulgated by the United States

department of agriculture, APHIS 91-1, as effective January 1, 1996, but may adopt rules that are more restrictive.

3. The department may implement any procedure provided in the uniform methods and rules if approved jointly by state and federal animal health officials, including but not limited to the use of quarantined pastures, quarantined feedlots, or other options permitted under the uniform methods and rules.

[C46, 50, 54, 58, 62, §164.2; C66, 71, 73, 75, 77, 79, 81, §164.4]

86 Acts, ch 1036, §5; 96 Acts, ch 1079, §8; 97 Acts, ch 124, §4

Referred to in §164.6

#### **164.5 Request for test.**

Upon request by the owner for a departmental inspection of the owner's designated animals for brucellosis, the department may designate a veterinarian to make an inspection of the designated animals. If authorized by the department, the veterinarian may conduct an official test on the designated animals.

[C46, 50, 54, 58, 62, §164.3; C66, 71, 73, 75, 77, 79, 81, §164.5]

97 Acts, ch 124, §5

#### **164.6 Expense of test.**

The expense for an inspection and official test of a designated animal other than for bovine animals shall be borne by the owner. If the designated animal is a bovine animal, and the owner agrees to comply with and carry out the provisions of this chapter and the rules adopted by the department under section 164.4, the expense of the inspection and test shall be borne by the United States department of agriculture, or by the department, or by the brucellosis and tuberculosis eradication fund or any combination of these sources.

[C46, 50, 54, 58, 62, §164.4; C66, 71, 73, 75, 77, 79, 81, §164.6]

83 Acts, ch 123, §72, 209; 97 Acts, ch 124, §6

Referred to in §163A.12, 164.3, 164.9

#### **164.7 Copy of report provided to owner.**

A veterinarian or the department shall provide a report to the owner of a designated animal showing the results of an official test conducted by a veterinarian. The report may be a copy of a test chart.

[C46, 50, 54, 58, 62, §164.5, 164.6; C66, 71, 73, 75, 77, 79, 81, §164.7]

97 Acts, ch 124, §7

#### **164.8 Test at auction premises.**

A designated animal purchased at an auction market may be officially tested on the auction market premises, in the new owner's name at the owner's request and expense. This official test must be made within twenty-four hours from the time of sale. If the test discloses reactors, the herd of origin shall be placed under quarantine.

[C66, 71, 73, 75, 77, 79, 81, §164.8]

97 Acts, ch 124, §8

#### **164.9 Retest by order or request — expense.**

The department may order a retest of designated animals at any time, if the department determines that a retest is necessary. In case of reactors, one retest shall be granted the owner of the designated animals by the department upon the request of the owner or owner's veterinarian before the designated animals are permanently marked as reactors. The expense of the retest of reactors shall be borne in the same manner as provided in section 164.6.

[C46, 50, 54, 58, 62, §164.7; C66, 71, 73, 75, 77, 79, 81, §164.9]

86 Acts, ch 1036, §6; 97 Acts, ch 124, §9

#### **164.10 Report of laboratory tests to department.**

A report of tests conducted by a laboratory under this chapter shall be made in writing to the department within seven days immediately following the completion of the tests. The

department shall supply forms for the report. The report shall be signed by the director of the laboratory or the person conducting the test.

[C46, 50, 54, 58, 62, §164.8; C66, 71, 73, 75, 77, 79, 81, §164.10]  
97 Acts, ch 124, §10

#### **164.11 Identification mark.**

A designated animal subjected to an official test shall be plainly and permanently marked for identification in a manner authorized by the department. Native grade bovine carrying the calfhood vaccination and calves vaccinated after importation from other states shall be tattooed in the ear. Officially vaccinated purebred registered cattle must receive a vaccination tattoo and either an official vaccination tag or a purebred identification tattoo. The vaccination tattoo and the vaccination tag number or the purebred identification tattoo shall be evidenced on the official certificate of vaccination.

[C46, 50, 54, 58, 62, §164.9; C66, 71, 73, 75, 77, 79, 81, §164.11]  
97 Acts, ch 124, §11

#### **164.12 Quarantined marking.**

A designated animal which is quarantined as a result of a test for brucellosis shall be plainly and permanently marked for identification by a veterinarian making the test in a manner authorized by the department and to the extent applicable by the United States department of agriculture.

[C46, 50, 54, 58, 62, §164.10; C66, 71, 73, 75, 77, 79, 81, §164.12]  
97 Acts, ch 124, §12

#### **164.13 Unlawful acts.**

An owner shall not sell or transfer ownership of a designated animal, allow the commingling of designated animals belonging to two or more owners, or allow the commingling of designated animals with other designated animals under feeder quarantine on a state-approved premises, unless the commingled designated animals are accompanied by a negative brucellosis test report issued by a veterinarian, conducted within thirty days. The provisions of this section do not apply to the following:

1. Bovine animals under six months of age, spayed heifers, or steers.
  2. Officially vaccinated of bovine animals other than dairy cattle under twenty-four months of age or dairy cattle under twenty months of age, if not postparturient.
  3. Designated animals which are consigned directly to slaughter.
  4. Designated animals which are imported for exhibition purposes, if any of the following apply:
    - a. When under the test-eligible ages as provided by the department for designated animals other than bovine. For bovine the test-eligible ages are as provided in this section. The designated animal must be accompanied by an official vaccination certificate as provided by the department. A bovine animal which is six months or older must be accompanied with a vaccination certificate.
    - b. Designated animals of any age when accompanied by a report of a negative brucellosis test conducted within thirty days.
    - c. Designated animals originating from a herd in a class free state or designated animals from a brucellosis-free herd.
  5. Designated animals originating from a herd in a class free state or designated animals from a certified brucellosis-free herd.
  6. Designated animals moved to a state-approved premises.
- [C54, 58, 62, §164.11; C66, 71, 73, 75, 77, 79, 81, §164.13]  
86 Acts, ch 1036, §7; 97 Acts, ch 124, §13

#### **164.14 Imported designated animals.**

1. Female designated animals other than female bovine animals, which are under an age established by the department, and female bovine animals over six months and under eighteen months of age, may enter the state for feeding purposes to be consigned

to a state-approved premises under quarantine, if the female designated animals are not postparturient. The designated native female animals that have been consigned to the state-approved premises may be released from the state-approved premises if they have been any of the following:

- a. Consigned to slaughter.
- b. Consigned to a federally approved market.
- c. Consigned to another quarantined premises.
- d. Tested negative for brucellosis at the owner's expense. The test shall be made not less than sixty days after the last consignment to the premises and shall include all animals on the premises.

2. Female designated animals, other than female bovine, over an age established by the department and female bovine over eighteen months of age may enter the state if the designated animals are any of the following:

- a. Consigned to a federally approved market.
- b. Consigned to a slaughter plant for immediate slaughter.
- c. Accompanied by a certificate of veterinary inspection showing a record of a negative brucellosis test, when required, accomplished within thirty days of importation.

[C54, 58, 62, §164.11(7a); C66, 71, 73, 75, 77, 79, 81, §164.14]

86 Acts, ch 1036, §8; 97 Acts, ch 124, §14; 2004 Acts, ch 1163, §19

#### **164.15 Quarantined designated animals.**

A designated animal shall not be brought into contact with a condemned designated animal held in quarantine. If a designated animal is added to the quarantined lot, the designated animal shall become a part of the lot and held subject to the same requirements as apply to the quarantined designated animals.

[C46, 50, 54, 58, 62, §164.12; C66, 71, 73, 75, 77, 79, 81, §164.15]

97 Acts, ch 124, §15

#### **164.16 Movement or slaughter permit.**

A designated animal shall not be slaughtered, have its location changed, or be moved from quarantine except as authorized by an official written permit issued by the department or by a veterinarian.

[C46, 50, 54, 58, 62, §164.13; C66, 71, 73, 75, 77, 79, 81, §164.16]

97 Acts, ch 124, §16

#### **164.17 Quarantined for slaughter permit.**

When a written order has been issued by the department or its authorized representative for the removal of a quarantined designated animal to slaughter, the designated animal shall be tagged and handled within fifteen days after the date of testing. Within thirty days the designated animal shall be moved and slaughtered under the direct supervision of a duly authorized agent or representative of the United States department of agriculture at a time and place designated by the department. A designated animal quarantined because of brucellosis shall be disposed of by its owner within a period not to exceed forty-five days from the date on which blood samples were drawn disclosing it as a reactor.

[C46, 50, 54, 58, 62, §164.14; C66, 71, 73, 75, 77, 79, 81, §164.17]

97 Acts, ch 124, §17

#### **164.18 Unlawful sale or purchase.**

A person shall not sell, offer for sale, or purchase a designated animal which is quarantined as a result of an official test, except as provided by rules adopted by the department.

[C46, 50, 54, 58, 62, §164.15; C66, 71, 73, 75, 77, 79, 81, §164.18]

97 Acts, ch 124, §18

#### **164.19 Quarantine.**

The department may issue any quarantine order deemed necessary for the control and eradication of brucellosis and the proper enforcement of this chapter. A lot or group of

designated animals in which reactors have been disclosed shall be under quarantine along with any designated animal from which the lot or group originated or commingled. The designated animals may be sold for slaughter under permit, or returned to their place of origin. In case of hardship the department may upon investigation of the case alter a quarantine order to the extent that the department determines that it is necessary to alleviate the hardship and protect the industry and prospective purchasers. The department shall adopt rules pursuant to chapter 17A necessary in order to administer this section.

[C46, 50, 54, 58, 62, §164.16; C66, 71, 73, 75, 77, 79, 81, §164.19]  
97 Acts, ch 124, §19

#### **164.20 Appraisal of value of bovine animals.**

Before being slaughtered, quarantined bovine animals shall be appraised at their cash value for dairy and breeding purposes by the owner and a representative of the department, a representative of the United States department of agriculture, or by the owner and both of the representatives. If these parties cannot agree as to the amount of the appraisal, three competent and disinterested persons shall be appointed to render a final appraisal. One person shall be appointed by the department, one by the owner, and one by the first two appointed persons.

[C46, 50, 54, 58, 62, §164.18; C66, 71, 73, 75, 77, 79, 81, §164.20]  
97 Acts, ch 124, §20

#### **164.21 Indemnification of owner — determination of amount.**

The owner of a bovine animal shall be indemnified for the bovine animal as provided in this section. The department shall certify the claim of the owner for the bovine animal slaughtered in accordance with this chapter. An infected bovine animal herd may be completely depopulated and indemnity paid when, in the opinion of the department and the veterinary service of the United States department of agriculture, the disease cannot be adequately controlled by routine testing.

The owner shall be indemnified to the extent that money is available in the brucellosis and tuberculosis eradication fund as created in section 165.18 and indemnification is also made by the United States department of agriculture. However, if the United States department of agriculture is unable to indemnify the owner, the department may indemnify the owner, if money is available.

In the case of individual payment, all cattle shall be individually appraised and the amount of indemnity shall be equal to the difference between the slaughter value and the appraisal price, less the amount of indemnity paid by the United States department of agriculture. Bison shall be appraised as if the bison are beef cattle. The total amount of indemnity paid by the brucellosis and tuberculosis eradication fund for a grade animal or a purebred animal shall not exceed two hundred dollars. However, if purebred cattle are purchased and owned for at least one year before testing and the owner can verify the actual cost, the department may further indemnify the owner. The amount of the indemnification shall not exceed five hundred fifty dollars or the actual cost of the animal when purchased, whichever is less.

[C46, 50, 54, 58, 62, §164.19; C66, 71, 73, 75, 77, 79, 81, §164.21]  
83 Acts, ch 123, §73, 209; 86 Acts, ch 1036, §9; 97 Acts, ch 124, §21  
Referred to in §165.18

#### **164.22 Moneys administered.**

All moneys appropriated by the state for carrying out the provisions of this chapter shall be administered by the department for the payment of the indemnity, salaries, and other necessary expenses.

[C46, 50, 54, 58, 62, §164.20; C66, 71, 73, 75, 77, 79, 81, §164.22]  
97 Acts, ch 124, §22

**164.23** Repealed by 82 Acts, ch 1104, § 61.

**164.24 through 164.27** Repealed by 81 Acts, ch 117, § 1097.

**164.28** Repealed by 83 Acts, ch 123, § 206, 209.

**164.29 Reciprocal agreements.**

The department to every extent practical shall enter into reciprocal agreements with other states to provide that designated animals which are covered by certificates of vaccination in this state and other states may be transported and sold in interstate commerce between this state and the other states.

[C50, 54, 58, 62, §164.27; C66, 71, 73, 75, 77, 79, 81, §164.29]  
97 Acts, ch 124, §23

**164.30 Tagging designated animals received for sale or slaughter.**

1. The department shall provide requirements for tagging designated animals which are received for sale or shipment to a slaughtering establishment.

*a.* Bovine animals two years of age and older received for sale or shipment to a slaughtering establishment shall be identified with a back tag issued by the department. The back tag shall be affixed to the animal as directed by the department.

*b.* A livestock trucker delivering a designated animal to an out-of-state market, livestock dealer, livestock market operator, stockyard operator, or slaughtering establishment shall identify a designated animal which is not tagged as provided in this section, at the time of taking possession or control of the designated animal. A livestock trucker may be exempted from this requirement if the designated animal's farm of origin is identified when delivered to a livestock market, stockyard, or slaughtering establishment which agrees to accept responsibility for tagging the designated animal.

2. *a.* A person required to identify a designated animal in accordance with this section shall file a report of the identification on forms and as specified by the department, including the following for bovine animals:

(1) The back-tag number and date of application.

(2) The name, address, and county of residence of the person who owned or controlled the herd from which the bovine animal originated.

(3) The type of bovine animal. If the bovine animal is cattle, the person shall identify whether the animal was a beef or dairy type.

*b.* Each report shall cover all bovine animals identified during the preceding week.

3. A person shall not remove a tag affixed to a designated animal, unless the person is authorized by the department, and removes the tag according to instructions and policies established by the department. The removal of a tag by a person who is unauthorized by the department shall be a violation of this section and subject to the penalties provided in section 164.31.

[C71, 73, 75, 77, 79, 81, §164.30]  
97 Acts, ch 124, §24; 2009 Acts, ch 41, §263

**164.31 Penalty.**

A person guilty of violating a provision of this chapter is guilty of a simple misdemeanor.

[C66, §164.30; C71, 73, 75, 77, 79, 81, §164.31]  
97 Acts, ch 124, §25

Referred to in §164.30

## CHAPTER 165

## ERADICATION OF BOVINE TUBERCULOSIS

Referred to in §159.5, 159.6

Definitions applicable to chapter; see §159.1

165.1	Cooperation.	165.19	through 165.21 Repealed by 81 Acts, ch 117, §1097.
165.1A	Definitions.	165.22	and 165.23 Repealed by 83 Acts, ch 123, §206, 209.
165.2	State as accredited area.	165.24	Repealed by 81 Acts, ch 117, §1097.
165.3	Appraisal.	165.25	Repealed by 83 Acts, ch 123, §206, 209.
165.4	Presence of tuberculosis.	165.26	Permitting test.
165.5	Nonright to receive compensation.	165.27	Penalty.
165.6	Amount of indemnity.	165.28	Preventing test.
165.7	Pedigree.	165.29	Notice.
165.8	Right to receive pay.	165.30	and 165.31 Repealed by 83 Acts, ch 123, §206, 209.
165.9	Preference in examinations.	165.32	Retest.
165.10	Examination by department.	165.33	Penalty.
165.11	Records public.	165.34	Repealed by 83 Acts, ch 123, §206, 209.
165.12	Tuberculosis-free herds.	165.35	Township animal board of health.
165.13	Tuberculin.	165.36	Importation of cattle.
165.14	Inspectors and assistants.		
165.15	Accredited veterinarian.		
165.16	Equipment for inspector.		
165.17	Compensation.		
165.18	Brucellosis and tuberculosis eradication fund.		

**165.1 Cooperation.**

The department is authorized to cooperate with the United States department of agriculture for the purpose of eradicating tuberculosis from the dairy and beef breeds of cattle in the state.

[C24, 27, 31, 35, 39, §2665; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.1]  
2012 Acts, ch 1095, §26

**165.1A Definitions.**

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

1. "Department" means the department of agriculture and land stewardship.
2. "Certificate of veterinary inspection" or "certificate" means the same as defined in section 163.2.

2004 Acts, ch 1163, §20

**165.2 State as accredited area.**

1. The state of Iowa is declared to be and is established as an accredited area for the eradication of bovine tuberculosis from the dairy and breeding cattle of the state. It shall be the duty of the department to eradicate bovine tuberculosis in all of the counties of the state in the manner provided by law as it appears in this chapter. The department shall proceed with the examination, including the tuberculin test, of all such cattle as rapidly as practicable and as is consistent with efficient work, and as funds are available for paying the indemnities as provided by law.

2. An owner of dairy or breeding cattle in the state shall conform to and abide by the rules adopted by the department and rules promulgated by the United States department of agriculture. The owner shall follow instructions of the department of agriculture and land stewardship and the United States department of agriculture designed to suppress the disease, prevent its spread, and avoid reinfection of the herd.

[C24, 27, 31, 35, 39, §2666; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.2]  
86 Acts, ch 1245, §616; 2012 Acts, ch 1095, §27

**165.3 Appraisal.**

Before being tested, such animals shall be appraised at their cash value for breeding, dairy, or beef purposes by the owner and a representative of the department, or a representative of the United States department of agriculture, or by the owner and both of such representatives. If these parties cannot agree as to the amount of the appraisal, there shall be appointed three competent and disinterested persons, one by the department, one by the owner, and the third by the first two appointed, to appraise such animals, which appraisal shall be final. Every appraisal shall be under oath or affirmation and the expense of the same shall be paid by the state, except as provided in this chapter.

[C24, 27, 31, 35, 39, §2668; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.3]  
2012 Acts, ch 1095, §28

**165.4 Presence of tuberculosis.**

If, after such examination, tubercular animals are found, the department shall have authority to order such disposition of them as it considers most desirable and economical. If the department deems that a due regard for the public health warrants it, it may enter into a written agreement with the owner, subject to such conditions as it may prescribe, for the separation and quarantine of such diseased animals. Subject to such conditions, the diseased animals may continue to be used for breeding purposes.

[C24, 27, 31, 35, 39, §2669; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.4]  
Referred to in §165.5

**165.5 Nonright to receive compensation.**

Any animal retained, under section 165.4, by the owner for ninety days after it has been adjudged infected with tuberculosis shall not be made the basis of any claim for compensation against the state.

[C24, 27, 31, 35, 39, §2670; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.5]

**165.6 Amount of indemnity.**

When breeding animals are slaughtered following any test, there shall be deducted from their appraised value the proceeds from the sale of salvage. The owner shall be paid by the state one-third of the sum remaining after the above deduction is made, but the state shall in no case pay to such owner a sum in excess of seventy-five dollars for any registered purebred animal or fifty dollars for any grade animal.

[C24, 27, 31, 35, 39, §2671; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.6]

**165.7 Pedigree.**

The pedigree of purebred cattle shall be proved by certificate of registry from the herdbooks where registered.

[C24, 27, 31, 35, 39, §2672; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.7]

**165.8 Right to receive pay.**

No compensation shall be paid to any person for an animal condemned for tuberculosis unless said animal, if produced in, or imported into, the state has been owned by such owner for at least six months prior to condemnation or was raised by such person.

[C24, 27, 31, 35, 39, §2673; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.8]

**165.9 Preference in examinations.**

The department in making examinations of cattle shall give priority to applications by owners for the testing of dairy cattle from which are sold, or are offered for sale, in cities milk or milk products in liquid or condensed form.

[C24, 27, 31, 35, 39, §2674; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.9]

**165.10 Examination by department.**

The department may at any time, on its own motion, make an examination of any herd, and in case animals are destroyed, the appraisal and payment shall be made as provided in this chapter.

[C24, 27, 31, 35, 39, §2675; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.10]

**165.11 Records public.**

All records pertaining to animals infected with tuberculosis shall be open for public inspection and the department shall furnish such information relative thereto as may be requested.

[C24, 27, 31, 35, 39, §2676; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.11]

**165.12 Tuberculosis-free herds.**

The department shall establish rules for determining when a herd of cattle, tested and maintained under the provisions of this chapter, the laws of the United States, and the rules of the department and regulations of the United States department of agriculture, shall be considered as tuberculosis-free. When any herd meets such requirements, the owner shall be entitled to a certificate from the department of agriculture and land stewardship showing that the herd is a tuberculosis-free accredited herd. Such certificate shall be revoked whenever the herd no longer meets the necessary requirements for an accredited herd, but the herd may be reinstated as an accredited herd upon subsequent compliance with such requirements.

[C24, 27, 31, 35, 39, §2677; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.12]  
2012 Acts, ch 1095, §29

**165.13 Tuberculin.**

The department shall have control of the sale, distribution, and use of all tuberculin in the state, and shall formulate rules for its distribution and use. Only a licensed veterinarian shall apply a tuberculin test to cattle within this state.

[C24, 27, 31, 35, 39, §2678; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.13]

**165.14 Inspectors and assistants.**

The department may appoint one or more accredited veterinarians as inspectors for each county and one or more persons as assistants to such inspectors. Such inspectors, with the assistance of such person or persons, shall test the breeding cattle subject to test, as provided in this chapter, and shall be subject to the direction of the department in making such tests.

[C24, 27, 31, 35, 39, §2679; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.14]

**165.15 Accredited veterinarian.**

An accredited veterinarian is one who has successfully passed an examination set by the department and the United States department of agriculture and may make tuberculin tests of accredited herds of cattle under the uniform methods and rules governing accredited herd work which are approved by the United States department of agriculture.

[C24, 27, 31, 35, 39, §2680; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.15]  
86 Acts, ch 1245, §617; 2012 Acts, ch 1095, §30

**165.16 Equipment for inspector.**

The department may furnish each inspector with the necessary tuberculin and other material, not including instruments and utensils, necessary to make the tests provided for in this chapter.

[C24, 27, 31, 35, 39, §2681; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.16]

**165.17 Compensation.**

An inspector shall receive compensation for such testing as determined by the department.

[C24, 27, 31, 35, 39, §2682; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.17]  
See §70A.9 et seq.

**165.18 Brucellosis and tuberculosis eradication fund.**

1. A brucellosis and tuberculosis eradication fund is created in the office of the secretary of agriculture, to be used together with state and federal funds available to pay:

- a. The indemnity and other expenses provided in this chapter.
- b. The indemnity as set out in section 164.21 and other expenses provided in chapter 164.
- c. The expenses of the inspection and testing program provided in chapter 163A, but only to the extent that the moneys in the fund are not required for expenses incurred under chapter 164 or this chapter.
- d. Indemnities as provided in section 159.5, subsection 11, but only to the extent that the moneys in the fund are not required to pay expenses under chapter 163A, chapter 164, or this chapter.

2. If it appears to the secretary of agriculture that the balance in the fund on January 20 is insufficient to carry on the work in the state for the following fiscal year, the secretary shall notify the board of supervisors of each county to levy an amount sufficient to pay the expenses estimated to be incurred under subsection 1 for the following fiscal year, subject to a maximum levy of thirty-three and three-fourths cents per thousand dollars of assessed value of all taxable property in the county.

3. Not later than December 15 or June 15 of a year in which the tax is collected, the county treasurer shall transmit the amount of the tax levied and collected to the treasurer of state, who shall credit it to the brucellosis and tuberculosis eradication fund.

83 Acts, ch 123, §74, 209; 84 Acts, ch 1178, §1; 2007 Acts, ch 22, §44

Referred to in §159.5, 163.10, 164.21, 331.512, 331.559

**165.19 through 165.21** Repealed by 81 Acts, ch 117, § 1097.

**165.22 and 165.23** Repealed by 83 Acts, ch 123, § 206, 209.

**165.24** Repealed by 81 Acts, ch 117, § 1097.

**165.25** Repealed by 83 Acts, ch 123, § 206, 209.

**165.26 Permitting test.**

Every owner of dairy or breeding cattle in the state shall permit the owner's cattle to be tested for tuberculosis as provided in this chapter, and shall confine the cattle in a proper place so that the examination and test can be applied. If the owner refuses to so confine the cattle the department may employ sufficient help to properly confine them and the expense of such help shall be paid by the owner or deducted from the indemnity if any is paid. Such owner shall comply with all the requirements for the establishment and maintenance of a tuberculosis-free accredited herd.

[C24, 27, 31, 35, 39, §2699; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.26]

**165.27 Penalty.**

Any owner of dairy or breeding cattle in the state who prevents, hinders, obstructs, or refuses to allow a veterinarian authorized by the department to conduct such tests for tuberculosis on the owner's cattle, shall be deemed guilty of a simple misdemeanor.

[S13, §2538-s; C24, 27, 31, 35, 39, §2700; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.27]

Referred to in §165.29

**165.28 Preventing test.**

The cattle owned by any owner who violates the provisions of this chapter, or which have reacted to the tuberculin test, shall be quarantined by the department until the law is complied with. When such quarantine is established no beef or dairy products shall be sold from cattle under quarantine until the test has been applied or the quarantine released.

The accredited veterinarians appointed under this chapter shall enforce this quarantine and all of the rules of the department of agriculture and land stewardship of the state of Iowa

and of the provisions of this chapter, and in so doing may call to their assistance any peace officer of the state.

[C24, 27, 31, 35, 39, §2701; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.28]

**165.29 Notice.**

Before any action is commenced under section 165.27, upon request of the secretary of agriculture, the board of supervisors of any county shall cause such owner to be served with a written notice of the provisions of this chapter, at least fifteen days before the commencement of the action.

[C24, 27, 31, 35, 39, §2702; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.29]

**165.30 and 165.31** Repealed by 83 Acts, ch 123, § 206, 209.

**165.32 Retest.**

The secretary of agriculture may order a retest of any dairy or breeding cattle at any time when, in the secretary's opinion, it is necessary to do so, and shall, once in three years, order the tuberculin testing of any cattle to conform to and comply with the regulations of the federal bureau of animal industry in any county where the percentage of bovine tuberculosis has been reduced to one-half of one percent or less, subject to the provisions of this chapter with reference to the disposition or slaughtering of animals found to be reactors when given a tuberculin test. Such county shall be a modified accredited county, and it shall be unlawful for any person to transport any dairy or breeding cattle into such county unless they have been examined for tuberculosis as provided in this chapter.

[C27, 31, 35, §2704-b1; C39, §2704.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.32]  
Referred to in §165.33

**165.33 Penalty.**

Any person found guilty of violating the provisions of section 165.32 shall be deemed guilty of a simple misdemeanor.

[C31, 35, §2704-c1; C39, §2704.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.33]

**165.34** Repealed by 83 Acts, ch 123, § 206, 209.

**165.35 Township animal board of health.**

The township trustees in such county are hereby constituted the animal board of health in their respective townships and they shall by April 1 of each year and at such other times as they shall deem advisable, make a survey and report to the department all breeding cattle brought into their respective townships from outside of the county.

[C27, 31, 35, §2704-b3; C39, §2704.4; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.35]

**165.36 Importation of cattle.**

No dairy or breeding cattle shall be shipped, driven on foot, or transported, into the state of Iowa, except upon one of the following conditions:

1. That such cattle come from a herd which has been officially accredited as a tuberculosis-free accredited herd by the state from which such cattle come or by the department of agriculture of the United States; or

2. That such cattle come from an area officially declared as a modified accredited area by such state or the department of agriculture of the United States, and the herd from which they originate, if previously infected, has passed two tests free from tuberculosis; or

3. That such cattle are brought into this state under quarantine to be tuberculin tested for tuberculosis and fully examined in not less than sixty days nor more than ninety days. The test must be applied by a veterinarian accredited by the department and at the expense of the owner. Such cattle brought in under quarantine shall be accompanied by a certificate of veterinary inspection issued by a veterinarian accredited by the state from which the cattle are imported or by the animal and plant health inspection service of the United States department of agriculture showing them to be free from tuberculosis. The department of agriculture and

land stewardship shall not release its quarantine until an examination has been made and the department determines that such cattle are not afflicted with tuberculosis.

[C31, 35, §2704-c2; C39, §2704.5; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §165.36]

2004 Acts, ch 1163, §21

Additional provision, §163.11

## CHAPTER 165A

### JOHNE'S DISEASE CONTROL

Referred to in §172E.3

165A.1	Definitions.	165A.4	Infected cattle.
165A.2	Administration and enforcement.	165A.5	Enforcement — penalty.
165A.3	Determination of infection.		

#### 165A.1 Definitions.

1. "*Concentration point*" means a location or facility where cattle are assembled for purposes of sale or resale for feeding, breeding, or slaughtering, and where contact may occur between groups of cattle from various sources. "*Concentration point*" includes a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, or a livestock dealer's yard, truck, or facility.

2. "*Department*" means the department of agriculture and land stewardship.

3. "*Infected*" means infected with Johne's disease as provided in section 165A.3.

4. "*Johne's disease*" means a disease caused by the bacterium mycobacterium paratuberculosis, and which is also referred to as paratuberculosis disease.

5. "*Separate and apart*" means to hold cattle so that neither the cattle nor organic material originating from the cattle has physical contact with other animals.

6. "*Slaughtering establishment*" means a slaughtering establishment operated under the provision of the federal Meat Inspection Act, 21 U.S.C. § 601 et seq., or a slaughtering establishment that has been inspected by the state.

2001 Acts, ch 101, §1; 2012 Acts, ch 1095, §46, 47

#### 165A.2 Administration and enforcement.

The provisions of this chapter, including departmental rules adopted pursuant to this chapter, shall be administered and enforced by the department. The department may assess and collect civil penalties against persons in violation of this chapter as provided in section 165A.5. The attorney general may assist the department in the enforcement of this chapter.

2001 Acts, ch 101, §2

#### 165A.3 Determination of infection.

The department shall adopt rules providing methods and procedures to determine whether cattle are infected, which may include detection and analysis of Johne's disease using techniques approved by the United States department of agriculture.

2001 Acts, ch 101, §3; 2012 Acts, ch 1095, §48

Referred to in §165A.1

#### 165A.4 Infected cattle.

Cattle infected with Johne's disease shall be accompanied by an owner-shipper statement. A person shall not sell infected cattle other than directly to a slaughtering establishment, or to a concentration point for sale directly to a slaughtering establishment, for immediate slaughter. Cattle infected with Johne's disease that are kept at a concentration point shall be kept separate and apart.

2001 Acts, ch 101, §4; 2002 Acts, ch 1119, §23; 2012 Acts, ch 1095, §49

**165A.5 Enforcement — penalty.**

1. A person violating a provision of this chapter or any rule adopted pursuant to this chapter shall be subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars. The proceeding to assess a civil penalty shall be conducted as a contested case proceeding under chapter 17A.

2. In addition to any other remedies provided, the department may file a petition in the district court seeking an injunction restraining any person from violating provisions of this chapter including a rule adopted pursuant to this chapter.

3. This section does not prevent a person from commencing a civil cause of action based on any right that the person may assert under statute or common law.

2001 Acts, ch 101, §5; 2001 Acts, ch 176, §62

Referred to in §165A.2, 172E.3

## CHAPTER 165B

### CONTROL OF PATHOGENIC VIRUSES IN POULTRY

Referred to in §163.2

165B.1	Definitions.	165B.5	Restricted concentration points — civil penalties.
165B.2	Administration and enforcement.		
165B.3	Determination of infection.		
165B.4	Infected and exposed poultry — civil penalty — injunctive relief.		

**165B.1 Definitions.**

1. “*Concentration point*” means a location or facility where poultry originating from the same or different sources are assembled for any purpose. However, a concentration point does not include an animal feeding operation as defined in section 459.102 if the poultry are provided care and feeding for purposes of egg production or slaughter.

2. “*Department*” means the department of agriculture and land stewardship.

3. “*Law enforcement officer*” means a state patrol officer or a regularly employed member of a police force of a city or county, including but not limited to a sheriff’s office, who is responsible for the prevention and detection of a crime and the enforcement of the criminal laws of this state.

4. “*Manure*” means the same as defined in section 459.102.

5. “*Pathogenic virus*” means any of the following:

a. A recognized serotype of the virus avian paramyxovirus which is classified as a velogenic or mesogenic strain of that virus and which may be transmitted to poultry.

b. A recognized serotype of the virus commonly referred to as avian influenza which may be transmitted to poultry.

6. “*Poultry*” means domesticated fowl which are chickens, ducks, or turkeys.

7. “*Separate and apart*” means to hold poultry so that neither the poultry nor organic material originating from the poultry has physical contact with other animals.

8. “*Slaughtering establishment*” means a slaughtering establishment operated under the provisions of the federal Meat Inspection Act, 21 U.S.C. § 601 et seq., or a slaughtering establishment that has been inspected by the state.

2004 Acts, ch 1089, §2; 2005 Acts, ch 35, §31

**165B.2 Administration and enforcement.**

1. a. The provisions of this chapter, including departmental rules adopted pursuant to this chapter, shall be administered and enforced by the department. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed. The department may impose, assess, and collect the civil penalties. The attorney general or county

attorney may bring a judicial action or prosecution necessary to enforce the provisions of this chapter.

b. The department shall retain moneys from civil penalties that it collects under this chapter. The moneys are appropriated to the department for the administration and enforcement of this chapter. Notwithstanding section 8.33, such moneys shall not revert, but shall be retained by the department for the purposes described in this paragraph. The department shall submit a report to the chairpersons of the joint appropriations subcommittee on agriculture and natural resources by January 5 of each year. The report shall state, at a minimum, the total amount of moneys collected during the past calendar year and describe how these moneys were expended.

2. The provisions of this chapter do not limit the authority of the department, another state agency, or a political subdivision to regulate or bring an enforcement action against a person based on another provision of law, including but not limited to provisions in chapter 163, 717B, or 717D.

2004 Acts, ch 1089, §3

### **165B.3 Determination of infection.**

The department may adopt rules if necessary to provide methods and procedures to determine whether poultry are infected with a pathogenic virus, which may include detection and analysis of the disease using techniques approved by the United States department of agriculture.

2004 Acts, ch 1089, §4

### **165B.4 Infected and exposed poultry — civil penalty — injunctive relief.**

1. A person who is the owner or custodian of poultry infected with or exposed to a pathogenic virus shall keep the poultry separate and apart, and shall dispose of infected or exposed poultry in accordance with requirements of the department. The person shall ensure the premises where such poultry are kept are sanitized as required by the department. The person shall dispose of the poultry carcasses, eggs, or manure as provided by the department.

2. A person who violates this section is subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars, as determined by the department. In the case of a continuing violation, each day of the continuing violation is a separate violation. However, a person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars.

3. The department may seek injunctive relief as provided in section 163.62.

2004 Acts, ch 1089, §5

### **165B.5 Restricted concentration points — civil penalties.**

1. A person shall not operate a restricted concentration point. A restricted concentration point includes, but is not limited to, all of the following:

a. A concentration point where poultry are sold, bartered, or offered for sale or barter, if the concentration point is part of a market where poultry are sold, bartered, or offered for sale or barter to the general public.

b. A concentration point where poultry are placed together as part of a contest, including but not limited to an event conducted for purposes of producing violent contact between the poultry.

2. Subsection 1 does not apply to any of the following:

a. A slaughtering establishment, public stockyard, livestock auction market, state or federal market, livestock buying station, or a livestock dealer's yard, truck, or facility.

b. A fair conducted pursuant to chapter 173 or 174.

c. An event sanctioned by the department.

d. A 4-H function.

e. An event sponsored or sanctioned by the Iowa turkey marketing council, the Iowa turkey federation, the national turkey federation, the Iowa poultry association, the Iowa egg council, the American egg board, or the American poultry association.

3. a. A person who owns or operates a restricted concentration point is subject to a civil

penalty of five thousand dollars for the first violation and twenty-five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

b. A person who has a legal interest in infected poultry or has custody of infected poultry which are located at a restricted concentration point is subject to a civil penalty of five thousand dollars for the first violation and twenty-five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

c. A person who transports poultry to or from a restricted concentration point is subject to a civil penalty of one thousand dollars for the first violation and five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

d. A person who purchases, offers to purchase, barter, or offers to barter for poultry at a restricted concentration point is subject to a civil penalty of one hundred dollars for the first violation and one thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

e. A person who charges admission for entry into a restricted concentration point where a contest occurs or otherwise holds, advertises, or conducts the contest is subject to a civil penalty of one thousand dollars for the first violation and five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

f. A person who attends or participates in a contest at a restricted concentration point where a contest occurs is subject to a civil penalty of one hundred dollars for the first violation and one thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

4. This subsection applies to poultry maintained at a restricted concentration point, or poultry transported to or from a restricted concentration point.

a. The department or a law enforcement officer may confiscate poultry before a contested case proceeding or judicial hearing is conducted to determine whether this section has been violated. If the department or a court determines that a violation of this section has occurred, the poultry are conclusively deemed to be infected with a pathogenic virus. The poultry shall be kept separate and apart until destroyed by euthanasia as defined in section 162.2.

b. The department shall provide that real or personal property that is exposed to the poultry shall be sanitized as required to eliminate the source of the pathogenic virus. As part of the sanitation, the department shall provide for the disposal of poultry carcasses, eggs, or manure. Upon inspection, the department shall certify that the sanitization has been performed as required by this paragraph.

c. The department may utilize the procedures provided in section 17A.18A in order to enforce the provisions of this section. The attorney general or county attorney may petition the district court for an expedited hearing.

d. The department shall be reimbursed by the owner of the poultry or property for costs required to carry out this subsection. However, if the enforcement action is brought due to the activity of a law enforcement officer of a political subdivision, the political subdivision shall be reimbursed by the owner of the poultry or property for those costs. The department or political subdivision shall certify the amount to the county auditor of any county in which the owner is a titleholder of real property. The amount shall be placed upon the tax books and shall be a lien upon the real property, and collected with interest and penalties after due, in the same manner as other unpaid property taxes.

2004 Acts, ch 1089, §6; 2004 Acts, ch 1175, §329; 2005 Acts, ch 3, §41

## CHAPTER 166

## CLASSICAL SWINE FEVER VIRUS AND SERUM

Referred to in §159.6

166.1	Definitions.	166.29	Reports by manufacturers and dealers.
166.2	Rules.		
166.3	Permit to manufacture or sell.	166.30	and 166.31 Repealed by 65 Acts, ch 177, §2.
166.4	Application for permit.		
166.5	Manufacturer's permit.	166.32	Repealed by 69 Acts, ch 142, §9.
166.6	Dealer's permit.	166.33	Repealed by 65 Acts, ch 177, §2.
166.7	Liability on bond.	166.34	Seizure of samples.
166.8	New or additional bond.	166.35	Condemnation and destruction.
166.9	Liability of manufacturer.	166.36	Defacing labels.
166.10	Fees.	166.37	Price of virus.
166.11	Inspection of premises.	166.38	Compensation.
166.12	Manufacturer's or dealer's permit.	166.39	Violations.
166.13	Revocation of permit.	166.40	Repealed by 65 Acts, ch 177, §2.
166.14	Revocation by department.	166.41	Classical-swine-fever vaccine prohibited — emergency.
166.15	Prohibited sales.	166.42	Biological products reserve — use.
166.16	Sales — limitation.		
166.17	through 166.28 Repealed by 65 Acts, ch 177, §2.		

**166.1 Definitions.**

When used in this chapter:

1. “*Biological products*” shall include and be deemed to embrace only anti-classical-swine-fever serum and viruses which are either virulent or nonvirulent, alive or dead.

2. “*Dealer*” includes every person who, for profit, sells, dispenses, or distributes, or offers to do so, either as principal or agent, biological products, except:

a. A manufacturer selling direct to any person licensed under this chapter to sell, dispense, or distribute such biological products.

b. A regularly licensed veterinarian who uses such biological products in the veterinarian's professional practice and does not use it for sale or distribution to any other person.

3. “*Manufacturer*” includes every person engaged in the preparation, at any stage of the process, of biological products, except those engaged in such preparation in any state or governmental institution.

4. “*Place of business*” is construed to mean each place or premises where biological products are sold, or where biological products are stored or kept for the purpose of sale, dispensation or distribution, or where biological products are offered for sale, dispensation or distribution.

[SS15, §2538-w12; C24, 27, 31, 35, 39, §2705; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.1]

2005 Acts, ch 19, §34; 2012 Acts, ch 1095, §36

Further definitions; see §159.1

**166.2 Rules.**

The department shall have power to make such rules governing the manufacture, sale, and distribution of biological products as it deems necessary to maintain their potency and purity.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §2706; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.2]

**166.3 Permit to manufacture or sell.**

Every person, before engaging as a manufacturer of, or dealer in, biological products shall obtain from the department a permit for that purpose and shall be required to have a separate

permit for each place of business. A pharmacy licensed under chapter 155A shall not be required to obtain a dealer's permit to deal in biological products.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §2707; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.3]

87 Acts, ch 215, §42

#### **166.4 Application for permit.**

Every application for such a permit shall be made on a form provided by the department, which form shall call for such information as the department shall deem necessary, including the name and place of business of the applicant.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §2708; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.4]

#### **166.5 Manufacturer's permit.**

An application for a permit to manufacture biological products shall be accompanied by evidence satisfactory to the department that the applicant is the holder of a valid, unrevoked, United States department of agriculture license for the manufacture and sale of such biological products.

[C24, 27, 31, 35, 39, §2709; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.5]

#### **166.6 Dealer's permit.**

An application for a permit to deal in biological products shall be accompanied by a separate bond for each place of business, with sureties to be approved by the department, in the sum of five thousand dollars for each place of business, which bond shall be conditioned:

1. To faithfully comply with all laws governing the warehousing, sale, and distribution of biological products, and with all the rules of the department relating to such biological products.

2. To indemnify any person who uses any such biological products sold by the principal and is damaged by the negligence of the principal, or any of the principal's agents, in the warehousing, handling, sale, or distribution of such biological products.

3. To pay to the state all penalties which may be adjudged against the principal.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §2710; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.6]

99 Acts, ch 114, §10

#### **166.7 Liability on bond.**

The principal on such bond shall be liable to every person for any damage caused by the negligence of the principal or of the principal's agents, notwithstanding the execution of the bond.

[C24, 27, 31, 35, 39, §2711; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.7]

#### **166.8 New or additional bond.**

When judgment is rendered on such bond, the principal shall immediately execute and file with the department a new or additional bond, conditioned as the original bond, and in an amount to be fixed by the department, which will furnish the same amount of security that was furnished before the original bond was impaired.

[C24, 27, 31, 35, 39, §2712; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.8]

#### **166.9 Liability of manufacturer.**

A manufacturer shall be liable to an injured person for all damages which occur:

1. By reason of the negligence of the manufacturer or the manufacturer's employees in the manufacture, warehousing, handling, or distribution of biological products.

2. By reason of the failure of the manufacturer, or the manufacturer's employees, to discharge any duty imposed by law, or by the rules of the department.

[C24, 27, 31, 35, 39, §2713; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.9]

**166.10 Fees.**

Fees for permits shall be paid by the manufacturer or dealer to the department when the application for such permit is made and shall be:

1. In case of a manufacturer, twenty-five dollars for each plant at which it is proposed to manufacture biological products.

2. In case of a dealer, five dollars for each place of business, warehouse or distributing agency of the dealer.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §2714; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.10]

**166.11 Inspection of premises.**

The premises upon which the business authorized by such permit is carried on shall be subject at all times to inspection by the department. Before issuing an original permit, the department may cause the proposed premises to be inspected, and shall make such requirements regarding the physical conditions and sanitation of said premises as it may deem necessary to secure and maintain the potency and purity of the biological products. If such requirements are not complied with and maintained, the permit shall be refused or revoked as the case may be.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §2715; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.11]

**166.12 Manufacturer's or dealer's permit.**

Every permit issued to a manufacturer or dealer shall expire on the first day of July following the date of issuance. A renewal of the same shall be subject to all the conditions, including fees, that are required in the case of an original permit.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §2716; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.12]

**166.13 Revocation of permit.**

Such a permit shall be automatically revoked:

1. In case of a dealer, by the dealer's failure to execute and file with the department a new and approved bond when required by law, or by the dealer's failure to obtain a separate permit and to file a separate bond in the amount of five thousand dollars for each place of business.

2. In case of a manufacturer, by the manufacturer's ceasing to be the holder of a United States department of agriculture license for the manufacture and sale of biological products.

3. In case of either a manufacturer or dealer, for discrimination in the price at which such biological products are sold, and such permit shall not in such case be renewed for one year.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §2717; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.13]

**166.14 Revocation by department.**

Such a permit may also be revoked by the department at any time after a reasonable notice and hearing:

1. For violation of the terms, conditions, and requirements on which it was issued.

2. For violation of any law, or of any rule of the department, relating to the business authorized by such permit.

3. In case of a dealer's permit, when a judgment has been rendered on the bond, or when the security of such bond has become impaired in any other way and no new bond is given as required by the department.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §2718; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.14]

**166.15 Prohibited sales.**

No biological products shall be sold, offered for sale, distributed, or used, unless produced at a plant which, at the time of producing, held a United States department of agriculture license for the manufacture of such biological products.

[SS15, §2538-w3; C24, 27, 31, 35, 39, §2719; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.15]

**166.16 Sales — limitation.**

A person shall not sell, distribute, use, or offer to sell, distribute, or use virulent blood or virus from classical-swine-fever-infected swine except for one or more of the following purposes:

1. For the purpose of interstate or foreign shipment of such blood or virus.
2. For the purpose of research at any biological laboratory or by any manufacturer of biological products.
3. For the purpose of testing biological products by any governmental authority or by any manufacturer of biological products.
4. For the purpose of manufacturing any biological products or for the purpose of producing immune swine to be used in the production of anti-classical-swine-fever serum.

[SS15, §2538-w5; C24, 27, 31, 35, 39, §2720; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.16]

2012 Acts, ch 1095, §37, 38

Referred to in §166.41

**166.17 through 166.28** Repealed by 65 Acts, ch 177, § 2.

**166.29 Reports by manufacturers and dealers.**

A person holding a permit as manufacturer or dealer shall make such written reports to the department relative to biological products as it may from time to time require.

[SS15, §2538-w5; C24, 27, 31, 35, 39, §2733; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.29]

**166.30 and 166.31** Repealed by 65 Acts, ch 177, § 2.

**166.32** Repealed by 69 Acts, ch 142, § 9.

**166.33** Repealed by 65 Acts, ch 177, § 2.

**166.34 Seizure of samples.**

The department may seize, at any time or place, for examination, samples of biological products manufactured or kept for use or sale within the state.

[S13, §2538-w6; C24, 27, 31, 35, 39, §2738; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.34]

**166.35 Condemnation and destruction.**

The department shall have power to condemn and destroy any biological products which it deems unsafe.

[S13, §2538-w6; C24, 27, 31, 35, 39, §2739; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.35]

**166.36 Defacing labels.**

No person shall remove or deface any label upon the bottles or packages containing any biological products or change the contents from the original container except for immediate use.

[SS15, §2538-w8; C24, 27, 31, 35, 39, §2740; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.36]

**166.37 Price of virus.**

Persons holding permits, either as manufacturers or dealers, shall sell all biological products at a uniform price to all persons to whom sales are made. No rebate on said price shall be given, either directly or indirectly, in any manner whatsoever.

[C24, 27, 31, 35, 39, §2741; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.37]

**166.38 Compensation.**

No licensed veterinarian shall receive, directly or indirectly, any compensation of any kind for the handling, sale, or use of any biological products, other than the veterinarian's charges for administering the same, unless the veterinarian makes known in writing the amount of such compensation, if requested to do so by the person using biological products. Any veterinarian violating this section shall be guilty of a simple misdemeanor.

[C24, 27, 31, 35, 39, §2742; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.38]

Revocation of license, §169.13

**166.39 Violations.**

Any person who violates any provision of this chapter, or any rule of the department, or who shall hinder or attempt to hinder the department or any duly authorized agent or official thereof in the discharge of that person's duty, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars.

[S13, §2538-w7; C24, 27, 31, 35, 39, §2743; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §166.39]

**166.40** Repealed by 65 Acts, ch 177, § 2.

**166.41 Classical-swine-fever vaccine prohibited — emergency.**

The sale or use of classical-swine-fever vaccine, except as provided in section 166.16, is prohibited and a person shall not use such a product in this state. However, in the case of an emergency as defined in section 166.42, a special permit for the use of vaccines may be issued by the secretary.

[C66, 71, 73, 75, 77, 79, 81, §166.41]

2012 Acts, ch 1095, §39

**166.42 Biological products reserve — use.**

1. The secretary may establish a reserve supply of biological products of approved modified live virus classical-swine-fever vaccine and of anti-classical-swine-fever serum or its equivalent in antibody concentrate to be used as directed by the secretary in the event of an emergency resulting from a classical-swine-fever outbreak. Vaccine and serum or antibody concentrate from the reserve supply, if used for such an emergency, shall be made available to swine producers at a price which will not result in a profit. Payment shall be made by the producer to the department and such vaccine shall be administered by a licensed practicing veterinarian. The secretary may cooperate with other states in the accumulation, maintenance and disbursement of such reserve supply of biological products. The secretary, with the advice and written consent of the state veterinarian, and the advice and written consent of the veterinarian-in-charge for Iowa of the animal and plant health inspection service — veterinary services, United States department of agriculture, shall determine when an emergency resulting from a classical-swine-fever outbreak exists.

2. The secretary is authorized to sell or otherwise dispose of classical-swine-fever vaccine and serum at such time as the state is declared a classical-swine-fever-free state by the United States department of agriculture, or if the potency of such vaccine and serum is in doubt. Money received under provisions of this section shall be paid into the state treasury.

[C71, 73, 75, 77, 79, 81, §166.42]

99 Acts, ch 96, §17; 2000 Acts, ch 1058, §21; 2012 Acts, ch 1095, §40

Referred to in §166.41

## CHAPTER 166A

## SCABIES CONTROL IN SHEEP

166A.1	Definitions.	166A.8	Quarantine of infected sheep.
166A.2	Sheep dealer's license.	166A.9	Scabies-free areas.
166A.3	Injunction.	166A.10	Restraint of movement.
166A.4	Treatment.	166A.11	Sheep entering state.
166A.5	Certificate. Repealed by 2012 Acts, ch 1095, §57.	166A.12	Shearers' reports.
166A.6	Records kept.	166A.13	Rules.
166A.7	Slaughter without treatment.	166A.14	Penalty.

**166A.1 Definitions.**

1. "Accredited veterinarian" means a veterinarian who is licensed by the state in which the veterinarian practices, is approved by the department of agriculture and land stewardship or the livestock sanitary authority of that state, and is accredited by the United States department of agriculture.

2. "Approved stockyard or livestock market" means any place where sheep are assembled for public auction, private sale, or on a commission basis which is under state or federal supervision.

3. "Area" means one or more counties or portions thereof.

4. "Certificate of veterinary inspection" or "certificate" means the same as defined in section 163.2.

5. "Certified scabies-free area" means an area in which all sheep have been inspected by a representative of the Iowa department of agriculture and land stewardship or of the animal disease eradication division of the United States department of agriculture and are found to be free of any evidence of scabies and such fact is certified to by both agencies.

6. "Dealer" means any person who is engaged in the business of buying for resale, selling, or exchanging sheep as a principal or agent or who claims to be so engaged but does not include employees of a dealer doing business in the name of such dealer or the owner or operator of a farm who exchanges only sheep which have been kept by that person solely for feeding or breeding purposes and does not claim to be so engaged, or as a livestock auction market acting strictly on a consignment basis.

7. "Division" means the animal disease eradication division of the agricultural research service of the United States department of agriculture.

8. "Infected animal" means an animal of the ovine species which shows clinical evidence of scabies or in which the presence of the scabies mite is demonstrated.

9. "Scabies" means a communicable skin disease caused by infestation with mites of the species psoroptes, sarcoptes, chorioptes or psorergates.

10. "Treatment" includes but is not limited to administering medication.

[C66, 71, 73, 75, 77, 79, 81, §166A.1]

86 Acts, ch 1245, §618; 2004 Acts, ch 1163, §22; 2012 Acts, ch 1095, §50

Further definitions; see §159.1

**166A.2 Sheep dealer's license.**

Any person engaged as a dealer shall be required to obtain a license from the department. The fee for such license shall be five dollars per year and all licenses shall expire on the first day of July following date of issue. Licenses shall be numbered and the dealer shall retain the number from year to year.

Applications for licenses shall be made upon blanks furnished by the department.

For good and sufficient grounds the department may refuse to grant a license to any applicant, and it may also revoke a license to any applicant for a violation of any provision of this chapter, or for the refusal or failure of any licensee to obey the lawful directions of the department.

Any person who is licensed as a sheep dealer under chapter 172A shall be exempt from this section.

[C66, 71, 73, 75, 77, 79, 81, §166A.2]

**166A.3 Injunction.**

Any person engaging in, or claiming to be in, the business of a dealer without obtaining a license may be restrained by injunction, and shall pay all costs made necessary by such procedure.

[C66, 71, 73, 75, 77, 79, 81, §166A.3]

**166A.4 Treatment.**

All breeding and feeding sheep offered for sale or exchange or otherwise moved or released from any premises, vehicle, or conveyance, shall, within ten days prior to exchange, release, or movement, be treated in an approved manner under the supervision of the department or the animal and plant health inspection service of the United States department of agriculture. When sheep are moved within or from a certified scabies-free area in this state, the sheep must be accompanied by a certificate of veterinary inspection as provided in chapter 163. The treatment shall not be required prior to such movement. Sheep may be moved from a premises to an approved facility for the purpose of treatment under such conditions as may be required by the rules of the department or the regulations of the animal and plant health inspection service of the United States department of agriculture. In addition, sheep are not required to be treated if moved to a livestock auction market until after sale. Sheep are not required to be treated if consigned directly for slaughter.

[C66, 71, 73, 75, 77, 79, 81, §166A.4]

2004 Acts, ch 1163, §23; 2012 Acts, ch 1095, §51

**166A.5 Certificate.** Repealed by 2012 Acts, ch 1095, § 57.

**166A.6 Records kept.**

Market operators and dealers in sheep shall use satisfactory treatment, approved by the department. Market operators and dealers shall maintain records which show the true origin of the sheep including name and address of the seller or consignor, number, date of receipt, date of treatment, and including all certificates, permits, waybills, and bills of lading for each consignment of sheep consigned to and leaving the market or dealer's premises. All records shall be retained for a period of one year and made available upon demand by a representative of the department.

[C66, 71, 73, 75, 77, 79, 81, §166A.6]

2012 Acts, ch 1095, §52

**166A.7 Slaughter without treatment.**

Animals may be sold for slaughter without treatment. Sheep when inspected at the market or dealer's premises and found free of scabies or no known exposure thereto, may be sold for slaughter purposes without treatment if consigned directly and immediately on a slaughter affidavit to a slaughtering establishment operating under federal, state or municipal meat inspection service.

[C66, 71, 73, 75, 77, 79, 81, §166A.7]

2012 Acts, ch 1095, §53

**166A.8 Quarantine of infected sheep.**

1. Sheep found to be infected with or exposed to scabies shall be immediately treated, as directed by and under the supervision of the department, at owner's expense. Such sheep shall remain under quarantine until released by the department, except that sheep infected with or exposed to scabies may be moved, without treatment, directly to a slaughter establishment under federal inspection, under permit from the department. No sheep shall be moved into or within the state of Iowa for any purpose except as provided in this chapter and the rules of the department, provided sheep may be moved without treatment between properties owned or rented by the owner of the sheep, if not moved from a noncertified scabies-free area to a certified scabies-free area.

2. Any person may sell or exchange sheep on the farm between November 1 and April 1 without treatment if accompanied by a certificate from a licensed veterinarian that the sheep

are free from scabies issued within ten days prior to such sale or exchange until such time as the county is declared a scabies-free area.

[C66, 71, 73, 75, 77, 79, 81, §166A.8]  
2012 Acts, ch 1095, §54

**166A.9 Scabies-free areas.**

When all flocks of sheep within a county have been inspected by a representative of the department and are found to be free of scabies, the department may certify the county as a “scabies-free area.”

[C66, 71, 73, 75, 77, 79, 81, §166A.9]

**166A.10 Restraint of movement.**

Sheep from noncertified scabies-free areas within this state shall not enter certified scabies-free areas unless they have been treated in an approved manner under supervision within ten days preceding movement and satisfactory evidence of treatment accompanies the shipment. However, such sheep may be moved into certified scabies-free areas if consigned directly to a stockyard market, auction market, or slaughter establishment, under federal inspection, provided the sheep are accompanied by a certificate of veterinary inspection stating number, description, consignor, and consignee.

[C66, 71, 73, 75, 77, 79, 81, §166A.10]  
2004 Acts, ch 1163, §24; 2012 Acts, ch 1095, §55

**166A.11 Sheep entering state.**

1. Sheep being moved into the state for breeding or feeding purposes shall be accompanied by a certificate of veterinary inspection stating the sheep are any of the following:

- a. From a certified scabies-free area.
- b. Treated in an approved manner within ten days prior to movement.

2. Livestock markets, dealers, and individuals shall retain all incoming waybills and certificates for a period of one year which shall be made available to the department upon demand.

[C66, 71, 73, 75, 77, 79, 81, §166A.11]  
2004 Acts, ch 1163, §25; 2012 Acts, ch 1095, §56

**166A.12 Shearers' reports.**

All persons engaged in the shearing of sheep shall immediately report any suspicion of or evidence of scabies to the department.

[C66, 71, 73, 75, 77, 79, 81, §166A.12]

**166A.13 Rules.**

The department is empowered to make and promulgate rules necessary for carrying out the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §166A.13]

**166A.14 Penalty.**

Any person, firm or partnership or corporation violating the provisions of this chapter shall be guilty of a simple misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §166A.14]

## CHAPTER 166B

## ERADICATION OF CLASSICAL SWINE FEVER

166B.1	Definitions.	166B.5	Cooperation with United States.
166B.2	General authority.	166B.6	Rules.
166B.3	Appraisal and indemnification.	166B.7	Judicial review.
166B.4	Institution of indemnification.		

**166B.1 Definitions.**

As used in this chapter:

1. “*Classical swine fever*” means the contagious, infectious, and communicable disease of swine commonly known as hog cholera.
2. “*Destroy*” means condemn under state authority and slaughter or otherwise kill as a result of or pursuant to such condemnation.
3. “*Exposed*” means all swine in physical contact with a known infected herd or tended by a person having direct contact with an infected herd.

[C66, 71, 73, 75, 77, 79, 81, §166B.1]

86 Acts, ch 1245, §619; 2012 Acts, ch 1095, §41, 42

Further definitions; see §159.1

**166B.2 General authority.**

The department may destroy or require the destruction of any swine which the state veterinarian knows to be, or suspects is, affected with or exposed to classical swine fever, whenever the department finds such destruction to be necessary to prevent or reduce the danger of the spread of classical swine fever. Disposal of condemned swine shall be under the supervision of a regulatory employee. Salvage of apparently healthy marketable swine is permissible as a minimum provision and may be discontinued in favor of total herd disposition with indemnification as necessary and without such salvage in any case or at any time when it is determined by the department and the United States department of agriculture that the procedure would constitute an undue threat to the eradication program. Before being condemned and ordered to be destroyed, a positive diagnosis of classical swine fever affecting the herd must be confirmed by a state or federal laboratory or personnel approved by the department and the United States department of agriculture.

[C66, 71, 73, 75, 77, 79, 81, §166B.2]

2012 Acts, ch 1095, §43

**166B.3 Appraisal and indemnification.**

The department shall appraise any swine destroyed or ordered destroyed pursuant to this chapter at not to exceed current market value and shall indemnify the owner of such swine in an amount not to exceed two hundred dollars for purebred, inbred or hybrid or breeding swine; and not to exceed one hundred dollars for all other swine, provided that fifty percent or more of all such indemnities are paid by the United States department of agriculture.

[C66, 71, 73, 75, 77, 79, 81, §166B.3]

**166B.4 Institution of indemnification.**

It is hereby recognized and declared that indemnification for destruction of swine infected with or exposed to classical swine fever is an expression of the public policy of this state but employed only in the final stages of eradication of the disease, or as a means of preventing or minimizing its recurrence. The department shall not therefore institute an initial program of indemnification pursuant to the chapter until it is mutually agreed between the department and the United States department of agriculture that such action is necessary in order to carry out the classical-swine-fever eradication program.

[C66, 71, 73, 75, 77, 79, 81, §166B.4]

2012 Acts, ch 1095, §44

**166B.5 Cooperation with United States.**

The department may cooperate with the United States, or any department, agency or officer thereof, in the control and eradication of classical swine fever, including the sharing in payment of indemnities for swine destroyed.

[C66, 71, 73, 75, 77, 79, 81, §166B.5]

2012 Acts, ch 1095, §45

**166B.6 Rules.**

The department of agriculture and land stewardship may make, promulgate, amend, repeal, and enforce necessary rules for implementing this chapter.

[C66, 71, 73, 75, 77, 79, 81, §166B.6]

**166B.7 Judicial review.**

Judicial review of department action under this chapter may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county, wherein the hogs are situated.

[C66, 71, 73, 75, 77, 79, 81, §166B.7]

2003 Acts, ch 44, §114

CHAPTER 166C

RESERVED

CHAPTER 166D

PSEUDORABIES CONTROL

Referred to in §163.2, 163.30, 163.61

166D.1	Purpose — rules.	166D.10A	Restricted movement — requirements.
166D.2	Definitions.	166D.10B	Approved premises.
166D.3	State pseudorabies advisory committee.	166D.11	Vaccination and testing requirements.
166D.3A	Departmental determination of pseudorabies prevalence.	166D.12	Concentration points.
166D.4	and 166D.5 Repealed by 2000 Acts, ch 1110, §22, 25.	166D.13	Exhibition of swine.
166D.6	Reporting of test results.	166D.14	Pseudorabies immunization products.
166D.7	Noninfected herds.	166D.15	Tracing pseudorabies to source or destination herds.
166D.8	Infected herds.	166D.16	Enforcement — penalty — certificates.
166D.9	Quarantined herds.		
166D.10	Movement of swine.		

**166D.1 Purpose — rules.**

This chapter provides for measures to control the transmission and incidence, and for the eventual eradication, of pseudorabies among swine within this state. The department shall adopt rules to carry out the provisions of this chapter.

89 Acts, ch 280, §1

Referred to in §166D.10

**166D.2 Definitions.**

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

1. “Advisory committee” means the state pseudorabies advisory committee composed

of swine producers and other representatives of the swine industry, appointed pursuant to section 166D.3.

2. “*Approved premises*” means a dry lot facility located in an area with confirmed cases of pseudorabies infection, which is certified by the department to receive, feed, and move or relocate infected swine as provided in section 166D.10B.

3. “*Approved premises permit*” means a permit issued by the department necessary for a person to own and operate an approved premises.

4. “*Breeding swine*” means swine over six months of age.

5. “*Certificate of inspection*” means a document approved by the United States department of agriculture or the department of agriculture and land stewardship, and issued by a licensed veterinarian prior to the interstate or intrastate movement of swine or to the relocation of swine. The certificate of inspection must state all of the following:

a. The number, description, and identification of the swine to be moved.

b. Whether the swine to be moved are known to be infected with or exposed to pseudorabies.

c. The farm of origin.

d. The purpose for moving the swine.

e. The point of destination of the swine.

f. The consignor and each consignee of the swine.

g. Additional information as required by state or federal law.

6. “*Certificate of veterinary inspection*” means the same as defined in section 163.2.

7. “*Cleanup plan*” means a herd cleanup plan or feeder pig cooperator herd cleanup plan as provided in section 166D.8.

8. “*Concentration point*” means a location or facility where swine are assembled for purposes of sale or resale for feeding, breeding, or slaughtering, and where contact may occur between groups of swine from various sources. “*Concentration point*” includes a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, or a livestock dealer’s yard, truck, or facility.

9. “*Cull swine*” means mature swine fed for purposes of direct slaughter. However, “*cull swine*” does not include swine kept for purposes of breeding or reproduction.

10. “*Differentiable test*” means a laboratory procedure approved by the department to diagnose pseudorabies. The procedure must be capable of recognizing and distinguishing between vaccine-exposed and field-pseudorabies-virus-exposed swine.

11. “*Differentiable vaccinate*” means a swine which has only been exposed to a differentiable vaccine.

12. “*Differentiable vaccine*” means a vaccine which has a licensed companion differentiable test, and includes a modified-live differentiable vaccine.

13. “*Direct movement*” means movement of swine to a destination without unloading the swine in route, without contact with swine of lesser pseudorabies vaccinate status, and without contact with infected or exposed livestock.

14. “*Epidemiologist*” means a state or federal veterinarian designated to investigate and diagnose suspected pseudorabies in livestock. The epidemiologist must have had special training in the diagnosis and epidemiology of pseudorabies.

15. “*Exhibition*” means the same as defined in section 163.32.

16. “*Exposed*” means an animal that has not been kept separate and apart or isolated from livestock infected with pseudorabies, including all swine in a known infected herd.

17. “*Exposed livestock*” means livestock that have been in contact with livestock infected with pseudorabies, including all livestock in a known infected herd. However, livestock other than swine that have not been exposed to a clinical case of the disease for a period of ten consecutive days shall not be considered exposed livestock. Swine released from quarantine are no longer considered exposed.

18. “*Farm of origin*” means a location where the swine were born, or on which the swine have been located for at least ninety consecutive days immediately prior to movement.

19. “*Feeder pig*” means an immature swine fed for purposes of direct slaughter which weighs one hundred pounds or less.

20. “*Feeder pig cooperator herd*” means a swine herd not currently determined to be

pseudorabies negative, that has not experienced clinical signs of pseudorabies in the last six months, that is capable of segregating offspring at weaning into separate and apart production facilities, and has implemented an approved pseudorabies eradication plan.

21. “*Feeder swine*” means swine fed for purposes of direct slaughter, including feeder pigs and cull swine. However, “*feeder swine*” does not include swine kept for purposes of breeding or reproduction.

22. “*Fixed concentration point*” means a concentration point which is a permanent location where swine are assembled for purposes of sale and movement to a slaughtering establishment as provided in section 166D.12.

23. “*Herd*” means a group of swine as established by departmental rule.

24. “*Herd cleanup plan*” means a plan to eliminate pseudorabies from a swine herd. The plan must be developed by an epidemiologist in consultation with the herd owner and the owner’s veterinary practitioner. The plan must be approved and signed by the epidemiologist, the owner, and the practitioner. The plan must be approved and filed with the department.

25. “*Herd of unknown status*” means all swine except swine which are part of a known infected herd, swine known to have been exposed to pseudorabies, or swine which are part of a noninfected herd.

26. “*Infected*” means infected with pseudorabies as determined by an epidemiologist whose diagnosis is supported by test results.

27. “*Infected herd*” means a herd that is known to contain infected swine, a herd containing swine exhibiting clinical signs of pseudorabies, or a herd that is infected according to an epidemiologist.

28. “*Inspection service*” means the animal and plant health inspection service, United States department of agriculture.

29. “*Isolation*” means separation of swine within a physical barrier in a manner to prevent swine from gaining access to swine outside the barrier, including excrement or discharges from swine outside the barrier. Swine in isolation must not share a building with a ventilation system common to other swine. Swine in isolation must not be maintained within ten feet of other swine.

30. “*Isowean feeder pig*” means a feeder pig that weighs twenty pounds or less.

31. “*Known infected herd*” means a herd in which swine have been determined by an epidemiologist to be infected.

32. “*Licensed pseudorabies vaccine*” means a pseudorabies virus vaccine produced under license from the United States secretary of agriculture under the federal Virus-Serum-Toxin Act of March 4, 1913, 21 U.S.C. § 151 et seq.

33. “*Livestock*” means swine, cattle, sheep, goats, horses, ostriches, rheas, or emus.

34. “*Monitored herd*” means a herd of swine, including a feeder swine herd, which has been determined within the past twelve months not to be infected, according to a statistical sampling.

35. “*Move*” or “*movement*” means the same as defined in section 163.30.

36. “*Noninfected herd*” means a herd which is one of the following:

a. A qualified pseudorabies negative herd.

b. A pseudorabies monitored herd.

c. A herd in which the animals have been individually tested negative within the past thirty days.

d. A herd which originates from an area with little or no incidence of pseudorabies as determined by the department based upon epidemiological studies and information relating to the area.

e. A qualified differentiable negative herd.

37. “*Nonvaccinate*” means a swine which has not been exposed to a pseudorabies vaccine.

38. “*Pseudorabies*” means the contagious, infectious, and communicable disease of livestock and other animals known as Aujeszky’s disease, mad itch, or infectious bulbar paralysis.

39. “*Pseudorabies eradication plan*” means a written herd management program which is based on accepted statistical and epidemiological evaluation and designed to eradicate pseudorabies from the swine herds in a given area.

40. “*Qualified differentiable negative herd*” means a herd in which one hundred percent of the herd’s breeding swine have been vaccinated and have reacted negatively to a differentiable test and which have been retested, as provided in this chapter.

41. “*Qualified negative herd*” means a herd in which one hundred percent of the herd’s breeding swine have reacted negatively to a test, and have not been vaccinated, and which is retested as provided in this chapter.

42. “*Quarantined herd*” means a herd in which pseudorabies infected or exposed swine are bred, reared, or fed under the supervision and control of the department, as provided in section 166D.9.

43. “*Reaction*” means a result determined by an approved laboratory procedure designed to recognize pseudorabies virus infection or a nondifferentiable vaccinated animal.

44. “*Relocate*” or “*relocation*” means the same as defined in section 163.30.

45. “*Relocation record*” means a record as maintained by the owner of swine in a form and containing information as required by the rules adopted by the department, which indicates a relocation of swine as provided in section 166D.10.

46. “*Restricted movement*” means swine which are moved or relocated as provided in section 166D.10A.

47. “*Separate and apart*” means to hold swine so that neither the swine nor organic material originating from the swine has physical contact with other animals.

48. “*Slaughtering establishment*” means a slaughtering establishment operated under the provision of the federal Meat Inspection Act, 21 U.S.C. § 601 et seq., or a slaughtering establishment which has been inspected by the state.

49. “*Stage II county*” means a county designated by the department as in stage II of the national pseudorabies eradication program.

50. “*Statistical sampling*” means a test based on at least a ninety percent probability of detecting at least a ten percent incidence of positive reaction within a herd.

51. “*Test*” means a serum neutralization (SN) test, virus isolation test, ELISA test, or other test approved by the department and performed by a laboratory approved by the department.

52. “*Transportation certificate*” means a written document evidencing that the movement or relocation of swine complies with the requirements of this chapter, and which may be a transportation certificate as provided in chapter 172B, or another document approved by the department, including but not limited to one or more types of forms covering different circumstances, as prescribed by the department.

89 Acts, ch 280, §2; 90 Acts, ch 1091, §1 – 3; 92 Acts, ch 1163, §42; 95 Acts, ch 43, §5; 97 Acts, ch 183, §2 – 6, 13; 2000 Acts, ch 1110, §1 – 4, 25; 2001 Acts, ch 24, §34; 2004 Acts, ch 1163, §26; 2010 Acts, ch 1061, §37; 2011 Acts, ch 84, §3, 5

Further definitions, see §159.1

### **166D.3 State pseudorabies advisory committee.**

A state pseudorabies advisory committee is established. The committee shall consist of not more than seven members who shall be appointed by the Iowa pork producers association. At least four members of the committee must be actively engaged in swine production. The members shall serve staggered terms of two years, except that the initial board members shall serve unequal terms. A person appointed to fill a vacancy for a member shall serve only for the unexpired portion of the term. A member is eligible for reappointment for three successive terms. A majority of the board constitutes a quorum and an affirmative vote of the majority of members is necessary for substantive action taken by the board. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the board. The advisory committee shall:

1. Inform and educate interested persons in the state, including persons involved in producing, processing, or marketing swine, regarding eradication activities under this chapter.

2. Review eradication activities under this chapter including the pseudorabies eradication programs. The committee shall make recommendations to the department and the

inspection service and may consult with state officials regarding any matter relating to pseudorabies control and eradication, including departmental rules, other state or federal regulations, program areas, the use of vaccine, testing procedures, the progress of pseudorabies eradication programs, and state and federal program standards. The committee in cooperation with the department shall report to the governor and general assembly not later than January 15 the progress of pseudorabies eradication, including recommendations.

3. Maintain communication with other states and with the national pork producers council, the livestock conservation institute, and the inspection service.

89 Acts, ch 280, §3; 2000 Acts, ch 1110, §5, 6, 25

Referred to in §166D.2

#### **166D.3A Departmental determination of pseudorabies prevalence.**

The department shall periodically determine the prevalence of pseudorabies in each county in a manner and according to procedures established by rules adopted by the department.

97 Acts, ch 183, §7, 13

**166D.4 and 166D.5** Repealed by 2000 Acts, ch 1110, § 22, 25.

#### **166D.6 Reporting of test results.**

All tests under this chapter must be taken by a test administered by a licensed veterinarian. Test samples are to be collected by or under the direction of the department and a licensed veterinarian. If the test is determined by a laboratory located outside the state of Iowa, the person whose animal has been tested shall be responsible for assuring that the result is reported to the department within fourteen days following completion of the test. Swine sampled shall be identified with a numbered metal ear tag. The department shall make the ear tags available. Ear notches or other numbered identification methods approved by the department may be used at the herd owner's expense.

Test results shall be reported on forms prescribed by the department signed by the veterinarian and transmitted to the department within fourteen days following completion of the tests. Copies shall be made available to the attending veterinarian. Upon receipt, the attending veterinarian shall provide copies to the herd owner.

89 Acts, ch 280, §6

#### **166D.7 Noninfected herds.**

In administering the pseudorabies eradication program, the department shall regulate noninfected herds as follows:

1. A qualified negative herd must be certified, recertified, and maintained as follows:

a. The herd shall be certified when all breeding swine have reacted negatively to a test. The herd must have been free from infection for thirty days prior to testing. At least ninety percent of swine in the herd must have been on the premises as a part of the herd for at least sixty days prior to testing, or swine in the herd must have been moved or relocated directly from another qualified negative herd. To remain certified, the herd must be retested and recertified each month as provided by the department. The herd shall be recertified when the greater of five head of swine or at least ten percent of the herd's breeding swine react negatively to a test.

b. Before being added to the herd new swine including swine returning to the herd after contact with nonherd swine, shall be isolated until the new swine react negatively to a test conducted thirty days or more after the swine has been placed in isolation. Swine from a herd of unknown status must react negatively to a test not more than thirty days prior to movement from the herd of unknown status and retested in isolation at least thirty days after movement onto the premises where the qualified negative herd is located.

c. Swine from another qualified negative herd may be added without isolation or testing.

d. The owner shall make a request to the department for approval or reapproval of a qualified negative herd when the required tests are completed. Upon satisfactory proof that all requirements have been met, the herd shall be recertified by the department.

2. A monitored herd shall be initially certified, recertified, and maintained as follows:

a. The herd shall be certified when a statistical sampling of the herd is determined to be noninfected.

b. In order to remain certified the herd must be retested and recertified as provided by the department. The herd must be recertified annually. The herd shall be recertified when a statistical sampling of the herd is determined to be noninfected within twelve months from initial certification or the most recent recertification.

c. A monitored herd shall not be certified or recertified, if the herd is located within a county which is designated by the department as in stage II of the national pseudorabies eradication program, unless the herd is vaccinated with a modified-live differentiable vaccine pursuant to section 166D.11 and as required by the department.

d. A monitored herd may receive new swine into the herd from a noninfected herd.

3. A qualified differentiable negative herd shall be certified, recertified, and maintained as follows:

a. The herd shall be certified when one hundred percent of breeding swine have reacted negatively to a test. The herd must have been free from infection for thirty days prior to testing. At least ninety percent of swine in the herd must have been on the premises as a part of the herd for at least sixty days prior to testing, or swine in the herd must have been directly moved or relocated from a qualified negative herd or qualified differentiable negative herd. A differentiable vaccine must be administered at intervals in accordance with the package insert for that vaccine. To remain certified, the herd must be retested and recertified as provided by the department. The herd shall be recertified when each month at least ten percent of the herd's breeding swine react negatively to a test.

b. Before adding to the herd new swine, including swine returning to the herd after contact with nonherd swine, the herd shall be isolated until the new swine react negatively to a test conducted thirty days or more after the swine have been placed in isolation. Swine from a herd of unknown status must react negatively to a test not more than fifteen days prior to movement from the herd of unknown status and retested in isolation at least thirty days after movement onto the premises where the qualified differentiable negative herd is located.

c. Swine from a qualified negative or qualified differentiable negative herd may be added without isolation or testing.

d. The owner shall make a request to the department for certification or recertification of a qualified differentiable negative herd when the required tests are completed. Upon satisfactory proof that all requirements have been met, the herd shall be recertified by the department.

89 Acts, ch 280, §7; 90 Acts, ch 1091, §5; 98 Acts, ch 1056, §4; 2000 Acts, ch 1110, §7 – 10, 25; 2000 Acts, ch 1232, §24, 39; 2002 Acts, ch 1119, §140; 2009 Acts, ch 133, §205

Referred to in §166D.10

#### **166D.8 Infected herds.**

An infected herd which is not quarantined under section 166D.9, shall either adopt a herd cleanup plan or a feeder pig cooperator herd cleanup plan.

1. a. A herd cleanup plan shall apply to a herd if feeder pigs are not moved from the herd. The plan shall provide for one of the following:

(1) The testing of all swine capable of being accurately diagnosed with pseudorabies and the removal of infected swine from the herd.

(2) Depopulation.

b. A herd cleanup plan must be implemented as follows:

(1) If the plan provides for the testing and removal of swine, all breeding swine must be tested with a differentiable test and react negatively to the test within fifteen days after the herd is classified by the department as infected. All breeding swine reacting positively to the test must be removed as provided in this section. At least thirty days after removal of the breeding swine reacting positively, all remaining breeding swine must be tested and react negatively to the test. Subsequent testing and removal must be conducted as provided in this subparagraph until all breeding swine react negatively. When all breeding swine are tested and react negatively to the test, the department shall classify the herd as a noninfected herd.

(2) The herd cleanup plan may provide for the relocation of feeder pigs or cull swine. If the plan provides for the relocation of feeder pigs, the plan must provide for the segregation of feeder pigs and identify in writing the approved premises where feeder pigs or cull swine may be relocated upon approval by the department.

2. *a.* A feeder pig cooperator herd cleanup plan shall apply to a herd if feeder pigs are moved from the herd. The plan shall include all the requirements for a herd cleanup plan. In order to be subject to a feeder pig cooperator herd cleanup plan all of the following conditions must be satisfied:

(1) There must have been no clinical signs of pseudorabies during the past thirty days.

(2) The production operation must be capable of segregating offspring at weaning into facilities separate and apart from the remainder of the herd.

*b.* The feeder pig cooperator herd cleanup plan may provide for the movement or relocation of feeder pigs or cull swine. If the feeder pig cooperator herd cleanup plan provides for the movement or relocation of feeder pigs or cull swine, the plan must identify in writing the approved premises where the feeder pigs or cull swine may be moved or relocated as provided in section 166D.10B.

3. Costs of testing and vaccination may be paid as provided in section 166D.11.

4. An infected herd not subject to a cleanup plan shall be quarantined within fifteen days of becoming a known infected herd. An infected herd which is not subject to a cleanup plan is a quarantined herd.

5. Swine which are part of a herd subject to a cleanup plan shall only be moved or relocated as required pursuant to section 166D.10. If the location where the herd is kept is an approved premises as provided in section 166D.10B, the cleanup plan shall include terms and conditions for being certified as an approved premises.

89 Acts, ch 280, §8; 98 Acts, ch 1056, §5, 6; 2000 Acts, ch 1110, §11, 25

Referred to in §166D.2, 166D.10, 166D.10B

### **166D.9 Quarantined herds.**

1. Swine which are part of a quarantined herd shall only be moved by restricted movement in accordance with section 166D.10A.

2. A herd shall be released from quarantine when no animal, including livestock, on the premises shows clinical symptoms of pseudorabies. In addition one of the following must occur:

*a.* The swine have been removed from the premises, and the premises have been cleaned and disinfected under supervision of the department or the inspection service. The disinfectant shall be approved by the department or inspection service. The premises must have been maintained free of swine for thirty days. However, the epidemiologist for good cause may determine that premises shall be maintained free of swine for a period greater or less than thirty days.

*b.* Swine reacting positively to a test have been removed from the premises. Remaining swine, except suckling pigs, must be tested and react negatively to the test thirty days or more after removal of the herd's swine reacting positively to the test.

*c.* The swine reacting positively to a test have been removed from the premises. At least thirty days after removal of the positive swine, breeding swine remaining plus a random sample equaling twenty-eight of grower-finishing swine more than two months of age must react negatively to the test. While the state is in stage III or IV of the national pseudorabies program pursuant to federal regulations, the grower-finisher swine must react negatively to a test at least thirty days after reacting negatively to the last test.

3. *a.* While the state is classified in stage I, II, or III of the national pseudorabies program pursuant to federal regulations, the following requirements must be satisfied:

(1) All swine present on the date the quarantine was imposed have been removed.

(2) There must have been no clinical signs of pseudorabies in the herd for at least six months.

(3) The epidemiologist must either conduct two successive statistical samplings at least ninety days apart, or conduct statistical samplings according to rules adopted by the

department which are consistent with the national pseudorabies eradication program, which reveal no infection within the new breeding swine.

(4) The epidemiologist must either conduct two successive statistical samplings ninety days apart, or conduct statistical samplings according to rules adopted by the department which are consistent with the national pseudorabies eradication program, which reveal no infection in the herd's progeny at least four months of age.

b. A herd removed from quarantine under this subsection shall be tested by statistical sampling one year later, unless an epidemiologist determines that the herd must be tested earlier.

89 Acts, ch 280, §9; 90 Acts, ch 1168, §29; 97 Acts, ch 183, §8, 13; 98 Acts, ch 1056, §7; 2000 Acts, ch 1110, §12 – 14, 25; 2009 Acts, ch 41, §263

Referred to in §166D.2, 166D.8

### **166D.10 Movement of swine.**

1. Except as otherwise provided in this section, a person shall not sell, lease, exhibit, loan, move, or relocate swine within the state unless the swine are accompanied by a certificate of inspection in the same manner as provided for a certificate of veterinary inspection as provided in section 163.30. The department may combine the certificate of inspection with a certificate of veterinary inspection.

2. A certificate of inspection is not required if any of the following apply:

a. The swine are moved to slaughter.

b. The swine are relocated, and all of the following apply:

(1) A transportation certificate accompanies the relocated swine.

(2) The swine's owner maintains information regarding the relocation in relocation records. The department may adopt rules excusing a person from maintaining relocation records, if the department determines that the purposes of the chapter as provided in section 166D.1 are not furthered by the requirement.

(3) A certificate of inspection, or a certificate of veterinary inspection as provided in section 163.30, has been issued for the swine within thirty days prior to the date of relocation. The department may adopt rules excusing a person from complying with this subparagraph if the department determines that the purposes of the chapter as provided in section 166D.1 are not furthered by the requirement.

(4) The swine have a current negative pseudorabies status.

c. A person transfers ownership of all or part of a herd, if the herd remains on the same premises. However, the herd must be tested by statistical sampling. If any part of the herd is subsequently moved or relocated, the swine must be moved or relocated in accordance with this section and sections 166D.7, 166D.8, and 166D.10A.

3. A transportation certificate accompanying swine which are relocated as provided in subsection 2, paragraph "b", shall cite the relevant relocation record and certificate of inspection, or certificate of veterinary inspection. The department may provide for the examination of the relocation records on the owner's premises during normal business hours, or may require that reports containing relevant information contained in relocation records and certificates of inspection, or certificates of veterinary inspection, be periodically submitted to the department. For purposes of this section, swine production information contained in relocation records is a trade secret as provided in section 22.7, unless otherwise provided by rules adopted by the department. The department shall provide for the disclosure of confidential information only to the extent required for enforcement of this chapter, the detection and prosecution of public offenses, or to comply with a subpoena or court order. The department shall adopt rules required to administer subsection 2, paragraph "b", and this subsection.

4. a. Except as provided in paragraph "b", swine that are moved shall be individually identified as provided in section 163.30, which may include requirements for affixing ear tags to swine.

b. (1) Native Iowa feeder pigs moved from farm to farm within the state shall be exempted from the identification requirements of this subsection if the owner transferring possession of

the feeder pigs executes a written agreement with the person taking possession of the feeder pigs.

(a) The agreement shall provide that the feeder pigs shall not be commingled with other swine for a period of thirty days.

(b) The owner transferring possession shall be responsible for making certain that the agreement is executed and for providing a copy of the agreement to the person taking possession.

(2) Native Iowa feeder pigs that are moved shall be accompanied by a certificate of inspection, or a certificate of veterinary inspection as provided in section 163.30, unless swine are otherwise exempted from this requirement by this section.

(3) As used in this paragraph “b”, “*farm to farm within the state*” does not include the movement or relocation of native Iowa feeder pigs to the possession of a dealer licensed pursuant to section 163.30.

5. Swine from a herd located within this state must be moved or relocated in compliance with this section. If the swine is moved or relocated from a herd located within a county which is designated by the department as in stage II of the national pseudorabies eradication program, the swine shall not be moved or relocated unless in compliance with section 166D.11. Regardless of whether the swine is from a herd located in a stage II county, the following shall govern the movement or relocation of swine within this state:

a. For swine from a noninfected herd, a person shall not move swine for breeding purposes, unless one of the following applies:

(1) The swine is moved from a qualified negative herd or qualified differentiable negative herd.

(2) The swine reacts negatively to a differentiable test within thirty days prior to moving the swine.

b. For swine which is exposed, a person shall not move or relocate the swine, unless one of the following applies:

(1) The swine reacts negatively to a differentiable test within thirty days prior to moving or relocating the swine.

(2) The swine moves by restricted movement to either a fixed concentration point or slaughtering establishment.

c. For swine from a herd of unknown status, a person shall not move or relocate the swine, unless one of the following applies:

(1) The swine reacts negatively to a differentiable test within thirty days prior to moving or relocating the swine.

(2) The swine moves by restricted movement to either a fixed concentration point or slaughtering establishment. However, the swine is not required to move by restricted movement if the swine is moved from a fixed concentration point directly to another fixed concentration point or to a slaughtering establishment.

d. For swine which is from an infected herd, a person shall not move or relocate the swine, unless one of the following applies:

(1) If the swine is part of a cleanup plan, the following shall apply:

(a) For swine, other than feeder pigs or cull swine, which are part of a herd subject to a cleanup plan, a person shall only move swine by restricted movement to either a fixed concentration point or slaughtering establishment. A person shall not relocate the swine.

(b) For a feeder pig or cull swine which is part of a herd subject to a herd cleanup plan, a person shall only move the feeder pig or cull swine by restricted movement to either a fixed concentration point or slaughtering establishment or relocate the feeder pig or cull swine by restricted movement to an approved premises. For a feeder pig or cull swine which is part of a feeder pig cooperator herd cleanup plan, a person shall only move the feeder pig or cull swine by restricted movement to either a fixed concentration point or slaughtering establishment or move or relocate the feeder pig or cull swine by restricted movement to an approved premises. However, a person shall not move or relocate a feeder pig or cull swine to an approved premises, unless the approved premises is identified in a cleanup plan as provided in section 166D.8, or the department approves the move or relocation to another approved premises. A person shall not move or relocate a cull swine to an approved premises, unless

the cull swine reacts negatively to a test and is vaccinated with a differentiable vaccine. The test and vaccine must be administered within thirty days prior to the movement or relocation to the approved premises. A noninfected feeder pig is not required to be tested or vaccinated prior to movement or relocation to an approved premises, if the feeder pig is vaccinated upon arrival at the approved premises.

(c) For swine from a herd kept on an approved premises, a person shall only move or relocate the swine by restricted movement as provided in the cleanup plan governing the herd and terms and conditions of the certification required for the approved premises as provided in section 166D.10B.

(2) If the swine is not part of a herd that is subject to a cleanup plan because the herd is quarantined, a person shall only move the swine by restricted movement to either a fixed concentration point or slaughtering establishment.

6. Swine from a herd located outside this state must be moved into and maintained in this state in compliance with this section. A person shall not move swine into this state, except as follows:

a. For swine from a herd, other than a noninfected herd, the swine must be moved either to a fixed concentration point or slaughtering establishment.

b. For swine from a noninfected herd, the swine may be moved to a concentration point or slaughtering establishment. If the swine is not moved to a concentration point or slaughtering establishment, the following shall apply:

(1) Unless the person moves the swine into a county designated by the department as in stage II of the national pseudorabies eradication program, the following shall apply:

(a) A person shall not move swine into this state for breeding purposes, unless one of the following applies:

(i) The swine is moved from a qualified negative herd or qualified differentiable negative herd.

(ii) The swine reacts negatively to a differentiable test, within thirty days prior to moving the swine.

(b) A person shall not move a feeder swine which is moved into this state, unless the feeder swine reacts negatively to a differentiable test within thirty days prior to movement from a herd in this state.

(2) If a person moves the swine into a county which is designated by the department as in stage II of the national pseudorabies eradication program, the following shall apply:

(a) Except as provided in this subparagraph, the owner of swine shall vaccinate the swine with a modified-live differentiable vaccine, prior to moving swine into the stage II county. A person is not required to vaccinate swine prior to moving swine into the stage II county if one of the following applies:

(i) The swine is part of a herd that cannot be vaccinated under the law of the state or country in which the herd is kept immediately prior to being moved into the stage II county.

(ii) The swine is an isowean feeder pig.

(iii) The swine is moved either to a fixed concentration point or slaughtering establishment.

(b) For swine which are not vaccinated before being moved into a stage II county as provided in this paragraph, the following shall apply:

(i) For swine other than swine moved into a herd within a stage II county as an isowean feeder pig, the swine must be immediately vaccinated with a differentiable vaccine, as provided in section 166D.11. The swine shall be considered as part of a herd of unknown status, until tested negative and vaccinated.

(ii) For swine moved into a herd within a stage II county as an isowean feeder pig, the swine moved into the herd must be immediately vaccinated with a differentiable vaccine, as provided in section 166D.11. The department may require that the swine be revaccinated with a differentiable vaccine at a later date. The swine shall be considered as part of a herd of unknown status, until tested negative and vaccinated.

7. A person shall not move a swine within this state, other than to a fixed concentration point or slaughtering establishment, if the swine is vaccinated with a vaccine other than a differentiable vaccine approved by the department pursuant to section 166D.14.

8. Known infected swine moved through a fixed concentration point shall only be moved by restricted movement to a slaughtering establishment.

9. Swine moved under this section to a slaughtering establishment shall be for the exclusive purpose of slaughtering the swine. Swine moved under this section to a fixed concentration point shall be for the exclusive purpose of immediately moving the swine to a slaughtering establishment. Swine moved or relocated under this section to an approved premises shall be for the exclusive purpose of feeding the swine prior to movement or relocation to another approved premises, or movement to either a fixed concentration point or a slaughtering establishment.

89 Acts, ch 280, §10; 90 Acts, ch 1091, §6; 90 Acts, ch 1168, §30; 96 Acts, ch 1214, §30; 97 Acts, ch 183, §9 – 11, 13; 98 Acts, ch 1056, §8 – 10; 2000 Acts, ch 1110, §15, 16, 25; 2002 Acts, ch 1093, §1 – 5, 7; 2002 Acts, ch 1119, §141; 2003 Acts, ch 108, §124, 132; 2004 Acts, ch 1163, §27 – 30; 2009 Acts, ch 133, §71

Referred to in §166D.2, 166D.8, 166D.10A, 166D.10B, 166D.11

#### **166D.10A Restricted movement — requirements.**

1. If swine must be moved or relocated by restricted movement as provided in section 166D.10, the swine shall only be transported by direct movement.

2. *a.* If a person moves or relocates swine subject to restricted movement, the person shall only move the swine to either a fixed concentration point or slaughtering establishment or move or relocate the swine to an approved premises.

*b.* If a person receives swine subject to restricted movement, the person shall only receive the swine at either a fixed concentration point or slaughtering establishment or an approved premises.

3. Swine required to be moved or relocated by restricted movement must be accompanied by a restricted movement permit, as provided by rules which must be adopted by the department. The department shall issue a restricted movement permit to the person moving or relocating the swine. The permit shall include information required by the department, which shall at least include a description of the swine, the name and address of the owner, the name and address of the person receiving the swine, the date of movement or relocation, and the seal number as prescribed by the department, if a seal is required. The moved or relocated swine must also be accompanied by a transportation certificate and certificate of inspection, if required in section 166D.10.

4. *a.* Except as provided in this section, a vehicle moving swine under restricted movement shall contain a cargo area for the swine which shall be sealed to prevent access. The seal shall conform with requirements adopted by the department. Each seal shall be identified by number as required by the department. The vehicle shall be sealed by an accredited veterinarian at the premises where the swine are kept. The seal shall only be removed by a departmental official, an accredited veterinarian, an official of the United States department of agriculture, or the person authorized by the department to receive the swine upon arrival at the fixed concentration point, slaughtering establishment, or approved premises.

*b.* The department may adopt rules or issue an order to provide that a vehicle moving or relocating feeder swine from a herd which is subject to a cleanup plan is not required to be sealed as otherwise provided in this subsection, if the herd is kept and moved or relocated in compliance with the cleanup plan.

2000 Acts, ch 1110, §17, 25

Referred to in §166D.2, 166D.9, 166D.10, 166D.12

#### **166D.10B Approved premises.**

1. A person shall not maintain swine other than feeder pigs or cull swine at an approved premises.

*a.* A person shall not move or relocate swine to an approved premises, unless all of the following apply:

- (1) The swine is a feeder pig or cull swine.
- (2) The swine is not exposed or from a herd of unknown status.

b. A person shall not receive swine at an approved premises, unless the swine is one of the following:

(1) The swine is a feeder pig or cull swine.

(2) The swine is not exposed or from a herd of unknown status.

2. If swine is moved or relocated to an approved premises, the following shall apply:

a. A cull swine shall not be moved or relocated to an approved premises, unless the cull swine reacts negatively to a test and is vaccinated prior to the movement or relocation, as provided in section 166D.10.

b. A noninfected feeder pig must be vaccinated upon arrival at the approved premises.

3. Dead swine must be disposed of in accordance with chapter 167. The dead swine must be held so as to prevent animals, including wild animals and livestock, from reaching the dead swine.

4. The following shall apply to the location of an approved premises:

a. An approved premises shall not be located within one and one-half miles from a noninfected herd, other than a qualified negative herd or qualified differentiable negative herd.

b. An approved premises shall not be located within three miles from a qualified negative herd or a qualified differentiable negative herd.

c. An approved premises shall not be located in any of the following:

(1) A county in stage III of the national pseudorabies eradication program, as designated by the department.

(2) A county which has a zero percent prevalence of infection among all herds in the county at any time on or after March 1, 2000, regardless of whether the county subsequently has a greater than zero percent prevalence of infection among all herds in the county.

5. A feeder pig or a cull swine may be kept at the approved premises only for purposes of feeding and restricted movement as provided in section 166D.10.

6. a. The department must certify a location as an approved premises pursuant to rules adopted by the department. The department may adopt rules providing for the renewal, suspension, or termination of a certification. The terms and conditions of the certification shall be part of the cleanup plan required for the herd kept at the location pursuant to section 166D.8. Except as provided in this subsection, a location is certified as an approved premises, as long as all of the following apply:

(1) The approved premises complies with the requirements of this section and rules adopted by the department.

(2) The owner of the approved premises or the person managing the approved premises provides to the department during normal business hours access to the approved premises and records required by this subparagraph. Records of swine transfers must be kept for at least one year. Records of vaccinations occurring on the approved premises must be maintained by the owner for at least one year after vaccination. The records shall include information about purchases and sales, the names of buyers and sellers, the dates of transactions, and the number of swine involved in each transaction.

b. The department shall terminate the certification of an approved premises if the county in which the approved premises is located has a zero percent prevalence of infection among all herds in the county, not counting a herd kept at the approved premises. The department shall provide for the suspension or termination of the certification for a violation of a term or condition of the certification. When a certification is suspended, terminated, or not renewed, the location shall remain under a cleanup plan until released pursuant to the provisions of section 166D.8.

2000 Acts, ch 1110, §18, 25; 2002 Acts, ch 1119, §142

Referred to in §166D.2, 166D.8, 166D.10, 166D.11

#### **166D.11 Vaccination and testing requirements.**

1. A person shall not use in this state any vaccine that is not a differentiable vaccine.

2. a. Except as provided in this section, swine within a county which is designated by the department as in stage II of the national pseudorabies eradication program shall be

vaccinated with a modified-live differentiable vaccine. The swine located in a stage II county shall be vaccinated as follows:

(1) Except as provided in subparagraph (2), the following applies:

(a) Breeding swine shall at a minimum receive quarterly vaccinations.

(b) Feeder swine shall at a minimum receive one vaccination. The feeder swine shall be vaccinated when the feeder swine reach eight to twelve weeks of age or one hundred pounds, whichever occurs earlier.

(2) If swine are required to be vaccinated prior to or after movement, as provided in section 166D.10, to a stage II county, the swine shall be vaccinated with a modified-live differentiable vaccine as otherwise required in that section.

b. The department shall adopt rules or issue an order that exempts swine from being vaccinated with a modified-live vaccine, as provided in this subsection, based on any of the following:

(1) The swine is part of a qualified negative herd or a qualified differentiable negative herd.

(2) The swine belong to a herd located within a county, if all of the following apply:

(a) The county has a history of zero percent prevalence of infection among all herds in the county, regardless of whether the county currently has a higher than zero percent prevalence of infection among all herds in the county.

(b) All contiguous counties have a zero percent prevalence of infection among herds in that county, as designated by the department.

3. a. The person who owns the swine when the swine is required to be vaccinated under this chapter shall be solely liable for providing the vaccine and administering the vaccination. A noninfected feeder pig required to be vaccinated upon arrival at an approved premises as provided in section 166D.10B shall be vaccinated at the expense of the owner who moves the feeder pig. If the swine is transported into this state, the owner shall be deemed to be the person who owns the swine immediately prior to transportation.

b. This subsection does not prohibit the owner of swine from contracting with a person, including a person receiving ownership of swine moved into this state, to provide the vaccination, if the person receives fair compensation for providing the vaccination and the sale price for the swine is not increased because the owner must comply with this subsection.

4. The cost, or any segment of the cost, of purchasing a laboratory product used for testing and vaccination provided in this chapter may be paid for by federal or state funds or a combination of both. Federal or state funds shall not be paid to the owner of a vaccinated herd other than the owner of a herd vaccinated with a modified-live differentiable vaccine.

89 Acts, ch 280, §11; 90 Acts, ch 1091, §7; 2000 Acts, ch 1110, §19, 25

Referred to in §166D.7, 166D.8, 166D.10

### **166D.12 Concentration points.**

A person shall not move swine through a concentration point, except as provided in this section.

1. For swine from a noninfected herd, the swine may be moved through any concentration point. All of the following shall apply:

a. Breeding swine must be kept separate and apart from feeder pigs.

b. Breeding swine must be sold first.

2. a. For swine other than swine from a noninfected herd, the swine shall not be moved through a concentration point other than a fixed concentration point, as required by the department. A fixed concentration point shall be used exclusively for the following:

(1) The movement of livestock other than swine.

(2) The immediate movement of swine to a slaughtering establishment.

b. A fixed concentration point shall never be used for the movement of swine other than to a slaughtering establishment.

c. (1) Except as provided in subparagraph (2), a person shall not move swine subject to restricted movement to or from a fixed concentration point or receive swine subject to restricted movement at a fixed concentration point, unless the swine is moved and received in compliance with section 166D.10A.

(2) A person may move swine from a herd of unknown status from a fixed concentration point other than by restricted movement as provided in section 166D.10A, if the person moves the swine directly to another fixed concentration point or to a slaughtering establishment.

d. Livestock, other than swine, moved to the fixed concentration point must be kept separate and apart.

e. If an infected swine, exposed swine, or swine from a herd of unknown status is moved through a fixed concentration point, the owner of the fixed concentration point shall post and maintain a sign on the premises of the fixed concentration point. The sign must be posted in a conspicuous place clearly visible to persons moving livestock through the fixed concentration point. The notice shall appear in black letters a minimum of one inch high and in the following form:

NOTICE  
THIS FACILITY MAY SELL SWINE WHICH  
HAVE BEEN EXPOSED TO PSEUDORABIES.  
HOWEVER, ALL SWINE ARE MOVED  
IMMEDIATELY TO SLAUGHTER.

89 Acts, ch 280, §12; 98 Acts, ch 1056, §11; 2000 Acts, ch 1110, §20, 25; 2001 Acts, ch 24, §35; 2002 Acts, ch 1093, §6, 7

Referred to in §166D.2

#### **166D.13 Exhibition of swine.**

1. Swine from an infected herd shall not be displayed or shown at any exhibition.
2. Animals infected shall not be shown or displayed at an exhibition.
3. Rules controlling exhibition movement requirements may be adopted by the department in addition to the requirements of this section.

89 Acts, ch 280, §13; 98 Acts, ch 1056, §12; 2011 Acts, ch 84, §4, 5

#### **166D.14 Pseudorabies immunization products.**

A person shall not use, sell, or distribute or offer to sell or distribute a pseudorabies immunization product within the state unless the products are approved by the secretary. However, the secretary shall approve a pseudorabies immunization product for purposes of product research or testing by a biological laboratory, government authority, or manufacturer of biological products if the secretary concludes that the use will not be detrimental to the state pseudorabies disease program.

Only a licensed veterinarian may buy and dispense a department-approved immunization product. The veterinarian must report information relating to the use of the product to the department, including the name and address of the owner and the number of doses used. The report shall be signed by the owner or the owner's agent. The report shall be mailed to the department immediately after the use of the product.

A differentiable vaccinate to be classified as a noninfected animal must react negatively to field strains of pseudorabies virus as determined by a companion differentiable serologic test. The swine must be identified as differentiable vaccinated animals.

89 Acts, ch 280, §14

Referred to in §166D.10

#### **166D.15 Tracing pseudorabies to source or destination herds.**

1. The owner of a known infected herd shall furnish to the department all of the following information:

- a. A list of sources of feeder pigs or breeding swine during the preceding twelve months.
  - b. A list of sales of feeder pigs or breeding swine during the preceding twelve months.
2. If pseudorabies is diagnosed in breeding swine or feeder pigs which have been purchased from or sold to another swine producer within ninety days from the sale, the department may require a statistical sample of the breeding herd of the seller or buyer and a

statistical sample of the herd progeny over four months. If the owner of the herd refuses to allow the test, the herd shall be classified as a known infected herd.

3. Tests conducted pursuant to this section shall be completed at the owner’s expense unless state funds are available for this purpose.

89 Acts, ch 280, §15

**166D.16 Enforcement — penalty — certificates.**

1. The provisions of this chapter including departmental rules adopted pursuant to this chapter shall be administered and enforced by the department.

2. Except as provided in this subsection, a person violating a provision of this chapter or any rule adopted pursuant to this chapter shall be subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars.

a. A person who falsifies a certificate of inspection issued pursuant to this chapter shall be subject to a civil penalty of not more than five thousand dollars for each swine falsified on the certificate. A person shall not be subject to a civil penalty totaling more than twenty-five thousand dollars for falsifying a certificate, regardless of the number of swine falsified on the certificate.

b. The person who owns swine when the swine are required to be vaccinated under this chapter shall be subject to a civil penalty of two dollars for each swine which is not vaccinated as required.

3. In addition to any other remedies provided, the department may file a petition in the district court seeking an injunction restraining any person from violating provisions of this chapter including a rule adopted pursuant to this chapter.

89 Acts, ch 280, §16; 91 Acts, ch 32, §4; 92 Acts, ch 1163, §43; 2000 Acts, ch 1110, §21, 25  
 Referred to in §163.61

## CHAPTER 167

### USE AND DISPOSAL OF DEAD ANIMALS

Referred to in §159.6, 166D.10B

Definitions applicable to chapter; see §159.1

167.1	Scope.	167.13	Rules.
167.2	Disposal of dead animals.	167.14	Annual inspection.
167.3	“Disposing” defined.	167.15	Transportation of animals — carcasses, parts, or offal material.
167.4	Licensing procedure — fees.	167.16	Driving upon premises of another.
167.5	Inspection of place.	167.17	Disinfecting outfit.
167.6	Repealed by 2004 Acts, ch 1162, §5.	167.18	Duty to dispose of dead bodies.
167.7	Record of licenses.	167.19	Penalty.
167.8	Inspection revealing unsuitable place.	167.20	Appropriation.
167.9	and 167.10 Repealed by 2004 Acts, ch 1162, §5.	167.21	Reciprocal agreements with other states.
167.11	Disposal plants — specifications.	167.22	Chronic wasting disease.
167.12	Disposing of bodies.		

**167.1 Scope.**

This chapter shall not apply to licensed slaughterhouses, or to the disposal, by licensed slaughterhouses, of the bodies of animals, or any part thereof, slaughtered for human food.

[C24, 27, 31, 35, 39, §2744; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.1]

**167.2 Disposal of dead animals.**

No person shall engage in the business of disposing of the bodies of dead animals without first obtaining a license for that purpose from the department.

[C24, 27, 31, 35, 39, §2745; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.2]

**167.3 “Disposing” defined.**

1. A person who receives from any other person the body of any dead animal for the purpose of obtaining the hide, skin, or grease from such animal, in any way whatsoever, or any part thereof, shall be deemed to be engaged in the business of disposing of the bodies of dead animals, and must be the operator or employee of a licensed disposal plant.

2. A disposal plant does not include an operation where the body of a dead animal is cremated, so long as the operation does not use the body of a dead animal for any other purpose described in subsection 1.

[C24, 27, 31, 35, 39, §2746; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.3]  
2009 Acts, ch 154, §1

**167.4 Licensing procedure — fees.**

1. The following shall apply to a person required to be licensed under this chapter:

a. The person shall submit an application for a license to the department in a manner and according to procedures required by the department.

b. The person shall include in the application information as required by the department, on forms prescribed by the department, which shall include at least all of the following:

(1) For a disposal plant, the person shall state the person’s name and address, the person’s proposed place of business, and the total number of vehicles to be involved in the operation.

(2) For a collection point involving the accumulation of whole animal carcasses or their parts for ultimate transportation to a disposal plant, the person’s name and address, the person’s proposed place of business, and the total number of vehicles to be involved in the operation.

(3) For a delivery service which transports whole animal carcasses or their parts to a disposal plant or collection point, the person’s name and address, the total number of vehicles to be involved in the operation, and the location where the vehicles involved in the operation are to be maintained.

c. The person shall submit a separate application for each location that the person is to operate as a disposal plant, collection point, or a delivery service.

d. The person shall pay a license fee as follows:

(1) For a disposal plant, one hundred dollars.

(2) For a collection point, one hundred dollars. However, a person is not required to pay the license fee for a collection point which is operated by a disposal plant.

(3) For a delivery service which is not part of the operation of a disposal plant or collection point, fifty dollars.

e. A license issued to a person under this section shall expire on December 31 of each year. The person may renew the license by completing a renewal form as prescribed by the department in a manner and according to procedures required by the department. However, the renewal form must be submitted to the department prior to the license’s expiration date. The person shall pay a renewal license fee which shall be for the same amount as the original license fee.

f. A person’s license is subject to suspension or revocation by the department if the department determines that the person has committed a material violation of this chapter, including rules adopted by this chapter, or a term or condition of the license. The person may contest the department’s action as provided in chapter 17A.

2. Fees collected pursuant to this section shall be deposited into the general fund of the state.

[C24, 27, 31, 35, 39, §2747; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.4]  
2004 Acts, ch 1162, §1; 2005 Acts, ch 3, §42; 2009 Acts, ch 133, §206

Referred to in §167.15

**167.5 Inspection of place.**

On receipt of such application, the secretary of agriculture or some person appointed by the secretary, shall at once inspect the building in which the applicant proposes to conduct such business. If the inspector finds that said building complies with the requirements of this chapter, and with the rules of the department, and that the applicant is a responsible and

suitable person, the inspector shall so certify in writing to such specific findings, and forward the same to the department.

[C24, 27, 31, 35, 39, §2748; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.5]

**167.6** Repealed by 2004 Acts, ch 1162, § 5. See § 167.4.

**167.7 Record of licenses.**

The department shall keep a record of all licenses applied for or issued, which shall show the date of application and by whom made, the cause of all rejections, the date of issue, to whom issued, the date of expiration, and the location of the licensed business.

[C24, 27, 31, 35, 39, §2750; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.7]

**167.8 Inspection revealing unsuitable place.**

If the inspector finds that said building does not comply with the requirements of this chapter or with the rules of the department, the inspector shall notify the applicant wherein the same fails to so comply. If within a reasonable time thereafter, to be fixed by the inspector, the specified defects are remedied, the department shall make a second inspection, and proceed therewith as in case of an original inspection. Not more than two inspections need be made under one application.

[C24, 27, 31, 35, 39, §2751; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.8]

**167.9 and 167.10** Repealed by 2004 Acts, ch 1162, § 5. See § 167.4.

**167.11 Disposal plants — specifications.**

Each place for the carrying on of said business shall, to the satisfaction of the department, be provided with floors constructed of concrete, or some other nonabsorbent material, adequate drainage, be thoroughly sanitary, and adapted to carrying on the business.

This section shall not apply where the state building code, as adopted pursuant to section 103A.7, has been adopted or when the state building code applies throughout the state.

[C24, 27, 31, 35, 39, §2754; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.11]  
2004 Acts, ch 1086, §42

**167.12 Disposing of bodies.**

The following requirements shall be observed in the disposal of such bodies:

1. Cooking vats or tanks shall be airtight, except proper escapes for live steam.
2. Steam shall be so disposed of as not to cause unnecessary annoyance or create a nuisance.
3. The skinning and dismembering of bodies shall be done within said building.
4. The building shall be so situated and arranged, and the business therein so conducted, as not to interfere with the comfortable enjoyment of life and property.
5. Such portions of bodies as are not entirely consumed by cooking or burning shall be disposed of by burying as hereafter provided, or in such manner as the department may direct.
6. In case of disposal by burying, the burial shall be to such depth that no part of such body shall be nearer than four feet to the natural surface of the ground, and every part of such body shall be covered with quicklime, and by at least four feet of earth.
7. All bodies shall be disposed of within twenty-four hours after death.

[C24, 27, 31, 35, 39, §2755; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.12]

**167.13 Rules.**

The department shall make such reasonable rules for the carrying on and conducting of such business as it may deem advisable, and all persons engaging in such business shall comply therewith.

[C24, 27, 31, 35, 39, §2756; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.13]

**167.14 Annual inspection.**

The department shall inspect each place licensed under this chapter at least once each year, and as often as it deems necessary, and shall see that the licensee conducts the business in conformity to this chapter and the rules made by the department. For a failure or refusal by any licensee to obey the provisions of this chapter or said rules, the department shall suspend or revoke the license held by such licensee.

[C24, 27, 31, 35, 39, §2757; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.14]

**167.15 Transportation of animals — carcasses, parts, or offal material.**

1. A person required to be licensed under section 167.4 shall transport a whole or part of an animal carcass or offal material according to requirements adopted by departmental rule.

a. The delivery vehicle's container used for loading and transporting the carcass or offal material shall be constructed according to departmental rules in a manner that prevents parts or liquids associated with the carcass or offal material from escaping during transport.

b. The department shall adopt rules requiring that the delivery vehicle's container be covered when transporting an animal carcass or offal material. However, this requirement shall not apply to a route delivery vehicle used primarily to transport animal carcasses from a farm to another location, unless the department issues a special order as provided in this paragraph. The department may issue such an order and require that the delivery vehicle's container be covered, if the state veterinarian determines that an animal or animal carcass on the farm has been infected or exposed to an infectious or contagious disease or that there has been an outbreak of an infectious or contagious disease in the area where the farm is located.

c. The person shall not overload the delivery vehicle's container with carcasses or offal material.

2. The department shall provide for the inspection of delivery vehicles used to transport carcasses or offal material, and for the inspection of disposal plants, collection points, or other locations in which carcasses or offal material is stored or processed before being delivered to a disposal plant.

[C24, 27, 31, 35, 39, §2758; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.15]  
2004 Acts, ch 1162, §2; 2005 Acts, ch 3, §43

**167.16 Driving upon premises of another.**

Vehicles when loaded with the carcass of an animal which has died of disease shall be driven directly to the place of disposal or transfer, except that the driver in so driving may stop on the highway for other like carcasses, but the driver shall not drive into the yard or upon the premises of any person unless the driver first obtains the permission of the person to do so.

[C24, 27, 31, 35, 39, §2759; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.16]

**167.17 Disinfecting outfit.**

The driver or owner of a vehicle used in conveying animals which said driver or owner has reason to believe died of disease, shall, immediately after unloading said animals, cause the bed, box, tank or other container of such vehicle, the wheels thereof, all canvas and covers, the feet of the animals drawing said conveyance, and the outer clothing of all persons who have handled said carcasses to be disinfected with a solution of at least one part of creosol dip to four parts of water, or with some other equally effective disinfectant.

[C24, 27, 31, 35, 39, §2760; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.17]

**167.18 Duty to dispose of dead bodies.**

1. A person who has been caring for or who owns an animal that has died shall not allow the carcass to lie about the person's premises. The carcass shall be disposed of within a reasonable time after death by composting, cooking, burying, or burning, as provided in this chapter, or by disposing of it, within the allowed time, to a person licensed to dispose of it.

2. Subsection 1 does not apply to a veterinarian, issued a valid license or a valid temporary

permit by the Iowa board of veterinary medicine as provided in chapter 169, who contains a dead animal's carcass in a manner that prevents an outbreak of disease.

[C24, 27, 31, 35, 39, §2761; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.18]  
87 Acts, ch 96, §1; 2009 Acts, ch 154, §2

**167.19 Penalty.**

A person who violates this chapter or a rule adopted by the department pursuant to this chapter is guilty of a simple misdemeanor. The person may be subject to a civil penalty of not less than one hundred dollars and not more than one thousand dollars for each violation. However, the state shall be precluded from bringing a criminal action against the person if the department has initiated a civil enforcement proceeding. Moneys collected in civil penalties shall be deposited into the general fund of the state.

[C97, §5019; C24, 27, 31, 35, 39, §2762; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.19]  
2004 Acts, ch 1162, §3

**167.20 Appropriation.**

The expense attending the inspection provided for in this chapter shall be paid from any unappropriated funds in the state treasury.

[C24, 27, 31, 35, 39, §2763; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §167.20]

**167.21 Reciprocal agreements with other states.**

The department is authorized to enter into reciprocal agreements in behalf of this state with any one or more of the states adjacent to this state, providing for permits to be issued to rendering plants located in either state to transport carcasses to their plants over public highways of this state and the reciprocating state.

[C62, 66, 71, 73, 75, 77, 79, 81, §167.21]

**167.22 Chronic wasting disease.**

1. As used in this section "*chronic wasting disease*" means the same as defined in section 170.1.

2. Except as otherwise provided in this subsection, a person licensed under this chapter shall not transport the carcass of a deer or elk into this state if the carcass originates from an area outside this state that has a significant prevalence of chronic wasting disease as determined by the state veterinarian. In order to transport the carcass into this state, the person must obtain approval by the state veterinarian in a manner and according to procedures required by the department.

2004 Acts, ch 1162, §4, 6

## CHAPTER 168

### BABY CHICKS

168.1	Definitions.	168.5	Requirements of dealers.
168.2	License of dealers.	168.6	Inspection.
168.3	Term and fee.	168.7	Administration of chapter.
168.4	Disposal of fees.	168.8	Punishment.

**168.1 Definitions.**

For the purpose of this chapter:

1. "*Baby chicks*" shall mean all domestic fowls six weeks of age or under.
2. "*Person*" shall include an individual, partnership, a corporation, company, firm, society, association, community sales, public sale pavilions, or other holders of public auctions any place in the state, operating in the state, but the term "*person*" shall not be construed to include any person who hatches for sale one thousand chicks per year or less; and the act, omission, or conduct of any officer, agent or other person acting in a representative capacity may be

imputed to the organization or person represented, and the person acting in such capacity shall also be liable for violation of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.1]

86 Acts, ch 1245, §621

Referred to in §10D.1

Further definitions; see §159.1

### **168.2 License of dealers.**

Every person engaged in the business of custom hatching, producing baby chicks for sale in this state, or of selling or offering for sale baby chicks from any place located in this state shall obtain a license from the department for each establishment at which said business is conducted. Applications for such licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.2]

### **168.3 Term and fee.**

The license fee shall be ten dollars per annum, and each license shall expire on July 1 after date of issue.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.3]

### **168.4 Disposal of fees.**

All fees collected under the provisions of this chapter shall be paid into the state treasury.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.4]

### **168.5 Requirements of dealers.**

All establishments licensed under this chapter shall:

1. Before baby chicks are delivered for sale, determine that the same are in a healthy condition.
2. Provide ample facilities for the proper care and handling of baby chicks on the premises.
3. Maintain sanitary measures such as will properly suppress and prevent the spread of contagious and infectious diseases of baby chicks.
4. When selling or delivering baby chicks to a purchaser in the state, place the same in a box, crate, coop, or other sanitary container for delivery. Each such box, crate, coop, or other container shall be plainly labeled with the name of seller and description of contents. Such description of contents shall include name of breed and variety, percent of guarantee if chicks are sold as sexed chicks, date of hatch, number of chicks, and any tests made on parent stock.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.5]

Referred to in §168.6

### **168.6 Inspection.**

All establishments licensed under this chapter shall be subject to inspection by the department to determine that the requirements of section 168.5 are fully met. The failure to comply with section 168.5 or any of the provisions thereof shall constitute a violation of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.6]

### **168.7 Administration of chapter.**

The secretary of agriculture shall be charged with administration and enforcement of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.7]

### **168.8 Punishment.**

Any person, partnership, corporation, company, firm, society, or association who violates any provision of this chapter shall be guilty of a simple misdemeanor.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §168.8]

## CHAPTER 169

## VETERINARY PRACTICE

Referred to in §159.6, 162.13, 162.20, 163.3, 163.3A, 163.32, 167.18, 272C.1, 272C.6, 581.1A, 714H.4, 717.1A, 717.2A, 717.3, 717A.1, 717A.2, 717B.2, 717B.3A, 717B.5, 717D.3, 717F.7

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**169.1 Title.**

This chapter shall be known as the “*Iowa Veterinary Practice Act*”.  
[C79, 81, §169.1]

**169.2 Legislative purpose.**

This chapter is enacted as an exercise of the police powers of the state to promote the public health, safety, and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine. It is declared that the right to practice veterinary medicine is a privilege conferred by legislative grant to persons possessed of the personal and professional qualifications specified in this chapter. This chapter shall be liberally construed to effect the legislative purpose.

[C79, 81, §169.2]

**169.3 Definitions.**

When used in this chapter:

1. “*Accepted livestock management practice*” includes but is not limited to: Dehorning, castration, docking, vaccination, pregnancy testing, clipping swine needle teeth, ear notching, drawing of blood, relief of bloat, draining of abscesses, branding, and other surgical acts of no greater magnitude; artificial insemination, collecting of semen, implanting of growth hormones, feeding commercial feed defined in section 198.3, or administration or prescription of drugs performed by the owner or contract-feeder thereof of livestock, a bona fide employee, or anyone rendering gratuitous assistance with respect to such livestock. Nothing contained herein shall be construed to permit any person except those persons enumerated in this subsection, to provide purportedly gratuitous assistance with regard to the treatment of animals other than advisory assistance, in return for the purchase of goods or services.

2. “*Accredited or approved college of veterinary medicine*” means any veterinary college or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent and that conforms to the standards required for accreditation or approval by the board.

3. “*Animal*” means any nonhuman primate, dog, cat, rabbit, rodent, fish, reptile, and other vertebrate or nonvertebrate life forms, living or dead, except domestic poultry.

4. “*Board*” means the Iowa board of veterinary medicine.

5. “*ECFVG certificate*” means a current certificate issued by the American veterinary medical association educational commission for foreign veterinary graduates, indicating that the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited or approved college of veterinary medicine.

6. “*Fee*” means monetary compensation given for a service consisting primarily of an act or acts described in subsection 10, paragraph “a”.

7. “*Licensed veterinarian*” means a person who is validly and currently licensed to practice veterinary medicine in the state of Iowa.

8. “*Owner*” means any person, association, partnership, corporation, or other legal entity in whom is vested the ownership, dominion over, or title to an animal, including one who is obligated by law to care for such animal.

9. “*Person*” means natural person or individual.

10. “*Practice of veterinary medicine*” means any of the following:

a. To diagnose, treat, correct, change, relieve or prevent, for a fee, any animal disease, deformity, defect, injury or other physical or mental conditions or cosmetic surgery; including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, for a fee; or to evaluate or correct sterility or infertility, for a fee; or to render, advise or recommend with regard to any of the above for a fee.

b. To represent, directly or indirectly, publicly or privately, an ability or willingness to do an act described in paragraph “a”.

c. To use any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in paragraph “a”.

11. “*Veterinarian*” means a person who has received a doctor of veterinary medicine degree or its equivalent from an accredited or approved college of veterinary medicine.

12. “*Veterinary assistant*” means an assistant employed by a licensed veterinarian as an animal technician and any other assistant the board designates by rule.

13. “*Veterinary medicine*” includes veterinary surgery, veterinary obstetrics, veterinary dentistry, and all other branches or specialties of veterinary medicine.

[S13, §2538-m; C24, 27, 31, 35, 39, §2764, 2765; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.1, 169.2; C79, 81, §169.3]

83 Acts, ch 115, §2

Further definitions; see §159.1

#### **169.4 License requirement and exceptions.**

A person may not practice veterinary medicine in the state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the board. This chapter shall not be construed to prohibit:

1. An employee of the federal, state, or local government from performing official duties.

2. A person who is a veterinary student in an accredited or approved college of veterinary medicine from performing duties or actions assigned by instructors, or working under the direct supervision of a licensed veterinarian. The board shall issue to any veterinary medicine student who attends an accredited veterinary medicine college or school and who has been certified as being competent by an instructor of such college or school to perform veterinary duties under the direction of an instructor of veterinary medicine or under the direct supervision of a licensed veterinarian, a certificate authorizing the veterinary medicine student to perform such functions.

3. A veterinarian currently licensed in another state from consulting with a licensed veterinarian in this state.

4. Any manufacturer, wholesaler, or retailer from advising with respect to or selling in the ordinary course of trade or business, drugs, feeds, including, but not limited to customer-formula feeds as defined in section 198.3, appliances, and other products used in the prevention or treatment of animal diseases.

5. The owner of an animal or the owner’s bona fide employees from caring for and treating the animal in the possession of such owner except where the ownership of the animal was transferred solely for the purpose of circumventing this chapter.

6. A member of the faculty of an accredited college of veterinary medicine from performing functions in the classrooms or continuing education. However, those faculty members who have professional responsibility to the owner must be licensed. A temporary

permit may be granted for a period not to exceed two years to interns or residents who are on the staff of the college of veterinary medicine of Iowa state university of science and technology. Such permit shall be renewable annually upon the application of the dean of the college of veterinary medicine.

7. Any person from manufacturing, selling, offering for sale, or applying any pesticide, insecticide, or herbicide.

8. Any person from engaging in bona fide scientific research which reasonably requires experimentation involving animals.

9. Any veterinary assistant employed by a licensed veterinarian from performing duties other than diagnosis, prescription, or surgery under the direct supervision of such veterinarian which assistant has been issued a certificate by the board subject to section 169.20.

10. A graduate of a foreign college of veterinary medicine who is in the process of obtaining an ECFVG certificate for performing duties or actions under the direction or supervision of a licensed veterinarian.

11. Any person from advising with respect to or performing accepted livestock management practices.

12. Any person from engaging in the full-time study of the improvement of the quality of livestock.

13. Any person from performing post-mortem examinations on swine or cattle.

14. Any person from collecting or evaluating semen from livestock or poultry, or artificial insemination of livestock and poultry.

15. Any person from castrating, dehorning or branding notwithstanding section 169A.14. [S13, §2538-a; C24, 27, 31, 35, 39, §2766; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.3; C79, 81, §169.4]

83 Acts, ch 115, §3

#### **169.4A Provision of veterinary services.**

A person, including a corporation, limited liability company, or partnership, established on or after July 1, 1994, other than either a professional corporation organized under chapter 496C or a veterinarian licensed under this chapter, shall not provide veterinary medical services, own a veterinary clinic, or practice in this state, except as otherwise provided in this chapter. However, this section shall not prohibit a person from owning an interest in real property or a building where a clinic is located, if veterinary medical services or a practice is conducted by the clinic by a professional corporation or a veterinarian licensed under this chapter.

94 Acts, ch 1198, §35

#### **169.5 Board of veterinary medicine.**

1. a. The governor shall appoint, subject to confirmation by the senate pursuant to section 2.32, a board of five individuals, three of whom shall be licensed veterinarians and two of whom shall not be licensed veterinarians and shall represent the general public. The board shall be known as the Iowa board of veterinary medicine.

b. Each licensed veterinarian board member shall be actively engaged in veterinary medicine and shall have been so engaged for a period of five years immediately preceding appointment, the last two of which shall have been in Iowa. The representatives of the general public shall be knowledgeable in the area of animal husbandry. A member of the board shall not be employed by or have any material or financial interest in any wholesale or jobbing house dealing in supplies, equipment, or instruments used or useful in the practice of veterinary medicine.

c. Professional associations or societies composed of licensed veterinarians may recommend the names of potential board members to the governor, but the governor is not bound by the recommendations.

2. The members of the board shall be appointed for a term of three years, except the terms of the members of the initial board shall be rotated in such a manner that at least one member shall retire each year and a successor be appointed. The term of each member

shall commence and end as provided by section 69.19. Members shall serve no more than three terms or nine years total, whichever is less. Any vacancy in the membership of the board caused by death, resignation, removal, or otherwise, shall be filled for the period of the unexpired term in the same manner as original appointments.

3. The board shall meet at least once each year as determined by the board. Other necessary meetings may be called by the president of the board by giving proper notice. Except as provided, a majority of the board constitutes a quorum. Meetings shall be open and public except that the board may meet in closed session to prepare, approve, administer, or grade examinations, or to deliberate the qualifications of an applicant for license or the disposition of a proceeding to discipline a licensed veterinarian.

4. At its annual meeting, the board shall organize by electing a president and such other officers as may be necessary. Officers of the board serve for terms of one year and until a successor is elected, without limitation on the number of terms an officer may serve. The president shall serve as chairperson of board meetings. The person designated as the state veterinarian shall serve as secretary of the board.

5. The duties of the board shall include carrying on the correspondence of the board, keeping permanent accounts and records of all receipts and disbursements by the board and of all board proceedings, including the disposition of all applications for a license, and keeping a register of all persons currently licensed by the board. The representatives of the general public shall not prepare, grade, or otherwise administer examinations to applicants for a license to practice veterinary medicine. All board records shall be open to public inspection during regular office hours.

6. Members of the board shall set their own per diem compensation, at a rate not exceeding the per diem specified in section 7E.6 for each day actually engaged in the discharge of their duties, as well as compensation for necessary traveling and other expenses. Compensation for veterinarian members of the board shall include compensation for the time spent traveling to and from the place of conducting the examination and for a reasonable number of days for the preparation of examination and the reading of papers, in addition to the time actually spent in conducting examinations, within the limits of funds appropriated to the board.

7. Upon a three-fifths vote, the board may:

a. Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in the state.

b. Issue, renew, or deny issuance or renewal of licenses and temporary permits to practice veterinary medicine in this state.

c. Establish and publish annually a schedule of fees for licensing and registration of veterinarians. The fees shall be set by rule and shall include fees for a license to practice veterinary medicine issued upon the basis of the examination, a license granted on the basis of reciprocity, a renewal of a license to practice veterinary medicine, a certified statement that a licensee is licensed to practice in this state, and an issuance of a duplicate license when the original is lost or destroyed. The fee schedule shall be based on the board's anticipated financial requirements for the year, which shall include but not be limited to the following:

(1) Per diem, expenses, and travel of board members.

(2) Costs to the department for administration of this chapter.

d. Conduct investigations for the purpose of discovering violations of this chapter or grounds for disciplining licensed veterinarians.

e. Hold hearings on all matters properly brought before the board and administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and commission depositions. An administrative law judge may be appointed pursuant to section 17A.11 to perform those functions which properly repose in an administrative law judge.

f. Employ full-time or part-time personnel, professional, clerical, or special, as are necessary to effectuate the provisions of this chapter.

g. Appoint from its own membership one or more members to act as representatives of

the board at any meeting within or without the state where such representation is deemed desirable.

*h.* Bring proceedings in the courts for the enforcement of this chapter or any regulations made pursuant to this chapter.

*i.* Adopt, amend, or repeal rules relating to the standards of conduct for, testing of, and revocation or suspension of certificates issued to veterinary assistants. However, a certificate shall not be suspended or revoked by less than a two-thirds vote of the entire board in a proceeding conducted in compliance with section 17A.12.

*j.* Adopt, amend, or repeal all rules necessary for its government and all regulations necessary to carry into effect the provision of this chapter, including the establishment and publication of standards of professional conduct for the practice of veterinary medicine.

8. The powers enumerated in subsection 7 are granted for the purpose of enabling the board to effectively supervise the practice of veterinary medicine and are to be construed liberally to accomplish this objective.

9. A person who provides veterinary medical services, owns a veterinary clinic, or practices in this state shall obtain a certificate from the board and be subject to the same standards of conduct, as provided in this chapter and rules adopted by the board, as apply to a licensed veterinarian, unless the board determines that the same standards of conduct are inapplicable. The board shall issue, renew, or deny a certificate; adopt rules relating to the standards of conduct; and take disciplinary action against the person, including suspension or revocation of a certificate, in accordance with the procedures established in section 169.14. Certification fees shall be established by the board pursuant to subsection 7, paragraph "j". Fees shall be established in an amount sufficient to fully offset the costs of certification pursuant to this subsection. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, the department shall retain fees collected to administer the program of certifying veterinary clinics and the fees retained are appropriated to the department for the purposes of this subsection. For the fiscal year beginning July 1, 2001, and ending June 30, 2002, notwithstanding section 8.33, fees which remain unexpended at the end of the fiscal year shall not revert to the general fund of the state but shall be available for use for the following fiscal year to administer the program. For the fiscal year beginning July 1, 2002, and succeeding fiscal years, certification fees shall be deposited in the general fund of the state and are appropriated to the department to administer the certification provisions of this subsection. This subsection shall not apply to an animal shelter, as defined in section 162.2, that provides veterinary medical services to animals in the custody of the shelter.

10. The department shall furnish the board with all articles and supplies required for the public use and necessary to enable the board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained, and the department shall assess the costs to the board for such articles and supplies. The board shall also reimburse the department for direct and indirect administrative costs incurred in issuing and renewing the licenses.

[S13, §2538-f, -h, -i, -j, -t; C24, 27, 31, 35, §2799-d1, -d5; C39, §2773, 2777-2780, 2782, 2784, 2785, 2799.1, 2799.5; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.11, 169.15 – 169.19, 169.21, 169.22, 169.37, 169.41; C79, 81, §169.5]

83 Acts, ch 115, §4; 84 Acts, ch 1067, §23; 88 Acts, ch 1109, §17; 90 Acts, ch 1256, §31; 98 Acts, ch 1202, §32, 46; 2000 Acts, ch 1183, §1, 3; 2001 Acts, ch 24, §70, 74; 2005 Acts, ch 159, §1; 2009 Acts, ch 133, §72

#### **169.6 Disclosure of confidential information.**

1. A member of the board shall not disclose information relating to the following:

- a.* Criminal history or prior misconduct of the applicant.
- b.* Information relating to the contents of the examination.
- c.* Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

2. A member of the board who willfully communicates or seeks to communicate

information in violation of subsection 1, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor for each separate offense.

[C75, 77, §169.56; C79, 81, §169.6]  
2009 Acts, ch 133, §207

#### **169.7 Status of persons previously licensed.**

Any person holding a valid license to practice veterinary medicine in this state on January 1, 1979 shall be recognized as a licensed veterinarian and shall be entitled to retain this status as long as licensee complies with the provisions of this chapter.

[C79, 81, §169.7]

#### **169.8 Qualifications.**

1. *a.* Any person desiring a license to practice veterinary medicine in this state shall make written application to the board on a form approved by the board. The application shall show that the applicant is a graduate of an accredited or approved college of veterinary medicine or the holder of an ECFVG certificate. The application shall also show such other information and proof as the board may require by rule. The application shall be accompanied by a fee in the amount established and published by the board.

*b.* If the board determines that the applicant possesses the proper qualifications, it shall admit the applicant to the next examination, or if the applicant is eligible for license without examination under section 169.10, the board may grant a license to the applicant.

*c.* If an applicant is found not qualified to take the examination or for a license without examination, the secretary of the board shall immediately notify the applicant in writing of such finding and the grounds therefor. An applicant found unqualified may request a hearing on the question of the applicant's qualification under the procedure set forth in section 169.14. Any applicant who is found not qualified shall be allowed the return of the application fee.

*d.* Based upon an applicant's education, experience, and training, the board may grant a limited license to an applicant to perform a restricted range of activities within the practice of veterinary medicine, as specified by the board.

2. *a.* The name, location, number of years of practice of the person to whom a license is issued, the number of the certificate, and the date of registration thereof shall be entered in a book kept in the office of the department of agriculture and land stewardship, to be known as the "registry book", and the same shall be open to public inspection.

*b.* When any person licensed to practice under this chapter changes residence, the board shall be notified within thirty days and such change shall be noted in the registry book.

3. Every individual licensed under this chapter shall keep the license displayed in the place at which an office is maintained.

[S13, §2538-e, -i, -j; C24, 27, 31, 35, 39, §2767, 2768, 2775, 2776, 2786; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.4, 169.5, 169.13, 169.14, 169.23; C79, 81, §169.8]

83 Acts, ch 115, §5, 6; 90 Acts, ch 1117, §1; 2009 Acts, ch 41, §63

#### **169.9 Examinations.**

The board shall hold at least one examination during each year and may hold such additional examinations as it deems necessary. The secretary shall give public notice of the time and place for each examination at least ninety days in advance of the date set for the examination. A person desiring to take an examination shall make application at least thirty days before the date of the examination.

The preparation, administration, and grading of examinations shall be governed by rules prescribed by the board. Examinations shall be designed to test the examinee's knowledge of and proficiency in the subjects and techniques commonly taught in veterinary schools. To pass the examination, the examinee must demonstrate scientific and practical knowledge sufficient to establish competency to practice veterinary medicine in the judgment of the board. All examinees shall be tested by a written examination, supplemented by such oral interviews and practical demonstrations as the board may deem necessary. The board may

adopt and use the examination prepared by the national board of veterinary examiners as a part of the examination given to examinees.

After each examination, the board shall notify each examinee of the examination result, and the board shall issue licenses to the individuals successfully completing the examination. The board shall record the new licenses and issue a certificate of registration to the new licensees. Any individual failing an examination shall be admitted to any subsequent examination on payment of the application fee.

In all written examinations the identity of the individual taking the same shall not be disclosed upon the examination papers in such a way as to enable the members of the examining board to know by whom written until after the papers have been passed upon.

[S13, §2538-e, -f, -i; C24, 27, 31, 35, 39, §2772, 2790 – 2792; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.10, 169.27 – 169.29; C79, 81, §169.9]

83 Acts, ch 115, §7

#### **169.10 License by endorsement.**

1. The board may issue a license to practice veterinary medicine in this state without written examination to an applicant who meets all of the following requirements:

a. Has graduated from an accredited college of veterinary medicine or has received a certificate from the educational commission for foreign veterinary graduates at least five years prior to application.

b. Has actively practiced for at least two thousand hours during the five years preceding application.

c. Has not previously failed and not subsequently passed a veterinary licensing examination in this state.

d. Holds a current license to practice veterinary medicine in another state or United States territory or province of Canada.

e. Is not subject to license investigation, suspension, or revocation in any state, United States territory, or province of Canada.

f. Provides other information and proof as the board may require by rule.

2. The board may issue a license to practice veterinary medicine in this state without written or oral examination to an applicant who meets all of the following requirements:

a. Holds a current certification as a diplomate of a national specialty board or college recognized by the board by rule.

b. Is not subject to license investigation, suspension, or revocation in any state, United States territory, or province of Canada.

c. Provides other information and proof as the board may require by rule.

[S13, §2538-i, -il; C24, 27, 31, 35, 39, §2794 – 2797; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.31 – 169.34; C79, 81, §169.10]

90 Acts, ch 1117, §2

Referred to in §169.8

#### **169.11 Temporary permit.**

The board may issue without examination a temporary permit to practice veterinary medicine in this state:

1. To a qualified applicant for license pending examination and the temporary permit shall expire the day after the notice of results of the first examination given after the permit is issued. The temporary permit holder should keep the secretary continually advised of the permit holder's current address.

2. To a nonresident veterinarian validly licensed in another state, territory, or district of the United States or a foreign country who pays the fee established and published by the board. Such temporary permit shall be issued for a period of no more than one hundred eighty days and no more than one permit shall be issued to a person during each calendar year.

[C79, 81, §169.11]

**169.12 License renewal.**

All licenses shall expire in multiyear intervals as determined by the board but may be renewed by registration with the board and payment of the registration renewal fee established and published by the board. Prior to expiration the secretary shall mail a notice to each licensed veterinarian that the license will expire and provide the licensee with a form for registration.

Any person who shall practice veterinary medicine after license expiration is practicing in violation of this chapter. However, a person may renew an expired license within five years of the date of its expiration by making written application for renewal and paying the current renewal fee plus all delinquent renewal fees. After five years have elapsed since the date of expiration, a license may not be renewed, and the holder must make application for a new license and take the license examination.

The board may by rule waive the payment of the registration renewal fee of a licensed veterinarian during the period when the veterinarian is on active duty with any branch of the armed services of the United States.

Any licensee who is desirous of changing residence to another state or territory shall, upon application to the department and payment of the legal fee, receive a certified statement that the licensee is a duly licensed practitioner in this state.

[S13, §2538-j; C24, 27, 31, 35, 39, §2769, 2769.1, 2798; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.6, 169.35; C79, 81, §169.12]

Referred to in §169.13

**169.13 Discipline of licensees.**

1. The board of veterinary medicine, after due notice and hearing, may revoke or suspend a license to practice veterinary medicine if it determines that a veterinarian licensed to practice veterinary medicine is guilty of any of the following acts or offenses:

a. Knowingly making misleading, deceptive, untrue, or fraudulent representation in the practice of the profession.

b. Being convicted of a felony in the courts of this state or another state, territory, or country. Conviction as used in this paragraph includes a conviction of an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding in which a finding or verdict of guilt is made or returned, but the adjudication or guilt is either withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state is conclusive evidence.

c. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of veterinary medicine.

d. Having the person's license to practice veterinary medicine revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

e. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice veterinary medicine.

f. Being adjudged mentally incompetent by a court of competent jurisdiction. The adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

g. Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of veterinary medicine as defined in rules adopted by the board, in which proceeding actual injury to an animal need not be established; or the committing by a veterinarian of an act contrary to honesty, justice, or good morals, whether the act is committed in the course of the practice or otherwise, and whether committed within or without this state.

h. Inability to practice veterinary medicine with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

i. Willful or repeated violation of lawful rules adopted by the board or violation of a lawful order of the board, previously entered by the board in a disciplinary hearing.

2. a. The board, upon probable cause, may compel a veterinarian to submit to a mental or physical examination by designated physicians. Failure of a veterinarian to submit to an examination constitutes an admission to the allegations made against that veterinarian and the finding of fact and decision of the board may be entered without the taking of testimony or presentation of evidence. At reasonable intervals, a veterinarian shall be afforded an opportunity to demonstrate that the veterinarian can resume the competent practice of veterinary medicine with reasonable skill and safety to animals.

b. A person licensed to practice veterinary medicine who makes application for the renewal of the person's license as required by section 169.12 gives consent to submit to a mental or physical examination as provided by this paragraph when directed in writing by the board. All objections shall be waived as to the admissibility of the examining physician's testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against a veterinarian in another proceeding and are confidential except for other actions filed against a veterinarian to revoke or suspend that person's license.

[S13, §2538-e; C24, 27, 31, 35, 39, §2799; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.36; C79, 81, §169.13]

83 Acts, ch 115, §8; 2009 Acts, ch 41, §64

Referred to in §169.14, 272C.3, 272C.4

#### **169.14 Procedure for suspension or revocation.**

A proceeding for the revocation or suspension of a license to practice veterinary medicine or to discipline a person licensed to practice veterinary medicine shall be substantially in accord with the following:

1. The board, upon its own motion or upon a verified complaint in writing, may request the department of inspections and appeals to conduct an investigation of the charges contained in the complaint. The department of inspections and appeals shall report its findings to the board, and the board may issue an order fixing the time and place for hearing if a hearing is deemed warranted. A written notice of the time and place of the hearing, together with a statement of the charges, shall be served upon the licensee at least ten days before the hearing in the manner required for the service of notice of the commencement of an ordinary action.

2. If the licensee has left the state, the notice and statement of the charges shall be so served at least twenty days before the date of the hearing, wherever the licensee may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by those rules. If the licensee fails to appear either in person or by counsel at the time and place designated in the notice, the board shall proceed with the hearing.

3. The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board according to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The member or officer shall issue subpoenas at the request and on behalf of the licensee.

4. A mechanized or stenographic record of the proceedings shall be kept. The licensee shall be given the opportunity to appear personally and by attorney, with the right to produce evidence in one's own behalf, to examine and cross-examine witnesses, and to examine documentary evidence produced against the licensee.

5. If a person refuses to obey a subpoena issued by the presiding member or administrative law judge or to answer a proper question put to that person during the hearing, the presiding member or administrative law judge may invoke the aid of a court of competent jurisdiction in requiring the attendance and testimony of that person and the production of papers. A failure to obey the order of the court may be punished by the court as a civil contempt may be punished.

6. Unless the hearing is before the entire board, a transcript of the proceeding, together

with exhibits presented, shall be considered by the entire board at the earliest practicable time. The licensee and attorney shall be given the opportunity to appear personally to present the licensee's position and arguments to the board. The board shall determine the charge upon the merits on the basis of the evidence in the record before it.

7. Upon three members of the board voting in favor of finding the licensee guilty of an act or offense specified in section 169.13, the board shall prepare written findings of fact and its decision imposing one or more of the following disciplinary measures:

a. Suspend the license to practice veterinary medicine for a period to be determined by the board.

b. Revoke the license to practice veterinary medicine.

c. Suspend imposition of judgment and penalty or impose the judgment and penalty, but suspend enforcement and place the veterinarian on probation. The probation ordered may be vacated upon noncompliance. The board may restore and reissue a license to practice veterinary medicine, and may impose a disciplinary or corrective measure which it might originally have imposed.

8. Judicial review of the board's action may be sought in accordance with chapter 17A.

9. The filing of a petition for review does not in itself stay execution or enforcement of board action. Upon application, the board or the review court, in appropriate cases, may order a stay pending the outcome of the review proceedings.

[C31, 35, §2799-d1, -d3, -d4, -d6; C39, §2799.1, 2799.3, 2799.4, 2799.6; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.37, 169.39, 169.40, 169.42; C79, 81, §169.14]

83 Acts, ch 115, §9; 88 Acts, ch 1109, §18; 88 Acts, ch 1158, §44; 89 Acts, ch 296, §19; 98 Acts, ch 1202, §33, 46

Referred to in §169.5, 169.8, 169.20

#### **169.15 Appeal.**

Any party aggrieved by a decision of the board may appeal the matter to the district court as provided in section 17A.19.

[C79, 81, §169.15]

83 Acts, ch 115, §10

#### **169.16 Reinstatement.**

A person whose license is suspended or revoked may be relicensed or reinstated at any time by a vote of five members of the board after written application made to the board showing cause justifying relicensing or reinstatement. Examination of the applicant may be waived by the board.

[C79, 81, §169.16]

83 Acts, ch 115, §11

#### **169.17 Forgeries.**

Any person who shall file or attempt to file with the department or board of veterinary medicine any false or forged diploma or certificate or affidavit of identification or qualification is guilty of a fraudulent practice.

[C24, 27, 31, 35, 39, §2803; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.43; C79, 81, §169.17]

#### **169.18 Fraud.**

Any person who shall present to the department or board of veterinary medicine a diploma or certificate of which the person is not the rightful owner, for the purpose of procuring a license, or who shall falsely impersonate anyone to whom a license has been granted by said department, is guilty of a fraudulent practice.

[C24, 27, 31, 35, 39, §2804; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.44; C79, 81, §169.18]

#### **169.19 Enforcement — penalties.**

1. Any person who practices veterinary medicine without a currently valid license or temporary permit is guilty of a fraudulent practice. Each act of such unlawful practice shall constitute a distinct and separate offense.

2. A person who shall practice veterinary medicine without a currently valid license or temporary permit shall not receive any compensation for services so rendered.

3. The county attorney of the county in which any violation of this chapter occurs shall conduct the necessary prosecution for such violation. Notwithstanding this provision, the board of veterinary medicine or any citizen of this state may bring an action to enjoin any person from practicing veterinary medicine without a currently valid license or temporary permit. The action brought to restrain a person from engaging in the practice of veterinary medicine without possessing a license shall be brought in the name of the state of Iowa. If the court finds that the individual is violating or threatening to violate this chapter it shall enter an injunction restraining the individual from such unlawful acts.

4. The successful maintenance of an action based on any one of the remedies set forth in this section shall in no way prejudice the prosecution of an action based on any other remedy set forth in this section.

5. The department shall cooperate with the board of veterinary medicine in the enforcement of the provisions of this chapter.

[S13, §2538-1; C24, 27, 31, 35, 39, §2805 – 2807; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §169.45 – 169.48; C79, 81, §169.19]

83 Acts, ch 115, §12; 2012 Acts, ch 1023, §157

Referred to in §331.756(31)

**169.20 Veterinary assistants.**

A veterinarian may employ certified veterinary assistants for any purpose other than diagnosis, prescription or surgery. Veterinary assistants must act under the direct supervision of a licensed veterinarian.

The board shall issue certificates to veterinary assistants who have met the educational, experience and testing requirements as the board shall specify by rule. The certificate is not a license and does not expire. The certificate may be suspended or revoked, or any other disciplinary action may be taken as specified in section 272C.3, subsection 2. All disciplinary actions shall be taken pursuant to section 169.14.

83 Acts, ch 115, §1

Referred to in §169.4

**CHAPTER 169A**

**MARKING AND BRANDING OF LIVESTOCK**

Referred to in §169C.3

169A.1	Definitions.	169A.10	Evidence of ownership — investigations.
169A.2	Adoption of brand.	169A.11	Publication of brands list.
169A.3	Must be recorded.	169A.12	Repealed by 2001 Acts, ch 183, §23.
169A.4	Recording — fee.	169A.13	Renewal of brand and fee.
169A.5	Effect of record.	169A.13A	Branding administration fund.
169A.6	Certified copy furnished.	169A.14	Tampering.
169A.7	Unlawful use of brand — penalty.	169A.15	Repealed by 95 Acts, ch 60, §10.
169A.8	Sale or assignment of brand.	169A.16	Repealed by 96 Acts, ch 1119, §2.
169A.9	Certified copy to new owner.		

**169A.1 Definitions.**

When used in this chapter:

1. “*Animal*” means a creature belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 170.1; or poultry.
2. “*Brand*” means an identification mark that is burned into the hide of a live animal by a hot iron or another method approved by the secretary. A brand shall include a cryo-brand.
3. “*Computer*” means the same as defined in section 22.3A.
4. “*Cryo-brand*” means a brand produced by application of extreme cold temperature.

5. “*Identification device*” means a device which when installed is designed to store information regarding an animal or the animal’s owner in an electronic format which may be accessed by a computer for purposes of reading or manipulating the information.

6. “*Install*” means to place an identification device onto or beneath the hide or skin of an animal, including but not limited to fixing the device into the ear of an animal or implanting the device beneath the skin of the animal.

7. “*Livestock*” means horses, cattle, sheep, mules, or asses.

[C66, 71, 73, 75, 77, 79, 81, §187.1]

86 Acts, ch 1245, §635

C93, §169A.1

95 Acts, ch 60, §1; 98 Acts, ch 1208, §1; 2003 Acts, ch 149, §2, 23

Further definitions; see §159.1

#### **169A.2 Adoption of brand.**

Any person owning livestock may adopt a brand for the purpose of branding the livestock. The person shall have the exclusive right to use the brand in this state, after recording the brand as provided in sections 169A.4 and 169A.6 or 169A.9.

[C66, 71, 73, 75, 77, 79, 81, §187.2]

C93, §169A.2

95 Acts, ch 60, §2

#### **169A.3 Must be recorded.**

Evidence of an animal’s ownership shall not be established in court by the animal’s brand, unless the animal is livestock, the brand complies with the requirements of this chapter, and the brand is recorded as provided in sections 169A.4 and 169A.6 or 169A.9.

[C66, 71, 73, 75, 77, 79, 81, §187.3]

C93, §169A.3

95 Acts, ch 60, §3

#### **169A.4 Recording — fee.**

A person desiring to adopt a brand shall forward to the secretary a brand application on forms approved by the secretary and providing for the desired brand, together with a recording fee of twenty-five dollars. Upon receipt, the secretary shall file the application and fee, unless the brand is of record of another person or conflicts with or closely resembles the brand of another person. If the secretary determines that such brand is of record or conflicts with or closely resembles the brand of another person, the secretary shall not record it but shall return the facsimile and fee to the forwarding person. However, the secretary shall renew a conflicting brand if the brand was originally recorded prior to July 1, 1996, and the brand is renewed as provided in section 169A.13. The department may notify each owner of a conflicting brand that the owner may record a nonconflicting brand. The power of examination, approval, acceptance, or rejection shall be vested in the secretary. The secretary shall file all brands offered for record pending the examination provided for in this section. The secretary shall make such examination as promptly as possible. If the brand is accepted, the brand’s ownership shall vest in the person recording it from the date of filing.

[C51, §921 – 923; R60, §1556 – 1558; C73, §1480, 1481, 3809; C97, §2335, 2336; C24, 27, 31, 35, 39, §2977, 2978; C46, 50, 54, 58, 62, §187.2, 187.3; C66, 71, 73, 75, 77, 79, 81, §187.4]

C93, §169A.4

96 Acts, ch 1119, §1; 2001 Acts, ch 183, §20; 2002 Acts, ch 1050, §61, 65

Referred to in §169A.2, 169A.3, 169A.5, 169A.8, 169A.13

#### **169A.5 Effect of record.**

The recording provided for in sections 169A.4 and 169A.6 or 169A.9 shall secure the brand to the person and shall be considered personal property of said owner.

[C66, 71, 73, 75, 77, 79, 81, §187.5]

C93, §169A.5

**169A.6 Certified copy furnished.**

As soon as the brand is recorded by the secretary, the secretary shall furnish the owner of the brand with a certified copy of the record of the brand.

[C66, 71, 73, 75, 77, 79, 81, §187.6]

C93, §169A.6

95 Acts, ch 60, §4

Referred to in §169A.2, 169A.3, 169A.5, 169A.10

**169A.7 Unlawful use of brand — penalty.**

A person shall not use any brand for branding livestock, unless the brand has been recorded as provided by this chapter. A person may use an unrecorded hot brand or an unrecorded cryo-brand, consisting only of Arabic numerals, if the person uses the unrecorded brand in conjunction with the person's recorded brand, and only for purposes of identifying animals within a herd. However, the unrecorded brand shall not be evidence of ownership. A person convicted of violating this section shall be guilty of an aggravated misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §187.7]

C93, §169A.7

95 Acts, ch 60, §5

**169A.8 Sale or assignment of brand.**

Any brand recorded as provided in section 169A.4 shall be the property of the person causing such record to be made and shall be subject to sale, assignment, transfer, devise, and descent as personal property. Instruments of writing, evidencing the sale, assignment, or transfer of such brand shall be recorded by the secretary and the fee for recording such sale, assignment, or transfer shall be in an amount established by rule of the secretary pursuant to chapter 17A, which amount shall be based upon the administrative costs of maintaining the brand program provided for by this chapter.

[C66, 71, 73, 75, 77, 79, 81, §187.8]

C93, §169A.8

**169A.9 Certified copy to new owner.**

As soon as instruments of writing evidencing the sale, assignment, or transfer of a brand have been recorded by the secretary, the secretary shall furnish such new owner one certified copy of such sale, assignment, or transfer.

[C66, 71, 73, 75, 77, 79, 81, §187.9]

C93, §169A.9

Referred to in §169A.2, 169A.3, 169A.5, 169A.10

**169A.10 Evidence of ownership — investigations.**

1. In a suit at law or equity or in any criminal proceedings in which the title to an animal is an issue, the following shall be admissible as evidence:

a. A certified copy of a record as provided for in section 169A.6 or 169A.9. The certified copy shall be prima facie evidence of the ownership of livestock by the person in whose name the brand is recorded.

b. Information stored in an identification device which identifies the owner of an animal. The information shall be prima facie evidence of the ownership of the animal, if all of the following apply:

(1) The identification device meets applicable design standards adopted by the international standard organization, or which may be adopted by the department.

(2) The identification device is installed according to manufacturer's requirements.

(3) The information is not in conflict with a certified copy of a record as provided for in section 169A.6 or 169A.9.

c. The results of a sheriff's investigation as provided in this section.

2. A dispute involving the custody or ownership of an animal branded or subject to electronic identification under this chapter shall be investigated, on request, by the sheriff of the county where the animal is located. The sheriff may call upon the services of an authorized person, approved by the secretary, in reading the brands on animals. The cost

of the services shall be paid by the person requesting the investigation. The results of the sheriff's investigation are a public record.

[C66, 71, 73, 75, 77, 79, 81, §187.10]

C93, §169A.10

95 Acts, ch 60, §6; 98 Acts, ch 1208, §2

Referred to in §331.653

#### **169A.11 Publication of brands list.**

The secretary from time to time shall publish on the internet a list of all brands on record at the time of the publication. The publication shall contain a facsimile of all brands recorded and the owner's name and post office address. The records shall be arranged in convenient form for reference.

[C66, 71, 73, 75, 77, 79, 81, §187.11]

C93, §169A.11

95 Acts, ch 60, §7; 2012 Acts, ch 1095, §60

**169A.12** Repealed by 2001 Acts, ch 183, § 23.

#### **169A.13 Renewal of brand and fee.**

Each owner of a brand which is recorded pursuant to section 169A.4 shall renew the brand every five years after originally recording the brand and pay a renewal fee. The amount of the renewal fee is twenty-five dollars. The secretary shall notify every owner of a brand of record at least thirty days prior to the date of the renewal period. If the owner of a brand of record does not renew the brand and pay the renewal fee within six months after it is due, the owner shall forfeit the brand and the brand shall no longer be recorded. A forfeited brand shall not be issued to any other person for five years following date of forfeiture.

[C66, 71, 73, 75, 77, 79, 81, §187.13]

C93, §169A.13

95 Acts, ch 60, §8; 96 Acts, ch 1034, §8; 2001 Acts, ch 183, §21; 2002 Acts, ch 1119, §24

Referred to in §169A.4

#### **169A.13A Branding administration fund.**

1. A branding administration fund is created in the state treasury under the control of the department. The fund is composed of moneys collected in fees as provided in this chapter, moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund.

2. The fund is subject to warrants written by the director of the department of administrative services, drawn upon the written requisition of the department.

3. Moneys in the fund are appropriated to the department for the exclusive purpose of supporting the administration of this chapter by the department.

4. The department may adopt rules pursuant to chapter 17A to administer this section.

5. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

2001 Acts, ch 183, §22; 2003 Acts, ch 145, §286

#### **169A.14 Tampering.**

1. A person shall not do any of the following to an animal:

a. Brand, attempt to brand, or cause to be branded livestock, without authorization from the owner.

b. Efface, deface, or obliterate or attempt to efface, deface, or obliterate a brand, without authorization from the owner of the livestock.

c. Brand, attempt to brand, or cause to be branded a recorded brand on livestock, without authorization of the owner of the brand.

d. Install an electronic device or remove or damage an installed electronic device, without authorization from the owner of an animal.

2. A person violating this section is guilty of a fraudulent practice as provided in chapter 714.

[C66, 71, 73, 75, 77, 79, 81, §187.14]

C93, §169A.14

98 Acts, ch 1208, §3

Referred to in §169.4

**169A.15** Repealed by 95 Acts, ch 60, § 10.

**169A.16** Repealed by 96 Acts, ch 1119, § 2.

## CHAPTER 169B

RESERVED

## CHAPTER 169C

### TRESPASSING OR STRAY LIVESTOCK

169C.1	Definitions.	169C.4	Liability.
169C.2	Custody.	169C.5	Satisfaction for damages.
169C.3	Notice to livestock owner.	169C.6	Habitual trespass.

#### **169C.1 Definitions.**

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

1. “*Aggrieved party*” means a landowner or a local authority.
2. “*County system*” means the same as defined in section 445.1.
3. “*Fence*” means a fence as described in chapter 359A which is lawful and tight as provided in that chapter, including but not limited to a partition fence. For purposes of this chapter, “*fence*” includes a fence bordering a public road.
4. “*Landowner*” means a person who holds an interest in land, including a titleholder or tenant.
5. “*Livestock*” means an animal belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 170.1; or poultry.
6. “*Livestock care provider*” means a person designated by a local authority to provide care to livestock which is distrained by a local authority.
7. “*Livestock owner*” means the person who holds title to livestock or who is primarily responsible for the care and feeding of the livestock as provided by the titleholder.
8. “*Local authority*” means a city as defined in section 362.2 or a county as provided in chapter 331.
9. “*Maintenance*” means the provision of shelter, food, water, or a nutritional formulation as required pursuant to chapter 717.
10. “*Public road*” means a thoroughfare and its right-of-way, whether reserved by public ownership or easement, for use by the traveling public.  
97 Acts, ch 57, §1; 2003 Acts, ch 149, §3, 23; 2007 Acts, ch 64, §1; 2010 Acts, ch 1118, §1  
Further definitions, see §159.1

#### **169C.2 Custody.**

A landowner may take custody of livestock if the livestock trespasses upon the landowner’s land or strays from the livestock owner’s control on a public road which adjoins the landowner’s land. A local authority may take custody of the livestock as provided by the local authority. The landowner shall not transfer custody of the livestock to a person other than the livestock owner or a local authority, unless the livestock owner approves of the

transfer. A local authority shall not transfer custody of the livestock to a person other than the livestock owner or a livestock care provider.

97 Acts, ch 57, §2

Referred to in §169C.4, 169C.5

### **169C.3 Notice to livestock owner.**

1. *a.* If livestock trespasses upon a landowner's land or the landowner takes custody of the livestock, the landowner shall deliver notice of the trespass or custody to the livestock owner within forty-eight hours following discovery of the trespass or taking custody of livestock which has not trespassed. If a local authority takes custody of the livestock, the local authority shall deliver notice of the custody to the livestock owner within forty-eight hours after taking custody of the livestock. The forty-eight-hour period shall exclude any time that falls on a Sunday or a holiday recognized by the state or the United States. The notice shall be made in writing and delivered by certified mail or personal service to the last known mailing address of the livestock owner.

*b.* If the aggrieved party does not know the name and address of the livestock owner, the aggrieved party shall make reasonable efforts to determine the identity of the livestock owner. The reasonable efforts shall include obtaining the name and address of the owner of the brand appearing on the livestock from the department of agriculture and land stewardship under chapter 169A. If the name and address of the livestock owner cannot be determined, the aggrieved party shall publish the notice as soon as possible at least once each week for two consecutive weeks in a newspaper having general circulation in the county where the livestock is located.

2. A notice required under this section shall at least provide all of the following:

- a.* The name and address of the landowner or local authority.
- b.* A description of the livestock and where it trespassed or strayed.
- c.* An estimate of the amount of the livestock owner's liability.

97 Acts, ch 57, §3

Referred to in §169C.4, 169C.5

### **169C.4 Liability.**

1. A livestock owner shall be liable to the following persons:

*a.* To a landowner for damages caused by the livestock owner's livestock which have trespassed on the landowner's land, including but not limited to property damage and costs incurred by the landowner's custody of the livestock including maintenance costs. A livestock owner's liability is not affected by the failure of a landowner to take custody of the livestock. A livestock owner shall not be liable for damages incurred by a landowner if the livestock trespassed through a fence that was not maintained by the landowner as required pursuant to chapter 359A.

*b.* To a landowner who takes custody of livestock on a public road as provided in section 169C.2 for costs incurred by the landowner in taking custody of the livestock, including maintenance costs.

*c.* To a local authority which takes custody of livestock for costs incurred by the local authority in taking custody of the livestock, including maintenance costs.

2. An aggrieved party who fails to provide timely notice of a livestock's trespass or custody as required by section 169C.3 shall not be entitled to compensation for damages for the period of time during which the aggrieved party fails to provide timely notice.

3. A landowner is not liable for an injury or death suffered by the livestock in the landowner's custody, unless the landowner caused the injury or death. The landowner is not liable for livestock that strays from the landowner's land. An aggrieved party is not liable for livestock that strays from the control of the aggrieved party.

97 Acts, ch 57, §4; 98 Acts, ch 1100, §21, 22

### **169C.5 Satisfaction for damages.**

1. *a.* After receiving notice by an aggrieved party as required by section 169C.3, the livestock owner shall pay all damages to the aggrieved party for which the livestock owner is liable.

b. The aggrieved party or the livestock owner may bring a civil action in order to determine the livestock owner's liability and the amount of any claim for damages. The aggrieved party or livestock owner must bring the action within thirty days following receipt or publication of the notice as required by section 169C.3. The court may join all other claims arising out of the same facts that are alleged in the claim for damages. The civil action may be heard by a district judge or a district associate judge. The civil action may be heard by the district court sitting in small claims as provided in chapter 631.

c. If the livestock is in the custody of an aggrieved party or livestock care provider, a rebuttable presumption arises that the livestock has trespassed or strayed from the control of the livestock owner. The rebuttable presumption shall not apply if a criminal charge has been filed involving the removal or transfer of the livestock. The burden of proof regarding all other matters of dispute shall be on the aggrieved party.

d. The failure of an aggrieved party to provide notice as required by section 169C.3 shall not bar the aggrieved party from being awarded a judgment, if the court determines that the livestock owner had actual knowledge that the livestock had trespassed or strayed and the name and address of the aggrieved party.

2. If a civil action is brought by the livestock owner or aggrieved party, the matter shall be heard by a court on an expedited basis. The aggrieved party shall provide for the transfer of the livestock to the livestock owner, if the livestock owner posts a bond or other security with the court in the amount of the aggrieved party's claim. If a bond or security is not posted, the aggrieved party or livestock care provider shall keep custody of and provide maintenance to the livestock. However, the livestock owner shall post the bond or other security if the matter is set for hearing more than thirty days from the date that the petition bringing the civil action is filed. The court shall order the immediate disposition of the livestock as provided in chapter 717, if the livestock is permanently distressed by disease or injury to a degree that would result in severe or prolonged suffering.

3. If a civil action is not timely brought as provided in this section, title to the livestock shall transfer to the aggrieved party thirty days following receipt of the notice by the livestock owner or the first date of the notice's publication as required pursuant to section 169C.3, if the parties fail to agree to the amount, terms, or conditions of payment or if the identity of the livestock owner cannot be determined. Title to the livestock shall transfer subject to any applicable security interests or liens.

4. A landowner is liable to the livestock owner for twice the fair market value of livestock that the landowner transfers to a person other than a local authority in violation of section 169C.2.

5. If the aggrieved party is a local authority, the local authority shall reimburse the landowner for the landowner's damages from proceeds received from the sale of the livestock, after satisfying any superior security interests or liens.

97 Acts, ch 57, §5

#### **169C.6 Habitual trespass.**

A habitual trespass occurs when livestock trespasses from the land where the livestock are kept onto the land of a neighboring landowner or strays from the land where the livestock are kept onto a public road, and on three or more separate occasions within the prior twelve-month period the same or different livestock kept on that land have trespassed onto the land of the same neighboring landowner or strayed from the land where the livestock are kept onto the same public road.

1. The local authority upon its own initiative or upon receipt of a complaint shall determine whether livestock are trespassing or straying from the land where the livestock are kept onto a public road, and make a record of its findings.

2. a. Once a habitual trespass occurs, a neighboring landowner may request that the responsible landowner of the land where the trespassing or stray livestock are kept erect or maintain a fence on the land. The neighboring landowner shall make the request to the responsible landowner in writing. The responsible landowner may compel an adjacent landowner to contribute to the erection or maintenance of the fence as provided in chapter 359A.

b. If the responsible landowner does not erect or maintain a fence within thirty days after receiving the request, the neighboring landowner may apply to the fence viewers as provided in chapter 359A as if the matter were a controversy between the responsible landowner and an adjacent landowner, and the matter shall be resolved by an order issued by the fence viewers, subject to appeal, as provided in chapter 359A. The neighboring landowner shall be a party to the controversy as if the neighboring party were an adjacent landowner. The neighboring landowner is not liable for erecting or maintaining the fence, unless the neighboring landowner is an adjacent landowner who is otherwise required to make a contribution under chapter 359A.

3. If the fence is not erected or maintained as required in section 359A.6, and upon the written request of the board of township trustees, the board of supervisors of the county where the fence is to be erected or maintained shall act in the same manner as the board of township trustees under that section, including by erecting or maintaining the fence, ordering payment from a defaulted party, and certifying an amount due to the county treasurer in the same manner as in section 359A.6. The amount due shall include the total costs required to erect or maintain the fence and a penalty equal to five percent of the total costs. The amount shall be placed upon the county system and collected in the same manner as ordinary taxes. Upon certification to the county treasurer, the amount assessed shall be a lien on the parcel until paid.

2007 Acts, ch 64, §2; 2010 Acts, ch 1118, §2  
 Referred to in §359A.22A, 445.1

## CHAPTER 170

### FARM DEER

Referred to in §481A.124, 484B.3, 484B.12, 484C.2, 484C.6, 484C.8

170.1	Definitions.	170.3C	Farm deer administration fund — appropriation.
170.1A	Application of chapter.	170.4	Requirements for keeping whitetail — fence certification.
170.2	Farm deer council.	170.5	Requirements for releasing whitetail — property interests.
170.3	Departmental jurisdiction — administration and enforcement.	170.6	Disciplinary proceedings.
170.3A	Chronic wasting disease control program.	170.7	Department of natural resources — investigations.
170.3B	Farm deer administration fee.	170.8	Penalties.

#### 170.1 Definitions.

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

1. “*Chronic wasting disease*” means the animal disease afflicting deer, elk, or moose that is a transmissible disease of the nervous system resulting in distinctive lesions in the brain and that belongs to the group of diseases that is known as transmissible spongiform encephalopathies (TSE).

2. “*Council*” means the farm deer council established pursuant to section 170.2.

3. “*Department*” means the department of agriculture and land stewardship.

4. a. “*Farm deer*” means an animal belonging to the cervidae family and classified as part of the dama species of the dama genus, commonly referred to as fallow deer; part of the elaphus species of the cervus genus, commonly referred to as red deer or elk; part of the virginianus species of the odocoileus genus, commonly referred to as whitetail; part of the hemionus species of the odocoileus genus, commonly referred to as mule deer; part of the nippon species of the cervus genus, commonly referred to as sika; or part of the alces species of the alces genus, commonly referred to as moose.

b. “*Farm deer*” does not include any unmarked free-ranging elk, whitetail, or mule deer.

“*Farm deer*” also does not include preserve whitetail which are kept on a hunting preserve as provided in chapter 484C.

5. “*Fence*” means a boundary fence which encloses farm deer within a landowner’s property as required to be constructed and maintained pursuant to section 170.4.

6. “*Landowner*” means a person who holds an interest in land, including a titleholder or tenant.

2003 Acts, ch 149, §4, 23; 2005 Acts, ch 139, §1; 2012 Acts, ch 1095, §58, 59  
Referred to in §10.1, 167.22, 169A.1, 169C.1, 189A.2, 423.1, 481A.1, 481A.134, 481A.135, 716.7, 716.8, 717.1

#### **170.1A Application of chapter.**

1. A landowner shall not keep whitetail unless the whitetail are kept as farm deer under this chapter or kept as preserve whitetail on a hunting preserve pursuant to chapter 484C.

2. This chapter authorizes the department of agriculture and land stewardship to regulate whitetail kept as farm deer. However, the department of natural resources shall regulate preserve whitetail kept on a hunting preserve pursuant to chapter 484C.

2005 Acts, ch 139, §2

#### **170.2 Farm deer council.**

1. A farm deer council is established within the department.

a. The council shall consist of not more than seven members who shall be appointed by the secretary of agriculture. All members must be actively engaged in the production of farm deer and at least four members must be actively engaged in the production of whitetail as farm deer.

b. The members of the council shall serve staggered terms of two years, except that the initial council members shall serve terms of unequal length. A person appointed to fill a vacancy for a member shall serve only for the unexpired portion of the term. A member is eligible for reappointment for three successive terms.

c. The council shall elect a chairperson and meet according to rules adopted by the council. A majority of the council constitutes a quorum and an affirmative vote of a majority of members is necessary for substantive action taken by the council. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the council.

d. A member of the council is not entitled to receive expenses incurred in the discharge of the member’s duties on the council. A member is also not entitled to receive compensation as otherwise provided in section 7E.6.

2. The council shall do all of the following:

a. Monitor conditions relating to the production of farm deer, the processing of farm deer products, and the marketing of such products. The council shall advise the department about health issues affecting farm deer, including but not limited to chronic wasting disease, and related regulations or practices.

b. Advise the department about the administration and enforcement of this chapter, including but not limited to consulting with the department regarding the rules adopted under this chapter, the certification of fences, and disciplinary actions. However, the council shall not control policy decisions or direct the administration or enforcement of this chapter.

2003 Acts, ch 149, §5, 23

Referred to in §170.1, 170.3B

#### **170.3 Departmental jurisdiction — administration and enforcement.**

1. Farm deer are livestock as provided in this title and are principally subject to regulation by the department of agriculture and land stewardship, and also the department of natural resources as specifically provided in this chapter. The regulations adopted by the department of agriculture and land stewardship may include but are not limited to providing for the importation, transportation, and disease control of farm deer. The department of natural resources shall not require that the landowner be issued a license or permit for keeping farm deer or for the construction of a fence for keeping farm deer.

2. The department of agriculture and land stewardship and the department of natural resources shall cooperate in administering and enforcing this chapter.

2003 Acts, ch 149, §6, 23

**170.3A Chronic wasting disease control program.**

The department shall establish and administer a chronic wasting disease control program for the control of chronic wasting disease which threatens farm deer. The program shall include procedures for the inspection and testing of farm deer, responses to reported cases of chronic wasting disease, and methods to ensure that owners of farm deer may engage in the movement and sale of farm deer.

2005 Acts, ch 172, §21

Referred to in §170.3C

See also §167.22

**170.3B Farm deer administration fee.**

The department may establish a farm deer administration fee which shall be annually imposed on each landowner who keeps farm deer in this state. The amount of the fee shall not exceed two hundred dollars per year. The fee shall be collected by the department in a manner specified by rules adopted by the department after consulting with the farm deer council established in section 170.2. The collected fees shall be credited to the farm deer administration fund created pursuant to section 170.3C.

2005 Acts, ch 172, §22

Referred to in §170.3C

**170.3C Farm deer administration fund — appropriation.**

A farm deer administration fund is created in the state treasury under the control of the department.

1. The fund shall be composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund. The fund shall include all moneys collected from the farm deer administration fee as provided in section 170.3B.

2. The moneys in the fund are appropriated exclusively to the department for the purpose of administering the chronic wasting disease control program as provided in section 170.3A.

3. Section 8.33 shall not apply to moneys credited to the fund. Notwithstanding section 12C.7, moneys earned as income or interest from the fund shall remain in the fund until expended as provided in this section.

2005 Acts, ch 172, §23

Referred to in §170.3B

**170.4 Requirements for keeping whitetail — fence certification.**

A landowner shall not keep whitetail as farm deer, unless the whitetail is kept on land which is enclosed by a fence. The fence must be constructed and maintained as prescribed by rules adopted by the department. A landowner shall not keep the whitetail unless the fence is certified in a manner and according to procedures required by the department. The fence shall be constructed and maintained to ensure that whitetail are kept in the enclosure and that other deer are excluded from the enclosure. A fence that is constructed on or after May 23, 2003, shall be at least eight feet in height above ground level. The department of agriculture and land stewardship may require that the fence is inspected and approved prior to certification. The department of natural resources may periodically inspect the fence according to appointment with the enclosure's landowner.

2003 Acts, ch 149, §7, 23

Referred to in §170.1, 170.5, 170.6, 170.8

**170.5 Requirements for releasing whitetail — property interests.**

A person shall not release whitetail kept as farm deer onto land unless the landowner complies with all of the following:

1. The landowner must notify the department of natural resources and the department of agriculture and land stewardship at least thirty days prior to first releasing the whitetail on

the land. The notice shall be provided in a manner required by the departments. The notice must at least provide all of the following:

a. A statement verifying that the fence which encloses the land is certified by the department of agriculture and land stewardship pursuant to section 170.4.

b. The landowner's name.

c. The location of the land enclosed by the fence.

2. The landowner shall cooperate with the department of natural resources and the department of agriculture and land stewardship to remove any whitetail from the enclosed land. However, after the thirtieth day following receipt of the notice, the state shall relinquish its property interest in any remaining whitetail that the landowner and the cooperating departments were unable to remove from the enclosed land. Any remaining whitetail existing at that time on the enclosed land, and any progeny of the whitetail, shall become property of the landowner.

2003 Acts, ch 149, §8, 23

Referred to in §170.6, 481A.130

### **170.6 Disciplinary proceedings.**

1. The department of agriculture and land stewardship may suspend or revoke a certification issued pursuant to section 170.4 if the department determines that a landowner has done any of the following:

a. Provided false information to the department in an application for certification pursuant to section 170.4.

b. Failed to provide notice or access to the department of natural resources and the department of agriculture and land stewardship as required by section 170.5.

c. Failed to maintain a fence enclosing the land where a whitetail is kept as required in section 170.4.

d. Forces or lures a whitetail that is property of the state onto the enclosed land.

e. Restrains or inhibits a whitetail that is property of the state from leaving the enclosed land.

f. Takes a whitetail that is property of the state which is enclosed on the property in violation of a chapter in Title XI, subtitle 6.

2. If the department suspends a landowner's certification, the landowner shall not release additional whitetail onto the enclosed land, unless otherwise provided in the department's order for suspension. If the department revokes a landowner's certification under this section, the landowner shall provide for the disposition of the enclosed whitetail by any lawful means.

2003 Acts, ch 149, §9, 23; 2003 Acts, ch 179, §66

### **170.7 Department of natural resources — investigations.**

This chapter does not prevent the department of natural resources from conducting an investigation of a violation of fish and game laws, including but not limited to a provision of Title XI, subtitle 6. The department of natural resources may obtain a warrant to search the enclosed land pursuant to chapter 808. This chapter does not prevent the department of natural resources from examining the landowner's business records according to appointment with the enclosure's landowner. The records include but are not limited to those relating to whitetail inventories, health, inspections, or shipments; and the enclosure's fencing.

2003 Acts, ch 149, §10, 23

### **170.8 Penalties.**

A person is guilty of taking a whitetail in violation of section 481A.48 if the whitetail is on the land enclosed by a fence required to be certified as provided in section 170.4 and the person does any of the following:

1. Forces or lures a whitetail that is property of the state onto the enclosed land.

2. Restrains or inhibits a whitetail that is property of the state from leaving the enclosed land.

3. Takes a whitetail that is property of the state that is within the enclosure in violation of a chapter in Title XI, subtitle 6.  
2003 Acts, ch 149, §11, 23

## CHAPTERS 170A to 171

RESERVED

## CHAPTER 172

### FROZEN FOOD LOCKER PLANTS

Repealed by 2000 Acts, ch 1100, §2

## CHAPTER 172A

### BONDING OF SLAUGHTERHOUSE OPERATORS

Referred to in §166A.2

172A.1	Definitions.	172A.8	Reciprocal agreements.
172A.2	License required.	172A.9	Payment for livestock.
172A.3	Application for license.	172A.10	Injunctions — criminal penalties.
172A.4	Proof of financial responsibility required.	172A.11	Suspension of license.
172A.5	Bonded packers registration.	172A.12	Revocation of license.
172A.6	Low volume dealers exempt from license and bond.	172A.13	Rules.
172A.7	Access to records.	172A.14	Reserved.
		172A.15	through 172A.18 Transferred to §163.34 – 163.37.

#### 172A.1 Definitions.

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

1. “Agent” means a person engaged in the buying or soliciting in this state of livestock for slaughter exclusively on behalf of a dealer or broker.
2. “Animals” or “livestock” includes cattle, calves, swine, sheep, goats, turkeys, chickens, or horses.
3. “Dealer” or “broker” means any person, other than an agent, who is engaged in this state in the business of slaughtering live animals or receiving, buying or soliciting live animals for slaughter, the meat products of which are directly or indirectly to be offered for resale or for public consumption.
4. “Person” means an individual, partnership, association or corporation, or any other business unit.

[C73, 75, 77, 79, 81, §172A.1]

86 Acts, ch 1245, §623; 2012 Acts, ch 1095, §61

Further definitions; see §159.1

#### 172A.2 License required.

No person shall act as a dealer or broker without first being licensed. No person shall act for any dealer or broker as an agent unless such dealer or broker is licensed, has designated such agent to act in the dealer’s or broker’s behalf, and has notified the secretary of the designation in the dealer’s or broker’s application for license or has given official notice in writing of the appointment of the agent and the secretary has issued to the agent an agent’s license. A dealer or broker shall be accountable and responsible for contracts made by an agent in the

course of the agent's employment. The license of an agent whose employment by the dealer or broker is terminated shall be void on the date written notice of termination is received by the secretary. The license of a dealer, broker, or agent, unless revoked, shall expire on the last day of June following the date of issue. The annual fee for the license of a dealer or broker is fifty dollars. The annual fee for an agent's license is ten dollars.

No person may be issued a license if that person previously has had a license revoked, or previously was issued a license and the secretary suspended that license, unless the order of suspension or revocation is thereafter terminated by the secretary.

[C73, 75, 77, 79, 81, §172A.2]

### **172A.3 Application for license.**

Application for a license as a dealer or broker or as an agent shall be made in writing to the department. The application shall state the nature of the business, the municipal corporation, township and county, the post office address at which the business is to be conducted, and such additional information as the department may prescribe.

The applicant upon satisfying the department of the applicant's character and good faith in seeking to engage in such business and upon complying with such other requirements specified in this chapter, shall be issued by the department a license to conduct the business of a dealer, broker, or agent at the place named in the application.

[C73, 75, 77, 79, 81, §172A.3]

### **172A.4 Proof of financial responsibility required.**

1. A license shall not be issued by the secretary to a dealer or broker until the applicant has furnished proof of financial responsibility as provided in this section. The proof may be in the following forms:

a. (1) A bond of a surety company authorized to do business in the state of Iowa in the form prescribed by and to the satisfaction of the secretary, conditioned for the payment of a judgment against the applicant furnishing the bond because of nonpayment of obligations in connection with the purchase of animals.

(a) The amount of bond for an established dealer or broker who does not maintain a business location in this state shall be not less than the nearest multiple of five thousand dollars above twice the average daily value of purchases of livestock originating in this state, handled by such applicant during the preceding twelve months or such parts thereof as the applicant was purchasing livestock. The bond of a person who does not maintain a business location in this state shall be conditioned for the payment only of those claims which arise from purchases of livestock originating in this state.

(b) The amount of bond for an established dealer or broker who maintains one or more business locations in this state shall be not less than the nearest multiple of five thousand dollars above twice the average daily value of purchases of livestock originating in this state handled by the applicant during the preceding twelve months or such parts thereof as the applicant was purchasing livestock. The bond of a person who maintains one or more business locations in this state shall be conditioned for the payment only of those claims which arise from purchases of livestock originating in this state.

(c) If a new dealer or broker not previously covered by this chapter applies for a license, the amount of bond shall be based on twice the estimated average daily value of purchases of livestock originating in this state.

(d) For the purpose of computing average daily value, two hundred sixty is deemed the number of business days in a year.

(e) Whenever a dealer or broker's weekly purchases exceed one hundred fifty percent of the dealer's or broker's average weekly volume, the department shall require additional bond in an amount determined by the department.

(2) The licensee and surety of the bond shall be held and firmly bound unto the secretary as trustee for all persons who may be damaged because of nonpayment of obligations in connection with the purchase of animals originating in this state. Any person damaged because of such nonpayment may maintain suit in the person's own behalf to recover on the bond, even though not named as a party to the bond.

(3) For purposes of this paragraph “a”, “*purchases of livestock originating in this state*” shall not include purchases by dealers or brokers from their subsidiaries.

b. A bond equivalent may be filed in lieu of a bond. The bond equivalent shall be in the form of a trust agreement and the fund of the trust shall be in the form of fully negotiable obligations of the United States or certificates of deposit insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

(1) The trust agreement shall be in the form prescribed by the secretary and executed to the satisfaction of the secretary. The trustee of the trust agreement shall be an institution located in this state in which the funds are invested or deposited.

(2) The trust agreement shall provide as beneficiary, the secretary for the benefit of those persons damaged because of nonpayment of obligations in connection with the purchase of animals originating in this state. The fund in trust shall be an amount calculated in the exact manner as provided in paragraph “a”. The fund in trust shall not be subject to attachment for any other claim, or to levy of execution upon a judgment based on any other claim.

c. A person who is not a resident of this state and who either maintains no business location in this state or maintains one or more business locations in this state, and a person who is a resident of this state and who maintains more than one business location in this state, may submit a consolidated proof of financial responsibility. The consolidated proof of financial responsibility shall consist of a bond or a trust agreement meeting all of the requirements of this section, except that the calculation of the amount of the bond or the amount of the trust fund shall be based on the average daily value of all purchases of livestock originating in this state. A person who submits consolidated proof of financial responsibility shall maintain separate records for each business location, and shall maintain such other records respecting purchases of livestock as the secretary by rule shall prescribe.

2. a. Any person damaged by nonpayment of obligations or by any misrepresentation or fraud on the part of a broker or dealer may maintain an action against the broker or dealer, and the sureties on the bonds or the trustee of a trust fund. The aggregate liability of the sureties or the trust for all such damage shall not exceed the amount of the bond or trust. In the event that the aggregate claims exceed the total amount of the bond or trust, the amount payable on account of any claim shall be in the same proportion to the amount of the bond or trust as the individual claim bears to the aggregate claims.

b. Unless the person damaged files claim with the dealer or broker, and with the sureties or trustee, and with the department within ninety days after the date of the transaction on which the claim is based, the claimant shall be barred from maintaining an action on the bond or trust and from receiving any proceeds from the bond or trust.

3. Whenever the secretary determines that the business volume of the applicant or licensee is such as to render the bond or trust inadequate, the amount of the bond or trust shall be, upon notice, adjusted.

4. All bonds and trust agreements shall contain a provision requiring that at least thirty days’ prior notice in writing be given to the secretary by the party terminating the bond or trust agreement as a condition precedent to termination.

5. a. Whenever a bond or a trust agreement is to be terminated by a cancellation by the surety or trustee, the secretary shall cause to be published notices of the proposed cancellation not less than ten days prior to the date the cancellation is effective. The notices shall be published as follows:

(1) In the Iowa administrative code.

(2) In a newspaper of general circulation in the county in which the licensee maintains a business location, or if the licensee maintains no business location in this state, then in the county where the licensee transacts a substantial part of the licensee’s business.

(3) By general news release to all news media. Failure by the secretary to cause the publication of notice as required by this subparagraph shall not be deemed to prevent or delay the cancellation.

b. The termination of a bond or a trust agreement shall not release the parties from any liability arising out of the facts or transactions occurring prior to the termination date.

c. Trust funds shall not be withdrawn from trust by a licensee until the expiration of ninety days after the date of termination of the trust, and then only if no claims secured

by the agreement have been filed with the secretary. If any claims have been filed with the secretary, the withdrawal of funds by the licensee shall not be permitted until the claims have been satisfied or released and evidence of the satisfaction or release filed with the secretary.

[C73, 75, 77, 79, 81, §172A.4]  
2009 Acts, ch 41, §65

#### **172A.5 Bonded packers registration.**

A dealer or broker who has a bond required by the United States department of agriculture under the Packers and Stockyards Act of 1921 as amended, 7 U.S.C. § 181 – 231, shall be exempt from the provisions of this chapter upon registration with the secretary. Registration shall be effective upon filing with the secretary a certified copy of the bond filed with the United States department of agriculture, and shall continue in effect until that bond is terminated.

[C73, 75, 77, 79, 81, §172A.5]  
2010 Acts, ch 1061, §38

#### **172A.6 Low volume dealers exempt from license and bond.**

The license and financial responsibility provisions of this chapter do not apply to a person who is licensed as provided in chapter 137F who purchases livestock for slaughter valued at less than an average daily value of two thousand five hundred dollars during any period of the preceding twelve months. A person licensed under that chapter is subject to other provisions of this chapter, including the regulatory and penal provisions of this chapter.

The provisions of this chapter shall not apply to any other person who purchases livestock for slaughter valued at less than an average daily value of two thousand five hundred dollars based upon the preceding twelve months or such part thereof as the person was purchasing livestock.

[C73, 75, 77, 79, 81, §172A.6]  
98 Acts, ch 1032, §4; 98 Acts, ch 1162, §25, 30; 2000 Acts, ch 1100, §1

#### **172A.7 Access to records.**

Every dealer or broker shall during all reasonable times permit an authorized representative of the department to examine all records relating to the business necessary in the enforcement of this chapter.

[C73, 75, 77, 79, 81, §172A.7]

#### **172A.8 Reciprocal agreements.**

The department shall have the power and authority to enter into reciprocal agreements with the authorized representatives of other federal or state jurisdictions for the exchange of information and audit reports on a cooperative basis which may assist the department in the proper administration of this chapter.

[C73, 75, 77, 79, 81, §172A.8]

#### **172A.9 Payment for livestock.**

1. Each dealer, or broker purchasing livestock, before the close of the next business day following either the purchase of livestock or the determination of the amount of the purchase price, whichever is later, shall transmit or deliver to the seller or the seller's duly authorized agent the full amount of the purchase price. If livestock is bought on a yield or grade and yield basis, a dealer or broker shall upon the express request in writing of the seller, transmit or deliver to the seller or the seller's duly authorized agent before the close of the next business day following such purchase or delivery, whichever is later, up to eighty percent of the estimated purchase price, and pay the remaining balance on the next business day following the determination of the purchase price.

2. Payment to the seller shall be made by cash, check, or wire transfer of funds. If payment to the seller is by check, the check shall be drawn on a bank located in this state or on a bank located in an adjacent state and in the nearest city to Iowa in which a check processing center of a federal reserve bank district is located. For the purpose of this subsection, "wire transfer"

means any telephonic, telegraphic, electronic, or similar communication between the bank of the purchaser and the bank of the seller which results in the transfer of funds or credits of the purchaser to an account of the seller.

3. Provisions of this section may be modified by an agreement signed by both the buyer and the seller or their duly authorized agents at the time of the sale. However, such an agreement shall not be a condition of sale unless expressly requested by the seller.

4. Failure to comply with this section shall be a violation of this chapter.

[C77, 79, 81, §172A.9]

Referred to in §172A.11

#### **172A.10 Injunctions — criminal penalties.**

If any person who is required by this chapter to be licensed fails to obtain the required license, or if any person who is required by this chapter to maintain proof of financial responsibility, or if any licensee fails to discontinue engaging in licensed activities when that person's license has been suspended, such failure shall be deemed a nuisance and the secretary may bring an action on behalf of the state to enjoin such nuisance. Such actions may be heard on not less than five days' notice to the person whose activities are sought to be enjoined. The failure to obtain a license when required, or the failure to maintain proof of financial responsibility shall constitute a violation of this chapter.

Any person convicted of violating any provision of this chapter shall be guilty of a serious misdemeanor.

[C73, 75, §172A.9; C77, 79, 81, §172A.10]

Nuisances in general, chapter 657

Section not amended; editorial change applied

#### **172A.11 Suspension of license.**

1. *a.* The secretary shall have the authority to suspend the license of any dealer or broker or agent if upon hearing it is found that the dealer or broker or agent has committed any of the following acts or omissions:

- (1) Failure to submit a larger bond amount or trust fund when ordered by the secretary.
- (2) Failure to pay for purchases of livestock in the manner required by section 172A.9.

*b.* An order of suspension issued by the secretary shall be effective for an indefinite period, unless and until the person establishes to the satisfaction of the secretary that the person has taken reasonable precautions to prevent a recurrence of the act or omission in the future.

2. *a.* The secretary shall have the authority temporarily to suspend without hearing the license of any licensee in any of the following circumstances:

(1) The licensee fails to maintain proof of financial responsibility, or the surety on the licensee's bond loses its authorization to issue bonds in this state, or the trustee of a trust fund loses its authorization to engage in the business of a fiduciary.

(2) Claims are filed with the secretary against the bond or trust in an aggregate amount equal to ten percent or more of the amount of the bond.

*b.* A temporary suspension shall be effective on the date of issuance of the order of suspension, and until a revocation hearing has been held and the secretary either has entered an order of revocation of the license, or has terminated the order of suspension.

[C77, 79, 81, §172A.11]

2009 Acts, ch 41, §263

#### **172A.12 Revocation of license.**

1. The secretary shall have the authority to revoke the license of a dealer or broker or agent upon notice and hearing if any of the following conditions exist:

*a.* Grounds exist for the temporary suspension of the license without hearing, and it is established that the person is or will be unable to meet obligations to producers of livestock when due.

*b.* The person has refused access to the secretary to the books and records of the person as required by this chapter.

*c.* Any other conditions exist which in the opinion of the secretary reasonably establish

that it would be financially detrimental to livestock producers of this state to permit the person to engage in licensed activities in this state.

2. An order of revocation shall be effective upon the issuance of the order of revocation, and until the order is rescinded by the secretary, or until the decision of the secretary is reversed by a final order of a court of this state.

[C77, 79, 81, §172A.12]

**172A.13 Rules.**

The secretary is authorized to adopt rules pursuant to chapter 17A which are reasonable and necessary for the enforcement of this chapter.

[C77, 79, 81, §172A.13]

**172A.14** Reserved.

**172A.15 through 172A.18** Transferred to § 163.34 – 163.37.

## CHAPTER 172B

### LIVESTOCK TRANSPORTATION

Referred to in §166D.2, 331.653

172B.1	Definitions.	172B.4	Execution and retention of records.
172B.2	Transportation certificate exhibited — public offense.	172B.5	Authority of law enforcement officers.
172B.3	Form of certificate — substitutes.	172B.6	Offenses and penalties.

**172B.1 Definitions.**

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

1. “*Driver’s license*” means any license or permit issued to a person to operate a motor vehicle on the highways.
2. “*Law enforcement officer*” means a state patrol officer, a sheriff, or other peace officer so designated by this state or by a county or municipality.
3. “*Livestock*” means and includes live cattle, swine, sheep, horses, ostriches, rheas, or emus, and the carcasses of such animals whether in whole or in part.
4. “*Owner*” means a person having legal title to livestock.
5. “*Transportation certificate*” means the document specified in section 172B.3 and includes either the standard form prescribed by the secretary, or a substitute document the use of which has been authorized by the secretary.
6. “*Transporting livestock*” means being in custody of or operating a vehicle in this state, whether or not on a highway, in which are confined one or more head of livestock. Vehicle includes a truck, trailer, and other device used for the purpose of conveying objects, whether or not the device has motive power or is attached to a vehicle with motive power at the time the livestock are confined.

[C77, 79, 81, §172B.1]

86 Acts, ch 1245, §624; 90 Acts, ch 1230, §1; 95 Acts, ch 43, §6; 98 Acts, ch 1073, §9; 98 Acts, ch 1074, §18; 2005 Acts, ch 35, §31

Further definitions; see §159.1

**172B.2 Transportation certificate exhibited — public offense.**

A person transporting livestock shall execute in the presence of a law enforcement officer, at the request of the officer, a transportation certificate. A person who fails to comply with this section commits a public offense punishable as provided in section 172B.6. A person who

fails to execute a transportation certificate upon the request of the officer fails to comply with this section even though the person possesses a transportation certificate.

[C77, 79, 81, §172B.2]

Referred to in §172B.5, 172B.6

### **172B.3 Form of certificate — substitutes.**

1. *Duties of secretary.* The secretary, pursuant to chapter 17A, shall prescribe a standard form of the transportation certificate required by this chapter. Where the laws of this state or of the United States require the possession of another shipping document by a person transporting livestock, or where the industry practice of carriers requires the possession of a shipping document by a person transporting livestock, and where such a document contains all of the information other than signatures which is prescribed in subsection 2, upon application of a carrier the secretary by rule shall authorize the use of a specific document in lieu of the standard form prescribed by the secretary, but subject to any conditions the secretary may impose.

a. A person who is in possession of a shipping document approved by the secretary shall not be required to possess the standard form transportation certificate prescribed by the secretary, but the person may be required by a law enforcement officer to execute the standard form transportation certificate.

b. The form prescribed or authorized by the secretary shall be executed in triplicate, and shall be retained as provided in section 172B.4.

c. The secretary shall distribute, upon request, copies of the prescribed standard form to veterinarians, marketing agencies, carriers, law enforcement officers, and other persons, and may collect a fee from the recipient totaling not more than the cost of printing and postage. Nothing in this chapter shall be construed to prohibit a person from causing the reproduction of the standard form, and an accurate reproduction of a standard current form may be used as a transportation certificate for all purposes.

2. *Contents.* The transportation certificate shall contain the following information:

a. The date of execution of the certificate.

b. The name, driver's license number, and address of the owner of the livestock.

c. The name and address of the shipper if other than the owner.

d. The address of the loading point of the livestock, or the nearest post office and county.

e. The date of loading of the livestock.

f. The name and address of the purchaser, consignee, or other person receiving shipment.

g. The address of the destination of the livestock, or the nearest post office and county.

h. The name and address of the carrier or person transporting livestock.

i. The driver's license number of the person transporting livestock.

j. The vehicle registration plate number and the state of issuance.

k. The vehicle seal number, if any.

l. The form number and state of issuance of any certificate of veterinary inspection accompanying the livestock.

m. A description of the livestock including number, breed, sex, age, and brands, if any.

n. The signature of the owner or shipper, or the signature of the person transporting livestock, or the signatures of either the owner or shipper and the person transporting livestock.

[C77, 79, 81, §172B.3]

89 Acts, ch 202, §1; 90 Acts, ch 1230, §2; 98 Acts, ch 1073, §9; 2004 Acts, ch 1163, §31; 2009 Acts, ch 41, §204

Referred to in §172B.1, 172B.5

### **172B.4 Execution and retention of records.**

1. *Shipper.* A person who causes the transporting of livestock shall cause to be executed and to be delivered to the person transporting livestock, at the request of that person, duplicate copies of a transportation certificate.

2. *Transporter.* A person transporting livestock who has been given a receipt by a law

enforcement officer shall retain that receipt until the person relinquishes custody of the livestock.

3. *Law enforcement officer.*

a. A law enforcement officer, upon requesting and receiving a transportation certificate, shall retain a copy of the certificate and shall submit the certificate to the law enforcement agency by which the officer is employed.

b. The law enforcement officer shall give to the person transporting livestock, in a form prescribed by the commissioner of public safety or the commissioner's designee, a receipt for the certificate given to the officer. The commissioner of public safety may authorize the use of any method of giving receipt, including endorsement by the officer on the certificate retained by the person transporting livestock. The receipt shall make the law enforcement officer issuing the receipt identifiable by other law enforcement officers.

c. A law enforcement officer shall not retain a copy of the certificate if the person transporting livestock has a receipt issued by another law enforcement officer.

[C77, 79, 81, §172B.4]

2008 Acts, ch 1031, §38

Referred to in §172B.3, 172B.5, 172B.6

**172B.5 Authority of law enforcement officers.**

1. *Investigation.* A law enforcement officer may stop and detain a person, whether on or off a highway, who is transporting livestock for the purpose of obtaining compliance with section 172B.2, and the officer may request the presentation or execution of a transportation certificate. The officer may examine the livestock for identification, the vehicle for the purpose of obtaining the vehicle registration plate number, and the registration of the vehicle and the driver's license of the driver or person detained. However, nothing in this chapter shall be construed to authorize any law enforcement officer to open or require the opening of the cargo compartment of any vehicle manufactured for use in carrying refrigerated cargo when both the cargo is actually under refrigeration at the time the vehicle is detained by the law enforcement officer, and the person operating the vehicle has in possession when stopped a valid transportation certificate or approved shipping document which was executed by the shipper and which identifies the cargo as processed livestock and otherwise complies with section 172B.3, subsection 2.

2. *Execution of certificate.* If the person transporting livestock does not possess a completed transportation certificate, or if in the opinion of the officer the form possessed is improper, the officer may provide the person with a blank standard form, and may request that the person execute the form, including the person's signature. The person shall be permitted to view any documents in the person's possession for the purpose of completing the form. Except as provided in section 172B.4, the officer shall retain a copy of the certificate and shall give the person a receipt for that certificate.

3. *Detention.* A law enforcement officer may detain a person transporting livestock for a reasonable period of time not to exceed thirty minutes for the purpose of verifying any information obtained by the officer.

4. *Arrest.* A detention for the purposes of subsections 1, 2 and 3 shall not constitute an arrest. If the law enforcement officer has probable cause to believe that the person transporting livestock has committed a public offense, the officer may place the person under arrest. The officer may require the person to move the vehicle to a place determined by the officer, or the officer may make other provisions for the vehicle and the livestock, as the officer shall determine. If the owner of the livestock is not available, the officer is authorized to incur reasonable expense for the care of the livestock which expense shall be charged to and paid by the owner of the livestock.

[C77, 79, 81, §172B.5]

90 Acts, ch 1230, §3; 98 Acts, ch 1073, §9

**172B.6 Offenses and penalties.**

1. A person who is convicted of violating section 172B.2 shall be guilty of a simple misdemeanor.

2. A person who makes or utters a transportation certificate with knowledge that some or all of the information contained in the certificate is false, or a person who alters, forges, or counterfeits a transportation certificate, or the receipt prescribed in section 172B.4, commits a class “C” felony.

[C77, 79, 81, §172B.6]  
 Referred to in §172B.2

## CHAPTER 172C

RESERVED

## CHAPTER 172D

### LIVESTOCK FEEDLOTS

Referred to in §657.8

172D.1	Definitions.	172D.3	Compliance with rules of the department.
172D.2	Compliance — a defense to nuisance actions.	172D.4	Compliance with zoning requirements.

#### 172D.1 Definitions.

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

1. “City” means a municipal corporation, but not including a county, township, school district, or any special-purpose district or authority.

2. “Department” means the department of environmental quality in a reference to a time before July 1, 1983, the department of water, air and waste management in a reference to a time on or after July 1, 1983, and through June 30, 1986, and the department of natural resources on or after July 1, 1986, and includes any officer or agency within that department.

3. “Established date of operation” means the date on which a feedlot commenced operating with not more livestock than reasonably could be maintained by the physical facilities existing as of that date. If the physical facilities of the feedlot are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent “established date of operation” established as of this date of commencement of the expanded operations, and the commencement of expanded operations shall not divest the feedlot of a previously established date of operation.

4. “Established date of ownership” means the date of the recording of an appropriate muniment of title establishing the ownership of realty.

5. “Establishment cost of a feedlot” means the cost or value of the feedlot on its established date of operation and includes the cost or value of the building, machinery, vehicles, equipment or other real or personal property used in the operation of the feedlot.

6. “Feedlot” means a lot, yard, corral, or other area in which livestock are confined, primarily for the purposes of feeding and growth prior to slaughter. The term does not include areas which are used for the raising of crops or other vegetation and upon which livestock are allowed to graze or feed.

7. A rule pertaining to “feedlot design standards” means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds in excess of two percent of the establishment cost of the feedlot.

8. A rule pertaining to “feedlot management standards” means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds not in excess of two percent of the establishment cost of the feedlot.

9. “Livestock” means cattle, sheep, swine, ostriches, rheas, emus, poultry, and other

animals or fowl, which are being produced primarily for use as food or food products for human consumption.

10. “*Materially affects*” means prohibits or regulates with respect to the location, or the emission of noise, effluent, odors, sewage, waste, or similar products resulting from the operation or the location or use of buildings, machinery, vehicles, equipment, or other real or personal property used in the operation, of a livestock feedlot.

11. “*Nuisance*” means and includes public or private nuisance as defined either by statute or by the common law.

12. “*Nuisance action or proceeding*” means and includes every action, claim or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

13. “*Owner*” shall mean the person holding record title to real estate to include both legal and equitable interests under recorded real estate contracts.

14. “*Rule of the department*” means a rule as defined in section 17A.2 which materially affects the operation of a feedlot and which has been adopted by the department. The term includes a rule which was in effect prior to July 1, 1975. Except as specifically provided in section 172D.3, subsection 2, paragraph “b”, subparagraph (5) and paragraph “c”, subparagraph (5) nothing in this chapter shall be deemed to empower the department to make any rule.

15. “*Zoning requirement*” means a regulation or ordinance, which has been adopted by a city, county, township, school district, or any special-purpose district or authority, and which materially affects the operation of a feedlot. Nothing in this chapter shall be deemed to empower any agency described in this subsection to make any regulation or ordinance.

[C77, 79, 81, §172D.1; 82 Acts, ch 1199, §92, 96]

84 Acts, ch 1219, §7; 89 Acts, ch 83, §31; 95 Acts, ch 43, §7

Referred to in §203.1

Further definitions, see §159.1

### **172D.2 Compliance — a defense to nuisance actions.**

In any nuisance action or proceeding against a feedlot brought by or on behalf of a person whose date of ownership of realty is subsequent to the established date of operation of that feedlot, proof of compliance with sections 172D.3 and 172D.4 shall be an absolute defense, provided that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with either section 172D.3 or 172D.4.

[C77, 79, 81, §172D.2]

### **172D.3 Compliance with rules of the department.**

1. *Requirement.* A person who operates a feedlot shall comply with applicable rules of the department. The applicability of a rule of the department shall be as provided in subsection 2. A person complies with this section as a matter of law where no rule of the department exists.

2. *Applicability of rules.*

a. *Exclusion for federally mandated requirements.* This section shall apply to the department’s rules except for rules required for delegation of the national pollutant discharge elimination system permit program pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pt. 124.

b. *Applicability of rules of the department other than those relating to air quality under chapter 455B, division II, and chapter 459, subchapter II.*

(1) A rule of the department in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

(2) A rule of the department shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the department adopted after November 1, 1976, does not apply to a feedlot holding a wastewater permit from the department and having an established date of operation prior to the effective date of the rule until either the expiration of the term of the permit in

effect on the effective date of the rule, or ten years from the established date of operation of the feedlot, whichever time period is greater.

(4) A rule of the department adopted after November 1, 1976, does not apply to a feedlot not previously required to hold a wastewater permit from the department and having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or five years from the effective date of the rule, whichever time period is greater.

(5) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule.

c. Applicability of rules of the department relating to air quality under chapter 455B, division II, and chapter 459, subchapter II.

(1) A rule of the department under chapter 455B, division II, in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

(2) A rule of the department under chapter 455B, division II, or chapter 459, subchapter II, shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the department under chapter 455B, division II, or chapter 459, subchapter II, pertaining to feedlot management standards adopted after November 1, 1976, shall not apply to any feedlot having an established date of operation prior to the effective date of the rule until one year after the effective date of the rule.

(4) A rule of the department under chapter 455B, division II, or chapter 459, subchapter II, pertaining to feedlot design standards adopted after November 1, 1976, shall not apply to any feedlot having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or two years from the effective date of the rule, whichever time period is greater. However, any design standard rule pertaining to the siting of any feedlot shall apply only to a feedlot with an established date of operation subsequent to the effective date of the rule.

(5) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule.

[C77, 79, 81, §172D.3]

84 Acts, ch 1219, §8; 2003 Acts, ch 108, §42; 2010 Acts, ch 1061, §39

Referred to in §172D.1, 172D.2

#### **172D.4 Compliance with zoning requirements.**

1. *Requirement.* A person who operates a feedlot shall comply with applicable zoning requirements. The applicability of a zoning requirement shall be as provided in subsection 2 of this section. A person complies with this section as a matter of law where no zoning requirement exists.

##### *2. Applicability.*

a. A zoning requirement shall apply to a feedlot with an established date of operation subsequent to the effective date of the zoning requirement.

b. A zoning requirement, other than one adopted by a city, shall not apply to a feedlot with an established date of operation prior to the effective date of the zoning requirement for a period of ten years from the effective date of that zoning requirement.

c. A zoning requirement which is in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

d. A zoning requirement adopted by a city shall apply to a feedlot located within an incorporated or unincorporated area which is subject to regulation by that city as of November 1, 1976, regardless of the established date of operation of the feedlot.

e. A zoning requirement adopted by a city shall not apply to a feedlot which becomes located within an incorporated or unincorporated area subject to regulation by that city by virtue of an incorporation or annexation which takes effect after November 1, 1976 for a period of ten years from the effective date of the incorporation or annexation.

[C77, 79, 81, §172D.4]

Referred to in §172D.2

## CHAPTER 172E

## DAIRY CATTLE SOLD FOR SLAUGHTER

172E.1	Definitions.	172E.3	Penalties.
172E.2	Marketing practices — dairy cattle sold for slaughter.		

**172E.1 Definitions.**

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

1. “*Dairy cattle*” means cattle belonging to a breed that is used to produce milk for human consumption, including but not limited to Holstein and Jersey breeds.
2. “*Livestock*” means the same as defined in section 717.1.
3. “*Livestock market*” means any place where livestock are assembled from two or more sources for public auction, private sale, or sale on a commission basis, which is under state or federal supervision, including a livestock auction market, if such livestock are kept in the place for ten days or less.
4. “*Packer*” means a person who is engaged in the business of slaughtering livestock or receiving, purchasing, or soliciting livestock for slaughter. As used in this chapter, “*packer*” includes an agent of the packer engaged in buying or soliciting livestock for slaughter on behalf of a packer.

2001 Acts, ch 101, §6; 2001 Acts, ch 176, §63

**172E.2 Marketing practices — dairy cattle sold for slaughter.**

1. If a livestock market accepts dairy cattle upon condition that the dairy cattle are to be moved directly to slaughter, the dairy cattle shall be segregated with other livestock to be moved directly to slaughter until sold to a packer. A person shall not knowingly sell the dairy cattle to a purchaser other than to a packer at the livestock market. A person other than a packer shall not knowingly purchase the dairy cattle at the livestock market.
2. This section shall not supersede requirements relating to the movement or marketing of livestock infected with an infectious or contagious disease, including but not limited to those diseases enumerated in section 163.2.

2001 Acts, ch 101, §7; 2002 Acts, ch 1100, §1

Referred to in §172E.3

**172E.3 Penalties.**

1. The department, with assistance by the attorney general, shall have the same authority to enforce this chapter as it does under chapter 165A. A person who violates section 172E.2 is subject to the same penalties as provided in section 165A.5.
2. This section does not prevent a person from commencing a civil cause of action based on any right that the person may assert under statute or common law.

2001 Acts, ch 101, §8

## SUBTITLE 3

### AGRICULTURAL DEVELOPMENT AND MARKETING

Referred to in §159.1, 159.5

## CHAPTER 173

### STATE FAIR

Referred to in §8.32, 8A.502, 163.32, 165B.5, 174.2, 307A.2, 423.3, 717E.1, 717F.7

173.1	State fair authority.	173.14	Functions of the board.
173.1A	Definitions.	173.14A	General corporate powers of the authority.
173.2	Convention.	173.14B	Bonds and notes.
173.3	Certification of state aid associations.	173.15	Management of state fair.
173.4	Voting power — election of district directors.	173.16	Maintenance of state fair.
173.4A	State fair board districts.	173.17	Claims.
173.5	Duties of the convention.	173.18	Warrants.
173.6	Terms of office.	173.19	Examination of financial affairs.
173.7	Vacancies.	173.20	Report.
173.8	Compensation and expenses.	173.21	Annual report to governor.
173.9	Secretary.	173.22	Iowa state fair foundation — foundation fund.
173.10	Salary of secretary.	173.22A	Iowa state fairgrounds trust fund.
173.11	Treasurer.	173.23	Lien on property.
173.12	Salary of treasurer. Repealed by 2011 Acts, ch 131, §131, 158.	173.24	Exemption of state fair by the state's purchasing procedures.
173.13	Executive committee — meetings.		

#### 173.1 State fair authority.

The Iowa state fair authority is established as a public instrumentality of the state. The authority is not an agency of state government. However, the authority is considered a state agency and its employees state employees for the purposes of chapters 17A, 20, 91B, 97B, 509A, and 669. The authority is established to conduct an annual state fair and exposition on the Iowa state fairgrounds and to conduct other interim events consistent with its rules. The powers of the authority are vested in the Iowa state fair board. The Iowa state fair board consists of the following:

1. The governor of the state, the secretary of agriculture, and the president of the Iowa state university of science and technology or their qualified representatives.
2. Two district directors from each state fair board district to be elected at a convention as provided in section 173.4.
3. A president and vice president to be elected by the state fair board from the elected directors.
4. A treasurer to be elected by the board from the elected directors.

5. A secretary to be appointed by the board who shall serve as a nonvoting member. [S13, §1657-c; C24, 27, 31, 35, 39, §2873; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.1; 81 Acts, ch 67, §1]

86 Acts, ch 1245, §625, 626; 87 Acts, ch 233, §225; 91 Acts, ch 248, §1, 2; 95 Acts, ch 13, §2; 98 Acts, ch 1114, §1; 2001 Acts, ch 29, §1; 2010 Acts, ch 1069, §22; 2011 Acts, ch 131, §130, 158

Referred to in §99D.13, 173.1A

#### 173.1A Definitions.

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

1. “*Board*” means the Iowa state fair board as provided in section 173.1.
2. “*Convention*” means the convention held each year, to elect members of the state fair board and conduct other business of the board, as provided in section 173.2.

3. “*District director*” means a director of the Iowa state fair board who represents a state fair board district.

4. “*State fair board district*” or “*district*” means any of the six geographic regions established in section 173.4A.

2001 Acts, ch 29, §2; 2002 Acts, ch 1119, §25

### **173.2 Convention.**

A convention shall be held at a time and place in Iowa to be designated by the Iowa state fair board each year, to elect members of the state fair board and conduct other business of the board. The board shall give sixty days’ notice of the location of the convention to all agricultural associations and persons eligible to attend. The convention shall be composed of:

1. The members of the state fair board as then organized.

2. The president or secretary of each county or district agricultural society entitled to receive aid from the state, or a regularly elected delegate therefrom accredited in writing, who shall be a resident of the county.

3. One delegate, a resident of the county, to be appointed by the board of supervisors in each county where there is no such society, or when such society fails to report to the association of Iowa fairs in the manner provided by law as a basis for state aid. The association shall promptly report such failure to the county auditor.

[R60, §1701, 1704; C73, §1103, 1112; C97, §1653, 1661; S13, §1657-d; SS15, §1661-a; C24, 27, 31, 35, 39, §2874; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.2; 81 Acts, ch 67, §2 – 4]

87 Acts, ch 115, §29; 96 Acts, ch 1028, §1; 98 Acts, ch 1114, §2; 99 Acts, ch 204, §28

Referred to in §173.1A, 173.3, 174.2, 174.12, 331.321

### **173.3 Certification of state aid associations.**

On or before November 15 of each year, the secretary of agriculture shall certify to the secretary of the state fair board the names of the various associations, fairs, and societies which have qualified for state aid under the provisions of chapters 176A through 178, 181, 182, 186, and 352, and which are entitled to representation in the convention as provided in section 173.2.

[C24, 27, 31, 35, 39, §2875; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.3]

90 Acts, ch 1009, §2; 98 Acts, ch 1032, §5; 2002 Acts, ch 1017, §3, 8; 2003 Acts, ch 44, §43, 116; 2004 Acts, ch 1019, §5

### **173.4 Voting power — election of district directors.**

1. Except as provided in this subsection, each member present at the convention shall be entitled to not more than one vote. A member shall not vote by proxy.

2. A successor to a district director shall be elected by a majority of convention members from the same state fair board district as the district director, according to rules adopted by the convention. A member who is also a district director shall not be entitled to vote for a successor to a district director.

[S13, §1657-d; C24, 27, 31, 35, 39, §2876; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.4]

91 Acts, ch 248, §3; 98 Acts, ch 1114, §3; 2001 Acts, ch 29, §3

Referred to in §173.1, 173.5

### **173.4A State fair board districts.**

The state shall be divided into six geographic regions known as state fair board districts. The regions shall include all of the following:

1. The northwest state fair board district which shall contain all of the following counties: Buena Vista, Calhoun, Cherokee, Clay, Dickinson, Emmet, Ida, Lyon, O’Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, and Woodbury.

2. The north central state fair board district which shall contain all of the following counties: Boone, Butler, Cerro Gordo, Floyd, Franklin, Grundy, Hamilton, Hancock,

Hardin, Humboldt, Kossuth, Marshall, Mitchell, Story, Tama, Webster, Winnebago, Worth, and Wright.

3. The northeast state fair board district which shall contain all of the following counties: Allamakee, Benton, Black Hawk, Bremer, Buchanan, Chickasaw, Clayton, Delaware, Dubuque, Fayette, Howard, Jackson, Jones, Linn, and Winneshiek.

4. The southwest state fair board district which shall contain the following counties: Adair, Adams, Audubon, Carroll, Cass, Crawford, Fremont, Greene, Guthrie, Harrison, Mills, Monona, Montgomery, Page, Pottawattamie, Shelby, and Taylor.

5. The south central state fair board district which shall contain the following counties: Appanoose, Clarke, Dallas, Decatur, Jasper, Lucas, Madison, Mahaska, Marion, Monroe, Polk, Poweshiek, Ringgold, Union, Warren, and Wayne.

6. The southeast state fair board district which shall contain the following counties: Cedar, Clinton, Davis, Des Moines, Henry, Iowa, Jefferson, Johnson, Keokuk, Lee, Louisa, Muscatine, Scott, Van Buren, Wapello, and Washington.

2001 Acts, ch 29, §4

Referred to in §173.1A

### **173.5 Duties of the convention.**

1. The convention shall establish staggered terms of office for the elected directors. Notwithstanding section 173.6, the convention may establish terms of office for initial elected directors for more or less than two years.

2. Each year, the convention shall elect a successor to one of the two district directors whose term expires following the adjournment of the convention, as provided in section 173.4.

3. The Iowa state fair board shall present a financial report to the convention. The report is not required to include an audit, but shall provide an estimate of the accounts under the authority of the board.

[R60, §1700; C73, §1104; C97, §1654; S13, §1657-e; C24, 27, 31, 35, 39, §2877; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.5]

91 Acts, ch 248, §4; 96 Acts, ch 1028, §2; 98 Acts, ch 1114, §4; 2001 Acts, ch 29, §5

### **173.6 Terms of office.**

The term of the president and vice president of the board shall be one year. A person shall not hold the office of president for more than three consecutive years, plus any portion of a year in which the person was first elected by the board to fill a vacancy.

A member of the board who is a district director shall serve a term of two years. The term of a district director shall begin following the adjournment of the convention at which the district director was elected and shall continue until a successor is elected and qualified as provided in this chapter.

[R60, §1700; C73, §1104; C97, §1654; S13, §1657-e; C24, 27, 31, 35, 39, §2878; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.6]

91 Acts, ch 248, §5; 98 Acts, ch 1114, §5; 99 Acts, ch 96, §18; 2001 Acts, ch 29, §6

Referred to in §173.5

### **173.7 Vacancies.**

If, after the adjournment of the convention, a vacancy occurs in the office of any member of the board elected by the convention the board shall fill the vacancy by election. The elected member shall qualify at once and serve until noon of the day following the adjournment of the next convention. If, by that time, the member elected by the board will not have completed the full term for which the member's predecessor was elected, the convention shall elect a member to serve for the unexpired portion of the term. The member elected by the convention shall qualify at the same time as other members elected by the convention.

[S13, §1657-e; C24, 27, 31, 35, 39, §2879; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.7]

91 Acts, ch 248, §6

**173.8 Compensation and expenses.**

A member of the board elected at the annual convention shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses incurred while engaged in official duties. All per diem and expense moneys paid to a member shall be paid from funds of the state fair board.

[S13, §1657-p; C24, 27, 31, 35, 39, §2880; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.8]

90 Acts, ch 1256, §32

**173.9 Secretary.**

The board shall appoint a secretary who shall serve at the pleasure of the board. The secretary shall do all of the following:

1. Administer the policies set by the board.
2. Employ other employees and agents as the secretary deems necessary for carrying out the policies of the board and to conduct the affairs of the state fair. The secretary may fix the duties and compensation of any employees or agents with the approval of the board.
3. Keep a complete record of the annual convention and of all meetings of the board.
4. Draw all warrants on the treasurer of the board and keep a correct account of them.
5. Perform other duties as the board directs.

[R60, §1700, 1703; C73, §1104, 1107; C97, §1654, 1656; S13, §1657-k; C24, 27, 31, 35, 39, §2881; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.9]

86 Acts, ch 1245, §627; 87 Acts, ch 233, §226; 93 Acts, ch 176, §34

**173.10 Salary of secretary.**

The compensation and employment terms of the secretary shall be set by the Iowa state fair board with the approval of the governor, taking into consideration the level of knowledge and experience of the secretary.

[S13, §1657-n; C24, 27, 31, 35, 39, §2882; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.10]

87 Acts, ch 233, §227; 2008 Acts, ch 1191, §24

**173.11 Treasurer.**

The board shall elect a treasurer who shall hold office for one year, and the treasurer shall:

1. Keep a correct account of the receipts and disbursements of all moneys belonging to the board.
2. Make payments on all warrants signed by the president and secretary from any funds available for such purpose.
3. Administer the foundation fund under the control of the Iowa state fair foundation, as directed by the board in its capacity as the board of the Iowa state fair foundation. The treasurer shall administer the fund in accordance with procedures of the treasurer of state, and maintain a correct account of receipts and disbursements of assets of the foundation fund.

[R60, §1700; C73, §1104; C97, §1654; S13, §1657-o; C24, 27, 31, 35, 39, §2883; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.11]

91 Acts, ch 132, §1; 91 Acts, ch 248, §7; 2011 Acts, ch 79, §3; 2012 Acts, ch 1021, §48

**173.12 Salary of treasurer.** Repealed by 2011 Acts, ch 131, § 131, 158.

**173.13 Executive committee — meetings.**

The president, vice president, and secretary shall constitute an executive committee, which shall transact such business as may be delegated to it by the board. The president may call meetings of the board or executive committee when the interests of the work require it.

[R60, §1104; C73, §1700; C97, §1654; S13, §1657-h; C24, 27, 31, 35, 39, §2885; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.13]

**173.14 Functions of the board.**

The state fair board has the custody and control of the state fairgrounds, including the buildings and equipment on it belonging to the state, and may:

1. Hold an annual fair and exposition on those grounds. All revenue generated by the fair and any interim uses shall be retained solely by the board.
  2. Prepare premium lists and establish rules of exhibitors for the fair which shall be published by the board not later than sixty days prior to the opening of the fair.
  3. Grant a written permit to persons as it deems proper to sell fruit, provisions, and other lawful articles under rules the board prescribes.
  4. Appoint, as the president deems necessary, security personnel and peace officers qualified according to standards adopted by the board.
  5. Take and hold property by gift, devise, or bequest for fair purposes. The president, secretary, and treasurer of the board shall have custody and control of the property, subject to the action of the board. Those officers shall give bonds as required in the case of executors, to be approved by the board and filed with the secretary of state.
  6. Erect and repair buildings on the grounds and make other necessary improvements.
  7. Grant written permission to persons to use the fairgrounds when the fair is not in progress.
  8. Take, acquire, hold, and dispose of property by deed, gift, devise, bequest, lease, or eminent domain. The title to real estate acquired under this subsection and improvements erected on the real estate shall be taken and held in the name of the state of Iowa and shall be under the custody and control of the board. In the exercise of the power of eminent domain the board shall proceed in the manner provided in chapters 6A and 6B.
  9. Solicit and accept contributions from private sources for the purpose of financing and supporting the fair.
  10. Make an agreement with the department of public safety to provide for security during the annual fair and exposition and interim events.
  11. Administer the Iowa state fair foundation created in section 173.22 in its capacity as the board of the Iowa state fair foundation.
    - a. The board shall administer the foundation fund by authorizing all payments from the foundation fund. The board on behalf of the foundation fund may contract, sue and be sued, and adopt rules necessary to carry out the provisions of this subsection, but the board in administering the foundation fund shall not in any manner, directly or indirectly, pledge the credit of the state.
    - b. The board shall administer the Iowa state fairgrounds trust fund as trustees of an institutional endowment fund as provided in section 173.22A.
- [R60, §1702; C73, §1106; C97, §1655; S13, §1657-i, -j, -r; C24, 27, 31, 35, 39, §2886; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.14]  
 83 Acts, ch 195, §23; 86 Acts, ch 1244, §28; 87 Acts, ch 233, §228; 88 Acts, ch 1055, §1; 91 Acts, ch 132, §2; 91 Acts, ch 248, §8; 2011 Acts, ch 79, §4

**173.14A General corporate powers of the authority.**

The authority has all of the general corporate powers needed to carry out its purposes and duties, and to exercise its specific powers including, but not limited to, the power to:

1. Issue its negotiable bonds and notes as provided in this chapter.
  2. Sue and be sued in its own name.
  3. Have and alter a corporate seal.
  4. Make and alter bylaws for its management consistent with this chapter.
  5. Make and execute agreements, contracts, and other instruments, with any public or private entity.
  6. Accept appropriations, gifts, grants, loans, or other aid from public or private entities.
  7. Make, alter, and repeal rules consistent with this chapter, subject to chapter 17A.
- 87 Acts, ch 233, §229

**173.14B Bonds and notes.**

1. The board may issue and sell negotiable revenue bonds of the authority in

denominations and amounts as the board deems for the best interests of the fair. However, the board must first submit a list of the purposes ranked by priority and a purpose must be authorized by a constitutional majority of each house of the general assembly and approved by the governor. A purpose must be one of the following:

- a. To acquire real estate to be devoted to uses for the fair.
- b. To pay any expenses or costs incidental to a building or repair project.
- c. To provide sufficient funds for the advancement of any of its corporate purposes.

2. The board may issue negotiable bonds and notes of the authority in principal amounts which are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes, and all other expenditures of the board incident to and necessary or convenient to carry out its purposes and powers, subject to authorization and approval required under subsection 1. However, the total principal amount of bonds and notes outstanding at any time under subsection 1 and this subsection shall not exceed twenty-five million dollars. The bonds and notes are deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code, chapter 554.

3. Bonds and notes are payable solely out of the moneys, assets, or revenues of the authority and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets, or revenues. Bonds or notes are not an obligation of this state or its political subdivisions other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely from sources provided in this chapter, and the authority shall not pledge the credit or taxing power of this state or its political subdivisions other than the authority or make its debts payable out of any moneys except those of the authority.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered, and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or its political subdivisions other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the board prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the president or vice president, attested by the manual or facsimile signature of the secretary, have impressed or imprinted on it the seal of the authority or facsimile of it, and coupons attached shall be signed with the facsimile signature of the president or vice president, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance, at places and with reserved rights of prior redemption, as the board prescribes, be sold at prices, at public or private sale, and in a manner as the board prescribes, and the board may pay all expenses, premiums, and commissions which it deems necessary or advantageous in connection with the issuance and sale; and be issued subject to the terms, conditions, and covenant providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the board for the most advantageous sale, which may include, but are not limited to, covenants with the holders of the bonds as to those matters set forth in section 16.26, subsection 4, paragraph "b".

5. The board may issue bonds of the authority for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of the bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with this chapter. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned

or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding bonds shall be issued and secured and subject to this chapter in the same manner and to the same extent as other bonds.

6. The board may issue negotiable bond anticipation notes of the authority and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged or from the proceeds of the sale of bonds in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as bonds and notes and the resolution of the board may contain any provisions, conditions, or limitations, not inconsistent with this subsection, which the bonds or a bond resolution of the board may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders have all the remedies provided in this chapter for bondholders. Notes shall be as fully negotiable as bonds of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each bond resolution, indenture of trust, or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under article 9 of the uniform commercial code as provided in chapter 554, or any other law of the state is required to perfect the security interest in the collateral or any additions to it or substitutions for it, and the lien and trust so created is binding from and after the time it is made against all parties having claims of any kind in tort, contract, or otherwise against the pledgor.

8. Members of the board and any person executing the authority's bonds, notes, or other obligations are not liable personally on the bonds, notes, or other obligations or subject to personal liability or accountability by reason of the issuance of the authority's bonds or notes.

9. The board shall publish a notice of intention to issue bonds or notes in a newspaper published and of general circulation in the state. The notice shall include a statement of the maximum amount of bonds or notes proposed to be issued, and in general, what net revenues will be pledged to pay the bonds or notes and interest on them. An action shall not be brought questioning the legality of the bonds or notes, the power of the board to issue the bonds or notes, or the legality of any proceedings in connection with the authorization or issuance of the bonds or notes after sixty days from the date of publication of the notice.

87 Acts, ch 233, §230; 91 Acts, ch 268, §228, 229; 94 Acts, ch 1198, §36; 2005 Acts, ch 3, §44

#### **173.15 Management of state fair.**

The board may delegate the management of the state fair to the executive committee and two or more additional members of the board; and in carrying on such fair it may employ such assistance as may be deemed necessary.

[S13, §1657-i; C24, 27, 31, 35, 39, §2887; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.15]

#### **173.16 Maintenance of state fair.**

All expenses incurred in maintaining the state fairgrounds and in conducting the annual fair on it, including the compensation and expenses of the officers, members, and employees of the board, shall be recorded by the secretary and paid from the state fair receipts, unless a specific appropriation has been provided for that purpose. The board may request special capital improvement appropriations from the state and may request emergency funding from the executive council for natural disasters. The board may request that the department of transportation provide maintenance in accordance with section 307A.2, subsection 11.

In order to efficiently administer facilities and events on the state fairgrounds, and to

promote Iowa's conservation ethic, the Iowa state fair board shall handle or dispose of waste generated on the state fairgrounds under supervision of the department of natural resources.

[S13, §1657-i, -t; C24, 27, 31, 35, 39, §2888; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.16]

87 Acts, ch 233, §231; 89 Acts, ch 311, §25; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §2; 2002 Acts, ch 1162, §36

#### **173.17 Claims.**

The board shall prescribe rules for the presentation and payment of claims out of the state fair receipts and other funds of the board and no claim shall be allowed which does not comply therewith.

[C24, 27, 31, 35, 39, §2889; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.17]

#### **173.18 Warrants.**

No claim shall be paid by the treasurer except upon a warrant signed by the president and secretary of the board, but this section shall not apply to the payment of state fair premiums.

[S13, §1657-o; C24, 27, 31, 35, 39, §2890; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.18]

#### **173.19 Examination of financial affairs.**

The auditor of state shall annually examine and report to the executive council all financial affairs of the board.

[S13, §1657-q; C24, 27, 31, 35, 39, §2891; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.19]

96 Acts, ch 1028, §3

#### **173.20 Report.**

The board shall file each year with the department, at such time as the department may specify, a report containing such information relative to the state fair and exposition and the district and county fairs as the department may require.

[C24, 27, 31, 35, 39, §2892; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.20]

#### **173.21 Annual report to governor.**

The board shall file with the governor each year by February 15 a report containing the following information relative to the state fair and exposition and the district and county fairs:

1. A complete account of the annual state fair and exposition.
2. The proceedings of the annual state agricultural convention.
3. The proceedings of the annual county and district fair managers convention.

[R60, §1703; C73, §1107; C97, §1656; S13, §1657-k; C24, 27, 31, 35, 39, §2893; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §173.21]

87 Acts, ch 233, §232

#### **173.22 Iowa state fair foundation — foundation fund.**

1. An Iowa state fair foundation is established under the authority of the Iowa state fair board.

2. A foundation fund is created within the state treasury composed of moneys appropriated or available to and obtained or accepted by the foundation. The foundation fund shall include moneys credited to the fund as provided in section 422.12D.

3. The foundation may solicit or accept gifts, including donations and bequests. A gift, to the greatest extent possible, shall be used according to the expressed desires of the person providing the gift.

4. Moneys in the foundation fund shall be used to support foundation activities, including foundation administration, or capital projects or major maintenance improvements at the Iowa state fairgrounds or to property under the control of the board.

5. *a.* Foundation moneys credited to the foundation fund may be expended on a matching basis with public moneys or Iowa state fair authority receipts. All interest earned on moneys

in the foundation fund shall be credited to and remain in the fund. Section 8.33 does not apply to moneys in the fund.

b. The auditor of state shall conduct regular audits of the foundation fund and shall make a certified report relating to the condition of the foundation fund to the treasurer of the state, and to the treasurer and secretary of the state fair board.

91 Acts, ch 132, §3; 93 Acts, ch 144, §1, 6; 94 Acts, ch 1199, §3 – 6; 2011 Acts, ch 79, §5  
Referred to in §173.14, 173.22A, 422.12D

#### **173.22A Iowa state fairgrounds trust fund.**

1. An Iowa state fairgrounds trust fund is created as an endowment fund under the authority and in the custody of the Iowa state fair board in its capacity as the board of the Iowa state fair foundation. The Iowa state fairgrounds trust fund is not part of the state treasury. The fund shall be composed exclusively of gifts accepted by the board in trust from private donors or testators. The board may accept these gifts in trust and shall fulfill its duties as trustee of gifts accepted notwithstanding section 633.63. The trust beneficiaries shall include all future attendees of events held on the Iowa state fairgrounds. The fund shall be an endowment fund to be used exclusively for the maintenance and improvement of the Iowa state fairgrounds and for no other purpose. The board shall decline any gifts not consistent with these purposes.

2. Moneys in the Iowa state fairgrounds trust fund shall not be deposited in the state treasury, but shall be held separate and apart from both the state fair's operating moneys and the state fair foundation fund established in section 173.22. The board as trustee shall hold only legal title to these moneys, which shall not form any part of the general fund of the state. The moneys shall not be subject to appropriation by the general assembly or subject to transfer pursuant to chapter 8. The moneys are not and shall not be deemed public funds for any purpose. The fund shall be an institutional endowment fund within the meaning of and subject to chapter 540A. The fund shall not be subject to audit by the auditor of state, but shall be audited annually by a certified public accountant. The annual audit shall be delivered to the auditor of state, who may include it in any further report that the auditor of state deems appropriate. However, an annual audit shall be a confidential record to the extent required in section 22.7, subsection 52. The moneys may be held in perpetuity, subject to the provisions for release or modification of restrictions on the moneys as provided in chapter 540A.

2011 Acts, ch 79, §6  
Referred to in §22.7, 173.14

#### **173.23 Lien on property.**

The board has a prior lien upon the property of any concessionaire, exhibitor, or person, immediately upon the property being brought onto the grounds, to secure existing or future indebtedness.

87 Acts, ch 233, §233

#### **173.24 Exemption of state fair by the state's purchasing procedures.**

The state fair is exempt from the state system of uniform purchasing procedures. However, the board may contract with the department of administrative services to purchase any items through the state system. The board shall adopt its own system of uniform standards and specifications for purchasing.

87 Acts, ch 233, §234; 2003 Acts, ch 145, §286

## CHAPTER 174

## COUNTY AND DISTRICT FAIRS

Referred to in §21.2, 22.1, 99B.1, 163.32, 165B.5, 322.5, 331.427, 423.3, 490.1701, 717E.1, 717F.7

174.1	Terms defined.	174.13	County aid.
174.2	Powers of a fair.	174.14	Fairground aid.
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174.7	Refusal to remove obstructions.	174.19	Report of county aid.
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174.10	Appropriation — availability.	174.23	Class determined.
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174.12	Payment of state aid — participation by delegates.		

**174.1 Terms defined.**

For the purposes of this chapter:

1. “*Association*” means the association of Iowa fairs.
2. “*Fair*” means an organization which is incorporated under the laws of this state, including as a county or district fair or as an agricultural society, for the purpose of conducting a fair event, if all of the following apply:
  - a. The organization owns or leases at least ten acres of fairgrounds. An organization may meet the requirement of owning or leasing land, buildings, and improvements through ownership by a joint entity under chapter 28E.
  - b. The organization owns buildings and other improvements situated on the fairgrounds which have been specially constructed for purposes of conducting a fair event.
  - c. The market value of the fairgrounds and buildings and other improvements located on the fairgrounds is at least twenty-five thousand dollars.
3. “*Fair event*” means an annual gathering of the public on fairgrounds that incorporates agricultural exhibits, demonstrations, shows, or competitions that include programs or projects sponsored by 4-H clubs, future farmers of America, or the Iowa cooperative extension service in agriculture and home economics of Iowa state university. Other activities may include any of the following:
  - a. Commercial exhibits sponsored by manufacturers or other businesses.
  - b. Educational programs or exhibits sponsored by governmental entities or nonprofit organizations.
  - c. Competition in culinary arts, fine arts, or home craft arts.
4. “*Fairgrounds*” or “*grounds*” means the real estate, including land, buildings, and improvements where a fair event is conducted.
5. “*Management*” shall mean president, vice-president, secretary, or treasurer of a fair.
6. “*State aid*” means moneys appropriated by the treasurer of state to the association of Iowa fairs for payments to eligible fairs pursuant to this chapter.

[C24, 27, 31, 35, 39, §2894; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.1]

97 Acts, ch 215, §32; 2004 Acts, ch 1019, §6 – 8; 2004 Acts, ch 1175, §366; 2010 Acts, ch 1193, §113, 114

Referred to in §87.4, 99D.13, 142D.3, 423.33, 427.1(39), 669.25, 670.7, 717D.3, 726.23

**174.2 Powers of a fair.**

A fair may annually conduct a fair event to further interest in agriculture and to encourage the improvement of agricultural commodities and products, livestock, articles of domestic

industry, implements, and other mechanical devices. It may offer and award such premiums as will induce general competition.

In addition to the powers granted in this chapter, a fair shall have the powers of a corporation not for pecuniary profit under the laws of this state and those powers enumerated in its articles of incorporation, such powers to be exercised before and after the holding of a fair event.

No salary or compensation of any kind shall be paid to the president, vice president, treasurer, or to a director of the fair for such duties. However, the president, vice president, treasurer, or a director of the fair may be reimbursed for actual expenses incurred by carrying out duties under this chapter or chapter 173, including, but not limited to attending the convention provided under section 173.2. A person claiming expenses under this paragraph shall be reimbursed to the same extent that a state employee is entitled to be reimbursed for expenses.

[R60, §1697; C73, §1109; C97, §1658; S13, §1658; C24, 27, 31, 35, 39, §2895; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.2]

91 Acts, ch 248, §9; 2004 Acts, ch 1019, §9; 2007 Acts, ch 126, §39

Nonprofit corporations, see chapter 504

#### **174.3 Control of fair event and fairgrounds.**

An ordinance or resolution of a county or city shall not in any way impair the authority of a fair. The fair shall have sole and exclusive control over and management of a fair event and fairgrounds.

[C73, §1116; C97, §1664; C24, 27, 31, 35, 39, §2896; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.3]

99 Acts, ch 204, §29; 2004 Acts, ch 1019, §10

#### **174.4 Permits to sell articles.**

The management of a fair may grant a written permit to a person determined proper by the management, to sell fruit, provisions, and other articles not prohibited by law, under such regulations as the management may prescribe.

[C73, §1115; C97, §1663; C24, 27, 31, 35, 39, §2897; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.4]

2004 Acts, ch 1019, §11

#### **174.5 Repealed by 2004 Acts, ch 1019, § 32.**

#### **174.6 Removal of obstructions.**

The management of a fair may order the removal of any obstruction to a fair event or on the fairgrounds, including but not limited to shows, swings, booths, tents, or vehicles.

[C73, §1116; C97, §1664; C24, 27, 31, 35, 39, §2899; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.6]

2004 Acts, ch 1019, §12

#### **174.7 Refusal to remove obstructions.**

Any person owning, occupying, or using any such obstruction who shall refuse or fail to remove the same when ordered to do so by the management shall be guilty of a simple misdemeanor.

[C73, §1116; C97, §1664; C24, 27, 31, 35, 39, §2900; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.7]

#### **174.8 Publication of financial statement.**

A fair shall annually publish in one newspaper of the county a financial statement of receipts and disbursements for the current year.

[R60, §1698; C73, §1110; C97, §1659; S13, §1659; C24, 27, 31, 35, 39, §2901; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.8]

2004 Acts, ch 1019, §13

**174.8A Liability insurance.**

The association of Iowa fairs, or a fair, shall have the power to join a local government risk pool as provided in section 670.7.

2008 Acts, ch 1139, §2

**174.9 State aid.**

An eligible fair which is a member of the association of Iowa fairs as provided in the association's bylaws and which conducts a fair event shall be entitled to receive state aid as provided in this chapter. The moneys paid as state aid must be used exclusively for capital expenditures relating to the acquisition of land for fairgrounds and improvements on the fairgrounds such as the construction of new facilities and the renovation of existing facilities. In order to be eligible for state aid, a fair must file with the association of Iowa fairs on or before November 15 of each year, a statement which provides information as required by the association of Iowa fairs. The information shall at least include all of the following:

1. The amount that the fair paid in cash premiums at its fair for the current year. The statement must correspond with its published offer of premiums.
2. A statement that no part of the amount of state aid was paid for any of the following:
  - a. Entertainment venues, including but not limited to speed events.
  - b. To secure games or amusements.
  - c. Supplies, rentals, equipment, payroll, inventory, fees, or routine operating expenses.
3. A full and accurate statement of the receipts and expenditures of the fair for the current year.
4. A statement of statistical data relative to exhibits and attendance for the year.
5. A copy of the published financial statement published as required by law, together with proof of such publication showing an itemized list of premiums awarded.

[R60, §1698, 1704; C73, §1110, 1112; C97, §1659, 1661; S13, §1659; SS15, §1661-a; C24, 27, 31, 35, 39, §2902; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.9]

96 Acts, ch 1218, §30, 31; 97 Acts, ch 215, §33, 34; 99 Acts, ch 204, §30, 31; 2004 Acts, ch 1019, §14

Referred to in §174.10

**174.10 Appropriation — availability.**

1. Any moneys appropriated for state aid shall be paid to the office of treasurer of state for allocation to the association of Iowa fairs. The association shall distribute the moneys to eligible fairs pursuant to this chapter.

2. a. The association shall maintain a list of each fair in a county which is a member of the association and conducts a fair event in that county as provided in this chapter. If a county has more than one fair event, the association shall list the name of each fair conducting a fair event in that county for three or more years. The association shall not make a payment to a fair under this chapter unless the fair complies with section 174.9, the name of the fair appears on the association's list, and the fair is a member in good standing according to the bylaws of the association.

b. The association shall prepare a report at the end of each fiscal year concerning the state aid that it received, the manner in which such aid was allocated to eligible fairs, and the manner in which the aid was expended by the fairs. The association shall submit the report to the governor and the general assembly by February 1 of each year. The association shall not use moneys appropriated for state aid, or interest earned on such moneys, for administrative or other expenses.

3. The association's board of directors shall determine the amount of state aid allocated to each eligible fair.

4. If no fair in a county is eligible to receive state aid, that county's share shall be divided equally among the eligible fairs.

[R60, §1698, 1704; C73, §1110, 1112; C97, §1661; S13, §1659; SS15, §1661-a; C24, 27, §2902; C31, 35, §2902-d1; C39, §2902.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §174.10; 81 Acts, ch 117, §1023]

95 Acts, ch 67, §53; 96 Acts, ch 1218, §32; 97 Acts, ch 215, §35; 99 Acts, ch 204, §32; 2004 Acts, ch 1019, §15

**174.11** Repealed by 99 Acts, ch 204, § 38.

**174.12 Payment of state aid — participation by delegates.**

1. The association of Iowa fairs shall pay a fair the amount due in state aid, less one thousand dollars, as provided in this chapter. The association must certify to the treasurer that the fair is eligible under this chapter to receive the amount to be paid to the fair by the association. The association shall pay the fair the remaining one thousand dollars, if all of the following apply:

a. The secretary of the state fair board certifies to the association that the fair had an accredited delegate in attendance at the annual convention for the election of members of the Iowa state fair board as provided in section 173.2.

b. A district director of the association representing the district in which the county is located, and the director of the Iowa state fair board representing the state fair board district in which the county is located, certify to the association that the fair had an accredited delegate in attendance at at least one of the district meetings and at the association's annual meeting.

2. Any moneys appropriated in state aid remaining due to the failure of a fair to comply with this section shall be distributed equally among the eligible fairs which have qualified for state aid under this section. The treasurer of state shall allocate to the association the total amount to be paid by the association to eligible fairs under this chapter.

[R60, §1698; C73, §1110; C97, §1659; S13, §1659; C24, 27, 31, 35, 39, §2904; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.12]

96 Acts, ch 1218, §33; 97 Acts, ch 215, §36; 99 Acts, ch 204, §33; 2004 Acts, ch 1019, §16; 2004 Acts, ch 1175, §367; 2009 Acts, ch 41, §263

**174.13 County aid.**

The board of supervisors of the county in which a fair is located may appropriate moneys to be used for purchasing fairgrounds, constructing or restoring facilities on the fairgrounds, aiding 4-H club work, and paying agricultural and livestock premiums in connection with the fair event.

[C73, §1111; C97, §1660; SS15, §1660; C24, 27, 31, 35, 39, §2905; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §174.13; 81 Acts, ch 117, §1024; 82 Acts, ch 1104, §5]

83 Acts, ch 123, §75, 209; 85 Acts, ch 67, §19; 2004 Acts, ch 1019, §17

**174.14 Fairground aid.**

1. The board of supervisors of a county which has acquired real estate for fairgrounds and which has a fair using the fairgrounds may appropriate moneys to be used for any of the following:

a. The erection and repair of buildings or other permanent improvements on the fairgrounds.

b. The payment of debts contracted in the erection or repair and payment of agricultural and livestock premiums.

2. In addition, the net proceeds from the sale of real estate or structures or improvements on the fairgrounds shall be used for the purchase of real estate or the erection of permanent buildings and installation of improvements on new fairgrounds, or the cost of moving structures from the old fairgrounds to the new fairgrounds.

83 Acts, ch 123, §76, 209; 84 Acts, ch 1178, §2; 2004 Acts, ch 1019, §18

**174.15 Purchase or gift of real property — management.**

1. Title to land purchased or received for purposes of conducting a fair event shall be taken in the name of the county or a fair. However, the board of supervisors shall place the land under the control and management of a fair. The fair may act as agent for the county in the erection of buildings and maintenance of the fairgrounds, including the buildings and improvements constructed on the grounds. Title to new buildings or improvements shall be taken in the name of the county or a fair. However, the county is not liable for the improvements or expenditures for them.

2. Notwithstanding section 364.7, subsection 3, a city may dispose of real property by gift to a fair.

[SS15, §1660; C24, 27, 31, 35, 39, §2907; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §174.15; 81 Acts, ch 117, §1025]

98 Acts, ch 1219, §16; 2004 Acts, ch 1019, §19; 2005 Acts, ch 19, §35; 2009 Acts, ch 92, §1

**174.16 Termination of rights of fair.**

The right of a fair to the control and management of its fairgrounds may be terminated by the board of supervisors whenever well-conducted fair events are not annually held on the fairgrounds.

[SS15, §1660; C24, 27, 31, 35, 39, §2908; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.16]

2004 Acts, ch 1019, §20

**174.17 Issuance of revenue bonds — standby tax levy.**

1. The governing body of a fair may issue bonds payable from revenue generated by the operations of the fair event and the use or rental of the real and personal property owned or leased by the fair. The governing body of a fair shall comply with all of the following procedures in issuing such bonds:

a. A fair may institute proceedings for the issuance of bonds by causing a notice of the proposal to issue the bonds to be published at least once in a newspaper of general circulation within the county at least ten days prior to the meeting at which the fair proposes to take action for the issuance of the bonds. The notice shall include a statement of the amount and purpose of the bonds, the maximum rate of interest the bonds are to bear, and the right to petition for an election.

b. If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by three percent of the registered voters of the county is filed with the board of supervisors, asking that the question of issuing the bonds be submitted to the registered voters, the board of supervisors shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. The proposition of issuing bonds under this subsection is not approved unless the vote in favor of the proposition is equal to at least sixty percent of the vote cast. If a petition is not filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the board of supervisors acting on behalf of the fair may proceed with the authorization and issuance of the bonds. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

c. All bonds issued under this subsection shall be payable solely from and shall be secured by an irrevocable pledge of a sufficient portion of the net rents, profits, and income derived from the operation of the fair event and the use or rental of the real and personal property owned or leased by the fair. Bonds issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under this subsection shall not limit or restrict the authority of the fair as otherwise provided by law.

2. To further secure the payment of the bonds, the board of supervisors may, by resolution, provide for the assessment of an annual levy of a standby tax upon all taxable property within the county. A copy of the resolution shall be sent to the county auditor. The revenues from the

standby tax shall be deposited in a special fund and shall be expended only for the payment of principal of and interest on the bonds issued as provided in this section, when the receipt of revenues pursuant to subsection 1 is insufficient to pay the principal and interest. If payments are necessary and made from the special fund, the amount of the payments shall be promptly repaid into the special fund from the first available revenues received which are not required for the payment of principal of or interest on bonds due. Reserves shall not be built up in the special fund in anticipation of a projected default. The board of supervisors shall adjust the annual standby tax levy for each year to reflect the amount of revenues in the special fund and the amount of principal and interest which is due in that year.

3. In order for the governing body of a fair to issue bonds under this section, the governing body must conduct a fair event that has a verifiable annual attendance of at least one hundred fifty thousand persons and annual outside gate admission revenues of at least four hundred thousand dollars.

99 Acts, ch 204, §34; 2004 Acts, ch 1019, §21, 22

**174.18** Repealed by 81 Acts, ch 117, § 1097.

**174.19 Report of county aid.**

A fair shall not receive an appropriation from a county under this chapter until the fair submits a financial statement to the county board of supervisors. The statement shall show all expenditures of moneys appropriated to the fair from the county in the previous year. The financial statement submitted to the board of supervisors shall include vouchers related to the expenditures.

[C73, §1113; C97, §1662; C24, 27, 31, 35, 39, §2911; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.19]

91 Acts, ch 98, §1; 2004 Acts, ch 1019, §23

**174.20 Fraudulent entries of horses.**

A person shall not knowingly enter or cause to be entered any horse of any age or sex under an assumed name, or out of its proper class, to compete for any purse, prize, premium, stake, or sweepstake offered or given by any person in the state, or drive any such horse under an assumed name, or out of its proper class, where such prize, purse, premium, stake, or sweepstake is to be decided by a contest of speed.

[C97, §1665; C24, 27, 31, 35, 39, §2912; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.20]  
2004 Acts, ch 1019, §24

Referred to in §174.21

**174.21 Violations — penalty.**

Any person convicted of a violation of section 174.20 shall be guilty of a fraudulent practice.

[C97, §1666; C24, 27, 31, 35, 39, §2913; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.21]

**174.22 Entry under changed name.**

The name of any horse for the purpose of entry for competition in any contest of speed shall not be changed after having once contested for a prize, purse, premium, stake, or sweepstake, except as provided by the code of printed rules of the fair or association under which the contest is advertised to be conducted, unless the former name is given.

[C97, §1667; C24, 27, 31, 35, 39, §2914; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.22]  
2004 Acts, ch 1019, §25

**174.23 Class determined.**

The class to which a horse belongs for the purpose of an entry in any contest of speed, as provided by the printed rules of the fair or association under which such contest is to be made, shall be determined by the public record of said horse in any such former contest.

[C97, §1668; C24, 27, 31, 35, 39, §2915; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §174.23]  
2004 Acts, ch 1019, §26

174.24 through 174.27 Repealed by 81 Acts, ch 117, § 1097.

## CHAPTER 175

### AGRICULTURAL DEVELOPMENT

Referred to in §7C.4A, 16.1A, 16.221, 502.201

Continuation of former agricultural development authority rules, regulations, forms, orders, and directives until amended, repealed, or supplemented by the Iowa finance authority; transfer of personnel and outstanding legal obligations and rights; continuation of ongoing programs; appointment of new agricultural development board members; 2013 Acts, ch 100, §28 – 40; 2013 Acts, ch 140, §80 – 82

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175.13	Loans to beginning farmers.		
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**175.1 Short title.**

This chapter shall be called and may be cited as the “Iowa Agricultural Development Act”.  
[C81, §175.1]

**175.2 Definitions.**

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

a. “Agricultural assets” means agricultural land, depreciable agricultural property, crops, or livestock.

b. “Agricultural improvements” means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. “Agricultural improvements” includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the dwelling.

c. “Agricultural land” means land suitable for use in farming.

d. “Agricultural producer” means a person that engages or wishes to engage or intends to engage in the business of producing and marketing agricultural produce in this state.

e. “Authority” means the Iowa finance authority created in section 16.1A.

f. “Bankhead-Jones Farm Tenant Act” means the Act cited as 50 Stat. 522 (1937), formerly codified as 7 U.S.C. § 1000 et seq., repealed by Pub. L. No. 87-128 (1961).

g. “Beginning farmer” means an individual, partnership, family farm corporation, or family farm limited liability company, as defined in section 9H.1, with a low or moderate net worth that engages in farming or wishes to engage in farming.

h. “Beginning farmer tax credit program” means all of the following:

(1) The agricultural assets transfer tax credit as provided in section 175.37.

(2) The custom farming contract tax credit as provided in section 175.38.

i. “Board” means the agricultural development board created in section 175.3.

j. “Bonds” means bonds issued by the authority pursuant to this chapter.

k. “Conservation farm equipment” means the specialized planters, cultivators, and tillage equipment used for reduced tillage or no-till planting of row crops.

l. “Depreciable agricultural property” means personal property suitable for use in farming for which an income tax deduction for depreciation is allowable in computing federal income tax under the Internal Revenue Code as defined in section 422.3.

m. “Executive director” means the executive director of the Iowa finance authority appointed pursuant to section 16.6.

n. “Farming” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the authority by rules subject to chapter 17A.

o. “Lending institution” means a bank, trust company, mortgage company, national banking association, life insurance company, any state or federal governmental agency or instrumentality, including without limitation the federal land bank or any of its local associations, or any other financial institution or entity authorized to make farm operating loans in this state.

p. (1) “Low or moderate net worth” means a person’s aggregate net worth calculated as a designated amount established pursuant to rules adopted by the authority and effective for one year. The designated amount shall be established by January 1 of each year by adjusting the designated amount effective on the previous December 31. The authority shall establish the designated amount in accordance with the “prices paid by farmers index” as compiled by the United States department of agriculture.

(2) “Low or moderate net worth” as applied to the following persons means:

(a) For an individual, an aggregate net worth of the individual and the individual’s spouse and minor children of less than the designated amount.

(b) For a partnership, an aggregate net worth of all partners, including each partner’s net capital in the partnership, and each partner’s spouse and minor children of less than twice the designated amount. However, the aggregate net worth of each partner and that partner’s spouse and minor children shall not exceed the designated amount.

(c) For a family farm corporation, an aggregate net worth of all shareholders, including the value of each shareholder’s share in the family farm corporation, and each shareholder’s spouse and minor children of less than twice the designated amount. However, the aggregate net worth of each shareholder and that shareholder’s spouse and minor children shall not exceed the designated amount.

(d) For a family farm limited liability company, an aggregate net worth of all members, including each member’s ownership interest in the family farm limited liability company, and each member’s spouse and minor children of less than twice the designated amount. However, the aggregate net worth of each member and that member’s spouse and minor children shall not exceed the designated amount.

q. “Mortgage” means a mortgage, mortgage deed, deed of trust, or other instrument creating a first lien, subject only to title exceptions and encumbrances acceptable to the authority, including any other mortgage liens of equal standing with or subordinate to the

mortgage loan retained by a seller or conveyed to a mortgage lender, on a fee interest in agricultural land and agricultural improvements.

r. “*Mortgage lender*” means a bank, trust company, mortgage company, national banking association, life insurance company, any state or federal governmental agency or instrumentality, including without limitation the federal land bank or any of its local associations, or any other financial institution or entity authorized to make mortgage loans or secured loans in this state.

s. “*Mortgage loan*” means a financial obligation secured by a mortgage.

t. “*Net worth*” means a person’s total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of a person’s net worth. Assets shall be valued at fair market value.

u. “*Note*” means a bond anticipation note or other obligation or evidence of indebtedness issued by the authority pursuant to this chapter.

v. “*Permanent soil and water conservation practices*” and “*temporary soil and water conservation practices*” have the same meaning as defined in section 161A.42.

w. “*Production item*” includes tools, machinery, or equipment principally used to produce crops or livestock.

x. “*Qualified beginning farmer*” means a beginning farmer who meets the requirements to participate in a beginning farmer tax credit program as provided in section 175.36A.

y. “*Secured loan*” means a financial obligation secured by a chattel mortgage, security agreement or other instrument creating a lien on an interest in depreciable agricultural property.

z. “*State agency*” means any board, commission, department, public officer, or other agency or authority of the state of Iowa.

aa. “*Veteran*” means the same as defined in section 35.1.

2. The authority may establish by rule further definitions applicable to this chapter and clarification of the definitions in this section, as necessary to assure eligibility for funds, insurance or guarantees available under federal laws and to carry out the public purposes of this chapter.

[C81, §175.2; 81 Acts, ch 68, §2; 82 Acts, ch 1243, §2]

83 Acts, ch 93, §1; 84 Acts, ch 1305, §23; 85 Acts, ch 15, §1, 2; 86 Acts, ch 1026, §1, 2; 86 Acts, ch 1027, §1; 86 Acts, ch 1245, §628; 87 Acts, ch 52, §1; 87 Acts, ch 169, §1; 94 Acts, ch 1118, §1 – 3; 2000 Acts, ch 1010, §1, 2; 2006 Acts, ch 1161, §1, 7; 2008 Acts, ch 1191, §51; 2012 Acts, ch 1017, §45; 2013 Acts, ch 100, §7, 8, 17; 2013 Acts, ch 125, §2, 23, 24

Referred to in §456A.38, 654.16, 654.16A

For future repeal of subsection 1, paragraphs h, w, x, and aa, effective December 31, 2017, see 2013 Acts, ch 125, §25, 28

Subsection 1, paragraphs h, w, x, and aa, take effect June 17, 2013, and apply retroactively to January 1, 2013, for tax years beginning on or after that date; 2013 Acts, ch 125, §23, 24

Subsection 1, paragraph e amended

Subsection 1, NEW paragraphs h and i, and former paragraphs h – j redesignated as j – l

Subsection 1, NEW paragraph m and former paragraphs k – s redesignated as n – v

Subsection 1, NEW paragraphs w and x and former paragraphs t and u redesignated as y and z

Subsection 1, NEW paragraph aa

### 175.3 Agricultural development board.

1. The powers of the agricultural development division, created within the Iowa finance authority under section 16.221, are vested in and shall be exercised by the agricultural development board as provided in section 16.221 and this section.

2. The agricultural development board is created to exercise all powers and perform all duties necessary to administer this chapter according to policies established by the Iowa finance authority. The authority shall establish policies and practices for the division and oversee its operations. The authority may review or approve decisions affecting the division or administration of this chapter, including decisions of the agricultural development board.

3. The agricultural development board consists of five members appointed by the governor. The executive director of the Iowa finance authority or the executive director’s designee shall serve as an ex officio nonvoting member.

4. The appointed members of the agricultural development board shall be appointed and retain office as follows:

a. Not more than three members shall belong to the same political party.

b. As far as possible, the governor shall include within the membership persons who represent financial institutions experienced in agricultural lending, real estate sales, farmers, beginning farmers, average taxpayers, local government, soil and water conservation district officials, agricultural educators, and other persons specially interested in family farm development.

c. Members shall serve for staggered terms of six years beginning and ending as provided in section 69.19. A person appointed to fill a vacancy shall serve only for the unexpired portion of the member's term. A member is eligible for reappointment. An appointed member may be removed from office by the governor for misfeasance, malfeasance, willful neglect of duty, or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

5. The agricultural development board shall conduct business according to all of the following:

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

b. Meetings of the board shall be held at the call of the chairperson or whenever two appointed members so request.

c. The appointed members shall elect a chairperson and vice chairperson annually, and other officers as they determine. The executive director of the Iowa finance authority or the executive director's designee shall serve as secretary to the board.

6. An appointed member of the agricultural development board is entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as a member, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as a member.

7. An appointed member of the agricultural development board shall give bond as required for public officers in chapter 64.

[C81, §175.3; 82 Acts, ch 1243, §3]

83 Acts, ch 101, §32; 85 Acts, ch 15, §3; 86 Acts, ch 1026, §3; 86 Acts, ch 1027, §2; 86 Acts, ch 1245, §629; 87 Acts, ch 23, §4; 90 Acts, ch 1256, §34; 96 Acts, ch 1029, §1; 2003 Acts, ch 137, §2; 2007 Acts, ch 215, §89, 90; 2011 Acts, ch 13, §1; 2011 Acts, ch 131, §55, 158; 2013 Acts, ch 100, §9, 17

Referred to in §16.221, 175.2  
Section stricken and rewritten

#### **175.4 Legislative findings.**

The general assembly finds and declares as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare and for the promotion of the economy, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There exists a serious problem in this state regarding the ability of nonestablished farmers to acquire agricultural land and agricultural improvements and depreciable agricultural property in order to enter farming.

4. This barrier to entry into farming is conducive to consolidation of acreage of agricultural land with fewer individuals resulting in a grave threat to the traditional family farm.

5. These conditions result in a loss in population, unemployment and a movement of persons from rural communities to urban areas accompanied by added costs to communities for creation of new public facilities and services.

6. One major cause of this condition has been recurrent shortages of funds in private channels and the high interest cost of borrowing.

7. These shortages and costs have made the sale and purchase of agricultural land to beginning farmers a virtual impossibility in many parts of the state.

8. The ordinary operations of private enterprise have not in the past corrected these conditions.

9. A stable supply of adequate funds for agricultural financing is required to encourage beginning farmers in an orderly and sustained manner and to reduce the problems described in this section.

10. Article IX, section 3, of the Constitution of the State of Iowa requires that, "The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement," and agricultural improvement and the public good are served by a policy of facilitating access to capital by beginning farmers unable to obtain capital elsewhere in order to preserve, encourage and protect the family farm which has been the economic, political and social backbone of rural Iowa.

11. It is necessary to create an authority to encourage ownership of farms by beginning farmers by providing purchase money loans to beginning farmers who are not able to obtain adequate capital elsewhere to provide such funds and to lower costs through the use of public financing.

12. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted.

13. The erosion of topsoil on agricultural land by wind and water is a serious problem within the state and one which threatens to destroy the natural resource most responsible for Iowa's prosperity.

14. It is necessary to the preservation of the economy and well-being of the state to encourage soil conservation practices by providing loans for permanent soil and water conservation practices on agricultural land within the state and for the acquisition of conservation farm equipment.

15. There exists a serious problem in this state regarding the ability of farmers to obtain affordable operating loans for reasonable and necessary expenses and cash flow requirements of farming.

16. Farming is one of the principal pursuits of the inhabitants of this state. Many other industries and pursuits, in turn, are wholly dependent upon farming.

17. The inability of farmers to obtain affordable operating loans is conducive to a general decline of the economy in this state.

18. A serious problem continues to exist in this state regarding the ability of agricultural producers to obtain, retain, restructure, or service loans or other financing on a reasonable and affordable basis for operating expenses, cash flow requirements, and capital asset acquisition or maintenance.

19. Because the Iowa economy is dependent upon the production and marketing of agricultural produce, the inability of agricultural producers to obtain, retain, restructure, or service loans or other financing on a reasonable and an affordable basis for operating expenses, cash flow requirements, or capital asset acquisition or maintenance contributes to a general decline of the state's economy.

20. The decline in the number of beef cattle production operations is a serious problem within the state, resulting in the conversion of land used for pasture to row crop production, which threatens to destroy a significant part of Iowa's agricultural base and damage the economic viability of the state.

21. It is necessary to create a program in this state to assist agricultural producers who have established or intend to establish beef cattle production operations, to obtain adequate

financing, and management assistance and training, and to convert land used for row crop production to pasture.

[C81, §175.4; 82 Acts, ch 1243, §4]

86 Acts, ch 1027, §3; 87 Acts, ch 52, §2; 87 Acts, ch 169, §2; 2013 Acts, ch 100, §10, 17; 2013 Acts, ch 125, §3, 23, 24

2013 amendment striking former subsection 18 takes effect June 17, 2013, and applies retroactively to January 1, 2013, for tax years beginning on or after that date; 2013 Acts, ch 125, §23, 24

Subsection 11 amended

Subsection 18 stricken and former subsections 19 – 22 renumbered as 18 – 21

### **175.5 Guiding principles.**

In the performance of its duties, implementation of its powers, selection of specific programs and projects to receive its assistance under this chapter, the authority shall be guided by the following principles:

1. The authority shall not become an owner of real or depreciable property, except on a temporary basis where necessary in order to implement its programs, to protect its investments by means of foreclosure or other means, or to facilitate transfer of real or depreciable property for the use of beginning farmers.

2. The authority shall exercise diligence and care in selection of projects to receive its assistance and shall apply customary and acceptable business and lending standards in selection and subsequent implementation of the projects. The authority may delegate primary responsibility for determination and implementation of the projects to any federal governmental agency which assumes any obligation to repay the loan, either directly or by insurance or guarantee.

3. The authority shall establish a beginning farmer loan program to aid beginning farmers in the acquisition of agricultural land and improvements and depreciable agricultural property.

4. The authority shall develop programs for providing financial assistance to agricultural producers in this state.

[C81, §175.5]

86 Acts, ch 1026, §4; 2013 Acts, ch 100, §11, 17

Unnumbered paragraph 1 amended

### **175.6 General powers.**

The authority has all of the general powers needed to carry out its purposes and duties, and to exercise its specific powers under this chapter including but not limited to the power to do any of the following:

1. Issue its negotiable bonds and notes as provided in this chapter in order to finance its programs.

2. Sue and be sued in its own name.

3. Have and alter a corporate seal.

4. Make and alter bylaws for its management consistent with the provisions of this chapter.

5. Make and execute agreements, contracts, and other instruments with any public or private entity, including but not limited to any federal governmental agency or instrumentality. The authority may make and execute contracts with any firm of independent certified public accountants to prepare an annual report on behalf of the authority. The authority may make and execute contracts with mortgage lenders for the servicing of mortgage and secured loans. All political subdivisions, other public agencies and state agencies may enter into contracts and otherwise cooperate with the authority.

6. Acquire, hold, improve, mortgage, lease and dispose of real and personal property, including but not limited to the power to sell at public or private sale, with or without public bidding, any property, mortgage or secured loan or other obligation held by it.

7. Procure insurance against any loss in connection with its operations and property interests, including pool insurance on any group of mortgage or secured loans.

8. Fix and collect fees and charges for its services.

9. Subject to an agreement with bondholders or noteholders, invest or deposit moneys of the authority in a manner determined by the authority, notwithstanding chapter 12B or 12C.

10. Accept appropriations, gifts, grants, loans, or other aid from public or private entities. A record of all gifts or grants, stating the type, amount and donor, shall be clearly set out in the authority's annual report along with the record of other receipts.

11. Provide to public and private entities technical assistance and counseling related to the authority's purposes.

12. In cooperation with other local, state or federal governmental agencies or instrumentalities, conduct studies of beginning farmer or agricultural producer agricultural needs, and gather and compile data useful to facilitate decision making.

13. Contract with architects, engineers, attorneys, accountants, housing construction and finance experts, and other advisors or enter into contracts or agreements for such services with local, state or federal governmental agencies.

14. Make, alter and repeal rules consistent with the provisions of this chapter, and subject to chapter 17A.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, §234.18; C81, §175.6]

84 Acts, ch 1230, §1; 87 Acts, ch 52, §3; 2012 Acts, ch 1023, §157; 2013 Acts, ch 100, §12, 17

Referred to in §175.13A

Unnumbered paragraph 1 amended

**175.7 Executive director — staff.** Repealed by 2013 Acts, ch 100, § 16, 17.

### **175.8 Annual report.**

1. As part of the authority's report required in section 16.7, the authority shall detail its activities under this chapter, which shall include all of the following:

a. Its operations and accomplishments.

b. Its receipts and expenditures during the fiscal year, in accordance with the classifications it establishes for its operating and capital accounts.

c. Its assets and liabilities at the end of its fiscal year and the status of reserve, special and other funds.

d. A schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and issued during its fiscal year.

e. A statement of its proposed and projected activities.

f. Recommendations to the general assembly, as it deems necessary.

g. An analysis of beginning farmer needs in the state.

2. a. The annual report shall include all of the following:

(1) Performance goals of the authority. The report shall clearly indicate the extent of progress during the reporting period in attaining the goals.

(2) An evaluation of the success of its programs, with a special emphasis on the beginning farmer loan program as provided in section 175.12, and the beginning farmer tax credit program.

b. Where possible, the findings and results of its performance goals and evaluation shall be expressed in terms of number of loans, tax credits, participating qualified beginning farmers, and acres of agricultural land, including by county.

3. The executive director shall report semiannually to the general assembly's standing committees on government oversight regarding the operations of the authority.

[C81, §175.8]

2007 Acts, ch 215, §92; 2009 Acts, ch 117, §1; 2010 Acts, ch 1069, §23; 2013 Acts, ch 100, §13, 14, 17; 2013 Acts, ch 125, §4, 5, 23, 24

For future repeal of 2013 amendment to subsection 2 effective December 31, 2017, see 2013 Acts, ch 125, §25, 28

2013 amendment to subsection 2 takes effect June 17, 2013, and applies retroactively to January 1, 2013, for tax years beginning on or after that date; 2013 Acts, ch 125, §23, 24

With respect to amendment to subsection 1, unnumbered paragraph 1 by 2013 Acts, ch 125, §4, see Code editor's note

Section amended

### **175.9 Nondiscrimination.**

1. The opportunity to acquire agricultural land and agricultural improvements and depreciable agricultural property financed or otherwise assisted by the authority, directly or

indirectly, is open to all persons regardless of race, creed, color, sex, national origin, age, physical or mental impairment, or religion.

2. The authority shall promote marketing plans for its programs under this chapter.  
[C81, §175.9]

#### **175.10 Surplus moneys.**

Moneys declared by the authority to be surplus moneys which are not required to service bonds and notes, to pay administrative expenses of the authority or to accumulate necessary operating or loss reserves, shall be used by the authority to provide loans, grants, subsidies, and other services or assistance to beginning farmers or agricultural producers through any of the programs authorized in this chapter.

[C81, §175.10]  
87 Acts, ch 52, §4

#### **175.11 Combination programs.**

Programs authorized in this chapter may be combined with any other programs authorized in this chapter, under chapter 16 or under a federal program in order to facilitate as far as practicable the acquisition of agricultural land and property by beginning farmers or to facilitate the implementation of permanent soil and water conservation practices and the acquisition of conservation farm equipment.

[C81, §175.11; 82 Acts, ch 1243, §5]

#### **175.12 Beginning farmer program.**

1. The authority shall develop a beginning farmer loan program to facilitate the acquisition of agricultural land and improvements and depreciable agricultural property by beginning farmers. The authority shall exercise the powers granted to it in this chapter in order to fulfill the goal of providing financial assistance to beginning farmers in the acquisition of agricultural land and agricultural improvements and depreciable agricultural property. The authority may participate in and cooperate with programs of the United States department of agriculture consolidated farm service agency, federal land bank or any other agency or instrumentality of the federal government or with any program of any other state agency in the administration of the beginning farmer loan program and in the making or purchasing of mortgage or secured loans pursuant to this chapter.

2. The authority may participate in any federal programs designed to assist beginning farmers or in any related federal or state programs.

3. The authority shall provide in a beginning farmer loan program that a mortgage or secured loan to or on behalf of a beginning farmer shall be provided only if the following criteria are satisfied:

- a. The beginning farmer is a resident of the state. If the beginning farmer is a partnership, all partners shall be residents of the state. If a beginning farmer is a family farm corporation, all shareholders shall be residents of the state. If the beginning farmer is a family farm limited liability company, all members shall be residents of the state.

- b. The agricultural land and agricultural improvements or depreciable agricultural property the beginning farmer proposes to purchase will be located in the state.

- c. The beginning farmer has sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. If the beginning farmer is a partnership, all partners shall have sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. If the beginning farmer is a family farm corporation, all shareholders who are not minors shall have sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan. If the beginning farmer is a family farm limited liability company, all members who are not minors shall have sufficient education, training, or experience in the type of farming for which the beginning farmer requests the mortgage or secured loan.

- d. A loan to a beginning farmer for the acquisition of agricultural land and agricultural improvements does not exceed five hundred thousand dollars. A loan to a beginning

farmer for the acquisition of depreciable agricultural property does not exceed one hundred twenty-five thousand dollars.

e. If the loan is for the acquisition of agricultural land, the beginning farmer has or will have access to adequate working capital, farm equipment, machinery or livestock. If the loan is for the acquisition of depreciable agricultural property, the beginning farmer has or will have access to adequate working capital or agricultural land.

f. The beginning farmer shall materially and substantially participate in farming. If the beginning farmer is a partnership, family farm corporation, or family farm limited liability company, each partner, shareholder, or member shall materially and substantially participate in farming.

g. If the beginning farmer is an individual, the agricultural land and agricultural improvements shall only be used for farming by the individual, the individual's spouse, or the individual's minor children. If the beginning farmer is a partnership, family farm corporation, or family farm limited liability company, the agricultural land and agricultural improvements shall only be used for farming by any or all of the partners, shareholders, or members, including their spouses and minor children.

h. The beginning farmer has not previously received financing under the program for the acquisition of property similar in nature to the property for which the loan is sought. However, this restriction shall not apply if the amount previously received plus the amount of the loan sought does not exceed five hundred thousand dollars in the case of agricultural land and improvements or one hundred twenty-five thousand dollars in the case of depreciable agricultural property.

i. Other criteria as the authority prescribes by rule.

4. The authority may provide in a mortgage or secured loan made or purchased pursuant to this chapter that the loan may not be assumed or any interest in the agricultural land or improvements or depreciable agricultural property may not be leased, sold or otherwise conveyed without its prior written consent and may provide a due-on-sale clause with respect to the occurrence of any of the foregoing events without its prior written consent. The authority may provide by rule the grounds for permitted assumptions of a mortgage or for the leasing, sale or other conveyance of any interest in the agricultural land or improvements. However, the authority shall provide and state in a mortgage or secured loan that the authority has the power to raise the interest rate of the loan to the prevailing market rate if the mortgage or secured loan is assumed by a farmer who is already established in that field at the time of the assumption of the loan. This provision controls with respect to a mortgage loan made or purchased pursuant to this chapter notwithstanding the provisions of chapter 535.

5. The authority may participate in any interest in any mortgage or secured loan made or purchased pursuant to this chapter with a mortgage lender. The participation interest may be on a parity with the interest in the mortgage or secured loan retained by the authority, equally and ratably secured by the mortgage or securing agreement securing the mortgage or secured loan.

[C81, §175.12; 81 Acts, ch 68, §3, 4]

85 Acts, ch 15, §4, 5; 94 Acts, ch 1118, §4 – 7; 95 Acts, ch 216, §25

Referred to in §16.221, 159.18, 175.8, 175.17, 175.34, 456A.38

### **175.13 Loans to beginning farmers.**

1. The authority may make mortgage or secured loans, including but not limited to mortgage or secured loans insured, guaranteed, or otherwise secured by the federal government or a federal governmental agency or instrumentality, a state agency or private mortgage insurers, to beginning farmers to provide financing for agricultural land and agricultural improvements or depreciable agricultural property.

2. Mortgage or secured loans shall contain terms and provisions, including interest rates, and be in a form established by rules of the authority. The authority may require the beginning farmer to execute a note, loan agreement or other evidence of indebtedness and furnish

additional assurances and guarantees, including insurance, reasonably related to protecting the security of the mortgage or secured loan, as the authority deems necessary.

[C81, §175.13]  
Referred to in §175.34

### **175.13A Financial assistance for agricultural producers.**

1. In addition to the other programs authorized pursuant to this chapter, the authority is authorized to provide any type of economic assistance directly or indirectly to agricultural producers, and may develop and implement programs including but not limited to the making of loan guarantees, interest buy-downs, grants, secured or unsecured direct loans, secondary market purchases of loans or mortgages, loans to mortgage lenders, lending institutions, other agricultural lenders as designated by rule of the authority, or entities that provide funds or credits to such lenders or institutions, to assist agricultural producers within the state. The authority may exercise any of the powers granted to it in this chapter in order to fulfill the goal of providing financial assistance to agricultural producers. The authority may participate in and cooperate with programs of any agency or instrumentality of the federal government or with programs of any other state agency in the administration of the programs to provide economic assistance to agricultural producers.

2. The authority shall provide in any program developed and implemented pursuant to this section that assistance shall be provided only if the following criteria are satisfied:

- a. The agricultural producer is a resident of the state.
- b. The agricultural producer's land and farm operations are located within the state.
- c. Based upon the agricultural producer's net worth, cash flow, debt-to-asset ratio, and other criteria as prescribed by rule of the authority, the authority determines that without such assistance the agricultural producer could not reasonably be expected to be able to obtain, retain, restructure, or service loans or other financing for operating expenses, cash flow requirements, or capital acquisition and maintenance upon a reasonable and affordable basis.
- d. Other criteria as the authority prescribes by rule.

3. The authority is granted all powers which are necessary or useful to develop and implement programs and authorizations pursuant to subsection 1. These powers include, but are not limited to:

- a. All general powers stated in section 175.6.
- b. The power to make or enter into or to require the making or entry into of agreements of any type, with or by any person, that are necessary to effect the purposes of this section. These agreements may include but are not limited to contracts, notes, bonds, guarantees, mortgages, loan agreements, trust indentures, reimbursement agreements, letters of credit or other liquidity or credit enhancement agreements, reserve agreements, loan or mortgage purchase agreements, buy-down agreements, grants, collateral or security agreements, insurance contracts, or other similar documents. The agreements may contain any terms and conditions which the authority determines are reasonably necessary or useful to implement the purposes of this section or which are usually included in agreements or documents between private or public persons in similar transactions.

c. The power to issue its bonds or notes and expend or commit moneys for the purposes set forth in subsection 1. The authority may provide in the documents authorizing its bonds or notes that their principal and interest shall be limited obligations payable solely out of the revenues derived from a specific program or source and do not constitute an indebtedness of the authority or a charge against the authority's general credit or general fund. Alternatively, the authority may provide that the principal and interest of specified bonds or notes do constitute an indebtedness of the authority and a charge against the authority's general credit or general fund.

d. The power to participate in any federal or other state program designed to assist agricultural producers or in related federal or state programs.

e. The power to require submission of evidence satisfactory to the authority of the receipt by an agricultural producer of the assistance intended under a program developed and implemented pursuant to this section. In that connection, the authority, through its

members, employees or agents, may inspect the books and records of any person receiving or involved in the provision of assistance in accordance with this section.

f. The power to establish by rule appropriate enforcement provisions in order to assure compliance with this section and rules adopted pursuant to this section, to seek the enforcement of such rules and the terms of any agreement or document by decree of any court of competent jurisdiction, and to require as a condition of providing assistance pursuant to this section the consent of any person receiving or involved in the provision of the assistance to the jurisdiction of the courts of this state over any enforcement proceeding.

g. The power to require, as a condition of the provision of assistance pursuant to this section, any representations and warranties on the part of any person receiving or involved in providing such assistance that the authority determines are reasonably necessary or useful to carry out the purposes of this section. A person receiving or involved in providing assistance pursuant to this section is liable to the authority for damages suffered by the authority by reason of a misrepresentation or the breach of a warranty.

4. All persons, public and private, are authorized to cooperate with the authority and to participate in the programs developed and implemented pursuant to this section and in accordance with the rules of the authority.

5. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 175.19, subsection 4, apply to bonds or notes issued pursuant to powers granted to the authority under this section, to reserve funds, to appropriations, and to the remedies of bondholders and noteholders except to the extent that they are inconsistent with this section.

86 Acts, ch 1026, §5; 87 Acts, ch 52, §5

Referred to in §175.34

#### **175.14 Loans to mortgage lenders.**

1. The authority may make and contract to make loans to mortgage lenders on terms and conditions it determines are reasonably related to protecting the security of the authority's investment and to implementing the purposes of this chapter. Mortgage lenders are authorized to borrow from the authority in accordance with the provisions of this section and the rules of the authority.

2. The authority shall require as a condition of each loan to a mortgage lender that the mortgage lender, within a reasonable period after receipt of the loan proceeds as the authority prescribes by rule, shall have entered into written commitments to make and, within a reasonable period thereafter as the authority prescribes by rule, shall have disbursed the loan proceeds in new mortgage or secured loans to beginning farmers in an aggregate principal amount of not less than the amount of the loan. New mortgage or secured loans shall have terms and conditions as the authority prescribes by rules which are reasonably related to implementing the purposes of this chapter.

3. The authority shall require the submission to it by each mortgage lender to which the authority has made a loan, of evidence satisfactory to the authority of the making of new mortgage or secured loans to beginning farmers as required by this section and in that connection may, through its members, employees or agents, inspect the books and records of a mortgage lender.

4. Compliance by a mortgage lender with the terms of its agreement with the authority with respect to the making of new mortgage or secured loans to beginning farmers may be enforced by decree of any district court of this state. The authority may require as a condition of a loan to a national banking association or a federally chartered savings and loan association, the consent of the association to the jurisdiction of courts of this state over any enforcement proceeding. The authority may also require, as a condition of a loan to a mortgage lender, agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority, and the penalties shall be recoverable at the suit of the authority.

5. The authority shall require that each mortgage lender receiving a loan pursuant to this section shall issue and deliver to the authority evidence of its indebtedness to the authority which shall constitute a general obligation of the mortgage lender and shall bear a date,

mature at a time, be subject to prepayment and contain other provisions consistent with this section and reasonably related to protecting the security of the authority's investment, as the authority determines.

6. Notwithstanding any other provision of this section, the interest rate and other terms of loans to mortgage lenders made from the proceeds of an issue of bonds or notes of the authority shall be at least sufficient to assure the payment of the bonds or notes and the interest on them as they become due.

7. The authority may require that loans to mortgage lenders are additionally secured as to payment of both principal and interest by a pledge of and lien upon collateral security by special escrow funds or other forms of guarantee and in amounts and forms as the authority by resolution determines to be necessary to assure the payment of the loans and the interest as they become due. Collateral security shall consist of direct obligations of or obligations guaranteed by the United States or one of its agencies, obligations satisfactory to the authority which are issued by other federal agencies, direct obligations of or obligations guaranteed by a state or a political subdivision of a state or investment quality obligations approved by the authority.

8. The authority may require that collateral for loans be deposited with a bank, trust company or other financial institution acceptable to the authority located in this state and designated by the authority as custodian. In the absence of that requirement, each mortgage lender shall enter into an agreement with the authority containing provisions the authority deems necessary to adequately identify and maintain the collateral, service the collateral and require the mortgage lender to hold the collateral as an agent for the authority and be accountable to the authority as the trustee of an express trust for the application and disposition of the collateral and the income from it. The authority may also establish additional requirements it deems necessary with respect to the pledging, assigning, setting aside or holding of collateral and the making of substitutions for it or additions to it and the disposition of income and receipts from it.

9. The authority may require as a condition of loans to mortgage lenders any representations and warranties it determines are necessary to secure the loans and carry out the purposes of this section.

10. The authority may require the beginning farmer to satisfy conditions and requirements normally imposed by mortgage lenders in making similar loans, including but not limited to, the purchase of capital stock in the federal land bank.

11. If a provision of this section is inconsistent with a provision of law of this state governing mortgage lenders, the provision of this section controls for the purposes of this section.

[C81, §175.14]

Referred to in §175.27, 175.34

#### **175.15 Purchase of loans.**

1. The authority may purchase and make advance commitments to purchase mortgage or secured loans from mortgage lenders at prices and upon terms and conditions as it determines. However, the total purchase price for all mortgage or secured loans which the authority commits to purchase from a mortgage lender at any one time shall not exceed the total of the unpaid principal balances of the mortgage or secured loans purchased. Mortgage lenders are authorized to sell mortgage or secured loans to the authority in accordance with the provisions of this section and the rules of the authority.

2. The authority shall require as a condition of purchase of mortgage or secured loans from mortgage lenders that the mortgage lenders certify that the mortgage or secured loans purchased are loans made to beginning farmers. Mortgage or secured loans to be made by mortgage lenders shall have terms and conditions as the authority prescribes by rule. The authority may make a commitment to purchase mortgage or secured loans from mortgage lenders in advance of the time the loans are made by mortgage lenders. The authority shall require as a condition of a commitment that mortgage lenders certify in writing that all mortgage or secured loans represented by the commitment will be made to beginning farmers and that the mortgage lender will comply with other authority specifications.

3. The authority shall require the submission to it by each mortgage lender from which the authority has purchased loans of evidence satisfactory to the authority of the making of mortgage or secured loans to beginning farmers as required by this section and in that connection may, through its members, employees or agents, inspect the books and records of a mortgage lender.

4. Compliance by a mortgage lender with the terms of its agreement with the authority with respect to the making of mortgage or secured loans to beginning farmers may be enforced by decree of any district court of this state. The authority may require as a condition of purchase of mortgage or secured loans from any national banking association or federally chartered savings and loan association the consent of the association to the jurisdiction of courts of this state over any enforcement proceeding. The authority may also require as a condition of the purchase of mortgage or secured loans from a mortgage lender agreement by the mortgage lender to the payment of penalties to the authority for violation by the mortgage lender of its agreement with the authority and the penalties shall be recoverable at the suit of the authority.

5. The authority may require as a condition of purchase of a mortgage or secured loan from a mortgage lender that the mortgage lender make representations and warranties the authority requires. A mortgage lender is liable to the authority for damages suffered by the authority by reason of the untruth of a representation or the breach of a warranty and, in the event that a representation proves to be untrue when made or in the event of a breach of warranty, the mortgage lender shall, at the option of the authority, repurchase the mortgage or secured loan for the original purchase price adjusted for amounts subsequently paid on it, as the authority determines.

6. The authority shall require the recording of an assignment of a mortgage loan purchased by it from a mortgage lender and is not required to notify the mortgagor of its purchase of the mortgage loan. The authority is not required to inspect or take possession of the mortgage documents if the mortgage lender from which the mortgage loan is purchased enters into a contract to service the mortgage loan and account to the authority for it.

7. If a provision of this section is inconsistent with another provision of law of this state governing mortgage lenders, the provision of this section controls for the purposes of this section.

[C81, §175.15]

Referred to in §175.27, 175.34

#### **175.16 Powers relating to loans.**

Subject to any agreement with bondholders or noteholders, the authority may renegotiate a mortgage or secured loan or a loan to a mortgage lender in default, waive a default or consent to the modification of the terms of a mortgage or secured loan or a loan to a mortgage lender, forgive or forbear all or part of a mortgage or secured loan or a loan to a mortgage lender and commence, prosecute and enforce a judgment in any action, including but not limited to a foreclosure action, to protect or enforce any right conferred upon it by law, mortgage or secured loan agreement, contract or other agreement and in connection with any action, bid for and purchase the property or acquire or take possession of it, complete, administer, pay the principal of and interest on any obligations incurred in connection with the property and dispose of and otherwise deal with the property in a manner the authority deems advisable to protect its interests.

[C81, §175.16]

#### **175.17 Bonds and notes.**

1. The authority may issue its negotiable bonds and notes in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The bonds and notes shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code, chapter 554.

2. Bonds and notes are payable solely and only out of the moneys, assets or revenues of the authority and as provided in the agreement with bondholders or noteholders pledging any particular moneys, assets or revenues. Bonds or notes are not an obligation of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limitations, but are special obligations of the authority payable solely and only from the sources provided in this chapter, and the authority shall not pledge the credit or taxing power of this state or any political subdivision of this state other than the authority or make its debts payable out of any moneys except those of the authority.

3. Bonds and notes must be authorized by a resolution of the authority. However, a resolution authorizing the issuance of bonds or notes may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.

4. Bonds shall:

a. State the date and series of the issue, be consecutively numbered and state on their face that they are payable both as to principal and interest solely out of the assets of the authority and do not constitute an indebtedness of this state or any political subdivision of this state other than the authority within the meaning of any constitutional or statutory debt limit.

b. Be either registered, registered as to principal only, or in coupon form, issued in denominations as the authority prescribes, fully negotiable instruments under the laws of this state, signed on behalf of the authority with the manual or facsimile signature of the chairperson or vice chairperson, attested by the manual or facsimile signature of the secretary, have impressed or imprinted thereon the seal of the authority or a facsimile of it, and the coupons attached shall be signed with the facsimile signature of the chairperson or vice chairperson, be payable as to interest at rates and at times as the authority determines, be payable as to principal at times over a period not to exceed fifty years from the date of issuance, at places and with reserved rights of prior redemption, as the authority prescribes, be sold at prices, at public or private sale, and in a manner as the authority prescribes, and the authority may pay all expenses, premiums and commissions which it deems necessary or advantageous in connection with the issuance and sale, and be issued under and subject to the terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, interest and other terms, conditions, covenants and protective provisions safeguarding payment, not inconsistent with this chapter, as are found to be necessary by the authority for the most advantageous sale, which may include but are not limited to covenants with the holders of the bonds as to those matters set forth in section 16.26, subsection 4, paragraph "b".

5. The authority may issue its bonds for the purpose of refunding any bonds or notes of the authority then outstanding, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption of the outstanding bonds or notes. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds or notes are applied to the purchase or retirement of outstanding bonds or notes or the redemption of outstanding bonds or notes, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this chapter. The interest, income and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds or notes to be refunded by purchase, retirement or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the authority for use by it in any lawful manner. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds.

6. The authority may issue negotiable bond anticipation notes and may renew them from time to time but the maximum maturity of the notes, including renewals, shall not exceed ten years from the date of issue of the original notes. Notes are payable from any available moneys of the authority not otherwise pledged or from the proceeds of the sale of bonds in anticipation of which the notes were issued. Notes may be issued for any corporate purpose of the authority. Notes shall be issued in the same manner as bonds and notes and the resolution authorizing them may contain any provisions, conditions or limitations, not inconsistent with the provisions of this subsection, which the bonds or a bond resolution of

the authority may contain. Notes may be sold at public or private sale. In case of default on its notes or violation of any obligations of the authority to the noteholders, the noteholders shall have all the remedies provided in this chapter for bondholders. Notes shall be as fully negotiable as bonds of the authority.

7. A copy of each pledge agreement by or to the authority, including without limitation each bond resolution, indenture of trust or similar agreement, or any revisions or supplements to it shall be filed with the secretary of state and no further filing or other action under article 9 of the uniform commercial code as provided in chapter 554, or any other law of the state shall be required to perfect the security interest in the collateral or any additions to it or substitutions for it and the lien and trust so created shall be binding from and after the time made against all parties having claims of any kind in tort, contract or otherwise against the pledgor.

8. Members of the authority and any person executing its bonds, notes or other obligations are not liable personally on the bonds, notes or other obligations or subject to personal liability or accountability by reason of the issuance of the authority's bonds or notes.

9. The authority shall publish a notice of intention to issue bonds or notes in a newspaper published and of general circulation in the state. The notice shall include a statement of the maximum amount of bonds or notes proposed to be issued, and in general, what net revenues will be pledged to pay the bonds or notes and interest thereon. An action shall not be brought questioning the legality of the bonds or notes or the power of the authority to issue the bonds or notes or to the legality of any proceedings in connection with the authorization or issuance of the bonds or notes after sixty days from the date of publication of the notice.

10. Bonds and notes issued by the authority for purposes of financing the beginning farmer loan program provided in section 175.12 are exempt from taxation by the state, and interest earned on the bonds and notes is deductible in determining net income for purposes of the state individual and corporate income tax under divisions II and III of chapter 422.

[C81, §175.17]

87 Acts, ch 52, §6; 89 Acts, ch 175, §1; 2005 Acts, ch 3, §45

Referred to in §175.33, 175.34, 422.7

### **175.18 Reserve funds and appropriations.**

1. The authority may create and establish one or more special funds, each to be known as a "bond reserve fund" and shall pay into each bond reserve fund any moneys appropriated and made available by the state for the purpose of the fund, any proceeds of sale of notes or bonds to the extent provided in the resolutions of the authority authorizing their issuance and any other moneys which are available to the authority for the purpose of the fund from any other sources. Moneys held in a bond reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

2. Moneys in a bond reserve fund shall not be withdrawn from it in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this section, except for the purpose of making payment when due of principal, interest, redemption premiums and the sinking fund payments with respect to the bonds for the payment of which other moneys of the authority are not available. Any income or interest earned by, or incremental to, a bond reserve fund due to the investment of it may be transferred by the authority to other funds or accounts of the authority to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for it.

3. The authority shall not at any time issue bonds, secured in whole or in part by a bond reserve fund if, upon the issuance of the bonds, the amount in the bond reserve fund will be less than the bond reserve fund requirement for the fund, unless the authority at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds issued or from other sources an amount which, together with the amount then in the fund will not be less

than the bond reserve fund requirement for the fund. For the purposes of this section, the term “*bond reserve fund requirement*” means, as of any particular date of computation, an amount of money, as provided in the resolutions of the authority authorizing the bonds with respect to which the fund is established, equal to not more than ten percent of the outstanding principal amount of bonds secured by the fund.

4. To assure the continued operation and solvency of the authority for the carrying out of its corporate purposes, provision is made in subsection 1 for the accumulation in each bond reserve fund of an amount equal to the bond reserve fund requirement for the fund. In order further to assure maintenance of the bond reserve funds, the chairperson of the authority shall, on or before July 1 of each calendar year, make and deliver to the governor a certificate stating the sum, if any, required to restore each bond reserve fund to its bond reserve fund requirement. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including any sum required to restore each bond reserve fund to its bond reserve fund requirement. Sums appropriated by the general assembly and paid to the authority pursuant to this section shall be deposited by the authority in the applicable bond reserve fund.

5. Amounts paid over to the authority by the state pursuant to the provisions of this section shall constitute and be accounted for as advances by the state to the authority and, subject to the rights of the holders of any bonds or notes of the authority, shall be repaid to the state without interest from all available operating revenues of the authority in excess of amounts required for the payment of bonds, notes or obligations of the authority, the bond reserve fund and operating expenses.

6. The authority shall cause to be delivered to the legislative fiscal committee within ninety days of the close of its fiscal year its annual report certified by an independent certified public accountant, who may be the accountant or a member of the firm of accountants who regularly audits the books and accounts of the authority selected by the authority. In the event that the principal amount of any bonds or notes deposited in a bond reserve fund is withdrawn for payment of principal or interest thereby reducing the amount of that fund to less than the bond reserve fund requirement, the authority shall immediately notify the general assembly of this event and shall take steps to restore the fund to its bond reserve fund requirement from any amounts available, other than principal of a bond issue, which are not pledged to the payment of other bonds or notes.

[C81, §175.18]

#### **175.19 Remedies of bondholders and noteholders.**

1. If the authority defaults in the payment of principal or interest on an issue of bonds or notes at maturity or upon call for redemption and the default continues for a period of thirty days or if the authority fails or refuses to comply with the provisions of this chapter, or defaults in an agreement made with the holders of an issue of bonds or notes, the holders of twenty-five percent in aggregate principal amount of bonds or notes of the issue then outstanding, by instrument filed in the office of the clerk of the county in which the principal office of the authority is located and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds or notes for the purposes provided in this section.

2. *a.* The authority or any trustee appointed under the indenture under which the bonds are issued may, but upon written request of the holders of twenty-five percent in aggregate principal amount of the issue of bonds or notes then outstanding shall:

(1) Enforce all rights of the bondholders or noteholders including the right to require the authority to carry out its agreements with the holders and to perform its duties under this chapter.

(2) Bring suit upon the bonds or notes.

(3) By action require the authority to account as if it were the trustee of an express trust for the holders.

(4) By action enjoin any acts or things which are unlawful or in violation of the rights of the holders.

(5) Declare all the bonds or notes due and payable and if all defaults are made good then with the consent of the holders of twenty-five percent of the aggregate principal amount of the issue of bonds or notes then outstanding, annul the declaration and its consequences.

b. The bondholders or noteholders may, to the extent provided in the resolution to which the bonds or notes were issued or in its agreement with the authority, enforce any of the remedies in paragraph “a”, subparagraphs (1) through (5), or the remedies provided in such proceedings or agreements for and on their own behalf.

3. The trustee shall also have all powers necessary or appropriate for the exercise of functions specifically set forth or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

4. Before declaring the principal of bonds or notes due and payable, the trustee shall first give thirty days’ notice in writing to the governor, to the authority and to the attorney general of the state.

5. The district court has jurisdiction of any action by the trustee on behalf of bondholders or noteholders. The venue of the action shall be in the county in which the principal office of the authority is located.

[C81, §175.19; 81 Acts, ch 68, §5]

2008 Acts, ch 1031, §39

Referred to in §175.13A, 175.33, 175.34

#### **175.20 Agreement of the state.**

The state pledges and agrees with the holders of any bonds or notes that the state will not limit or alter the rights vested in the authority to fulfill the terms of agreements made with the holders or in any way to impair the rights and remedies of the holders until the bonds or notes together with the interest on them, plus interest on unpaid installments of interest, and all costs and expenses in connection with an action by or on behalf of the holders are fully met and discharged. The authority may include this pledge and agreement of the state in any agreement with the holders of bonds or notes.

[C81, §175.20]

#### **175.21 Bonds and notes as legal investments.**

Bonds and notes are securities in which public officers, state departments and agencies, political subdivisions, insurance companies and other persons carrying on an insurance business, banks, trust companies, investment companies and other persons carrying on a banking business, administrators, executors, guardians, conservators, trustees and other fiduciaries and other persons authorized to invest in bonds or other obligations of this state may properly and legally invest funds including capital in their control or belonging to them. The bonds and notes are also securities which may be deposited with and may be received by public officers, state departments and agencies and political subdivisions for any purpose for which the deposit of bonds or other obligations of this state is authorized.

[C81, §175.21]

2012 Acts, ch 1017, §46

#### **175.22 Moneys of the authority.**

1. Moneys of the authority, except as otherwise provided in this chapter, shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall be secured in the manner determined by the authority. The auditor of state or the auditor’s legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and the authority shall not be required to pay a fee for the examination.

2. The authority may contract with holders of its bonds or notes as to the custody, collection, security, investment and payment of moneys of the authority, of moneys held in trust or otherwise for the payment of bonds or notes and to carry out the contract. Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds

or notes and deposits of the moneys may be secured in the same manner as moneys of the authority and banks and trust companies may give security for the deposits.

3. Subject to the provisions of any contract with bondholders or noteholders and to the approval of the director of the department of administrative services, the authority shall prescribe a system of accounts.

4. The authority shall submit to the governor, the auditor of state, the department of management, and the department of administrative services, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority other than copies of the reports of examinations made by the auditor of state.

[C81, §175.22]

88 Acts, ch 1158, §46; 2003 Acts, ch 145, §286

#### **175.23 Limitation of liability.**

Members of the authority and persons acting in its behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties given in this chapter.

[C81, §175.23]

#### **175.24 Assistance by state officers, agencies and departments.**

State officers and state departments and agencies may render services to the authority within their respective functions as requested by the authority.

[C81, §175.24]

#### **175.25 Liberal interpretation.**

This chapter, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

[C81, §175.25]

#### **175.26 Conflicts of interest.**

The requirements and procedures for conflicts of interest by a member or employee of the authority set forth in section 16.3A shall also apply to this chapter.

[C81, §175.26]

2013 Acts, ch 100, §15, 17

Section stricken and rewritten

#### **175.27 Exemption from competitive bid laws.**

The authority and all contracts made by it in carrying out its public and essential governmental functions under sections 175.14 and 175.15, shall be exempt from the laws of the state which provide for competitive bids in connection with such contracts.

[C81, §175.27]

#### **175.28 Trust assets.**

The authority shall make application to and receive from the secretary of agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of Pub. L. No. 81-499, 64 Stat. 152 (1950), formerly codified at 40 U.S.C. § 440 et seq. (1976), all of the trust assets held by the United States in trust for the Iowa rural rehabilitation corporation now dissolved.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, §234.15; C81, §175.28]

2009 Acts, ch 41, §66

Referred to in §175.30

#### **175.29 Agreements.**

The authority may enter into agreements with the secretary of agriculture of the United States pursuant to Pub. L. No. 81-499 § 2(f) (1950) upon terms and conditions and for periods of time as mutually agreeable, authorizing the authority to accept, administer, expend and use in the state of Iowa all or any part of the trust assets or other funds in the state of Iowa which have been appropriated for use in carrying out the purposes of the Bankhead-Jones Farm

Tenant Act and to do any and all things necessary to effectuate and carry out the purposes of said agreements.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, §234.16; C81, §175.29]  
2009 Acts, ch 41, §67

**175.30 Use of assets — insured or guaranteed loans to beginning or displaced farmers.**

1. As used in this section:

a. “*Beginning farmer*” includes an individual or partnership with a low or moderate net worth that became engaged in farming on or after January 1, 1982.

b. “*Displaced farmer*” means a person who discontinued farming on or after January 1, 1982, due to foreclosure or voluntary liquidation for financial reasons, and who was actively engaged in farming for at least one year prior to discontinuing farming.

2. The trust assets received under the application made pursuant to section 175.28 other than cash shall be taken on proper transfer or assignment from the department of human services to the authority and administered as provided in this chapter. These funds may be used for any of the purposes of this chapter, including but not limited to costs of administration and insuring or guaranteeing payment of all or a portion of loans made pursuant to this chapter.

3. a. Beginning August 11, 1983, the authority shall establish an insurance or guarantee loan program with those funds received pursuant to section 175.28 to the extent those funds were not committed under a program authorized by this chapter on August 11, 1983. This program shall provide for the insuring or guaranteeing of seventy-five percent of the amount of an agricultural loan, not in excess of twenty-five thousand dollars, made to a beginning or displaced farmer to provide operating moneys for farming purposes in this state.

b. The authority shall insure or guarantee only one such loan for each beginning or displaced farmer. The authority shall insure or guarantee a loan for only one year but with the option to extend the insurance or guarantee once for an additional year. The authority shall not insure or guarantee a loan where the ratio of the beginning or displaced farmer’s liabilities, excluding the amount of the loan, to assets is greater than three to one.

c. Provision shall be made in the insuring or guaranteeing of a loan that only those funds set aside for this program as provided in this subsection shall be used for the payment of all or a portion of the loan insured or guaranteed. Provision shall also be made that the authority shall pay under its insurance or guarantee seventy-five percent of the actual amount of the default.

d. A mortgage lender which seeks to have a loan of the lender insured or guaranteed under this program shall apply to the authority for the insurance or guarantee pursuant to rules established by the authority for this purpose. This program shall not obligate the state, authority, or other agency except to the extent provided in this subsection.

e. The authority shall define by rule what constitutes a loan made to provide operating moneys which definition shall not include a loan made for acquisition of agricultural land or agricultural improvements, or the refinancing of an existing loan even if made for operating purposes.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, §234.17; C81, §175.30]

83 Acts, ch 96, §157, 159; 83 Acts, ch 109, §1, 2, 3; 86 Acts, ch 1078, §1; 2009 Acts, ch 41, §68

**175.31 Programs in progress.**

The authority shall complete the administration of programs in progress on July 1, 1980, to the extent that funds were committed, obligations incurred or rights accrued prior to July 1, 1980, under the programs authorized under sections 234.15 to 234.20 prior to the repeal of those sections. Moneys received under this section shall be deposited to the authority.

[C81, §175.31]

**175.32 Liability.**

The United States, the authority and the secretary of agriculture of the United States shall be held free from liability by virtue of the transfer of the assets to the authority. The authority and persons acting in its behalf, while acting within the scope of their employment or agency,

are not subject to personal liability resulting from carrying out their powers and duties under this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, §234.20; C81, §175.32]

### **175.33 Additional loan program.**

1. The authority may enter into a loan agreement with a beginning farmer to finance in whole or in part the acquisition by construction or purchase of agricultural land, agricultural improvements, or depreciable agricultural property. The repayment obligation of the beginning farmer may be unsecured, or may be secured by a mortgage or security agreement or by other security as the authority deems advisable, and may be evidenced by one or more notes of the beginning farmer. The loan agreement may contain terms and conditions as the authority deems advisable.

2. The authority may issue its bonds and notes for the purposes set forth in subsection 1 and may enter into a lending agreement or purchase agreement with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. Bonds and notes must be authorized by a resolution of the authority. The authority and the bondholders or noteholders may enter into an agreement to provide for any of the following:

a. That the proceeds of the bonds and notes and investments thereon may be received, held, and disbursed by the bondholders or noteholders, or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority, may collect, invest, and apply the amounts payable under the loan agreement or any other security instrument securing the debt obligation of the beginning farmer.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreement or security instrument on their own behalf without the appointment or designation of a trustee and if there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained therein, the payment or performance may be enforced in accordance with the provisions contained therein.

d. That if there is a default in the payment of the principal or interest on a mortgage or security instrument or a violation of an agreement contained in the mortgage or security instrument, the mortgage or security instrument may be foreclosed or enforced and any collateral sold under proceedings or actions permitted by law and a trustee under the mortgage or security agreement or the holder of any bonds or notes secured thereby may become a purchaser if it is the highest bidder.

e. Other terms and conditions.

3. The authority may provide in the resolution authorizing the issuance of the bonds or notes that the principal and interest shall be limited obligations payable solely out of the revenues derived from the debt obligation, collateral, or other security furnished by or on behalf of the beginning farmer, and that the principal and interest does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

4. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 175.17, subsection 9 and section 175.19, subsection 4, apply to bonds or notes issued pursuant to and powers granted to the authority under this section except to the extent that they are inconsistent with this section.

[81 Acts, ch 68, §1]

Referred to in §16.221

### **175.34 Soil conservation loan program.**

1. The authority shall establish a soil conservation loan program to facilitate the implementation of permanent soil and water conservation practices and the acquisition of conservation farm equipment for agricultural land within the state by making financing for this program available to credit worthy owners or operators of agricultural land within the state. The authority may provide this financing under the program by direct loans, loans to lenders, and the purchase of loans in the manner provided in sections 175.13 through

175.15, except that the financing pursuant to these sections shall not be limited to beginning farmers. In addition under the program, the authority may enter into a loan agreement with the owner or operator to finance in whole or in part the implementation of permanent soil and water conservation practices and the acquisition of conservation farm equipment for agricultural land in the state. The repayment obligation of the owner or operator may be unsecured, or may be secured by a mortgage or security agreement or by other security as the authority deems advisable, and may be evidenced by one or more notes of the owner or operator. The loan agreement may contain terms and conditions as the authority deems advisable.

2. In addition to the other conditions and criteria established for the soil conservation loan program, the following apply:

a. Loans made pursuant to the soil conservation loan program shall only be made to the owner or operator of a farm located within the state for which a conservation plan has been developed by the soil and water conservation district and the project for which the loan is to be made has been approved by the district. However, loans under the soil conservation loan program for implementation of a permanent soil and water conservation practice shall not be remitted to the applicant until the applicant provides evidence that payment of the permanent soil and water conservation practice is arranged for and the soil and water conservation district certifies that the practice is completed and approved.

b. The program and financing provided pursuant to the program shall not be limited to beginning farmers but shall be available to all credit worthy owners or operators of agricultural land within the state, however in providing financing for the acquisition of conservation farm equipment preference shall be given those owners or operators of agricultural land who have the lower net worths.

c. The division of soil conservation or any other state agency and the commissioners and staffs of the soil and water conservation districts may provide technical and financial assistance to the authority or in connection with the soil conservation loan program to assure the success of this program.

d. The amount of financing that may be provided under the soil conservation loan program shall not exceed the cost of implementing the permanent soil and water conservation practice or of acquiring the conservation farm equipment which the owner or operator is seeking to implement or acquire less any amounts the owner or operator will receive in public cost-sharing funds under chapter 161A or other provisions of state or federal law for the implementation or acquisition. However, the maximum amount of loans that an owner or operator may receive pursuant to this program shall not exceed fifty thousand dollars for permanent soil and water conservation practices and fifty thousand dollars for conservation farm equipment.

e. If a cooperator of a soil and water conservation district qualifies for cost sharing under a state soil conservation cost share program, the cooperator is eligible for a loan request. In granting these requests the authority shall give preference to those with the lower net worths.

3. The authority may issue its bonds and notes for the purposes set forth in subsection 1 and may enter into a lending agreement or purchase agreement with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. Bonds and notes must be authorized by a resolution of the authority. However, the authority shall not have a total principal amount of bonds and notes outstanding under this section at any time in excess of twenty-five percent of the limitation on the amount of bonds and notes at any time specified in section 175.17, subsection 1. The authority and the bondholders or noteholders may enter into an agreement to provide for any of the following:

a. That the proceeds of the bonds and notes and investments thereon may be received, held, and disbursed by the bondholders or noteholders, or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority, may collect, invest, and apply the amounts payable under the loan agreement or any other security instrument securing the debt obligation of the owner or operator of the agricultural land.

c. That the bondholders or noteholders may enforce the remedies provided in the loan

agreement or security instrument on their own behalf without the appointment or designation of a trustee and if there is a default in the principal or interest on the bonds or notes or in the performance of any agreement contained therein, the payment or performance may be enforced in accordance with the provisions contained therein.

d. That if there is a default in the payment of the principal or interest on a mortgage or security instrument or a violation of an agreement contained in the mortgage or security instrument, the mortgage or security instrument may be foreclosed or enforced and any collateral sold under proceedings or actions permitted by law and a trustee under the mortgage or security agreement or the holder of any bonds or notes secured thereby may become a purchaser if it is the highest bidder.

e. Other terms and conditions.

4. The authority may provide in the resolution authorizing the issuance of the bonds or notes that the principal and interest are limited obligations payable solely out of the revenues derived from the debt obligation, collateral, or other security furnished by or on behalf of the owner or operator of the agricultural land, and that the principal and interest do not constitute an indebtedness of the authority or a charge against its general credit or general fund.

5. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 175.12, section 175.17, subsection 9 and section 175.19, subsection 4, apply to bonds or notes issued pursuant to and powers granted to the authority under this section except to the extent that they are inconsistent with this section.

[82 Acts, ch 1243, §1]

83 Acts, ch 93, §2; 87 Acts, ch 23, §5

Referred to in §16.221

**175.35 Agricultural loan assistance program.** Repealed by 2013 Acts, ch 125, § 22 – 24. 2013 repeal of this section takes effect June 17, 2013, and applies retroactively to January 1, 2013, for tax years beginning on or after that date; 2013 Acts, ch 125, §23, 24

**175.36 Assistance and management programs for beef cattle producers.**

1. The authority shall create and develop programs to assist agricultural producers who have established or intend to establish in this state, beef cattle production operations, including but not limited to the following assistance:

a. *Insurance or loan guarantee program.* An insurance or loan guarantee program to provide for the insuring or guaranteeing of all or part of a loan made to an agricultural producer for the acquisition of beef cattle to establish or expand a feeder cattle operation.

b. *An interest buy-down program.*

(1) The authority may contract with a participating lending institution and a qualified agricultural producer to reduce the interest rate charged on a loan for the acquisition of beef cattle breeding stock. The authority shall determine the amount that the rate is reduced, by considering the lending institution's customary loan rate for the acquisition of beef cattle breeding stock as certified to the authority by the lending institution.

(2) As part of the contract, in order to partially reimburse the lending institution for the reduction of the interest rate on the loan, the authority may agree to grant the lending institution any amount foregone by reducing the interest rate on that portion of the loan which is one hundred thousand dollars or less. However, the amount reimbursed shall not be more than the lesser of the following:

(a) Three percent per annum of the principal balance of the loan outstanding at any time for the term of the loan or within one year from the loan initiation date as defined by rules adopted by the authority, whichever is less.

(b) Fifty percent of the amount of interest foregone by the lending institution on the loan.

c. *A cost-sharing program.* The authority may contract with an agricultural producer to reimburse the producer for the cost of converting land planted to row crops to pasture suitable for beef cattle production. However, the amount reimbursed shall not be more than twenty-five dollars per acre converted, or fifty percent of the conversion costs, whichever is less. The contract shall apply to not more than one hundred fifty acres of row crop land converted to pasture. The converted land shall be utilized in beef cattle production for a

minimum of five years. The amount to be reimbursed shall be reduced by the amount that the agricultural producer receives under any other state or federal program that contributes toward the cost of converting the same land from row crops to pasture.

*d. A management assistance and training program.* The authority in cooperation with any agency or instrumentality of the federal government or with any state agency, including any state university or those associations organized for the purpose of assisting agricultural producers involved in beef cattle production, or with any farm management company if such company specializes in beef cattle production or in assisting beef cattle producers, as prescribed by rules adopted by the authority, shall establish programs to train and assist agricultural producers to effectively manage beef cattle production operations.

2. An agricultural producer shall be eligible to participate in a program established under this section only if all the following criteria are satisfied:

a. The agricultural producer is a resident of the state.

b. The agricultural producer has land or other facilities available to establish a beef cattle production operation as prescribed by rules of the authority.

c. The agricultural producer is an individual, partnership, or a family farm corporation as defined in section 9H.1, subsection 9.

d. The land or other facilities available to establish a beef cattle production operation are located within the state.

e. The agricultural producer has a net worth of four hundred thousand dollars or less.

f. The agricultural producer develops a farm unit conservation plan, as defined in section 161A.42, with the commissioners of the soil and water conservation district where the land is located within one year from the date of entering into the program, unless the authority prescribes a shorter period of time by rule.

3. The authority shall adopt rules to enforce the provisions of this section or the terms of a contract to which the authority is a party. The authority may also enforce the provisions of this section or terms of the contract by bringing an action in any court of competent jurisdiction to recover damages. As a condition of entering into the program, the authority may require that the agricultural producer consent to the jurisdiction of the courts of this state to hear any matter arising from the provisions of this section.

87 Acts, ch 169, §4; 2009 Acts, ch 41, §263

Referred to in §16.221

### **175.36A Criteria for beginning farmers qualifying to participate in the beginning farmer tax credit program.**

A beginning farmer qualifies to participate in the beginning farmer tax credit program by meeting all of the following criteria:

1. Is a resident of the state. If the beginning farmer is a partnership, all partners must be residents of the state. If a beginning farmer is a family farm corporation, all shareholders must be residents of the state. If the beginning farmer is a family farm limited liability company, all members must be residents of the state.

2. Has sufficient education, training, or experience in farming. If the beginning farmer is a partnership, each partner who is not a minor must have sufficient education, training, or experience in farming. If the beginning farmer is a family farm corporation, each shareholder who is not a minor must have sufficient education, training, or experience in farming. If the beginning farmer is a family farm limited liability company, each member who is not a minor must have sufficient education, training, or experience in farming.

3. Has access to adequate working capital and production items.

4. Will materially and substantially participate in farming. If the beginning farmer is a partnership, family farm corporation, or family farm limited liability company, each partner, shareholder, or member who is not a minor must materially and substantially participate in farming.

5. Is not responsible for managing or maintaining agricultural land and other agricultural

assets that are greater than necessary to adequately support a beginning farmer as determined by the authority according to rules which shall be adopted by the authority.

2013 Acts, ch 125, §6, 23, 24

Referred to in §175.2

For future repeal of this section effective December 31, 2017, see 2013 Acts, ch 125, §25, 28

Section takes effect June 17, 2013, and applies retroactively to January 1, 2013, for tax years beginning on or after that date; 2013 Acts, ch 125, §23, 24

NEW section

### **175.36B Administration of beginning farmer tax credit program.**

1. To every extent practicable, the authority shall administer tax credits under the beginning farmer tax credit program in a uniform manner that encourages participation by qualified beginning farmers. The authority shall determine a qualified beginning farmer's low or moderate net worth by using a single method applicable to all its programs, including the beginning farmer tax credit program.

2. The authority shall establish a due date to receive applications to participate in the beginning farmer tax credit program. The authority may establish different due dates for applications to qualify for each beginning farmer tax credit.

3. The department of revenue shall cooperate with the authority in administering the beginning farmer tax credit program.

2013 Acts, ch 125, §7, 23, 24

For future repeal of this section effective December 31, 2017, see 2013 Acts, ch 125, §25, 28

Section takes effect June 17, 2013, and applies retroactively to January 1, 2013, for tax years beginning on or after that date; 2013 Acts, ch 125, §23, 24

NEW section

### **175.37 Agricultural assets transfer tax credit — agreement.**

1. An agricultural assets transfer tax credit is allowed under this section. The tax credit is allowed against the taxes imposed in chapter 422, division II, as provided in section 422.11M, and in chapter 422, division III, as provided in section 422.33, to facilitate the transfer of agricultural assets from a taxpayer to a qualified beginning farmer.

2. In order to qualify for the tax credit, the taxpayer must meet qualifications established by rules adopted by the authority. At a minimum, the taxpayer must comply with all of the following:

a. Be a person who may acquire or otherwise obtain or lease agricultural land in this state pursuant to chapter 9H or 9I. However, the taxpayer must not be a person who may acquire or otherwise obtain or lease agricultural land exclusively because of an exception provided in one of those chapters or in a provision of another chapter of this Code including but not limited to chapter 10, 10D, or 501, or section 15E.207.

b. Execute an agricultural assets transfer agreement with a qualified beginning farmer as provided in this section.

3. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

4. The tax credit is allowed only for agricultural assets that are subject to an agricultural assets transfer agreement. The agreement shall provide for the lease of agricultural land located in this state, including any improvements and may provide for the rental of agricultural equipment as defined in section 322F.1.

a. The agreement shall include a lease made on a cash basis or on a commodity share basis which includes a share of the crops or livestock produced on the agricultural land. The agreement must be in writing.

b. The agreement shall be for at least two years, but not more than five years. The agreement or that part of the agreement providing for the lease may be renewed by the qualified beginning farmer for a term of at least two years, but not more than five years. An agreement does not include a lease or the rental of equipment intended as a security.

c. The agricultural transfer agreement cannot be assigned and the land subject to the agreement cannot be subleased.

5. The tax credit shall be based on the agricultural assets transfer agreement. The agreement shall be based on a cash basis or a commodity share basis or both.

a. For an agreement that includes a lease on a cash basis, the tax credit shall be computed as follows:

(1) If the qualified beginning farmer is not a veteran, the taxpayer may claim a tax credit equal to seven percent of the gross amount paid to the taxpayer under the agreement for each tax year that the tax credit is allowed.

(2) If the qualified beginning farmer is a veteran, the taxpayer may claim eight percent of the gross amount paid to the taxpayer under the agreement for the first year that the tax credit is allowed and seven percent of the gross amount paid to the taxpayer for each subsequent tax year that the tax credit is allowed. However, the taxpayer may only claim seven percent of the gross amount paid to the taxpayer under a renewed agreement or a new agreement executed by the same parties.

b. For an agreement that includes a lease on a commodity share basis, the tax credit shall be computed as follows:

(1) (a) If the qualified beginning farmer is not a veteran, the taxpayer may claim a tax credit equal to seventeen percent of the amount paid to the taxpayer from crops or animals sold under the agreement in which the payment is exclusively made from the sale of crops or animals.

(b) If the qualified beginning farmer is a veteran, the taxpayer may claim a tax credit equal to eighteen percent of the amount paid to the taxpayer from crops or animals sold under the agreement for the first tax year that the taxpayer is allowed the tax credit and seventeen percent of the amount paid to the taxpayer for each subsequent tax year that the taxpayer is allowed the tax credit. However, the taxpayer may only claim seventeen percent of the amount paid to the taxpayer from crops or animals sold for any tax year under a renewed agreement or a new agreement executed by the same parties.

(2) Notwithstanding subparagraph (1), the authority may elect an alternative method to compute a tax credit for a lease based on a crop share basis. The alternative method shall utilize a formula which uses data compiled by the United States department of agriculture. The formula shall calculate the amount of the tax credit by multiplying the average per bushel yield for the same type of grain as produced under the lease in the same county where the leased land is located by a per bushel state price established for such type of grain harvested the previous fall.

6. A tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit. A tax credit shall not be transferable to any other person other than the taxpayer's estate or trust upon the taxpayer's death.

7. A taxpayer shall not claim a tax credit under this section unless a tax credit certificate issued by the authority is attached to the taxpayer's tax return for the tax year for which the tax credit is claimed. The authority must review and approve an application for a tax credit as provided by rules adopted by the authority. The application must include a copy of the agricultural assets transfer agreement. The authority may approve an application and issue a tax credit certificate to a taxpayer who has previously been allowed a tax credit under this section. The authority may require that the parties to an agricultural assets transfer agreement provide additional information as determined relevant by the authority. The authority shall review an application for a tax credit which includes the renewal of an agricultural assets transfer agreement to determine that the parties to the renewed agreement meet the same qualifications as required for an original application. The authority shall not approve an application or issue a tax credit certificate to a taxpayer for an amount in excess of fifty thousand dollars. In addition, the authority shall not approve an application or issue a certificate to a taxpayer if any of the following applies:

a. The taxpayer is at fault for terminating a prior agricultural assets transfer agreement as determined by the authority.

b. The taxpayer is any of the following:

(1) A party to a pending administrative or judicial action, including a contested case

proceeding under chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

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

c. The agricultural assets are being leased or rented at a rate which is substantially higher or lower than the market rate for similar agricultural assets leased or rented within the same community, as determined by the authority.

8. A taxpayer or the qualified beginning farmer may terminate an agricultural assets transfer agreement as provided in the agreement or by law. The taxpayer must immediately notify the authority of the termination.

a. If the authority determines that the taxpayer is not at fault for the termination, the authority shall not issue a tax credit certificate to the taxpayer for a subsequent tax year based on the approved application. Any prior tax credit is allowed as provided in this section. The taxpayer may apply for and be issued another tax credit certificate for the same agricultural assets as provided in this section for any remaining tax years for which a certificate was not issued.

b. If the authority determines that the taxpayer is at fault for the termination, any prior tax credit allowed under this section is disallowed. The amount of the tax credit shall be immediately due and payable to the department of revenue. If a taxpayer does not immediately notify the authority of the termination, the taxpayer shall be conclusively deemed at fault for the termination.

2006 Acts, ch 1161, §2, 7; 2007 Acts, ch 22, §45; 2009 Acts, ch 135, §2, 3; 2011 Acts, ch 118, §32, 89; 2013 Acts, ch 125, §8 – 17, 23, 24

Referred to in §2.48, 16.221, 175.2, 175.38, 175.39, 422.11M, 422.33

For future repeal of 2013 amendments to this section effective December 31, 2017, see 2013 Acts, ch 125, §25, 28

Former subsection 10 applied to agricultural assets transfer agreements executed on or after July 1, 2009; 2009 Acts, ch 135, §3

2013 amendments take effect June 17, 2013, and apply retroactively to January 1, 2013, for tax years beginning on or after that date; 2013 Acts, ch 125, §23, 24

Subsection 1 amended

Subsection 2, paragraph b amended

Subsections 4 and 5 amended

Subsection 6 stricken and former subsections 7 – 9 renumbered as 6 – 8

Subsection 7, unnumbered paragraph 1 amended

Subsection 7 paragraph c stricken and former paragraph d redesignated as c

Subsection 8, unnumbered paragraph 1 amended

Subsection 8, paragraph b amended

Former subsection 10 stricken

### **175.38 Custom farming contract tax credit.**

1. A custom farming contract tax credit is allowed under this section. The tax credit is allowed against the taxes imposed in chapter 422, division II, as provided in section 422.11M, and in chapter 422, division III, as provided in section 422.33, to encourage taxpayers who are considering custom farming agricultural land located in this state to negotiate with qualified beginning farmers.

2. In order to be eligible to claim a custom farming contract tax credit, the taxpayer must meet qualifications established by rules adopted by the authority. At a minimum, the taxpayer must be a person who may acquire or otherwise obtain or lease agricultural land in the same manner as provided for a taxpayer claiming an agricultural assets transfer tax credit under section 175.37.

3. An individual may claim a custom farming contract tax credit of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

4. A custom farming contract tax credit is allowed only for the amount paid by the taxpayer to a qualified beginning farmer under a custom farming contract as provided in rules adopted by the department. The contract must provide for the production of crops located on agricultural land or the production of livestock principally located on agricultural

land. The agricultural land must be real estate and any improvements used for farming in which the taxpayer holds a legal or equitable interest.

5. The custom farming contract must provide that the taxpayer pay the qualified beginning farmer on a cash basis. The contract must be in writing for a term of not more than twelve months. The total cash payment must equal at least one thousand dollars.

6. The taxpayer must make all management decisions substantially contributing to or affecting the production of crops located on the agricultural land or the production of livestock principally located on the agricultural land. However, nothing in this paragraph prohibits a qualified beginning farmer from regularly or frequently taking part in making day-to-day operational decisions affecting production. The qualified beginning farmer must provide for all of the following:

a. Production items principally used to produce crops located on the agricultural land or to produce livestock principally located on the agricultural land.

b. Labor principally used to produce crops located on the agricultural land or to produce livestock principally located on the agricultural land. The qualified beginning farmer must personally provide such labor on a regular, continuous, and substantial basis.

7. A custom farming contract tax credit is not allowed if the taxpayer and qualified beginning farmer are related as any of the following:

a. Persons who hold a legal or equitable interest in the same agricultural land, including as individuals or as general partners, limited partners, shareholders, or members in the same business entity as defined in section 501A.102.

b. Family members related as spouse, child, stepchild, brother, or sister.

c. Partners in the same partnership which holds agricultural land, or shareholders in the same family farm corporation or members in the same family farm limited liability company and defined in section 9H.1.

8. A custom farming contract tax credit shall be calculated based on the gross amount paid to the qualified beginning farmer under the custom farming contract.

a. If the qualified beginning farmer is not a veteran, the taxpayer may claim a tax credit equal to seven percent of the gross amount paid to the qualified beginning farmer under the contract for each tax year that the tax credit is allowed.

b. If the qualified beginning farmer is a veteran, the taxpayer may claim a tax credit equal to eight percent of the gross amount paid to the qualified beginning farmer under the contract for the first year that the tax credit is allowed and seven percent of the gross amount paid to the qualified beginning farmer under the contract for each subsequent tax year that the tax credit is allowed. However, the taxpayer may only claim seven percent of the gross amount paid to the qualified beginning farmer under a renewed contract or a new contract executed by the same parties.

9. A custom farming contract tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit. A tax credit shall not be transferable to any other person other than the taxpayer's estate or trust upon the taxpayer's death.

10. A taxpayer shall not claim a custom farming contract tax credit unless a tax credit certificate issued by the authority under this section is attached to the taxpayer's tax return for the tax year for which the tax credit is claimed. The authority must review and approve an application for a tax credit certificate as provided by rules adopted by the authority. The application must include a copy of the custom farming contract. The authority may approve an application and issue a tax credit certificate to a taxpayer who has previously been allowed a tax credit under this section. The authority may require that the parties to the contract provide additional information as determined relevant by the authority. The authority shall review an application for a tax credit certificate which includes the renewal of a contract to determine that the parties to the renewed contract meet the same qualifications as required for an original application. The authority shall not approve an application or issue a tax credit certificate to a taxpayer for an amount in excess of fifty thousand dollars. In addition, the authority shall not approve an application or issue a tax credit certificate to a taxpayer if any of the following applies:

a. The taxpayer is at fault for terminating another custom farming contract, as determined by the authority.

b. The taxpayer is party to a pending administrative or judicial action, or classified as a habitual violator in the same manner as provided in section 175.37.

c. The contract amount is substantially higher or lower than the market rate for a similar custom farming contract, as determined by the authority.

11. A taxpayer or the qualified beginning farmer may terminate a custom farming contract as provided in the contract or by law. The taxpayer must immediately notify the authority of the termination.

a. If the authority determines that the taxpayer is not at fault for the termination, the authority shall not issue a tax credit certificate to the taxpayer for a subsequent tax year based on the approved application. Any prior tax credit is allowed as provided in this section until its expiration. The taxpayer may apply for and be issued another tax credit certificate for the same agricultural land under a custom farming contract with another qualified beginning farmer.

b. If the authority determines that the taxpayer is at fault for the termination, any prior tax credit allowed under this section is disallowed, and the amount of the tax credit shall be immediately due and payable to the department of revenue. If a taxpayer does not immediately notify the authority of the termination, the taxpayer shall be conclusively deemed at fault for the termination.

2013 Acts, ch 125, §18, 23, 24

Referred to in §2.48, 175.2, 175.39, 422.11M, 422.33

For future repeal of this section effective December 31, 2017, see 2013 Acts, ch 125, §25, 28

Section takes effect June 17, 2013, and applies retroactively to January 1, 2013, for tax years beginning on or after that date; 2013 Acts, ch 125, §23, 24

NEW section

### **175.39 Tax credit certificates — availability.**

1. The amount of tax credits that may be issued to support the beginning farmer tax credit program shall not in the aggregate exceed twelve million dollars in any year. Of the aggregate amount, eight million dollars is allocated to support the agricultural assets transfer tax credit as provided in section 175.37 and four million dollars is allocated to support the custom farming contract tax credit as provided in section 175.38. However, the authority's board of directors may at any time during the year adjust the allocation by adopting a resolution.

2. The authority shall issue tax certificates to support a beginning farmer tax credit on a first-come, first-served basis.

2013 Acts, ch 125, §19, 23, 24

For future repeal of this section effective December 31, 2017, see 2013 Acts, ch 125, §25, 28

Section takes effect June 17, 2013, and applies retroactively to January 1, 2013, for tax years beginning on or after that date; 2013 Acts, ch 125, §23, 24

NEW section

## CHAPTER 175A

### GRAPE AND WINE DEVELOPMENT

Repealed by 2010 Acts, ch 1031, §252

Expenditure of moneys in grape and wine development fund by department of agriculture and land stewardship to satisfy obligations or encumbrances incurred prior to July 1, 2010, are not affected by chapter repeal; transfer of unobligated or unencumbered moneys from grape and wine development fund created in former §175A.5 to wine gallonage tax fund created in §123.183 on June 30, 2010; 2010 Acts, ch 1031, §254

## CHAPTER 175B

## IOWA FARMERS' MARKET NUTRITION PROGRAM

175B.1	Short title.	175B.4	Other programs.
175B.2	Definitions.	175B.5	Administrative rules.
175B.3	Iowa farmers' market nutrition program — establishment and administration.		

**175B.1 Short title.**

This chapter shall be known and may be cited as the “*Iowa Farmers' Market Nutrition Program Act*”.

2007 Acts, ch 84, §1

**175B.2 Definitions.**

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

1. “*Department*” means the department of agriculture and land stewardship.
2. “*Federal program*” means the WIC farmers' market nutrition program and the senior farmers' market nutrition program.
3. “*Iowa farmers' market nutrition program*” means one or both of the federal programs as established and administered by the department pursuant to section 175B.3.
4. “*Senior farmers' market nutrition program*” means the federal senior farmers' market nutrition program as authorized by the federal Farm Security and Rural Investment Act of 2002, 7 U.S.C. § 3007, and provided for in 7 C.F.R. pt. 249.
5. “*WIC farmers' market nutrition program*” means the federal women, infants, and children farmers' market nutrition program as authorized by the federal Child Nutrition Act of 1966, 42 U.S.C. § 1786, and as regulated by 7 C.F.R. pt. 248.

2007 Acts, ch 84, §2

**175B.3 Iowa farmers' market nutrition program — establishment and administration.**

An Iowa farmers' market nutrition program is established.

1. The department shall administer the Iowa farmers' market nutrition program as a state agency approved by the United States department of agriculture to participate in the federal programs. The department may apply to and submit a state plan for approval by the United States department of agriculture as required to administer the Iowa farmers' market nutrition program.

2. The department and any other state agency, local government agency, or nonprofit entity participating in the federal programs shall cooperate as necessary in order to carry out the federal programs, including by entering into written agreements. The department and any other state agency shall cooperate under the auspices of the governor.

2007 Acts, ch 84, §3

Referred to in §175B.2

**175B.4 Other programs.**

Nothing in this chapter restricts the department from providing for other programs which promote the purposes of the federal programs.

2007 Acts, ch 84, §4; 2009 Acts, ch 133, §73

**175B.5 Administrative rules.**

The department shall adopt rules in order to administer the Iowa farmers' market nutrition program. If another state agency is involved in the administration of this chapter, the other state agency shall cooperate with the department in adopting its rules.

2007 Acts, ch 84, §5

Licensing of vendors at farmers' markets, see chapter 137F

## CHAPTER 176

## FARM AID ASSOCIATIONS

Repealed effective July 1, 2005, by 2002 Acts, ch 1017, §7, 8;  
see chapter 504

## CHAPTER 176A

## COUNTY AGRICULTURAL EXTENSION

Referred to in §159.6, 173.3

176A.1	Short title.	176A.10	County agricultural extension education tax.
176A.2	Declaration of policy.	176A.11	Annual levy by board of supervisors.
176A.3	Definition of terms.	176A.12	County agricultural extension fund.
176A.4	Establishment — body corporate — county agricultural extension districts.	176A.13	Cooperation extension council — extension service.
176A.5	County agricultural extension council.	176A.14	Extension council officers — duties.
176A.6	Elections.	176A.15	Consolidation of extension districts.
176A.7	Terms — meetings.	176A.16	General election law applicable.
176A.8	Powers and duties of county agricultural extension council.		
176A.9	Limitation on powers and activities of extension council.		

**176A.1 Short title.**

This chapter may be known and cited as the “*County Agricultural Extension Law*”.  
[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.1]

**176A.2 Declaration of policy.**

It is the policy of the legislature to provide for aid in disseminating among the people of Iowa useful and practical information on subjects relating to agriculture, home economics, and community and economic development, and to encourage the application of the information in the counties of the state through extension work to be carried on in cooperation with Iowa state university of science and technology and the United States department of agriculture as provided in the Act of Congress known as the Smith-Lever Act, adopted May 8, 1914, as amended, 38 Stat. 372 – 374, codified at 7 U.S.C. § 341 – 349.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.2]

86 Acts, ch 1245, §838; 2006 Acts, ch 1010, §57

**176A.3 Definition of terms.**

Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. “*County agricultural extension council*”, hereinafter referred to as “*extension council*”, means the agency created and constituted as provided in section 176A.5.

2. “*County agricultural extension district*”, hereinafter referred to as “*extension district*”, means a governmental subdivision of this state, and a public body corporate organized in accordance with the provisions of this chapter for the purposes, with the powers, and subject to the restrictions set forth in this chapter.

3. “*Director of extension*” means the “director of Iowa state university of science and technology extension service”, and shall hereinafter be referred to as “*director of extension*”.

4. “*Extension service*” means the “cooperative extension service in agriculture and home economics of Iowa state university”, and shall hereinafter be referred to as “*extension service*”.

5. “Iowa state university” means the “Iowa state university of science and technology”, and shall hereinafter be referred to as “Iowa state university”.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.3]  
2009 Acts, ch 41, §69

#### **176A.4 Establishment — body corporate — county agricultural extension districts.**

Each county, except Pottawattamie, is constituted and established as a “county agricultural extension district” and shall be a public body corporate organized in accordance with the provisions of this chapter for the purposes, with the powers and subject to the restrictions hereinafter set forth. Pottawattamie county shall be divided into and constitute two districts with one district to be known as “East Pottawattamie” which shall include the following townships: Pleasant, Layton, Knox, James, Valley, Lincoln, Washington, Belknap, Center, Wright, Carson, Macedonia, Grove, Waveland; and the other “West Pottawattamie” which shall include the following townships: Rockford, Boomer, Neola, Minden, Hazel Dell, York, Crescent, Norwalk, Lake, Garner, Hardin, Kane, Lewis, Keg Creek, Silver Creek.

[C24, 27, 31, 35, 39, §2930; C46, 50, 54, §176.8; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.4]

#### **176A.5 County agricultural extension council.**

There shall be elected in each extension district an extension council consisting of nine members. Each member of the extension council shall be a resident registered voter of the extension district.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.5]  
90 Acts, ch 1149, §1; 94 Acts, ch 1169, §64  
Referred to in §176A.3

#### **176A.6 Elections.**

An election shall be held biennially at the time of the general election in each extension district for the election of members of the extension council. All registered voters of the extension district are entitled to vote in the election.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.6]  
90 Acts, ch 1149, §2; 95 Acts, ch 67, §53  
Referred to in §39.21

#### **176A.7 Terms — meetings.**

1. Except as otherwise provided pursuant to law for members elected in 1990, the term of office of an extension council member is four years. The term shall commence on the first day of January following the date of the member’s election which is not a Sunday or legal holiday.

2. Each extension council shall meet at least two times during a calendar year and at other times during the year as the council determines. The date, time, and place of each meeting shall be fixed by the council.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.7]  
90 Acts, ch 1149, §3; 99 Acts, ch 133, §1

#### **176A.8 Powers and duties of county agricultural extension council.**

The extension councils of each extension district of the state shall have, exercise, and perform the following powers and duties:

1. To elect from their own number annually a chairperson, vice chairperson, secretary and a treasurer who shall serve and be the officers of the extension council for a term of one year, and perform the functions and duties as herein in this chapter provided.

2. To serve as an agency of the state and to manage and transact all of the business and affairs of its district and have control of all of the property acquired by it and necessary for the conduct of the business of the district for the purposes of this chapter.

3. *a.* To and shall, at least ninety days prior to the date fixed for the election of council members, appoint a nominating committee consisting of four persons who are not council members and designate the chairperson. The membership of the nominating committee shall be gender balanced. The nominating committee shall consider the geographic distribution

of potential nominees in nominating one or more resident registered voters of the extension district as candidates for election to each office to be filled at the election. To qualify for the election ballot, each nominee shall file a nominating petition signed by at least twenty-five eligible electors of the district with the county commissioner of elections at least sixty-nine days before the date of election.

b. To and shall also provide for the nomination by petition of candidates for election to membership on the extension council. A nominating petition shall be signed by at least twenty-five eligible electors of the extension district and shall be filed with the county commissioner of elections at least sixty-nine days before the date of the election.

4. To enter into a memorandum of understanding with the extension service setting forth the cooperative relationship between the extension service and the extension district.

5. To employ all necessary extension professional personnel from qualified nominees furnished to it and recommended by the director of extension and not to terminate the employment of any such without first conferring with the director of extension, and to employ such other personnel as it shall determine necessary for the conduct of the business of the extension district, and to fix the compensation for all such personnel in cooperation with the extension service and in accordance with the memorandum of understanding entered into with such extension service.

6. To prepare annually before March 15 a budget for the fiscal year beginning July 1 and ending the following June 30, in accordance with the provisions of chapter 24 and certify the same to the board of supervisors of the county of their extension district as required by law.

7. To and shall be responsible for the preparation and adoption of the educational program on extension work in agriculture, home economics and 4-H club work, and periodically review said program and for the carrying out of the same in cooperation with the extension service in accordance with the memorandum of understanding with said extension service.

8. To make and adopt such rules not inconsistent with the law as it may deem necessary for its own government and the transaction of the business of the extension district.

9. To fill all vacancies in its membership to serve for the unexpired term of the member creating the vacancy by appointing a resident registered voter of the extension district. However, if an unexpired term in which the vacancy occurs has more than seventy days to run after the date of the next pending election and the vacancy occurs seventy-four or more days before the election, the vacancy shall be filled at the next pending election.

10. To and shall, as soon as possible following the meeting at which the officers are elected, file in the office of the board of supervisors and of the county treasurer a certificate signed by its chairperson and secretary certifying the names, addresses and terms of office of each member, and the names and addresses of the officers of the extension council with the signatures of the officers affixed thereto, and said certificate shall be conclusive as to the organization of the extension district, its extension council, and as to its members and its officers.

11. To and shall deposit all funds received from the "county agricultural extension education fund" in a bank or banks approved by it in the name of the extension district. These receipts shall constitute a fund known as the "county agricultural extension education fund" which shall be disbursed by the treasurer of the extension council on vouchers signed by its chairperson and secretary and approved by the extension council and recorded in its minutes.

12. To expend the "county agricultural extension education fund" for salaries and travel, expense of personnel, rental, office supplies, equipment, communications, office facilities and services, and in payment of such other items as shall be necessary to carry out the extension district program; provided, however, it shall be unlawful for the county agricultural extension council to lease any office space which is occupied or used by any other farm organization or farm cooperative, and provided further, that it shall be lawful for the county agricultural extension council to lease space in a building owned or occupied by a farm organization or farm cooperative.

13. To carry over unexpended county agricultural extension education funds into the next year so that funds will be available to carry on the program until such time as moneys received

from taxes are collected by the county treasurer. However, the unencumbered funds in the county agricultural extension education fund in excess of one-half the amount expended from the fund in the previous year shall be paid over to the county treasurer. The treasurer of the extension council with the approval of the council may invest agricultural extension education funds retained by the council and not needed for current expenses in the manner authorized for treasurers of political subdivisions under section 12C.1.

14. To file with the county auditor and to publish in two newspapers of general circulation in the district before August 1 full and detailed reports under oath of all receipts, from whatever source derived, and expenditures of such county agricultural extension education fund showing from whom received, to whom paid and for what purpose for the last fiscal year.

[S13, §1683-j, -m; C24, 27, 31, 35, 39, §2930, 2933, 2938; C46, 50, 54, §176.8, 176.11, 176.16; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.8]

83 Acts, ch 123, §77, 209; 87 Acts, ch 43, §5; 90 Acts, ch 1149, §4 – 6; 91 Acts, ch 129, §22; 94 Acts, ch 1169, §64; 99 Acts, ch 133, §2, 3; 2001 Acts, ch 56, §10; 2009 Acts, ch 41, §70

Referred to in §176A.9, 331.427

Section not amended; editorial change applied

### **176A.9 Limitation on powers and activities of extension council.**

1. The extension council has for its sole purpose the dissemination of information, the giving of instruction and practical demonstrations on subjects relating to agriculture, home economics, and community and economic development, and the encouragement of the application of the information, instruction, and demonstrations to and by all persons in the extension district, and the imparting to the persons of information on those subjects through field demonstrations, publications, or other media.

2. The extension district, its council, or a member or an employee as a representative of either one or the other shall not engage in commercial or other private enterprises, legislative programs, nor attempt in any manner by the adoption of resolutions or otherwise to influence legislation, either state or national, or other activities not authorized by this chapter.

3. The extension council or a member or employee thereof as a representative of either the extension district or the extension council shall not give preferred services to any individual, group or organization or sponsor the programs of any group, organization or private agency other than as herein provided by this chapter.

4. The extension council may collect reasonable fees and may seek and receive grants, donations, gifts, bequests, or other moneys from public and private sources to be used for the purposes set forth in this section, and may enter into contracts to provide educational services.

5. The extension council and its employed personnel may cooperate with, give information and advice to organized and unorganized groups, but shall not promote, sponsor or engage in the organization of any group for any purpose except the promoting, organization and the development of the programs of 4-H clubs. Nothing in this chapter shall prevent the county extension council or extension agents employed by it from using or seeking opportunities to reach an audience of persons interested in agricultural extension work through the help of interested farm organizations, civic organizations or any other group: Provided, that in using or seeking such opportunities, the county extension council or agents employed by it shall make available to all groups and organizations in the county equal opportunity to cooperate in the educational extension program.

6. Members of the council shall serve without compensation, but may receive actual and necessary expenses, including in-state travel expenses at not more than the state rate, incurred in the performance of official duties other than attendance at regular local county extension council meetings. Payment shall be made from funds available pursuant to section 176A.8, subsection 12.

[SS15, §1683-e; C24, 27, 31, 35, 39, §2929, 2931; C46, 50, 54, §176.7, 176.9; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.9]

86 Acts, ch 1245, §839; 98 Acts, ch 1166, §1, 2

**176A.10 County agricultural extension education tax.**

1. The extension council of each extension district shall, at a meeting held before March 15, estimate the amount of money required to be raised by taxation for financing the county agricultural extension education program authorized in this chapter. The annual tax levy and the amount of money to be raised from the levy for the county agricultural extension education fund shall not exceed the following:

a. (1) Except as provided in subparagraph (2), for an extension district having a population of less than thirty thousand, an annual levy of twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of seventy thousand dollars for the fiscal year commencing July 1, 1985, and seventy-five thousand dollars for each subsequent fiscal year.

(2) For an extension district having a population of less than thirty thousand and as provided in subsection 2, an annual levy of thirty cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of eighty-seven thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of six thousand dollars in the amount payable during each subsequent fiscal year.

b. (1) Except as provided in subparagraph (2), for an extension district having a population of thirty thousand or more but less than fifty thousand, an annual levy of twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of eighty-four thousand dollars for the fiscal year commencing July 1, 1985, and ninety thousand dollars for each subsequent fiscal year.

(2) For an extension district having a population of thirty thousand or more but less than fifty thousand and as provided in subsection 2, an annual levy of twenty and one-fourth cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred four thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of seven thousand dollars in the amount payable during each subsequent fiscal year.

c. (1) Except as provided in subparagraph (2), for an extension district having a population of fifty thousand or more but less than ninety-five thousand, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred five thousand dollars for the fiscal year commencing July 1, 1985, and one hundred twelve thousand five hundred dollars for each subsequent fiscal year.

(2) For an extension district having a population of fifty thousand or more but less than ninety thousand and as provided in subsection 2, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred thirty thousand five hundred dollars payable during the fiscal year commencing July 1, 1992, and an increase of nine thousand dollars in the amount payable during each subsequent fiscal year.

d. (1) Except as provided in subparagraph (2), for an extension district having a population of ninety-five thousand or more, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred forty thousand dollars for the fiscal year commencing July 1, 1985, and one hundred fifty thousand dollars for each subsequent fiscal year.

(2) For an extension district having a population of ninety thousand or more but less than two hundred thousand and as provided in subsection 2, an annual levy of thirteen and one-half cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of one hundred eighty thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of fifteen thousand dollars in the amount payable during each subsequent fiscal year.

e. For an extension district having a population of two hundred thousand or more and as provided in subsection 2, an annual levy of five cents per thousand dollars of the assessed valuation of the taxable property in the district up to a maximum of two hundred thousand dollars payable during the fiscal year commencing July 1, 1992, and an increase of twenty-five thousand dollars in the amount payable during each subsequent fiscal year.

2. An extension council of an extension district may choose to be subject to the levy

and revenue limits specified in subparagraphs (2) of subsection 1, paragraphs “a” through “d”, and subsection 1, paragraph “e”, for the purpose of the annual levy for the fiscal year commencing July 1, 1991, which levy is payable in the fiscal year beginning July 1, 1992. Before an extension district may be subject to the levy and revenue limits specified in subparagraphs (2) of subsection 1, paragraphs “a” through “d”, and subsection 1, paragraph “e”, for fiscal years beginning on or after July 1, 1992, which levy is payable in fiscal years beginning on or after July 1, 1993, the question of whether the district shall be subject to the levy and revenue limits as specified in such paragraphs must be submitted to the registered voters of the district. The question shall be submitted at the time of a general election. If the question is approved by a majority of those voting on the question the levy and revenue limits specified in subparagraphs (2) of subsection 1, paragraphs “a” through “d”, and subsection 1, paragraph “e”, shall thereafter apply to the extension district. The question need only be approved at one general election. If a majority of those voting on the question vote against the question, the district may continue to submit the question at subsequent general elections until approved.

3. The extension council in each extension district shall comply with chapter 24.

[C24, 27, 31, 35, 39, §2930; C46, 50, 54, §176.8; C58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §176A.10; 81 Acts, ch 69, §1]

91 Acts, ch 156, §1; 92 Acts, ch 1212, §7; 92 Acts, ch 1246, §25; 99 Acts, ch 133, §4; 2009 Acts, ch 41, §205; 2010 Acts, ch 1069, §24; 2013 Acts, ch 30, §39

Subsection 2 amended

#### **176A.11 Annual levy by board of supervisors.**

The board of supervisors of each county shall annually, at the time of levying taxes for county purposes, levy the taxes necessary to raise the county agricultural extension education fund and certified to it by the extension council as provided in this chapter, but if the amount certified for such fund is in excess of the amount authorized by this chapter it shall levy only so much thereof as is authorized by this chapter.

[C24, 27, 31, 35, 39, §2930; C46, 50, 54, §176.8; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.11]

#### **176A.12 County agricultural extension fund.**

A county agricultural extension education fund shall be established in each county and the county treasurer of each county shall keep the amount of tax levied under this chapter in that fund. Before the fifteenth day of each month, the treasurer shall notify the chairperson of the county extension council of the amount collected for this fund to the first day of that month and shall pay that amount to the treasurer of the extension council as provided in section 331.552, subsection 29.

83 Acts, ch 123, §78, 209; 84 Acts, ch 1003, §4

Referred to in §331.559

#### **176A.13 Cooperation extension council — extension service.**

The extension council is specifically authorized to cooperate with the extension service and the United States department of agriculture in the accomplishment of the county agricultural extension education program contemplated by this chapter, to the end that the federal funds allocated to the extension service and the county agricultural extension education fund of each district may be more efficiently used by the extension service and the extension council. The director of extension shall coordinate the county agricultural extension education program in the several extension districts.

[S13, §1683-p; C24, 27, 31, 35, 39, §2931, 2932; C46, 50, 54, §176.9, 176.10; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.13]

#### **176A.14 Extension council officers — duties.**

1. The chairperson of the extension council shall preside at all meetings of the extension council, have authority to call special meetings of said council upon such notice as shall be fixed and determined by the extension council, and shall call special meetings of the extension council upon the written request of a majority of the members of said council, and in addition

to the duties imposed in this chapter perform and exercise the usual duties performed and exercised by a chairperson or president of a board of directors of a corporation.

2. The vice chairperson, in the absence or disability of the chairperson, or the chairperson's refusal to act, shall perform the duties imposed upon the chairperson and act in the chairperson's stead.

3. The secretary shall perform the duties usually incident to this office. The secretary shall keep the minutes of all meetings of the extension council. The secretary shall sign such instruments and papers as are required to be signed by the secretary as such in this chapter, and by the extension council from time to time.

4. The treasurer shall receive, deposit and have charge of all of the funds of the extension council and pay and disburse the same as in this chapter required, and as may be from time to time required by the extension council. The treasurer shall keep an accurate record of receipts and disbursements and submit a report thereof at such times as may be required by the extension council.

5. Each of the officers of the extension council shall perform and carry out the officer's duties as provided in this section and shall perform and carry out any other duties as required by rules adopted by the extension council as authorized in this chapter. A member of the extension council, within fifteen days after the member's election, shall take and sign the usual oath of public officers which shall be filed in the office of the county auditor of the county of the extension district. The treasurer of the extension council, within ten days after being elected and before entering upon the duties of the office, shall execute to the extension council a corporate surety bond for an amount not less than twenty thousand dollars. The bond shall be continued until the treasurer faithfully discharges the duties of the office. The bond shall be filed with the county auditor of the county of the extension district. The county auditor shall notify the chairperson of the extension council of the bond's filing in the auditor's office. The cost of the surety bond shall be paid for by the extension council.

[S13, §1683-i, -j, -m; C24, 27, 31, 35, 39, §2933, 2934, 2938; C46, 50, 54, §176.11, 176.12, 176.16; C58, 62, 66, 71, 73, 75, 77, 79, 81, §176A.14]

97 Acts, ch 73, §1; 98 Acts, ch 1107, §2

Referred to in §331.502

#### **176A.15 Consolidation of extension districts.**

Any two or more extension districts may be consolidated to form a single extension district, by resolution duly adopted by the extension council of each such extension district. Upon adoption of such resolutions providing for such consolidation, the extension councils shall do all things which may be necessary or convenient to carry into effect such consolidation. The initial extension council for such new extension district shall consist of the members of the extension councils of the consolidated extension districts. The extension council of such new extension district shall promptly elect officers as provided in this chapter, and upon such election the terms of the officers of the extension councils of the consolidated extension districts shall terminate. The extension council of the new extension district shall select a name for such district and shall file the name, together with copies of the resolution providing for such consolidation, with the recorder of each county affected thereby. The new extension district shall be regarded for all purposes as an extension district, the same as if such extension district consisted of a single county, and its extension council and officers thereof shall have all the powers and duties which now or hereafter may pertain to extension councils and officers thereof. All assets and liabilities of the consolidated extension districts shall become the assets and liabilities of the new extension district. The tax rate for the "county agricultural extension education fund" shall be the same in each county included in an extension district formed by consolidation. For the purposes of any law requiring extension districts to file any document with or certify any information to any county officer or board, an extension district formed by consolidation shall file or certify the same with or to the appropriate officer or board of each county included in the extension district. An extension district formed by consolidation may be dissolved and the original extension districts as they existed prior to such consolidation may be reestablished, by resolution duly adopted by the extension council of such extension district; and upon adoption of such

resolution, the extension council shall do all things which may be necessary or convenient to carry into effect such dissolution and the reestablishment of the original extension districts.

[C62, 66, 71, 73, 75, 77, 79, 81, §176A.15]

**176A.16 General election law applicable.**

The provisions of chapter 49 apply to the elections held pursuant to this chapter, and the county commissioner of elections has responsibility for the conducting of those elections.

[C75, 77, 79, 81, §176A.16]

90 Acts, ch 1149, §7

CHAPTER 176B

RESERVED

CHAPTER 177

CROP IMPROVEMENT ASSOCIATION

Referred to in §159.6, 173.3

177.1	Recognition of organization.	177.3	Board of directors.
177.1A	Definitions.	177.4	Employees.
177.2	Powers and purposes.	177.5	Expenses of officers.

**177.1 Recognition of organization.**

The organization existing in and incorporated under the laws of this state and known as the Iowa crop improvement association shall be entitled to the benefits of this chapter.

[C24, 27, 31, 35, 39, §2939; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §177.1]

2008 Acts, ch 1096, §1

Referred to in §177.1A

**177.1A Definitions.**

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

1. "Association" means the Iowa crop improvement association recognized in section 177.1.

2. "Department" means the department of agriculture and land stewardship.

2008 Acts, ch 1096, §2

**177.2 Powers and purposes.**

The Iowa crop improvement association shall have all powers necessary to carry out the following purposes:

1. Act as the official seed certifying agency for Iowa as provided by rules adopted by the department.

2. Adopt procedures for conducting seed and plant stock certification and planting stock quality assurance, pursuant to rules adopted by the department.

3. Provide educational and leadership opportunities to influence public policy regarding crop improvement.

4. Conduct, in cooperation with Iowa state university college of agriculture and life sciences, testing and disseminate information regarding the adaptation and performance of crop cultivars.

5. Coordinate all Iowa crop improvement association activities in a manner that is consistent with environmentally sound agricultural practices.

6. Provide a mechanism for commodity identity preservation.

7. Engage in such other activities that are reasonably connected to the purposes of this section.

[C24, 27, 31, 35, 39, §2940; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §177.2]  
87 Acts, ch 225, §204; 2008 Acts, ch 1096, §3; 2009 Acts, ch 41, §71

### **177.3 Board of directors.**

The Iowa crop improvement association shall be governed by a board of directors.

1. The association's articles of incorporation or bylaws shall provide for all of the following:

a. The organization of the board, its procedures for meeting and voting, and the election of its board members and officers.

b. The business of the association, which shall be transacted as provided in this chapter.

2. The board shall include all of the following members:

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

b. The following persons representing the college of agriculture and life sciences at Iowa state university:

(1) The director of the agricultural experiment station.

(2) The chair of the agronomy department.

(3) The director of the seed science center.

c. Six persons elected by the association's voting shareholders from among its voting shareholders.

[C24, 27, 31, 35, 39, §2941; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §177.3]  
87 Acts, ch 115, §30; 2008 Acts, ch 1096, §4; 2009 Acts, ch 41, §72

### **177.4 Employees.**

The Iowa crop improvement association may employ one or more competent persons to carry out the provisions of this chapter as directed by the association's board of directors. The board may employ an executive director. A person employed by the board shall receive compensation and necessary expenses incurred while engaged in the business of the association as provided by its board of directors.

[C24, 27, 31, 35, 39, §2942; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §177.4]  
2008 Acts, ch 1096, §5  
Referred to in §177.5

### **177.5 Expenses of officers.**

A member of the board of directors or officer of the Iowa crop improvement association other than the executive director appointed pursuant to section 177.4 shall serve without compensation. However, a member of the board of directors or officer may receive necessary expenses while engaged in the business of the association pursuant to section 7E.6, as determined by the board.

[C24, 27, 31, 35, 39, §2943; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §177.5]  
2008 Acts, ch 1096, §6

## CHAPTER 177A

## CROP PESTS

Referred to in §159.6, 173.3

177A.1	Short title.	177A.13	Quarantines — seizure and destruction.
177A.2	Definitions.	177A.14	Right of access.
177A.3	State entomologist.	177A.15	Right to hearing.
177A.4	Employees — expenses.	177A.16	Violations.
177A.5	Duties — public nuisances.	177A.17	Duty of owner — assessment of costs.
177A.6	Rules.	177A.18	Violations.
177A.7	Infection — eradication — notice.	177A.19	Harmful barberry.
177A.8	Importation — regulations.	177A.20	Liability of principal.
177A.9	Inspection — certificate — fees.	177A.21	Party plaintiff.
177A.10	Report of violations.	177A.22	Construction.
177A.11	Quarantine — general powers.		
177A.12	Federal quarantine — seizures.		

**177A.1 Short title.**

This chapter shall be known by the short title of “*The Iowa Crop Pest Act*”.

[C27, 31, 35, §4062-b1; C39, §4062.01; C46, 50, 54, 58, 62, 66, 71, 73, §267.1; C75, 77, 79, 81, §177A.1]

**177A.2 Definitions.**

1. As used in this chapter, unless the context otherwise requires, “*book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. For the purposes of this chapter, the following terms shall be construed, respectively, to mean:

a. “*Insect pests and diseases.*” Insect pests and diseases injurious to plants and plant products, including any of the stages of development of such insect pests and diseases.

b. “*Places.*” Vessels, cars, boats, trucks, automobiles, aircraft, wagons and other vehicles or carriers, whether air, land or water, buildings, docks, nurseries, greenhouses, orchards, fields, gardens, and other premises or any container where plants and plant products are grown, kept or handled.

c. “*Plants and plant products.*” Trees, shrubs, vines, berry plants, greenhouse plants and all other nursery plants; forage and cereal plants, and all other parts of plants; cuttings, grafts, scions, buds, and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all other plant products.

[C27, 31, 35, §4062-b2; C39, §4062.02; C46, 50, 54, 58, 62, 66, 71, 73, §267.2; C75, 77, 79, 81, §177A.2]

2000 Acts, ch 1148, §1

**177A.3 State entomologist.**

There is hereby created and established within the department of agriculture and land stewardship the office of state entomologist. The state entomologist shall be appointed by, responsible to and under the authority of the secretary of agriculture in the issuance of all rules, the establishment of quarantines and other official acts. The secretary of agriculture shall provide the state entomologist with suitable office space.

[S13, §2575-a47; C24, §4045; C27, 31, 35, §4062-b3; C39, §4062.03; C46, 50, 54, 58, 62, 66, 71, 73, §267.3; C75, 77, 79, 81, §177A.3; 81 Acts, ch 70, §1]

**177A.4 Employees — expenses.**

For the purpose of carrying out the provisions of this chapter, the state entomologist with the approval of the secretary of agriculture shall employ, prescribe the duties of, and fix the compensation of, such inspectors, and other employees as needed and incur such expenses as may be necessary, within the limits of appropriations made by law. The state entomologist

shall cooperate with other departments, boards and officers of the state and of the United States as far as practicable.

[S13, §2575-a47; C24, §4046; C27, 31, 35, §4062-b4; C39, §4062.04; C46, 50, 54, 58, 62, 66, 71, 73, §267.4; C75, 77, 79, 81, §177A.4]

2012 Acts, ch 1023, §157

#### **177A.5 Duties — public nuisances.**

The state entomologist shall keep informed as to known species and varieties of insect pests and diseases, the origin, locality, nature and appearance thereof, the manner in which they are disseminated, and approved methods of treatment and eradication. In the rules made pursuant to this chapter the state entomologist shall list the dangerously injurious insect pests and diseases which the entomologist shall find should be prevented from being introduced into, or disseminated within, this state in order to safeguard the plants and plant products likely to become infested or infected with such insect pests and diseases. Every such insect pest and disease listed, and every plant product infested or infected therewith, is hereby declared to be a public nuisance. Every person who has knowledge of the presence in or upon any place of any insect pest or disease so listed, shall immediately report the fact and location to the state entomologist, or the assistant state entomologist, giving such detailed information relative thereto as the person may have. Every person who deals in or engages in the sale of plants and plant products shall furnish to the state entomologist or the entomologist's inspectors, when requested, a statement of the names and addresses of the persons from whom and the localities where the person purchased or obtained such plants and plant products.

[S13, §2575-a47; C24, §4047; C27, 31, 35, §4062-b5; C39, §4062.05; C46, 50, 54, 58, 62, 66, 71, 73, §267.5; C75, 77, 79, 81, §177A.5]

Referred to in §177A.19

Nuisances in general, chapter 657

#### **177A.6 Rules.**

1. The state entomologist shall, from time to time, adopt rules for carrying out the provisions and requirements of this chapter, including rules under which the inspectors and other employees shall:

a. Inspect places, plants and plant products, and things and substances used or connected therewith,

b. Investigate, control, eradicate and prevent the dissemination of insect pests and diseases, and

c. Supervise or cause the treatment, cutting and destruction of plants and plant products infested or infected therewith.

2. The state entomologist, the entomologist's inspectors, employees, or other authorized agents shall have authority to enforce these rules which shall be published in the same manner as are the other rules of the department.

3. A nursery stock dealer shall not sell, offer for sale, or distribute nursery products by any method, or under any circumstances or condition, which has the capacity and tendency or effect of deceiving purchasers or prospective customers as to quantity, size, grade, kind, species, age, maturity, viability, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect.

4. When under the provisions of this section it becomes necessary for the state entomologist to verify sizes and grades of nursery stock, or either of them, the entomologist shall use as a guide the "American Standard for Nursery Stock" as revised and approved by the American standards association, inc.

[S13, §2575-a48; C24, §4050, 4051, 4054; C27, 31, 35, §4062-b6; C39, §4062.06; C46, 50, 54, 58, 62, 66, 71, 73, §267.6; C75, 77, 79, 81, §177A.6]

2009 Acts, ch 41, §73

Referred to in §177A.19

**177A.7 Infection — eradication — notice.**

Whenever inspection discloses that any places, or plants or plant products, or things and substances used or connected therewith, are infested or infected with any dangerously injurious insect pest or disease listed as a public nuisance, written notice thereof shall be given the owner or person in possession or control of the place where found, who shall proceed to control, eradicate or prevent the dissemination of such insect pest or disease, and to remove, cut or destroy infested and infected plants and plant products, or things and substances used or connected therewith, as prescribed in the notice or the rules. Whenever such owner or person in possession cannot be found, or shall fail, neglect or refuse to obey the requirements of the notice and the rules, such requirements shall be carried out by the state entomologist, as required by section 177A.17.

[S13, §2575-a48; C24, §4050, 4052, 4053, 4055; C27, 31, 35, §4062-b7; C39, §4062.07; C46, 50, 54, 58, 62, 66, 71, 73, §267.7; C75, 77, 79, 81, §177A.7]

Referred to in §177A.19

**177A.8 Importation — regulations.**

It shall be unlawful for any person to bring or cause to be brought into this state any plant or plant product listed in the rules, unless there be plainly and legibly marked thereon or affixed thereto, or on or to the carrier, or the bundle, package, or container, in a conspicuous place, a statement or tag or device showing the names and addresses of the consignors or shippers and the consignees or persons to whom shipped, the general nature and quantity of the contents, and the name of the locality where grown, together with a certificate of inspection of the proper official of the state, territory, district, or country from which it was brought or shipped, showing that such plant or plant product was found or believed to be free from dangerously injurious insect pests and diseases, and giving any other information required by the state entomologist.

[S13, §2575-a50; C24, §4058; C27, 31, 35, §4062-b8; C39, §4062.08; C46, 50, 54, 58, 62, 66, 71, 73, §267.8; C75, 77, 79, 81, §177A.8]

Referred to in §177A.9, 177A.10, 177A.19

**177A.9 Inspection — certificate — fees.**

It shall be unlawful for any person to sell, give away, carry, ship, or deliver for carriage or shipment, within this state, any plants or plant products listed in the rules unless such plants or plant products have been officially inspected and a certificate issued by an inspector of the state entomologist's office stating that such plants or plant products have been inspected and found to be apparently free from dangerously injurious insect pests and diseases, and giving any other facts provided for in the rules. For the issuance of such certificate, the state entomologist may require the payment of a reasonable fee to cover the expense of such inspection and certification. Provided, that if such plants or plant products were brought into this state in compliance with section 177A.8, the certificate required by that section may be accepted in lieu of the inspection and certificate required by this section, in such cases as shall be provided for in the rules. If it shall be found at any time that a certificate of inspection, issued or accepted under the provisions of this section, is being used in connection with plants and plant products which are infested or infected with dangerously injurious insect pests or diseases or in connection with uninspected plants, its further use may be prohibited, subject to such inspection and disposition of the plants and plant products involved as may be provided for by the state entomologist. All moneys collected under the provisions of this chapter shall be turned over to the secretary who shall deposit them in the state treasury.

The fees for inspections and certifications shall not be less than twenty-five dollars nor more than five hundred dollars. Certificates shall be issued to nursery stock growers and dealers on an annual basis. Inspection and certification fees for nursery stock growers shall be twenty-five dollars plus five dollars per acre or part thereof, according to the amount of stock inspected. The inspection and certification fee for nursery stock dealers shall be twenty-five dollars. All fees shall be paid at the time of inspection or before a certificate is issued. Inspection and certification shall take place when necessary to enforce this chapter and the rules pursuant to it. Certificates issued in accordance with this chapter may be

revoked when inspection results determine that conditions violate the standards for which certification was issued.

[S13, §2575-a47, -a49; C24, §4047, 4048, 4057; C27, 31, 35, §4062-b9; C39, §4062.09; C46, 50, 54, 58, 62, 66, 71, 73, §267.9; C75, 77, 79, 81, §177A.9; 81 Acts, ch 70, §2]

88 Acts, ch 1272, §19

Referred to in §177A.10, 177A.19

#### **177A.10 Report of violations.**

Any person who receives from without the state any plant or plant product without section 177A.8 having been complied with, or who receives any plant or plant product sold, given away, carried, shipped or delivered for carriage or shipment within this state without section 177A.9 having been complied with, shall immediately inform the state entomologist or one of the entomologist's inspectors of such facts and isolate and hold the plant or plant product unopened or unused, subject to such inspection and disposition as may be provided for by the state entomologist.

[S13, §2575-a49; C24, §4057; C27, 31, 35, §4062-b10; C39, §4062.10; C46, 50, 54, 58, 62, 66, 71, 73, §267.10; C75, 77, 79, 81, §177A.10]

Referred to in §177A.19

#### **177A.11 Quarantine — general powers.**

Whenever the state entomologist shall find that there exists outside of this state any insect pest or disease, and that its introduction into this state should be prevented in order to safeguard plants and plant products in this state, the state entomologist is authorized to quarantine and promulgate quarantine restrictions covering areas within the states affected by the pest and may adopt, issue, and enforce rules supplemental to such quarantines for the control of the pest. Under such quarantines, the state entomologist or the state entomologist's authorized agents may prohibit and prevent the movement within the state without inspection, or the shipment or transportation within the state, of any agricultural or horticultural product, or any other material of any character whatsoever, capable of carrying any dangerously injurious insect pest or disease in any living state of its development; and, in the enforcement of such quarantine, may intercept, stop, and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon, vehicles or carriers or any container, material, or substance believed or known to be carrying the insect pest or plant disease in any living state of its development in violation of said quarantines or of the rules issued supplemental thereto, and may seize, possess, and destroy any agricultural or horticultural product or other material of any character whatsoever, moved, shipped, or transported in violation of such quarantines or the rules.

[S13, §2575-a48; C24, §4049; C27, 31, 35, §4062-b11; C39, §4062.11; C46, 50, 54, 58, 62, 66, 71, 73, §267.11; C75, 77, 79, 81, §177A.11]

Referred to in §177A.19

#### **177A.12 Federal quarantine — seizures.**

1. Until the secretary of agriculture of the United States shall have made a determination that a federal quarantine is necessary, and has duly established the same with reference to any dangerous plant disease or insect infestation, the state entomologist of this state is authorized to promulgate and enforce quarantine regulations prohibiting or restricting the transportation of any class of plant material or product or article into this state from any state, territory or district of the United States, when the entomologist shall have information that a dangerous plant disease or insect infestation exists in such state, territory, district, or portion thereof.

2. The state entomologist, the entomologist's inspectors or duly authorized agents are authorized to seize, destroy, or return to the point of origin any material received in this state in violation of any state quarantine established under the authority of subsection 1, or in

violation of any federal quarantine established under the authority of the Act of August 20, 1912, 37 Stat. ch 308, or any amendment to that Act.

[C27, 31, 35, §4062-b12; C39, §4062.12; C46, 50, 54, 58, 62, 66, 71, 73, §267.12; C75, 77, 79, 81, §177A.12]

2006 Acts, ch 1010, §58

Referred to in §177A.19

#### **177A.13 Quarantines — seizure and destruction.**

Whenever the state entomologist shall find that there exists in this state, or any part thereof, any dangerously injurious insect pest or plant disease, and that its dissemination should be controlled or prevented, the entomologist may institute quarantines and promulgate quarantine restrictions covering areas within the state affected by such pest or disease, and may adopt, issue and enforce rules supplemental to such quarantines for the control of this pest. Under such quarantines, the state entomologist, the entomologist's inspectors or authorized agents may prohibit and prevent the movement within the state without inspection or the shipment or transportation within this state, of any agricultural or horticultural product, or any other material of any character whatsoever, capable of carrying any dangerously injurious insect pest or disease in any living state of its development; and, in the enforcement of such quarantine, may intercept, stop, and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon, or other vehicles or carriers of any kind or character, whether air, land, or water, or any container or material believed or known to be carrying such insect pest or plant disease in any living state of its development or any such material, in violation of said quarantine or of the rules issued supplemental thereto, and may seize, possess, and destroy any agricultural or horticultural product or other material of any character whatsoever, moved, shipped, or transported in violation of such quarantines or the said rules.

The state entomologist shall give public notice of such quarantines, specifying the plants and plant products infested or infected, or likely to become infested or infected; and the movement, planting or other use of any such plant or plant product, or other thing or substance specified in such notice as likely to carry and disseminate such insect pest or disease, except under such conditions as shall be prescribed as to inspection, treatment and disposition, shall be prohibited within such area as the entomologist may designate. When the state entomologist shall find that the danger of the dissemination of such insect pest or disease has ceased to exist, the entomologist shall give public notice that the quarantine is raised.

[S13, §2575-a48; C24, §4049; C27, 31, 35, §4062-b13; C39, §4062.13; C46, 50, 54, 58, 62, 66, 71, 73, §267.13; C75, 77, 79, 81, §177A.13]

Referred to in §177A.19

#### **177A.14 Right of access.**

The state entomologist and the entomologist's authorized inspectors, employees, and agents shall have free access within reasonable hours to any farm, field, orchard, nursery, greenhouse, garden, elevator, seedhouse, warehouse, building, cellar, freight or express office or car, freight yard, truck, automobile, aircraft, wagon, vehicle, carrier, vessel, boat, container or any place which it may be necessary or desirable for such authorized agents to enter in carrying out the provisions of this chapter. It shall be unlawful to deny such access to such authorized agents or to hinder, thwart, or defeat such inspection or entrance by misrepresentation or concealment of facts or conditions, or otherwise.

[S13, §2575-a48; C24, §4049; C27, 31, 35, §4062-b14; C39, §4062.14; C46, 50, 54, 58, 62, 66, 71, 73, §267.14; C75, 77, 79, 81, §177A.14]

Referred to in §177A.19

**177A.15 Right to hearing.**

Any person affected by any rule made or notice given may have a review thereof by the secretary of agriculture for the purpose of having such rule or notice modified, suspended or withdrawn.

[C27, 31, 35, §4062-b15; C39, §4062.15; C46, 50, 54, 58, 62, 66, 71, 73, §267.15; C75, 77, 79, 81, §177A.15]

Referred to in §177A.19

**177A.16 Violations.**

Any person, partnership, association or corporation, or any combination of individuals, violating any provision of a quarantine promulgated under the authority of this chapter, or of any rules issued supplemental thereto, shall be guilty of a simple misdemeanor.

[S13, §2575-a50; C24, §4059; C27, 31, 35, §4062-b16; C39, §4062.16; C46, 50, 54, 58, 62, 66, 71, 73, §267.16; C75, 77, 79, 81, §177A.16]

2008 Acts, ch 1032, §106

Referred to in §177A.19

**177A.17 Duty of owner — assessment of costs.**

When treatment or destruction of an agricultural or horticultural plant or product, in field, feedlot, place of assemblage or storage, or elsewhere, or when a special type of plowing or any other agricultural or horticultural operation is required under the rules, the owner or person having charge of the plants, plant products or places, upon due notice from the state entomologist or the entomologist's authorized agents, shall take the action required within the time and in the manner designated by the notice. If the owner or person in charge refuses or neglects to obey the notice, the secretary of agriculture, or the secretary's authorized agents, may do what is required, and the secretary shall assess the expense to the owner after giving the owner legal notice and a hearing. No expense other than that incidental to normal and usual farm operations shall be so assessed. If the assessment is not paid, the secretary shall certify it to the treasurer of the proper county who shall enter it on the tax books and collect it as ordinary taxes are collected and remit it to the secretary.

[S13, §2575-a48; C24, §4055, 4056; C27, 31, 35, §4062-b17; C39, §4062.17; C46, 50, 54, 58, 62, 66, 71, 73, §267.17; C75, 77, 79, 81, §177A.17; 81 Acts, ch 70, §3]

Referred to in §177A.7, 177A.19, 331.559

**177A.18 Violations.**

Any person who shall violate any provision or requirement of this chapter, or of the rules made or of any notice given pursuant thereto, or who shall forge, counterfeit, deface, destroy, or wrongfully use, any certificate provided for in this chapter, or in the rules and regulations made pursuant thereto, shall be deemed guilty of a simple misdemeanor.

[S13, §2575-a50; C24, §4059; C27, 31, 35, §4062-b18; C39, §4062.18; C46, 50, 54, 58, 62, 66, 71, 73, §267.18; C75, 77, 79, 81, §177A.18]

Referred to in §177A.19

**177A.19 Harmful barberry.**

1. No person, firm, or corporation shall receive, ship, accept for shipment, transport, sell, offer for sale, give away, deliver, plant, or permit to exist on the person's, firm's, or corporation's premises any plant of the harmful barberry, or any plant of a species that shall be designated by the state entomologist in published regulations to be a host or carrier of a dangerous plant disease or insect pest.

2. The state entomologist and the entomologist's inspectors, and authorized agents, are hereby empowered to eradicate any such plant found growing in the state. If the owner shall refuse or neglect to eradicate such plants within ten days after receiving a written notice, the expense of such eradication shall be assessed, collected, and enforced against the premises upon which such expense was incurred as taxes are assessed, collected and enforced.

3. The term "harmful barberry" shall be interpreted to consist of any species of *Berberis* or *Mahonia* susceptible to infection by *Puccinia graminis*, commonly called black stem rust

of grain, but not including Japanese barberry (*B. thunbergii*), which does not propagate the rust.

4. The procedures provided in section 177A.17 and all other applicable provisions of sections 177A.5 to 177A.18 shall govern and apply to the enforcement of this section.

[C24, §4053; C27, 31, 35, §4062-b19; C39, §4062.19; C46, 50, 54, 58, 62, 66, 71, 73, §267.19; C75, 77, 79, 81, §177A.19]

**177A.20 Liability of principal.**

In construing and enforcing the provisions of this chapter, the act, omission, or failure of any official, agent, or other person acting for or employed by an association, partnership or corporation within the scope of the person’s authority shall, in every case, also be deemed the act, omission, or failure of such association, partnership, or corporation as well as that of the person.

[C27, 31, 35, §4062-b20; C39, §4062.20; C46, 50, 54, 58, 62, 66, 71, 73, §267.20; C75, 77, 79, 81, §177A.20]

**177A.21 Party plaintiff.**

The secretary of agriculture, the state entomologist, or any of their inspectors or authorized agents shall be a proper party plaintiff in any action in any court of equity brought for the purpose of carrying out any of the provisions of this chapter.

[C27, 31, 35, §4062-b21; C39, §4062.21; C46, 50, 54, 58, 62, 66, 71, 73, §267.21; C75, 77, 79, 81, §177A.21]

**177A.22 Construction.**

This chapter shall not be so construed or enforced as to conflict in any way with any Act of Congress regulating the movement of plants and plant products in interstate or foreign commerce.

[C27, 31, 35, §4062-b22; C39, §4062.22; C46, 50, 54, 58, 62, 66, 71, 73, §267.22; C75, 77, 79, 81, §177A.22]

## CHAPTER 178

### STATE DAIRY ASSOCIATION

Referred to in §159.6, 173.3

178.1	Recognition of organization.	178.4	Employees of committee.
178.2	Duties and objects of association.	178.5	Expenses of officers.
178.3	Executive committee.		

**178.1 Recognition of organization.**

The organization known as the Iowa state dairy association shall be entitled to the benefits of this chapter by filing each year with the department verified proofs of its organization, the names of its president, vice president, secretary, and treasurer, and that five hundred persons are bona fide members of said association, together with such other information as the department may require.

[C24, 27, 31, 35, 39, §2944; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §178.1]

**178.2 Duties and objects of association.**

The Iowa state dairy association shall:

1. Promote dairy test associations, shows, and sales.
2. Publish a breeders’ directory.
3. Furnish such general instruction and assistance, either by institutes or otherwise, as it may deem proper, to advance the general interests of the dairy industry.

4. Make an annual report of the proceedings and expenditures to the secretary of agriculture.

[C24, 27, 31, 35, 39, §2945; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §178.2]

**178.3 Executive committee.**

The association shall conduct its business through an executive committee which shall consist of:

1. The president and the secretary of the association.
2. The dean of the college of agriculture and life sciences of the Iowa state university of science and technology.
3. A member of the faculty of said university engaged in the teaching of dairying to be designated by said dean.
4. The secretary of agriculture or the secretary’s designee.

[C24, 27, 31, 35, 39, §2946; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §178.3]

87 Acts, ch 115, §31; 2008 Acts, ch 1032, §29

**178.4 Employees of committee.**

The executive committee may employ two or more competent persons who shall devote their entire time, under the direction of the executive committee, in carrying out the provisions of this chapter. The salary of such persons so employed shall be set by the executive committee subject to the approval of the secretary of agriculture, and such persons shall hold office at the pleasure of the executive committee.

[C24, 27, 31, 35, 39, §2947; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §178.4]

**178.5 Expenses of officers.**

The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association.

[C24, 27, 31, 35, 39, §2948; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §178.5]

## CHAPTER 179

### DAIRY INDUSTRY COMMISSION

Referred to in §8A.502, 97B.1A, 159.6

179.1	Definitions.	179.6	Records of producers, first purchasers.
179.2	Commission created — suspension during national order — reactivation.	179.7	Returns filed with commission.
		179.8	Payment of expenses — limitation.
179.3	Powers and duties.	179.9	Investigations by commission.
179.4	Expenditure of funds.	179.10	Report.
179.5	Excise tax — administration of moneys — appropriation.	179.11	Penalties.
		179.12	Repealed by 74 Acts, ch 1153, §8.
179.5A	Right to refund not subject to legal process or transfer.	179.13	Referendum.
		179.14	Influencing legislation.

**179.1 Definitions.**

As used in this chapter:

1. “*Collection period*” means a calendar year.
2. The term “*commission*” shall mean the Iowa dairy industry commission.
3. “*First purchaser*” means a person who buys milk from a producer and resells that milk or products made from the milk to another person.
4. “*Nutrition education*” means activities intended to broaden the understanding of sound nutritional principles including the role of milk in a balanced diet.

5. The term “*person*” shall mean individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units.

6. “*Producer*” means a person who produces milk from cows and thereafter sells the same as milk.

7. “*Promotion*” means actions including but not limited to advertising, sales, promotion, and publicity to advance the image and sales of and demand for milk.

8. “*Qualified financial institution*” means a bank or credit union as defined in section 12C.1.

9. “*Research*” means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and to product utilization, and other related efforts to expand demand for milk.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.1]

85 Acts, ch 126, §1 – 4; 94 Acts, ch 1146, §1; 2012 Acts, ch 1017, §47; 2012 Acts, ch 1023, §157

### **179.2 Commission created — suspension during national order — reactivation.**

1. There is created an Iowa dairy industry commission, referred to in this chapter as the commission. The commission shall be composed of the secretary of agriculture or the secretary’s designee, the dean of agriculture at Iowa state university of science and technology or the dean’s designee, and sixteen members appointed by the secretary of agriculture as provided in this section.

2. Commissioners shall serve until their successors are duly appointed and qualify. Vacancies occurring in the membership of the commission resulting from death, inability or refusal to serve, or failure to meet the definition of a producer, shall be filled within three months of the time the vacancy occurs in the manner provided by the commission. Vacancy appointments shall be only for the remainder of the unexpired term. A commissioner shall not serve more than two consecutive full terms.

3. Appointive members of the commission shall receive a per diem as specified in section 7E.6 for each day spent on official business of the commission, not to exceed six hundred dollars per annum, and their actual necessary expenses, while engaged in commission activity.

4. When a national promotional order is established by the United States department of agriculture pursuant to the Dairy Product Stabilization Act of 1983, collection of the excise tax in section 179.5 shall be suspended for the period in which the national order is in effect. The commission shall continue to operate thereafter for only the period of time necessary to pay refunds and disburse the funds remaining in the dairy industry fund for the purposes enumerated in this chapter. Upon completion of these acts, the existence of the Iowa dairy industry commission shall be suspended. The secretary of agriculture shall certify the suspension of the commission as of a date certain to the Iowa dairy industry commission and the Iowa state dairy association. When the existence of the commission is suspended, the terms of office being served by individual commissioners shall terminate.

5. When the national promotional order expires, the period of suspension of the excise tax in section 179.5 shall terminate and the secretary of agriculture shall take the steps necessary to collect that excise tax and otherwise fulfill the duties of the commission, except that of expending funds collected under the excise tax, until those duties can be resumed by the reactivated commission. When the national promotional order expires, the period of suspension of the commission shall terminate. The secretary of agriculture shall call the first meeting of the reactivated commission. Upon reactivation, the commission shall reimburse the secretary of agriculture for expenses incurred in carrying out the duties provided in this subsection.

6. When the national dairy promotion program expires and the suspension of the Iowa dairy industry commission terminates pursuant to subsection 5, all first purchasers shall, in a manner designed to reflect their proportionate contributions to the national dairy promotion program in its most recently completed fiscal year, nominate two resident producers for each of the sixteen offices of the commission. The secretary of agriculture shall then appoint one nominee from each set of two nominees as commissioners of the reactivated Iowa dairy

industry commission. The secretary of agriculture shall stagger the terms of the reactivated commission resulting in as nearly as possible one third of the commissioners serving for one year, one third of the commissioners serving for two years, and one third of the commissioners serving for three years. After the initial staggering of terms by the secretary, commissioners shall be appointed to three-year terms.

7. After the reactivated commission has been formed, nominations for commissioners shall be made by first purchasers in a manner designed to reflect their proportionate contributions to the Iowa dairy industry commission in its most recently completed fiscal year.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.2]

84 Acts, ch 1183, §1; 85 Acts, ch 126, §5 – 8; 91 Acts, ch 258, §32

### **179.3 Powers and duties.**

The powers and duties of the commission shall include the following:

1. To elect a chairperson, a secretary, and from time to time such other officers as it may deem advisable, and from time to time to adopt, rescind, modify and amend all proper and necessary rules, regulations and orders for the exercise of its power and the performance of its duties, which rules and orders shall have the force and effect of law when not inconsistent with existing laws.

2. To administer and enforce this chapter, and do and perform all acts and exercise all powers reasonably necessary to effectuate the purpose of this chapter.

3. To employ at its pleasure and discharge at its pleasure such attorneys, advertising counsel, advertising agencies, clerks and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation.

4. To establish offices and incur any and all expense, and to enter into any and all contracts and agreements for the proper administration and enforcement of this chapter.

5. To report alleged violations of this chapter to the attorney general of the state of Iowa.

6. To conduct scientific research for the purpose of developing and discovering the health, food, therapeutic, dietetic, and industrial uses for products of milk or its derivatives.

7. To make in the name of the commission such advertising contracts and other agreements as it deems necessary to promote the sale and consumption of dairy products on either a state or national basis.

8. To keep accurate books, records, and accounts of all its dealings, which books, records, and accounts shall be audited annually by the auditor of state.

9. To receive, administer, disburse and account for, in addition to the funds received from the excise tax hereinafter imposed by section 179.5, all such other funds as may be voluntarily contributed to said commission for the purpose of promoting dairy products.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.3]

85 Acts, ch 126, §9

### **179.4 Expenditure of funds.**

Funds collected through the excise tax are to be used for purposes of advertising and promotion, product, process, and nutrition, dietetics, and physiology research, nutrition education, public relations, research and development, and for other activities that contribute to producer efficiency and productivity. In addition, the commission shall use these funds to maintain existing markets, to make contributions to organizations working toward the purposes of this section, and to assist in the development of new or enlarged markets for milk, both domestic and foreign. The primary purpose for use of these funds is to increase consumption of milk. The commission may contract for advertising, publicity, sales promotion, research, and educational services the committee deems appropriate to further the objectives of this section.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.4]

85 Acts, ch 126, §10

**179.5 Excise tax — administration of moneys — appropriation.**

1. There is levied and imposed an excise tax on all producers within the state of three-fourths of one percent of the gross value of milk produced in the state.

2. All taxes levied and imposed under this chapter shall be deducted from the price received by the producer and shall be collected by the first purchaser, except as follows:

a. If the producer produces milk from cows and sells the milk directly to the consumer, the taxes shall be remitted by that producer.

b. If the producer sells milk to a first purchaser outside the state, the taxes are due and payable by that producer before the shipment is made, except that the commission may make agreements with extra state purchasers for the keeping of records and the collection of the taxes as necessary to secure the payment of the taxes within the time fixed by this chapter.

3. All taxes levied and imposed under this chapter and other contributions made to the dairy industry commission shall be paid to and collected by the commission within thirty days after the end of the month during which the milk was marketed. The commission shall remit the taxes and other contributions to the treasurer of the state each quarter, and at the same time render to the director of the department of administrative services an itemized and verified report showing the source from which the taxes and voluntary contributions were obtained. All taxes and voluntary contributions received, collected, and remitted shall be placed in a special fund by the treasurer of state and the director of the department of administrative services, to be known as the “*dairy industry fund*” to be used by the Iowa dairy industry commission for the purposes set out in this chapter and to administer and enforce the laws relative to this chapter. The department of administrative services shall transfer moneys from the fund to the commission for deposit into an account established by the commission in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the commission. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. Moneys deposited in the fund and transferred to the commission as provided in this section are appropriated and shall be used for the purpose of carrying out the provisions of this chapter.

4. A person from whom the excise tax provided in this chapter is collected may, by application filed with the commission within thirty days after the collection of the tax, have the tax refunded to that person by the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.5]

85 Acts, ch 126, §11; 94 Acts, ch 1146, §2; 2003 Acts, ch 145, §286

Referred to in §179.2, 179.3, 179.8

Suspension during national order; see §179.2

**179.5A Right to refund not subject to legal process or transfer.**

The right of a person to a refund under this chapter or under chapter 181, 182, 183A, 184A, 185, or 185C is not subject to execution, levy, attachment, garnishment, or other legal process, and is not transferable or assignable at law or in equity.

86 Acts, ch 1100, §1; 89 Acts, ch 137, §1

**179.6 Records of producers, first purchasers.**

Every producer shipping milk to a first purchaser outside of Iowa who is not by agreement with the commission collecting the tax imposed by this chapter, and every first purchaser within the state, and every producer distributing milk directly to the consumer, shall keep a complete and accurate record of all milk produced or purchased by the person during the period for which an excise tax levy is imposed under this chapter. The records shall be in the form and contain the information prescribed by the commission, shall be preserved by the person charged with their making for a period of two years, and shall be offered or submitted for inspection at any time upon written or oral request by the commission or its duly authorized agent or employee.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.6]

85 Acts, ch 126, §12; 86 Acts, ch 1238, §8

**179.7 Returns filed with commission.**

Every person charged by this chapter or by agreement with the commission with the keeping of records provided for in this chapter shall at the times the commission may by rule require, file with the commission a return on forms to be prescribed and furnished by the commission. Producers shall state the quantity of milk produced. First purchasers shall state the quantity of milk handled, bottled, processed, distributed, delivered to, or purchased by the person from the producers of dairy products or their agents in the state. Returns shall contain other information as the commission may require, and shall be made in triplicate, one copy of which shall be for the files of the person making the return, one copy available at the office of the person for the use of the person's patrons, and the original filed with the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.7]  
85 Acts, ch 126, §13; 86 Acts, ch 1238, §9

**179.8 Payment of expenses — limitation.**

No part of the expense incurred by the commission shall be paid out of moneys in the state treasury except moneys transferred to the commission from the dairy industry fund. Moneys transferred from the fund to the commission, as provided in section 179.5, shall be used for the payment of all salaries, and other expenses necessary, to carry out the provisions of this chapter. However, in no event shall the total expenses exceed the total taxes collected and transferred from the fund to the commission.

No more than five percent of the excise tax collected and received by the commission pursuant to section 179.5 shall be utilized for administrative expenses of the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.8]  
85 Acts, ch 126, §14; 94 Acts, ch 1146, §3

**179.9 Investigations by commission.**

The commission shall have the power to cause its authorized agents to enter upon the premises of any person charged by this chapter or by agreement with the commission with the collection of the excise tax imposed by this chapter, and to cause to be examined by any such agent any books, records, documents, or other instruments bearing upon the amount of such tax collected or to be collected by such person; provided that the commission has reasonable ground to believe that all the tax herein levied has not been collected, or if it has not been fully accounted for as herein provided.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.9]

**179.10 Report.**

The commission shall each year prepare and submit a report summarizing the activities of the commission under this chapter to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.10]  
85 Acts, ch 126, §15; 94 Acts, ch 1146, §4

**179.11 Penalties.**

Except as otherwise provided, any person who shall violate or aid in the violation of any of the provisions of this chapter shall be deemed guilty of a simple misdemeanor. All prosecutions for alleged violations of the provisions of this chapter shall be by the county attorney of the county in which such alleged violation occurred and shall be instituted and conducted under the direction and authority of the attorney general of the state.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.11]  
Referred to in §331.756(34)

**179.12** Repealed by 74 Acts, ch 1153, § 8.

**179.13 Referendum.**

At a time designated by the commission within eighteen months after termination of the national promotional order made pursuant to the Dairy Product Stabilization Act of 1983, the commission shall conduct a referendum under administrative procedures prescribed by the department.

Upon signing a statement certifying to the department that the person is a bona fide producer as defined in this chapter, each producer is entitled to one vote in each referendum. When the secretary is required to determine the approval or disapproval of producers under this section, the secretary shall consider the approval or disapproval of a cooperative association of producers, engaged in a bona fide manner in marketing milk, as the approval or disapproval of the producers who are members of or contract with the cooperative association of producers. If a cooperative association elects to vote on behalf of its members, the cooperative association shall provide each producer on whose behalf the cooperative association is expressing approval or disapproval with a description of the question presented in the referendum together with a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership. The information shall inform the producer of procedures to follow to cast an individual ballot if the producer chooses to do so within the period of time established by the secretary for casting ballots. The notification shall be made at least thirty days prior to the referendum and shall include an official ballot. The ballots shall be tabulated by the secretary and the vote of the cooperative association shall be adjusted to reflect the individual votes.

The department shall count and tabulate the ballots filed during the referendum within thirty days of the close of the referendum. If from the tabulation the department determines that a majority of the total number of producers voting in the referendum favors the proposal, the excise tax provided for in this chapter shall be continued. The ballots cast pursuant to this section constitute complete and conclusive evidence for use in determinations made by the department under this chapter.

The secretary may conduct a referendum at any time after the Iowa dairy industry commission is reactivated, and shall hold a referendum on request of a representative group comprising ten percent or more of the number of producers eligible to vote, to determine whether the producers favor the termination or suspension of the excise tax. The secretary shall suspend or terminate collection of the excise tax within six months after the secretary determines that suspension or termination of the excise tax is favored by a majority of the producers voting in the referendum, and shall terminate the excise tax in an orderly manner as soon as practicable after the determination.

[C75, 77, 79, 81, §179.13]

85 Acts, ch 126, §16

**179.14 Influencing legislation.**

Neither commissioners, nor employees of the commission, shall attempt in any manner to influence legislation affecting any matters pertaining to the activities of the commission. No portion of the dairy industry fund shall be used in any manner to influence legislation or support any political candidate for public office, either directly or indirectly, or to support any political party.

[C75, 77, 79, 81, §179.14]

**CHAPTER 180**

RESERVED

## CHAPTER 181

## BEEF CATTLE PRODUCERS ASSOCIATION

Referred to in §8A.502, 97B.1A, 159.6, 173.3, 179.5A

181.1	Definitions.	181.12	Remission of state assessment on application.
181.1A	Recognition of organization.	181.13	Administration of moneys originating from state assessment — appropriation.
181.2	Duties and objects of association.	181.14	Notice. Repealed by 2004 Acts, ch 1037, §18, 19.
181.3	Iowa beef industry council.	181.15	Referendum — procedures.
181.4	Employees of council.	181.16	Moneys remaining in fund. Repealed by 2004 Acts, ch 1037, §18, 19.
181.5	Expenses of officers.	181.17	Producers not members.
181.6	Transferred to section 181.1.	181.18	Rules.
181.6A	Election of council.	181.18A	Not a state agency.
181.7	Research and education programs.	181.18B	Report.
181.7A	Commencement of federal assessment — suspension and recommencement of state assessment.	181.19	Initial and special referendums.
181.8	Entering premises — examining records.	181.19A	Continuance referendum.
181.9	and 181.10 Repealed by 2004 Acts, ch 1037, §18, 19.	181.20	Misdemeanors.
181.11	Collection of state assessment.		

**181.1 Definitions.**

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

1. “*Association*” means the Iowa beef cattle producers association.
2. “*Cattle*” means any live domesticated bovine animal regardless of age.
3. “*Council*” means the Iowa beef industry council.
4. “*Federal Act*” means the federal Beef Promotion and Research Act of 1985, 7 U.S.C. § 2901 et seq.
5. “*Federal assessment*” means an excise tax on the sale of bovine animals imposed pursuant to the federal Act.
6. “*Producer*” means any person who owns or acquires ownership of cattle. However, a person shall not be considered a producer if any of the following apply:
  - a. The person’s only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.
  - b. The person acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party; resold such cattle no later than ten days from the date on which the person acquired ownership; and certified as required by rules adopted by the council.
7. “*Qualified financial institution*” means a bank or credit union as defined in section 12C.1.
8. “*Records*” means books, papers, documents, accounts, agreements, memoranda, electronic records of accounts, or correspondence relating to a matter regulated under this chapter.
9. “*Secretary*” means the secretary of agriculture.
10. “*State assessment*” means an excise tax on the sale of cattle imposed pursuant to this chapter.

[C71, 73, 75, 77, 79, 81, §181.6]

86 Acts, ch 1100, §5; 94 Acts, ch 1146, §6; 97 Acts, ch 30, §2, 9  
CS97, §181.1

2004 Acts, ch 1037, §1, 19; 2012 Acts, ch 1017, §48

**181.1A Recognition of organization.**

The Iowa beef cattle producers association now existing in and incorporated under the laws of this state is entitled to the benefits of this chapter by filing, each year, with the department of agriculture and land stewardship, verified proof of the names of its president,

vice president, secretary, and treasurer, together with other information required by the department of agriculture and land stewardship.

[C24, 27, 31, 35, 39, §2949; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §181.1]  
86 Acts, ch 1100, §2  
CS97, §181.1A  
Referred to in §181.17

### **181.2 Duties and objects of association.**

The Iowa beef cattle producers association shall do all of the following:

1. Aid in the promotion of the cattle industry of the state.
2. Provide for practical and scientific instruction in the breeding and raising of cattle.
3. Make demonstrations in the feeding of cattle and publish suggestions beneficial to such business.
4. Aid and promote cattle feeding contests, shows, and sales.
5. Prepare an annual report of the proceedings and expenditures of the council as provided in section 181.18B.

[C24, 27, 31, 35, 39, §2950; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §181.2]  
94 Acts, ch 1146, §5; 2004 Acts, ch 1037, §2, 19

### **181.3 Iowa beef industry council.**

1. An Iowa beef industry council of the Iowa beef cattle producers association is created. The council consists of eight members, including all of the following:

- a. Five producers elected by the Iowa beef cattle producers association.
- b. One livestock market representative appointed pursuant to subsection 2.
- c. The secretary of agriculture or a designee, who shall serve as a voting ex officio member.
- d. The dean of the college of agriculture and life sciences of Iowa state university of science and technology or a designee, who shall serve as a voting ex officio member.

2. The Iowa livestock auction market association shall nominate two livestock market representatives. The secretary of agriculture shall appoint one of the nominees or another livestock market representative of the secretary's choice, who shall serve at the pleasure of the secretary.

3. The council shall elect a chairperson, secretary, and other officers it deems necessary.

4. Except for ex officio members, vacancies in the council resulting from death, inability or refusal to serve, or failure to meet the qualifications of this chapter shall be filled by the council. If the council fails to fill a vacancy, the secretary shall fill it. Vacancy appointments shall be only for the remainder of the unexpired term.

[C24, 27, 31, 35, 39, §2951; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §181.3]  
86 Acts, ch 1100, §3; 97 Acts, ch 30, §1; 2004 Acts, ch 1037, §3, 4, 19; 2008 Acts, ch 1032, §30

### **181.4 Employees of council.**

The council may employ two or more competent persons who shall devote their entire time, under the direction of the council, in carrying out the provisions of this chapter. The salary of persons so employed shall be set by the council, and the persons shall hold office at the pleasure of the council.

[C24, 27, 31, 35, 39, §2952; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §181.4]  
86 Acts, ch 1100, §4; 2004 Acts, ch 1037, §5, 19

### **181.5 Expenses of officers.**

The officers of the association shall serve without compensation, but shall receive their necessary expenses while engaged in the business of the association.

[C24, 27, 31, 35, 39, §2953; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §181.5]

**181.6** Transferred to section 181.1.

**181.6A Election of council.**

1. The Iowa beef cattle producers association shall hold an annual meeting of producers. An election shall be held at the annual meeting, as necessary, for election of producers to the council.

2. Prior to the annual meeting, the association shall appoint a nominating committee. At least sixty days prior to the annual meeting of the association, the nominating committee shall nominate two producers as candidates for each position on the council for which an election is to be held. At least forty-five days prior to the annual meeting of the association, additional candidates may be nominated by a written petition of fifty producers. Procedures governing the place of filing and the contents of the petition shall be promulgated and publicized by the council.

3. Producers attending the annual meeting of the association may vote for one nominee for each position on the council for which an election is held. Producers not attending the annual meeting of the association may vote by absentee ballot if the ballot is requested and mailed, with proper postage, to the council prior to the annual meeting of the association. For each position for which an election is held, the candidate receiving the highest number of votes shall be elected.

4. Notice of election for council membership shall be given by the council by publication in a newspaper of general circulation in the state and in any other reasonable manner as determined by the council, and shall set forth the date, time, and place of the annual meeting of the association. The council shall administer the elections, with the assistance of the secretary.

86 Acts, ch 1100, §6; 2004 Acts, ch 1037, §6, 19

**181.7 Research and education programs.**

The council shall initiate, administer, or participate in research and education programs directed toward the better and more efficient production, promotion, and utilization of cattle and the marketing of products made from cattle. The council shall provide for the methods and means that it determines are necessary to further the purposes of this section, including but not limited to any of the following:

1. Providing public relations and other promotion techniques for the maintenance of present markets.

2. Making donations to nonprofit organizations furthering the purposes of this section.

3. Assisting in the development of new or larger domestic markets for products made from cattle.

4. Assisting in the development of new or larger foreign markets for cattle and products made from cattle.

[C71, 73, 75, 77, 79, 81, §181.7]

2004 Acts, ch 1037, §7, 19

Referred to in §181.13

**181.7A Commencement of federal assessment — suspension and recommencement of state assessment.**

1. Prior to the commencement of the collection of the federal assessment, the council may seek certification as a qualified state beef council within the meaning of the federal Act.

2. The council shall suspend the state assessment upon collection of the federal assessment. The state assessment shall recommence upon the earlier of the following:

a. The noncollection of the federal assessment. The recommenced state assessment shall be imposed for a four-year period. Its effective date shall be the first date for which the federal assessment is not collected.

b. The passage of a special referendum pursuant to section 181.19 regardless of whether a federal assessment is being collected.

86 Acts, ch 1100, §7; 2004 Acts, ch 1037, §8, 19

Referred to in §181.13, 181.19

Rate of recommended state assessment shall be fifty cents per head on all cattle sold, unless another rate is established by referendum; 2004 Acts, ch 1037, §17, 19

**181.8 Entering premises — examining records.**

The council may authorize its agents to enter at a reasonable time upon the premises of any purchaser charged by this chapter with remitting the state assessment to the council, and to examine records and other instruments relating to the collection of the state assessment. However, the council must first have reasonable grounds to believe that the state assessment has not been remitted or fully accounted for.

The council may enter into arrangements with persons purchasing cattle outside of this state for remitting the state assessment by such purchasers.

[C71, 73, 75, 77, 79, 81, §181.8]

2004 Acts, ch 1037, §9, 19

**181.9 and 181.10** Repealed by 2004 Acts, ch 1037, § 18, 19.

**181.11 Collection of state assessment.**

A state assessment imposed as provided in this chapter shall be levied and collected from the purchaser on each sale of cattle at a rate provided in this chapter. The state assessment shall be imposed on any person selling cattle and shall be deducted by the purchaser from the price paid to the seller. The purchaser, at the time of the sale, shall make and deliver to the seller a separate invoice for each sale showing the names and addresses of the seller and the purchaser, the number of cattle sold, and the date of sale. The purchaser shall forward the state assessment to the council at a time prescribed by the council, but not later than the last day of the month following the end of the prior reporting period in which the cattle are sold.

2004 Acts, ch 1037, §10, 19

Referred to in §181.15

**181.12 Remission of state assessment on application.**

A person from whom a state assessment is collected may, by written application filed with the council within sixty days after its collection, have the amount remitted to the person by the council. The information that the state assessment is refundable and the address of the council to which application for a refund may be made shall appear on the invoice of sale form supplied by the purchaser to the producer near the area on the form which shows the amount of the state assessment paid. The council shall furnish uniform application for refund forms and envelopes properly addressed to the council to each purchaser charged by this chapter with remitting the state assessment in sufficient number to make the refund forms and envelopes readily available to all producers. A purchaser charged by this chapter with remitting the state assessment shall display the application for refund forms and envelopes in a prominent position in its place of business and make them readily available to all producers.

[C71, 73, 75, 77, 79, 81, §181.12; 81 Acts, ch 71, §1]

2004 Acts, ch 1037, §11, 19

Right to refund not subject to execution or transfer; §179.5A

**181.13 Administration of moneys originating from state assessment — appropriation.**

1. All state assessments imposed under this chapter shall be paid to and collected by the council and deposited with the treasurer of state in a separate cattle promotion fund which shall be created by the treasurer of state. The department of administrative services shall transfer moneys from the fund to the council for deposit into an account established by the council in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. From the moneys collected, deposited, and transferred to the council, in accordance with the provisions of this chapter, the council shall first pay the costs of referendums held pursuant to this chapter, the costs of collection of such state assessments, and the expenses of its agents. At least ten percent of the remaining moneys shall be remitted to the association in proportions determined by the council, for use in a manner not inconsistent with section 181.7. The remaining moneys, with approval of a majority of the council, shall be expended as

the council finds necessary to carry out the provisions and purposes of this chapter. However, in no event shall the total expenses exceed the total amount transferred from the fund for use by the council.

2. All moneys deposited in the cattle promotion fund and transferred to the council pursuant to this section are appropriated and shall be used for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

3. If the state assessment is suspended as provided in section 181.7A or a continuance referendum fails to pass as provided in section 181.19A, moneys remaining in the cattle promotion fund and transferred to the council shall continue to be transferred and expended in accordance with the provisions of this chapter until exhausted.

[C71, 73, 75, 77, 79, 81, §181.13]

86 Acts, ch 1100, §8; 94 Acts, ch 1146, §7; 97 Acts, ch 30, §3; 2003 Acts, ch 145, §286; 2004 Acts, ch 1037, §12, 19; 2006 Acts, ch 1030, §17

**181.14 Notice.** Repealed by 2004 Acts, ch 1037, § 18, 19.

**181.15 Referendum — procedures.**

Upon receiving a petition to conduct a referendum as provided in section 181.19 or 181.19A, the secretary shall conduct the referendum as follows:

1. The secretary shall provide for the publication of a notice of the referendum for a period of not less than five days in a newspaper of general circulation in the state and in such other newspapers as the secretary may prescribe. The notice of referendum shall set forth the period for voting and the voting places for the referendum and the amount of the state assessment. A referendum shall not be commenced prior to fourteen days after the last day of such period of publication.

2. Each producer upon signing a statement certifying that the person is a bona fide producer shall be entitled to one vote. At the close of the referendum period, the secretary shall count and tabulate the ballots filed during the referendum period. The ballots cast in the referendum shall constitute complete and conclusive evidence for use in any determination made by the secretary under the provisions of this chapter.

3. The secretary shall tabulate the ballots to determine whether the referendum has passed. If from such tabulation the secretary determines that a majority of the total number of producers voting approves the imposition of a state assessment, the state assessment shall be imposed as provided in section 181.11 at a rate provided for in section 181.19.

4. The secretary may prescribe such additional procedures as may be necessary to conduct a referendum.

[C71, 73, 75, 77, 79, 81, §181.15]

86 Acts, ch 1195, §3; 2004 Acts, ch 1037, §13, 19

**181.16 Moneys remaining in fund.** Repealed by 2004 Acts, ch 1037, § 18, 19.

**181.17 Producers not members.**

A producer who is not a member of the Iowa beef cattle producers association shall be entitled to vote in elections of persons to be members of the council in the same manner as if the producer were a member. The members elected to the council shall elect from their number the officers referred to in section 181.1A.

[C71, 73, 75, 77, 79, 81, §181.17]

97 Acts, ch 30, §5; 2005 Acts, ch 3, §46

**181.18 Rules.**

All rules of the council heretofore or hereinafter promulgated shall be subject to the provisions of chapter 17A.

[C71, 73, 75, 77, 79, 81, §181.18]

2005 Acts, ch 3, §47

**181.18A Not a state agency.**

The Iowa beef cattle producers association is not an agency of state government.  
93 Acts, ch 102, §1

**181.18B Report.**

Each year, the council shall prepare and submit a report summarizing the activities of the council under this chapter to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under this chapter.

94 Acts, ch 1146, §9; 2004 Acts, ch 1037, §14, 19  
Referred to in §181.2

**181.19 Initial and special referendums.**

1. The secretary shall, upon the petition of five hundred producers, conduct an initial referendum to determine whether a state assessment is to be imposed, at a rate established by the council of not to exceed fifty cents per head on all cattle sold for any purpose.

2. The secretary shall, upon the petition of five hundred producers, conduct a special referendum to do any of the following:

a. Determine whether a state assessment already imposed shall be increased to a rate, established by the council, not to exceed one dollar per head on all cattle sold for any purpose.

b. Determine whether a state assessment suspended pursuant to section 181.7A is to be in addition to a federal assessment. The state assessment shall be imposed at a rate of fifty cents per head on all cattle sold for whatever purpose.

3. If a referendum passes, the secretary shall establish an effective date to commence the state assessment. However, the state assessment must be commenced within ninety days from the date that the secretary determines that the referendum has passed.

4. If a special referendum to increase the rate of the state assessment does not pass, the result of the special referendum shall not affect the existence or length of the state assessment in effect on the date that the special referendum was conducted.

[C75, 77, 79, 81, §181.19; 81 Acts, ch 71, §2]

86 Acts, ch 1195, §4; 97 Acts, ch 30, §6, 7; 2004 Acts, ch 1037, §15, 19  
Referred to in §181.7A, 181.15

**181.19A Continuance referendum.**

1. The secretary shall, upon the petition of producers, conduct a continuance referendum to determine whether a state assessment should be renewed. The secretary must receive the petition not less than one hundred fifty and not more than two hundred forty days before the four-year anniversary of a state assessment's effective date. The petition must be signed within that period by a number of producers equal to or greater than two percent of the number of producers in this state reported in the most recent United States census of agriculture, requesting a referendum to determine whether to continue the state assessment. The referendum shall be conducted not earlier than thirty days before the four-year anniversary date of the state assessment.

2. If the secretary determines that a continuance referendum has passed, the state assessment shall continue in effect for four additional years from the anniversary of its effective date.

3. If the secretary determines that the referendum has not passed, the secretary and the council shall terminate the assessment in an orderly manner as soon as practicable after the determination. Another referendum shall not be held for at least one hundred eighty days from the date that the assessment is terminated.

4. If no valid petition for a continuance referendum is received by the secretary within the time period provided in this section, the state assessment shall continue in effect for four additional years from the anniversary of its effective date.

2004 Acts, ch 1037, §16, 19  
Referred to in §181.13, 181.15

**181.20 Misdemeanors.**

Any person who shall violate or assist in the violation of any of the provisions of this chapter shall be deemed guilty of a simple misdemeanor.

[C71, 73, §181.19; C75, 77, 79, 81, §181.20]

## CHAPTER 182

### IOWA SHEEP AND WOOL PROMOTION BOARD

Referred to in §159.6, 173.3, 179.5A

182.1	Definitions.	182.13	Compensation — meetings.
182.2	Petition for referendum election.	182.13A	Not a state agency.
182.3	Notice of referendum.	182.13B	Assessment rate.
182.4	Establishment of sheep and wool promotion board — assessment — termination.	182.14	Assessment.
		182.15	Invoice required.
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182.6	Nominations for initial board.	182.17	Refunds.
182.7	Notice of election for directors.	182.18	Use of moneys.
182.8	Terms.	182.19	Bond required.
182.9	Subsequent membership — nominations — election.	182.20	Examination of records.
		182.21	Penalty.
182.10	Vacancies.	182.22	Purchasers outside Iowa.
182.11	Purposes of board.	182.23	Report.
182.12	Powers and duties.	182.24	Board member disclosure.

**182.1 Definitions.**

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

1. “*Assessment*” means an excise tax on the sale of sheep or wool as provided in this chapter.

2. “*Board*” means the Iowa sheep and wool promotion board established pursuant to section 182.5.

3. “*Concentration point*” means a location or facility where sheep are assembled for purposes of sale or resale for feeding, breeding, or slaughtering, and where contact may occur between groups of sheep from various sources. “*Concentration point*” includes a public stockyard, auction market, street market, state or federal market, untested consignment sales location, buying station, or a livestock dealer’s yard, truck, or facility.

4. “*District*” means an official crop reporting district formed by the United States department of agriculture and set out in the annual farm census published by the Iowa department of agriculture and land stewardship.

5. “*First purchaser*” means a person who purchases sheep or wool from a producer.

6. “*Producer*” means a person who is actively engaged within this state in the business of producing or marketing sheep or wool and who receives income from the production of sheep or wool.

7. “*Sale*” or “*sold*” means a transaction in which the property in or to sheep or wool is transferred from the producer to a first purchaser for full or partial consideration.

8. “*Secretary*” means the secretary of agriculture.

9. “*Sheep*” means an animal of the ovine species, regardless of age, produced or marketed in this state.

10. “*Wool*” means the natural fiber produced by sheep.

85 Acts, ch 207, §1; 86 Acts, ch 1245, §631; 99 Acts, ch 50, §1 – 4; 2012 Acts, ch 1109, §1, 2, 7  
Further definitions; see §159.1

**182.2 Petition for referendum election.**

Upon receipt of a petition signed by at least fifty producers in each district requesting a referendum by election to determine whether to establish the board and to impose an

assessment, the secretary shall call a referendum to be conducted within sixty days following receipt of the petition.

85 Acts, ch 207, §2; 99 Acts, ch 50, §5

### **182.3 Notice of referendum.**

The secretary shall give notice of the referendum on the question of whether to establish an Iowa sheep and wool promotion board and to impose the assessment by publishing the notice for a period of not less than five days in at least one newspaper of general circulation in the state. The notice shall state the voting places, period of time for voting, and other information deemed necessary by the secretary.

A referendum shall not be commenced until five days after the last date of publication.

85 Acts, ch 207, §3

Referred to in §182.13B

### **182.4 Establishment of sheep and wool promotion board — assessment — termination.**

1. Each producer who signs a statement certifying that the producer is a bona fide producer is entitled to one vote. At the close of the referendum, the secretary shall count and tabulate the ballots cast. If a majority of voters favor establishing an Iowa sheep and wool promotion board and imposing an assessment, an Iowa sheep and wool promotion board shall be established. The assessment shall be imposed commencing not more than sixty days following the referendum as determined by the Iowa sheep and wool promotion board, and shall continue until terminated by a referendum as provided in subsection 2. If a majority of the voters do not favor establishing an Iowa sheep and wool promotion board and imposing the assessment, the assessment shall not be imposed and the board shall not be established until another referendum is held under this chapter and a majority of the voters favor establishing a board and imposing the assessment. If a referendum fails, another referendum shall not be held within one hundred eighty days.

2. Upon receipt of a petition signed by at least twenty-five producers in each district requesting a referendum election to determine whether to terminate the establishment of the Iowa sheep and wool promotion board and to terminate the imposition of the assessment, the secretary shall call a referendum to be conducted within sixty days following the receipt of the petition. The petitioners shall guarantee the payment of the costs of a referendum held under this subsection. If the majority of the voters of a referendum do not favor termination, an additional referendum may be held when the secretary receives a petition signed by at least twenty-five producers in each district. However, the additional referendum shall not be held within one hundred eighty days.

85 Acts, ch 207, §4

Referred to in §182.13B

### **182.5 Composition of board.**

The Iowa sheep and wool promotion board established under this chapter shall be composed of nine producers, one from each district. The dean of the college of agriculture and life sciences of Iowa state university of science and technology or the dean's representative and the secretary or the secretary's designee shall serve as ex officio nonvoting members of the board. The board shall annually elect a chairperson from its membership.

85 Acts, ch 207, §5; 2008 Acts, ch 1032, §31

Referred to in §182.1

### **182.6 Nominations for initial board.**

Candidates for positions on the initial board are nominated by filing a petition with the secretary containing the signatures of at least twenty-five producers in the candidate's district qualified to vote on the referendum. Candidates shall be resident producers of the district from which they are nominated. The secretary shall receive the nominations, and shall call an election for members of the initial board within thirty days following passage of the question at the referendum election.

85 Acts, ch 207, §6

**182.7 Notice of election for directors.**

Notice of the initial election for directors of the board shall be given by the secretary by publication in a newspaper of general circulation in the state at least five days prior to the date of the election and in any other reasonable manner as determined by the secretary. The notice shall set forth the period of time for voting, voting places, and other information as the secretary deems necessary.

Notice of subsequent elections for the membership position for a district shall be given by the board by publication in a newspaper of general circulation in the district and in any other reasonable manner as determined by the board and shall set forth the period of time for voting, voting places, and other information as the board deems necessary.

85 Acts, ch 207, §7

**182.8 Terms.**

The term of office for members of the board shall be three years and no member shall serve more than two complete consecutive terms. The producers on the initial board shall determine their terms by lot, so that three producers shall serve a one-year term, three producers shall serve a two-year term, and three producers shall serve a three-year term.

85 Acts, ch 207, §8

**182.9 Subsequent membership — nominations — election.**

After the appointment of the initial board, the board shall administer subsequent elections for members of the board with the assistance of the secretary. Before the expiration of a member's term of office, the board shall appoint a nominating committee for the district represented by the member. The nominating committee shall consist of five producers who are residents of the district from which a member must be elected. The nominating committee shall nominate two resident producers as candidates for the membership position for which an election is to be held. Additional candidates may be nominated by a written petition of twenty-five resident producers. The board shall provide by rule and shall publish procedures governing the time and place of filing the nominations.

85 Acts, ch 207, §9

**182.10 Vacancies.**

The board shall by appointment fill an unexpired term if a vacancy occurs on the board. The appointee shall be a resident producer in the district having a vacancy.

85 Acts, ch 207, §10

**182.11 Purposes of board.**

The purposes of the board shall be to:

1. Enter into contracts or agreements with or make grants to recognized and qualified agencies, individuals, or organizations for the development and carrying out of research and education programs directed toward better and more efficient production, marketing, and utilization of sheep and wool and their products.

2. Provide methods and means, including, but not limited to, public relations and other promotion techniques for the maintenance of present markets.

3. Assist in development of new or larger markets, both domestic and foreign, for sheep and wool and their products.

85 Acts, ch 207, §11

Referred to in §182.18

**182.12 Powers and duties.**

The board may:

1. Administer and enforce this chapter and perform acts reasonably necessary to effectuate the purposes of this section.

2. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.

3. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.
4. Adopt, rescind, and amend all proper and necessary rules for the exercise of its powers and duties.
5. Enter into arrangements for collection of the assessment on sheep and wool.
6. Formulate and execute assessment procedures and methods of collection.
7. Receive and investigate complaints and violations of this chapter and take necessary action.
8. Confer and cooperate with legally constituted authorities of other states and the United States.
9. Establish accounts in adequately protected financial institutions to receive, hold, and disburse board moneys.

85 Acts, ch 207, §12

Referred to in §182.13B, 182.16

### **182.13 Compensation — meetings.**

Members of the board may receive payment for their actual expenses and travel in performing official board functions. Payment shall be made from amounts collected from the assessment. No member of the board shall be a salaried employee of the board or any organization or agency receiving funds from the board. The board shall meet at least once every three months, and at other times it deems necessary.

85 Acts, ch 207, §13

Referred to in §182.24

### **182.13A Not a state agency.**

The Iowa sheep and wool promotion board is not an agency of state government.

93 Acts, ch 102, §2

### **182.13B Assessment rate.**

1. If a majority of voters at a referendum conducted pursuant to section 182.4 approve the establishment of an Iowa sheep and wool promotion board and the imposition of an assessment, the assessment shall be imposed on wool and sheep at the following rates:

- a. For wool, two cents imposed on each pound of wool sold by a producer.
- b. For sheep, ten cents imposed on each head of sheep sold by a producer.

2. a. Notwithstanding subsection 1, upon a resolution adopted by the board, the secretary shall call a special referendum for voters to authorize increasing the assessment rate imposed on sheep as provided in this section.

b. The special referendum shall be conducted in the same manner as a referendum conducted upon receipt of a petition as provided in this chapter, unless otherwise provided in the board's resolution. Only producers are eligible to vote in an election and each producer is entitled to one vote.

3. The special referendum conducted pursuant to subsection 2 shall allow a voter to cast a ballot for the following two questions:

a. For the first question, whether to authorize an increase in the assessment rate to twenty-five cents imposed on each head of sheep.

b. For the second question, if the first question is approved by a majority of voters, whether to also authorize the board to increase that assessment rate by future resolution as provided in this section.

4. If a majority of voters approve the first question, twenty-five cents shall be imposed on each head of sheep sold by a producer as effectuated by the board pursuant to section 182.12.

5. If a majority of voters approve both the first and second questions, all of the following apply:

a. Twenty-five cents shall be imposed on each head of sheep sold by a producer as effectuated by the board pursuant to section 182.12.

b. The board may adopt one or more resolutions to further impose an increased assessment rate. The increased assessment rate shall be imposed on each head of sheep

sold by a producer as effectuated by the board pursuant to section 182.12. The board shall comply with all of the following:

(1) The board must wait three or more years from the effective date of the previous action imposing an increase in order to adopt a resolution. For the first increase, the effective date is the date of the special referendum. For any subsequent increase, the effective date is the date that the board last adopted a resolution imposing an increased rate as provided in this paragraph “b”.

(2) The board shall not adopt a resolution until it provides notice to producers of the proposed increase and an opportunity for producers to submit written or oral comments to the board regarding the proposed increase. The board may provide notice by publication in the same manner as provided in section 182.3, publication on its internet site, mail bearing a United States postal service postmark, electronic transmission, or hand-delivery.

(3) The increase in the assessment rate imposed by a resolution adopted by the board must equal five cents. However, the assessment rate imposed by a resolution of the board shall not equal more than fifty cents.

6. a. If a majority of voters do not authorize increasing the assessment rate pursuant to a special referendum conducted pursuant to this section, the assessment rate shall be the same as provided in subsection 1.

b. Not more than one special referendum shall be conducted pursuant to this section.

2012 Acts, ch 1109, §3, 6, 7

Effect of 2012 enactment of subsection 1; 2012 Acts, ch 1109, §6, 7

#### **182.14 Assessment.**

1. An assessment provided in this chapter shall be imposed on the producer as follows:

a. If the producer sells wool or sheep to the first purchaser within this state, the following shall apply:

(1) If the sale occurs at a concentration point, the assessment shall be imposed at the time of delivery. The first purchaser shall deduct the assessment from the price paid to the producer at the time of sale.

(2) If the sale does not occur at a concentration point, the producer shall deduct the assessment from the amount received from the sale and shall forward the amount deducted to the board within thirty days following each calendar quarter.

b. If the producer sells, ships, or otherwise disposes of wool or sheep to any person outside this state, the producer shall deduct the assessment from the amount received from the sale and shall forward the amount deducted to the board.

2. The assessment imposed by this section shall be remitted to the board not later than thirty days following each calendar quarter during which the assessment amount was deducted.

85 Acts, ch 207, §14; 99 Acts, ch 50, §6; 2000 Acts, ch 1154, §16; 2012 Acts, ch 1109, §4 – 7  
Referred to in §182.16

Effect of 2012 strike of former subsection 1; 2012 Acts, ch 1109, §6, 7

#### **182.15 Invoice required.**

1. At the time of sale, the first purchaser shall sign and deliver to the producer separate invoices for each purchase. The invoices shall show:

- a. The name and address of the producer and the seller, if different from the producer.
- b. The name and address of the first purchaser.
- c. The pounds of wool or head of sheep sold.
- d. The date of the purchase.
- e. The rate of withholding and the total amount of the assessment withheld.

2. Invoices shall be legibly written and shall not be altered.

85 Acts, ch 207, §15; 99 Acts, ch 50, §7; 2009 Acts, ch 41, §263

#### **182.16 Deposit and disbursement of funds.**

The board shall deposit amounts collected from the assessment imposed pursuant to section 182.14 in an account established pursuant to section 182.12. Expenses and

disbursements incurred and made pursuant to this chapter shall be made by voucher, draft, or check bearing the signature of a person designated by majority vote of the board.

85 Acts, ch 207, §16; 99 Acts, ch 50, §8

#### **182.17 Refunds.**

A producer who has paid the assessment may, by application in writing to the board, secure a refund of all or part of the amount paid. The refund shall be payable only when the application has been made to the board within sixty days after the deduction has been made by the producer or within sixty days after the remittance has been made by the first purchaser. Each application for refund by a producer shall have attached proof that the assessment was paid. The proof of the assessment paid may be in the form of a duplicate or certified copy of the purchase invoice by the purchaser.

85 Acts, ch 207, §17

Right to refund not subject to execution or transfer; §179.5A

#### **182.18 Use of moneys.**

1. Moneys collected under this chapter are subject to audit by the auditor of state and shall be used by the Iowa sheep and wool promotion board first for the payment of collection and refund expenses, second for payment of the costs and expenses arising in connection with conducting referendums, third for the purposes identified in section 182.11, and fourth for the cost of audits for the auditor of state. Moneys of the board remaining after a referendum is held at which a majority of the voters favor termination of the board and the assessment shall continue to be expended in accordance with this chapter until exhausted. The auditor of state may seek reimbursement for the cost of the audit.

2. The board shall not engage in any political activity, and it shall be a condition of any allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

85 Acts, ch 207, §18; 2010 Acts, ch 1189, §31

#### **182.19 Bond required.**

All persons holding positions of trust under this chapter shall give bond in the amount required by the board. The premiums for bond costs shall be paid from the moneys of the board.

85 Acts, ch 207, §19

#### **182.20 Examination of records.**

Persons subject to this chapter shall furnish on forms provided by the board information needed to enable the board to effectuate the policies of this chapter. For the purpose of ascertaining the correctness of a report made to the board under this chapter, the secretary may examine books, papers, records, copies of tax returns not confidential by law, and accounts, which are in the control of any person. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas in connection with the administration of this chapter.

85 Acts, ch 207, §20

#### **182.21 Penalty.**

A person who willfully violates a provision of this chapter, willfully gives a false report, statement, or record required by the board, or willfully fails to furnish or render a report, statement or record required by the secretary is guilty of a simple misdemeanor.

85 Acts, ch 207, §21

#### **182.22 Purchasers outside Iowa.**

The secretary may enter into arrangements with first purchasers from outside Iowa for payment of the assessment.

85 Acts, ch 207, §22

**182.23 Report.**

During the period of collection of the assessment, the board in cooperation with the auditor of state shall make an annual report which shall show all income, expenses and other relevant information.

85 Acts, ch 207, §23

**182.24 Board member disclosure.**

Notwithstanding section 182.13, a member of the board may receive compensation, including a salary, from an organization or agency, including an educational institution, receiving funds from the board. If a member of the board has a pecuniary interest, either direct or indirect, in a matter considered by the board, the interest shall be disclosed by the member to the board and included in the minutes for that meeting of the board. The member having the pecuniary interest shall not participate in an action taken by the board on the matter.

88 Acts, ch 1284, §66

## CHAPTER 183

RESERVED

## CHAPTER 183A

## IOWA PORK PRODUCERS COUNCIL

Referred to in §8A.502, 97B.1A, 179.5A

183A.1	Definitions.	183A.8	Refund of assessment.
183A.2	Iowa pork producers council.	183A.9	Referendum.
183A.3	Terms.	183A.9A	Suspension during national order.
183A.4	Vacancies.	183A.10	Per diem and expenses.
183A.5	Duties, objects, and powers of the council.	183A.11	Audit.
183A.6	Assessment.	183A.12	Examination of books.
183A.7	Administration of moneys — appropriation.	183A.12A	Report.
		183A.13	Misdemeanors.
		183A.14	Influencing legislation.

**183A.1 Definitions.**

As used in this chapter:

1. “*Assessment*” means an excise tax on the sale of porcine animals as provided in this chapter.

2. “*First purchaser*” means a person who buys porcine animals from a seller in the first instance.

3. “*Iowa pork producers council*” or “*council*” means the body established under section 183A.2.

4. “*Market development*” means research, education, and other programs directed at better and more efficient production, marketing, and utilization of pork; public relations and other promotion techniques for the maintenance of existing markets for pork, including but not limited to contributions to organizations working toward the purposes of this subsection; development of new or larger markets for pork both domestic and foreign, including but not limited to public relations and other promotion techniques; and the adoption, prevention, modification, or elimination of trade barriers which bear on the flow of pork in commercial channels.

5. “*Porcine animals*” means swine raised for slaughter, feeder pigs, or swine seedstock.

6. “*Pork*” means porcine animals and all parts of porcine animals.

7. “*Pork Promotion Act*” means the federal Pork Promotion, Research, and Consumer Information Act of 1985.

8. “*Producer*” means a person engaged in this state in the business of producing and marketing porcine animals in the previous calendar year.

9. “*Qualified financial institution*” means a bank or credit union as defined in section 12C.1.

85 Acts, ch 199, §1; 86 Acts, ch 1100, §9, 10; 86 Acts, ch 1245, §632; 94 Acts, ch 1146, §10; 2012 Acts, ch 1017, §49

Referred to in §183A.7

Further definitions; see §159.1

### **183A.2 Iowa pork producers council.**

The Iowa pork producers council is created. The council consists of seven members, including two producers from each of three districts of the state designated by the secretary, and one producer from the state at large. The secretary shall appoint these members. The Iowa pork producers association may recommend the names of potential members, but the secretary is not bound by the recommendations. The secretary, the dean of the college of agriculture and life sciences of Iowa state university of science and technology, and the state veterinarian, or their designees, shall serve on the council as nonvoting ex officio members.

85 Acts, ch 199, §2; 86 Acts, ch 1100, §11; 2008 Acts, ch 1032, §32

Referred to in §183A.1, 183A.9A

### **183A.3 Terms.**

The voting members of the council shall serve terms of three years, and shall not serve for more than two complete consecutive terms.

85 Acts, ch 199, §3; 86 Acts, ch 1100, §12

Referred to in §183A.9A

### **183A.4 Vacancies.**

A vacancy in the voting membership of the council resulting from death, inability or refusal to serve, or failure to meet the qualifications established in this chapter, shall be filled by the council for the remainder of the unexpired term. If the council fails to fill the vacancy, the secretary shall fill it.

85 Acts, ch 199, §4; 86 Acts, ch 1100, §13

### **183A.5 Duties, objects, and powers of the council.**

1. The council shall:
  - a. Aid in the promotion of the pork industry of the state.
  - b. Make an annual report of its proceedings and expenditures to the secretary.
  - c. Elect a chairperson, secretary, and other officers it deems advisable.
  - d. Administer and enforce this chapter, and do and perform all acts and exercise all powers reasonably necessary to effectuate the purposes and requirements of this chapter.
  - e. Hire and discharge employees and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.
  - f. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.
  - g. Report alleged violations of this chapter to the attorney general or appropriate county attorney.
  - h. Keep accurate books, records, and accounts of all its dealings.
    - i. Receive, administer, disburse and account for, in addition to the funds received from the assessment provided in this chapter, other funds voluntarily contributed to the council for the purpose of promoting the pork industry.
2. The council or its designated agent may enter into arrangements with persons purchasing Iowa produced pork outside Iowa, for collection of the assessment from those persons.

3. The council is a state agency only for the purposes of chapters 21 and 22. Chapter 17A does not apply to the council.

85 Acts, ch 199, §5; 86 Acts, ch 1100, §14, 15; 2009 Acts, ch 41, §263

#### **183A.6 Assessment.**

The council shall make an assessment of not less than point zero zero two nor more than point zero zero three of the gross sale price of all porcine animals. The assessment shall be point zero zero two five of the gross sale price of porcine animals until consent to an assessment has been given through the initial referendum referred to in this chapter. After approval of the initial referendum, the rate of assessment shall be determined by the council. The assessment shall be made at the time of delivery of the animals for sale, and shall be deducted by the first purchaser from the price paid to the seller. The first purchaser, at the time of sale, shall make and deliver to the seller an invoice for each purchase showing the names and addresses of the seller and the first purchaser, the number and kind of animals sold, the date of sale, and the assessment made on the sale.

Assessments shall be paid to the Iowa pork producers council or its designated agent by first purchasers at a time prescribed by the council, but not later than the last day of the month following the month in which the animals were purchased.

85 Acts, ch 199, §6; 86 Acts, ch 1100, §16

Referred to in §183A.9A

#### **183A.7 Administration of moneys — appropriation.**

Assessments imposed under this chapter paid to and collected by the Iowa pork producers council shall be deposited in the pork promotion fund which is established in the office of the treasurer of state. The department of administrative services shall transfer moneys from the fund to the council for deposit into an account established by the council in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open.

All moneys deposited in the pork promotion fund and transferred to the council as provided in this section are appropriated and shall be used for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

From the moneys collected, deposited, and transferred to the council as provided in this chapter, the council shall first pay the costs of referendums held pursuant to this chapter. Of the moneys remaining, at least twenty-five percent shall be remitted to the national pork producers council and at least fifteen percent shall be remitted to the Iowa pork producers association, in the proportion the committee determines, for use by recipients in a manner not inconsistent with market development as defined in section 183A.1. Moneys remaining shall be spent as found necessary by the council to further carry out the provisions and purposes of this chapter.

However, in no event shall the total expenses exceed the total amount of moneys transferred from the fund for use by the council.

85 Acts, ch 199, §7; 86 Acts, ch 1100, §17; 94 Acts, ch 1146, §11; 2002 Acts, ch 1119, §143; 2003 Acts, ch 145, §286

Referred to in §183A.9A

#### **183A.8 Refund of assessment.**

A producer from whom the assessment has been deducted, upon written application filed with the council within thirty days after its collection, shall have that amount refunded by the council. Application forms shall be given by the council to each first purchaser when requested and the first purchaser shall make the applications available to any producer. Each application for a refund by a producer shall have attached a proof of assessment deducted. The proof of assessment deducted shall be in the form of the original or a copy of the purchase

invoice by the first purchaser. The council shall have no more than thirty days from the date the application for refund is received to remit the refund to the producer.

85 Acts, ch 199, §8; 86 Acts, ch 1076, §1  
Right to refund not subject to execution or transfer; §179.5A

### **183A.9 Referendum.**

At a time designated by the council within eighteen months after the termination of the collection of assessments under the Pork Promotion Act, the secretary shall conduct an initial referendum under administrative procedures prescribed by the department of agriculture and land stewardship.

Upon signing a statement certifying to the secretary that the person is a bona fide producer as defined in this chapter, each producer is entitled to one vote in each referendum. The secretary shall determine the qualification of producers under this section.

The secretary shall count and tabulate the ballots filed during the referendum within thirty days of the close of the referendum. If from the tabulation the secretary determines that a majority of the total number of producers voting in the referendum favors the assessment, the assessment provided for in the referendum shall be levied. The ballots cast pursuant to this section constitute complete and conclusive evidence for use in determinations made by the secretary under this chapter.

The secretary shall hold subsequent referendums on request of ten percent or more of the number of producers eligible to vote, to determine whether the producers favor the termination or suspension of the assessment. The secretary shall suspend or terminate collection of the assessment within six months after the secretary determines that suspension or termination of the assessment is favored by a majority of the producers voting in the referendum, and shall terminate the assessment in an orderly manner as soon as practicable after the determination.

85 Acts, ch 199, §9; 86 Acts, ch 1100, §18

### **183A.9A Suspension during national order.**

1. The terms of all voting members serving on the council on January 31, 1986 terminate at the time provided in subsection 2.

2. On the date of the commencement of the collection of assessments under the Pork Promotion Act, the collection of the assessments under section 183A.6 shall be suspended. The council shall continue to operate after suspension until all refunds are paid and all funds remaining in the pork promotion fund, less a reserve for future refunds, are disbursed for the purposes enumerated in this chapter. Notwithstanding section 183A.7, the council need not retain a reserve for future referendums. Upon completion of these acts, the existence of the Iowa pork producers council is suspended. The secretary of agriculture shall certify the suspension of the council as of a date certain to the Iowa pork producers council and the Iowa pork producers association. When the existence of the council is suspended, the terms of office of council members terminate.

3. On the date of the termination of the collection of assessments under the Pork Promotion Act, the period of suspension of the assessments under subsection 2 terminates. The secretary shall collect the assessments under section 183A.6 until this duty can be resumed by the reactivated council.

4. On the date of the termination of the collection of assessments under the Pork Promotion Act, the period of suspension of the council under subsection 2 terminates. Within sixty days from this date, the secretary shall appoint voting members to the council. For purposes of section 183A.3, a voting member so appointed is deemed not to have served a previous consecutive term. The terms of office of voting members of the initial reactivated council shall be determined by lot, but members from the same district shall not serve the same terms. As nearly as possible one-third of the voting members shall serve for one year, one-third of the voting members shall serve for two years, and one-third of the voting members shall serve for three years. Subsequent voting members shall be appointed pursuant to section 183A.2.

5. The secretary shall call the first meeting of the reactivated council. Upon reactivation,

the council shall reimburse the secretary for expenses incurred in carrying out the duties provided in this section.

86 Acts, ch 1100, §19

**183A.10 Per diem and expenses.**

The members of the council shall receive a per diem as specified in section 7E.6 for each day spent on official business of the council, not to exceed six hundred dollars per annum, and their actual necessary expenses, while engaged in council activity.

85 Acts, ch 199, §10; 91 Acts, ch 258, §33

**183A.11 Audit.**

Moneys collected, deposited in the fund, and transferred to the council, as provided in this chapter shall be supervised by a certified public accountant employed by the council using generally accepted accounting principles and shall be subject to audit by the auditor of state.

85 Acts, ch 199, §11; 94 Acts, ch 1146, §12

**183A.12 Examination of books.**

Persons subject to this chapter and first purchasers shall furnish any information needed to enable the council and secretary to carry out the provisions of this chapter. For the purpose of ascertaining the correctness of any information given to the council or the secretary under this chapter, the secretary may examine books, papers, records, copies of tax returns, accounts, correspondence, contracts, or other documents and memoranda the secretary deems relevant which are in the control of any person and which are not otherwise confidential as provided by law. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas duces tecum in connection with the administration of this chapter.

85 Acts, ch 199, §12

**183A.12A Report.**

The council shall prepare and submit a report summarizing the activities of the council under this chapter each year to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under the provisions of this chapter.

94 Acts, ch 1146, §13

**183A.13 Misdemeanors.**

A person who violates or assists in the violation of any of the provisions of this chapter is guilty of a simple misdemeanor.

85 Acts, ch 199, §13

**183A.14 Influencing legislation.**

Neither council members nor employees of the council shall attempt in any manner to influence legislation affecting any matters pertaining to the council's activities. No portion of the pork promotion fund shall be used, directly or indirectly, to influence legislation, to support any candidate for public office, or to support any political party.

85 Acts, ch 199, §14

## CHAPTER 184

## IOWA EGG COUNCIL

Referred to in §8A.502, 97B.1A

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**184.1 Definitions.**

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

1. “*Assessment*” means an excise tax on the sale of eggs as provided in this chapter.
2. “*Council*” means the Iowa egg council.
3. “*Egg product*” means a product produced in whole or in part from eggs or spent fowl.
4. “*Eggs*” means eggs produced from a layer-type chicken. “*Eggs*” includes shell eggs or eggs broken for further processing. However, “*eggs*” does not include any of the following:
  - a. Fertile eggs that are incubated, hatched, or used for vaccines.
  - b. Organic eggs which are produced as part of a production operation which is certified by the department pursuant to chapter 190C.
5. “*Eligible voter*” means a producer who is qualified to vote in a referendum conducted under this chapter according to the requirements of section 184.2 or 184.3.
6. “*Market development*” means programs which are directed toward any of the following:
  - a. Better and more efficient production, marketing, and utilization of eggs or egg products.
  - b. The maintenance of present markets and the development of new or larger markets for the sale of eggs or egg products.
  - c. Prevention, modification, or elimination of trade barriers which obstruct the free flow of eggs or egg products in commerce.
7. “*Processor*” means the first purchaser of eggs from a producer, or a person who both produces and processes eggs.
8. “*Producer*” means any person who owns, or contracts for the care of, thirty thousand or more layer-type chickens raised in this state.
9. “*Purchaser*” means a person who resells eggs purchased from a producer or offers for sale a product produced from the eggs for any purpose.
10. “*Qualified financial institution*” means a bank or credit union as defined in section 12C.1.

[C75, 77, 79, 81, §196A.1]

86 Acts, ch 1245, §641; 94 Acts, ch 1146, §39; 95 Acts, ch 7, §4; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §1, 2, 13

C99, §184.1

2005 Acts, ch 43, §1; 2012 Acts, ch 1017, §50

**184.2 Establishment of Iowa egg council and assessment.**

1. The secretary shall call and the department shall conduct a referendum upon the department’s receipt of a petition which is signed by at least twenty producers requesting a referendum to determine whether to establish an Iowa egg council and to impose an

assessment as provided in section 184.3. The referendum shall be conducted within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum by providing evidence of financial security as required by the department.

2. The department shall give notice of the referendum on the question whether to establish a council and to impose an assessment by publishing the notice for a period of not less than five days in at least one newspaper of general circulation in the state. The notice shall state the voting places, period of time for voting, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

3. *a.* Each producer who signs a statement certifying that the producer is a bona fide producer shall be an eligible voter under this section. An eligible voter is entitled to cast one vote in each referendum conducted under this section.

*b.* At the close of the referendum, the secretary shall count and tabulate the ballots cast.

(1) If a majority of eligible voters approve establishing an Iowa egg council and imposing an assessment, a council shall be established, and an assessment shall be imposed commencing not more than sixty days following the referendum as determined by the council and shall continue until eligible voters voting in a referendum held pursuant to section 184.5 vote to abolish the council and terminate the imposition of the assessment.

(2) If a majority of the voters do not approve establishing the council and imposing the assessment, the council shall not be established and an assessment shall not be imposed until another referendum is held under this chapter and a majority of the eligible voters approve establishing a council and imposing the assessment. If a referendum should fail, another referendum shall not be held within one hundred eighty days.

4. Immediately after passage of the question at the referendum, the secretary shall appoint seven members to the council in accordance with section 184.6 based on nominations made by the Iowa poultry association. The association shall nominate and the secretary shall appoint two members representing large producers, two members representing medium producers, and three members representing small producers. The department, in consultation with the association, shall determine initial classifications for small, medium, and large producers. The secretary shall complete the appointments within thirty days following passage of the question at the referendum.

[C75, 77, 79, 81, §196A.4]

95 Acts, ch 7, §5; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §3, 13

C99, §184.2

Referred to in §184.1, 184.5

### **184.3 Assessment.**

1. *a.* Except as provided in paragraph “*b*”, an assessment of two and one-half cents is imposed on each thirty dozen eggs produced in this state. The assessment shall be imposed on a producer at the time of delivery to a purchaser who shall deduct the assessment from the price paid to a producer at the time of sale. The assessment shall not be refundable. The assessment is due to be paid to the council within thirty days following each calendar quarter, as provided by the council.

*b.* Upon request of the council, the secretary shall call a special referendum for producers to vote on whether to authorize an increase in the assessment to an amount that is more than two and one-half cents imposed on each thirty dozen eggs produced in this state. Notice shall be given and the special referendum shall be conducted in the manner provided in section 184.5. If a majority of the producers voting approves the increase, the council may increase the assessment for the amount approved. However, the assessment shall not exceed fifteen cents imposed on each thirty dozen eggs produced in this state.

2. If the producer sells eggs to a purchaser outside the state of Iowa, the producer shall deduct the assessment from the amount received from the sale and shall forward the amount deducted to the council within thirty days following each calendar quarter. If the producer and processor are the same person, then that person shall pay the assessment to the council within thirty days following each calendar quarter.

3. The council may charge interest on any amount of the assessment that is delinquent.

The rate of interest shall not be more than the current rate published in the Iowa administrative bulletin by the department of revenue pursuant to section 421.7. The interest amount shall be computed from the date the assessment is delinquent, unless the council designates a later date. The interest amount shall accrue for each month in which there is delinquency calculated as provided in section 421.7, and counting each fraction of a month as an entire month. The interest amount due shall become a part of the assessment due.

[C75, 77, 79, 81, §196A.15]

95 Acts, ch 7, §14

CS95, §196A.4A

98 Acts, ch 1032, §11; 98 Acts, ch 1038, §4, 13

C99, §184.3

2000 Acts, ch 1164, §1; 2003 Acts, ch 145, §286; 2005 Acts, ch 43, §2

Referred to in §184.1, 184.2, 184.13

#### **184.4 Invoice required.**

1. At the time of sale, the purchaser shall sign and deliver to the producer separate invoices for each purchase. The invoices shall show:

- a. The name and address of the producer and the seller, if different from the producer.
- b. The name and address of the purchaser.
- c. The quantity of eggs sold.
- d. The date of the purchase.
- e. The rate of withholding and the total amount of assessment withheld.

2. Invoices shall be legibly written and shall not be altered.

[C75, 77, 79, 81, §196A.16]

95 Acts, ch 7, §15

CS95, §196A.4B

98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13

C99, §184.4

2009 Acts, ch 41, §263

#### **184.5 Referendums conducted to abolish the council and terminate imposition of the assessment.**

1. A referendum may be called to abolish the council and terminate the imposition of the assessment. The secretary shall call, and the department shall conduct, the referendum upon the department's receipt of a petition requesting the referendum. The petition must be signed by at least twenty eligible voters or fifty percent of all eligible voters, whichever is greater. In order to be an eligible voter under this section, a producer must have paid an assessment in the year of the referendum. The referendum shall be conducted within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum by providing evidence of financial security as required by the department.

2. The following procedures shall apply to a referendum conducted pursuant to this section:

a. The department shall publish a notice of the referendum for a period of not less than five days in at least one newspaper of general circulation in the state. The notice shall state the voting places, period of time for voting, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

b. Upon signing a statement certifying to the secretary that the producer is an eligible voter, a producer is entitled to one vote in each referendum conducted pursuant to this section. The department may conduct the referendum by mail, electronic means, or a general meeting of eligible voters. The department shall conduct the referendum and count and tabulate the ballots filed during the referendum within thirty days following the close of the referendum.

(1) If a majority of the total number of eligible voters who vote in the referendum approve the continuation of the council and the imposition of the assessment, the council and the imposition of the assessment shall continue as provided in this chapter.

(2) If a majority of the total number of eligible voters who vote in the referendum held

pursuant to this section do not approve continuing the council and the imposition of the assessment, the secretary shall terminate the collection of the assessment on the first day of the year for which the referendum was to continue. The secretary shall terminate the activities of the council in an orderly manner as soon as practicable after the determination. An additional referendum may be held as provided in section 184.2. However, the subsequent referendum shall not be held within one hundred eighty days.

95 Acts, ch 7, §6

CS95, §196A.4C

98 Acts, ch 1032, §11; 98 Acts, ch 1038, §5, 13

C99, §184.5

Referred to in §184.2, 184.3, 184.14

#### **184.6 Composition of council.**

The Iowa egg council established under this chapter shall be composed of seven members. Each member must be a natural person who is a resident of this state and a producer or an officer, equity owner, or employee of a producer. A producer shall not be represented by more than two members of the council. Two persons shall represent large producers, two persons shall represent medium producers, and three persons shall represent small producers. The council shall adopt rules pursuant to chapter 17A establishing classifications for large, medium, and small producers. The following persons or their designees shall serve as ex officio nonvoting members:

1. The secretary.

2. The director of the economic development authority.

3. The chairperson of the poultry science section of the department of animal science at Iowa state university of science and technology.

[C75, 77, 79, 81, §196A.5]

95 Acts, ch 7, §7; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §6, 13

C99, §184.6

2003 Acts, ch 15, §1; 2011 Acts, ch 118, §85, 89

Referred to in §184.2

#### **184.7 Terms and administration procedures.**

1. A person shall serve as a member on the council for a term of three years. A person may serve as a member on the council for more than one term.

2. The council shall elect a chairperson, and other officers as needed, from among its voting members.

3. A majority of voting members of the council present during a meeting shall constitute a quorum. A majority of the members present during a meeting is necessary to carry out the duties and exercise the powers of the council as provided in this chapter, unless the council requires a greater number.

4. The council shall meet at least once every three months and at other times the council determines are necessary.

95 Acts, ch 7, §8

CS95, §196A.5A

98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13

C99, §184.7

99 Acts, ch 109, §1, 8

#### **184.8 Election and appointment procedures.**

1. The council shall appoint a committee to nominate candidates to stand for election to the council. The council may require that the committee nominate candidates to be appointed by the council to fill a vacancy in a position for the unexpired term of a member.

2. The council shall appoint a producer to fill a member's position occurring because of a vacancy on the council. The person appointed to fill the vacancy must meet the same requirements as a person elected to that position. The person shall serve for the remainder of the unexpired term.

3. The council shall provide a notice of an election for members of the council by any

means deemed reasonable by the council. The notice shall include the period of time for voting, voting places, and any other information determined necessary by the council.

95 Acts, ch 7, §9

CS95, §196A.5B

98 Acts, ch 1032, §11; 98 Acts, ch 1038, §7, 13

C99, §184.8

Referred to in §184.10

#### **184.9 Duties of the council — marketing.**

The council shall develop new and expand existing markets for eggs and egg products, and may provide for any of the following:

1. Increasing the utilization of eggs or egg products.
2. Increasing the awareness of the health benefits associated with the consumption of eggs or egg products.
3. Increasing the awareness of the economic benefits associated with the production and processing of eggs or egg products.

[C75, 77, 79, 81, §196A.11]

95 Acts, ch 7, §10; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §8, 13

C99, §184.9

2005 Acts, ch 43, §3

#### **184.9A Duties of the council — research.**

The council shall participate in research programs or projects, including by conducting or financing such programs or projects, relating to any of the following:

1. Increasing the utilization of eggs or egg products.
2. Improving the production or processing of eggs or egg products.
3. Preventing, modifying, or eliminating barriers to trade which obstruct the free flow of eggs or egg products in commerce.

2005 Acts, ch 43, §4

#### **184.9B Duties of the council — education.**

The council shall participate in education programs or projects, including by conducting or financing such programs or projects, as follows:

1. The council's education programs or projects may provide for any of the following:
  - a. The utilization of eggs or egg products.
  - b. The production or processing of eggs or egg products.
  - c. The safe consumption of eggs or egg products.
  - d. The prevention, modification, or elimination of barriers to trade which obstruct the free flow of eggs or egg products in commerce.
  - e. Increasing the awareness of the health benefits associated with the consumption of eggs or egg products.
  - f. Increasing the awareness of the economic benefits associated with the production and processing of eggs or egg products.

2. The council's education programs or projects may be designed to increase consumers' knowledge of the production or processing of eggs, the preparation of eggs or egg products, or the consumption of eggs or egg products.

3. As part of the council's education programs or projects, the council may provide for the dissemination of information of public interest, including but not limited to the development or publication of materials in a printed or electronic format.

2005 Acts, ch 43, §5; 2006 Acts, ch 1010, §59

#### **184.10 Powers of council.**

The council may perform any function that it deems necessary to carry out its purposes and duties as provided in this chapter, including but not limited to doing any of the following:

1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers and fix their compensation.

2. Establish offices, incur expenses and enter into any contracts or agreements necessary to carry out the purposes of this chapter.
3. Adopt, rescind and amend all proper and necessary rules for the exercise of its powers and duties.
4. Enter into arrangements for the collection of the assessment.
5. Receive gifts, rents, royalties, license fees or other moneys for deposit in the Iowa egg fund as provided in section 184.13.
6. Become a dues-paying member of an organization carrying out a purpose related to any of the following:
  - a. The production or processing of eggs or egg products.
  - b. The consumption or utilization of eggs or egg products.
7. Administer elections for members of the council and provide for the appointment of persons to fill vacancies occurring on the council, as provided in section 184.8. The department may assist the council in administering an election, upon request to the secretary by the council.

[C75, 77, 79, 81, §196A.12]

95 Acts, ch 7, §11; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §9, 10, 13

C99, §184.10

99 Acts, ch 109, §2, 3, 8; 2005 Acts, ch 43, §6 – 8

#### **184.11 Prohibited actions.**

The Iowa egg council shall not do any of the following:

1. Execute a contract or act as an agent of a person who executes a contract for any of the following:
  - a. Selling eggs or egg products.
  - b. Selling equipment used in the manufacturing of egg products.
2. a. Make any contribution of council moneys, either directly or indirectly, to any political party or organization or in support of a political candidate for public office.
- b. Make payments to a political candidate including but not limited to a member of Congress or the general assembly for honoraria, speeches, or for any other purposes above actual and necessary expenses.

[C75, 77, 79, 81, §196A.13]

95 Acts, ch 7, §12; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §11, 13

C99, §184.11

99 Acts, ch 109, §4, 5, 8

#### **184.12 Compensation.**

Members of the council may receive payment for their actual expenses and travel in performing official council functions. A voting member of the council shall not be a salaried employee of the council or any organization or agency receiving moneys from the council.

[C75, 77, 79, 81, §196A.14]

95 Acts, ch 7, §13; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13

C99, §184.12

99 Acts, ch 109, §6, 8

#### **184.13 Administration of moneys.**

Subject to the provisions of section 184.3, the assessment imposed by this chapter shall be remitted by the purchaser to the council not later than thirty days following each calendar quarter during which the assessment was collected. Amounts collected from the assessment shall be deposited in the office of the treasurer of state in a separate fund to be known as the Iowa egg fund. The department of administrative services shall transfer moneys from the fund to the council for deposit into an account established by the council in a qualified financial institution. The department shall transfer the moneys as provided in a resolution

adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open.

[C75, 77, 79, 81, §196A.17]

94 Acts, ch 1146, §40; 95 Acts, ch 209, §22; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13  
C99, §184.13

2003 Acts, ch 145, §286

Referred to in §184.10, 184.14

#### **184.14 Use of moneys — appropriation — audit.**

1. All moneys deposited in the Iowa egg fund and transferred to the council as provided in section 184.13 are appropriated and shall be used for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

2. Moneys collected, deposited in the fund, and transferred to the council as provided in this chapter are subject to audit by the auditor of state. The auditor of state may seek reimbursement for the cost of the audit. The moneys transferred to the council shall be used by the council first for the payment of collection expenses, second for payment of the costs and expenses arising in connection with conducting referendums, third to perform the functions and carry out the duties of the council as provided in this chapter, and fourth for the cost of audits by the auditor of state. Moneys remaining after the council is abolished and the imposition of an assessment is terminated pursuant to a referendum conducted pursuant to section 184.5 shall continue to be expended in accordance with this chapter until exhausted.

[C75, 77, 79, 81, §196A.19]

86 Acts, ch 1100, §24; 89 Acts, ch 137, §3; 94 Acts, ch 1146, §41; 95 Acts, ch 7, §16; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §12, 13

C99, §184.14

2005 Acts, ch 43, §9; 2010 Acts, ch 1189, §32

#### **184.15 Bond required.**

The council shall provide a bond for all persons holding positions of trust under this chapter.

[C75, 77, 79, 81, §196A.21]

94 Acts, ch 1146, §42; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13

C99, §184.15

99 Acts, ch 109, §7, 8

#### **184.16 Examination of records.**

Persons subject to the provisions of this chapter shall furnish on forms provided by the council any information needed to enable the council to effectuate the policies of this chapter. For the purpose of ascertaining the correctness of any report made to the council under the provisions of this chapter, the secretary may examine books, papers, records, copies of tax returns not confidential by law, and accounts, which are in the control of any person. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas in connection with the administration of this chapter.

[C75, 77, 79, 81, §196A.22]

98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13

C99, §184.16

#### **184.17 Penalty.**

Any person who willfully violates any provision of this chapter, willfully gives a false report, statement, or record required by the council, or willfully fails to furnish or render any report, statement or record required by the secretary shall be guilty of a simple misdemeanor.

[C75, 77, 79, 81, §196A.23]

98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13

C99, §184.17

**184.18 Purchasers outside Iowa.**

The secretary may enter into arrangements with purchasers from outside Iowa for payment of the assessment.

[C75, 77, 79, 81, §196A.24]

95 Acts, ch 7, §17; 98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13  
C99, §184.18

**184.19 Not a state agency.**

The Iowa egg council is not an agency of state government.

93 Acts, ch 102, §3

CS93, §196A.14A

CS95, §196A.26

98 Acts, ch 1032, §11; 98 Acts, ch 1038, §13

C99, §184.19

**CHAPTER 184A**

**EXCISE TAX ON TURKEYS**

Referred to in §8A.502, 97B.1A, 179.5A

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184A.1B	Turkey marketing council — composition and procedures.	184A.12	Referendum conducted to continue the council and the imposition of the assessment.
184A.1C	Powers of the council.	184A.12A	Referendum conducted to abolish the council and terminate the imposition of the assessment.
184A.2	Assessment.	184A.13	Repealed by 99 Acts, ch 158, §17, 19.
184A.3	Assessment documentation.	184A.14	Examination of books.
184A.4	Administration of moneys.	184A.15	Misdemeanor.
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184A.6	Use of moneys.	184A.17	Report.
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184A.8	Repealed by 99 Acts, ch 158, §17, 19.	184A.19	Prohibited activities.
184A.9	Audit.		

**184A.1 Definitions.**

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

1. "Account" means the turkey council account created pursuant to section 184A.4.
2. "Council" means the Iowa turkey marketing council established pursuant to sections 184A.1A and 184A.1B.
3. "Fund" means the Iowa turkey fund created pursuant to section 184A.4.
4. "Integrator" means any person who is both a producer and a processor.
5. "Market development" means research and education programs to provide better and more efficient production, marketing, and utilization of turkey and turkey products produced for resale. The programs may include, but are not limited to, supporting public relations, promotion, and research efforts. The programs may provide for all of the following:
  - a. The maintenance of present markets and the development of new or larger domestic or foreign markets.
  - b. The prevention, modification, or elimination of trade barriers which obstruct the free flow of commerce.
  - c. The education of consumers regarding the benefits of purchasing and consuming turkey products and the role of turkey producers and processors.

d. Participation in activities and events sponsored by the national turkey federation, and the national turkey federation research fund which provide for research and promotion regarding the production and marketing of turkeys and turkey products.

6. “Processor” means a person who purchases more than one thousand turkeys for slaughter each year. A processor includes an integrator.

7. “Producer” means a person residing within this state or outside this state who does business in this state and who raises more than five thousand turkeys for slaughter each year. A producer includes an integrator.

8. “Qualified financial institution” means a bank or credit union as defined in section 12C.1.

9. “Qualified producer” means a producer who resides within this state.

10. “Turkey” means a turkey raised for slaughter.

11. “Turkey product” means a product produced in whole or in part from a turkey.

[C73, 75, 77, 79, 81, §184A.1]

86 Acts, ch 1100, §20; 94 Acts, ch 1146, §14; 99 Acts, ch 158, §1, 18, 19; 2012 Acts, ch 1017, §51

**184A.1A Referendum conducted to establish an Iowa turkey marketing council and impose an assessment.**

1. The department shall call and conduct a referendum upon the department’s receipt of a petition which is signed by at least twenty eligible voters requesting a referendum to determine whether to establish an Iowa turkey marketing council as provided in section 184A.1B and impose an assessment as provided in section 184A.2. In order to be an eligible voter under this section, a petitioner must be a qualified producer. The referendum shall be conducted by election within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum by providing evidence of financial security as required by the department.

2. The department shall give notice of the referendum on the question whether to establish a council and to impose an assessment by publishing the notice for a period of not less than five days in at least one newspaper of general circulation in the state, and for a similar period in other newspapers as prescribed by the department. The notice shall state the voting places, period of time for voting, the manner of voting, the amount of the assessment, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

3. a. Each eligible voter who signs a statement certifying that the eligible voter is a qualified producer shall be an eligible voter under this section. An eligible voter is entitled to cast one vote in each referendum conducted under this section. The department may conduct the referendum by mail, electronic means, or a general meeting of eligible voters.

b. At the close of the referendum, the department shall count and tabulate the ballots cast.

(1) If a majority of eligible voters who vote in the referendum approve establishing the council and imposing an assessment, a council shall be established, and an assessment shall be imposed commencing not more than sixty days following the referendum as determined by the council. The council and assessment shall continue for five years as provided in section 184A.12.

(2) If a majority of eligible voters who vote in the referendum do not approve establishing the council and imposing the assessment, the council shall not be established and an assessment shall not be imposed until another referendum is held under this section and a majority of the eligible voters voting approve establishing a council and imposing the assessment. If a referendum should fail, another referendum shall not be held within one hundred eighty days from the date of the last referendum.

4. Within thirty days after approval at the referendum to establish a council and to impose an assessment, the department shall organize the council as provided in section 184A.1B.

99 Acts, ch 158, §2, 18, 19; 2000 Acts, ch 1058, §22

Referred to in §184A.1, 184A.2, 184A.12, 184A.12A

**184A.1B Turkey marketing council — composition and procedures.**

1. The council shall consist of the following members:

a. The secretary of agriculture or the secretary's designee who shall serve at the pleasure of the secretary.

b. Six persons appointed by the board of the Iowa turkey federation. The appointees shall be knowledgeable about the care and management of poultry. The board shall appoint and replace the appointees by election as provided by the board. An appointee shall serve on the council at the pleasure of the board.

c. Any number of ex officio nonvoting members appointed by the board of the Iowa turkey federation. The board shall appoint and replace the appointees by election as provided by the board. An appointee shall serve on the council at the pleasure of the board.

2. The council shall elect a chairperson, and other officers, as needed, from among its members. An officer shall serve for a term as provided by the council and may be reelected to serve subsequent terms unless otherwise provided by the council.

3. A majority of voting members of the council present during a meeting shall constitute a quorum. A majority of the voting members present during a meeting is necessary to carry out the duties and exercise the powers of the council as provided in this chapter, unless the council requires a greater number.

4. The council shall meet on the call of the chairperson or as otherwise provided by the council.

99 Acts, ch 158, §3, 18, 19

Referred to in §184A.1, 184A.1A, 184A.12A

**184A.1C Powers of the council.**

The council may do all of the following:

1. Employ, manage, and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and provide for their compensation.

2. Establish offices, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.

3. Adopt rules necessary to administer the functions of the council as provided in this chapter.

4. Enter into arrangements for the collection and deposit of the assessment.

5. Require that any administrator, employee, or other person occupying a position of trust under this chapter give bond in the amount required by the council. The premiums for bonds shall be part of the costs of collecting the assessment.

6. Receive money, including in the form of gifts, rents, royalties, or license fees which shall be deposited in the turkey council account as provided in section 184A.4.

99 Acts, ch 158, §4, 18, 19

Referred to in §184A.4

**184A.2 Assessment.**

1. If an assessment is approved by a majority of the eligible voters voting at a referendum as provided in section 184A.1A or 184A.12, all of the following shall apply:

a. The assessment shall be imposed on each turkey delivered for processing.

b. The council shall establish a rate of assessment for each turkey delivered for processing. The council may establish different rates based on attributes or characteristics of turkeys. However, a rate shall not be more than three cents for each turkey delivered for processing.

c. The assessment shall be imposed on the producer and collected at the time of delivery of a turkey to the processor. The assessment shall be deducted by the processor at the time of delivery from the price paid to the producer at the time of the sale to the processor. A processor shall remit assessments to the council on a monthly basis as provided by the council. The council shall deposit the remitted assessments in the Iowa turkey fund as provided in section 184A.4.

2. The council may enter into agreements with processors from outside this state for the payment of the assessment.

3. The council shall provide for a refund of an assessment according to rules adopted by the council.

[C73, 75, 77, 79, 81, §184A.2]

99 Acts, ch 158, §5, 18, 19

Referred to in §184A.1A, 184A.4, 184A.10, 184A.12, 184A.12A

Right to refund not subject to execution or transfer; §179.5A

**184A.3 Assessment documentation.**

A processor receiving turkeys for slaughter shall do all of the following:

1. At the time of payment to the producer, the processor shall sign and submit a receipt to the producer which includes the rate of assessment imposed and the amount of the assessment for all turkeys delivered for processing.

2. Within a period established by rules adopted by the council, the processor shall regularly sign and submit to the council an invoice or other records required by the council to expedite collection of the assessment. The council may require that the processor submit a separate invoice for each purchase. The invoice shall be legibly printed and shall not be altered. An invoice shall include all of the following:

a. The name and address of the producer and the seller, if the seller's name is different from the producer.

b. The name and address of the processor.

c. The number of turkeys sold.

d. The date of the delivery.

[C73, 75, 77, 79, 81, §184A.3]

99 Acts, ch 158, §6, 18, 19

**184A.4 Administration of moneys.**

1. The assessments collected by the council as provided in section 184A.2 shall be deposited in the office of the treasurer of state in a special fund known as the Iowa turkey fund. The department of administrative services shall transfer moneys from the fund to the council for deposit into the turkey council account established by the council pursuant to this section. The department shall transfer the moneys as provided in a resolution adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open.

2. The council shall establish a turkey council account in a qualified financial institution. The council shall provide for the deposit of all of the following into the account:

a. The assessment collected, deposited in the Iowa turkey fund, and transferred to the council as provided in this section.

b. Moneys, other than assessments, including moneys in the form of gifts, rents, royalties, or license fees received by the council pursuant to section 184A.1C.

[C73, 75, 77, 79, 81, §184A.4]

94 Acts, ch 1146, §15; 99 Acts, ch 158, §7, 18, 19; 2003 Acts, ch 145, §286

Referred to in §184A.1, 184A.1C, 184A.2, 184A.6, 184A.9

**184A.5** Repealed by 99 Acts, ch 158, § 17, 19.

**184A.6 Use of moneys.**

1. All moneys deposited in the turkey council account pursuant to section 184A.4 shall be used by the council for purposes of administering this chapter.

2. The council shall expend moneys from the account first for the payment of expenses for the collection of assessments, second for the payment of expenses related to conducting a referendum as provided in section 184A.12, and third for the cost of audits by the auditor of state as required in section 184A.9. The council shall expend remaining moneys for market

development, producer education, and the payment of refunds to producers as provided in this chapter.

[C73, 75, 77, 79, 81, §184A.6]

94 Acts, ch 1146, §16; 99 Acts, ch 158, §8, 18, 19; 2000 Acts, ch 1154, §17; 2010 Acts, ch 1189, §33

Referred to in §184A.19

**184A.7** Repealed by 94 Acts, ch 1146, § 46.

**184A.8** Repealed by 99 Acts, ch 158, § 17, 19.

**184A.9 Audit.**

Moneys required to be deposited in the turkey council account as provided in section 184A.4 shall be subject to audit by the auditor of state. The auditor of state may seek reimbursement for the cost of the audit from moneys deposited in the turkey council account.

[C73, 75, 77, 79, 81, §184A.9]

94 Acts, ch 1146, §17; 99 Acts, ch 158, §9, 18, 19; 2010 Acts, ch 1189, §34

Referred to in §184A.6

**184A.10 Referendum.**

Upon receipt of a petition signed by at least twenty-five producers requesting an initial referendum election to determine whether to impose the fee as provided in section 184A.2 the secretary shall call and conduct an initial referendum.

[C73, 75, 77, 79, 81, §184A.10]

**184A.11** Repealed by 99 Acts, ch 158, § 17, 19.

**184A.12 Referendum conducted to continue the council and the imposition of the assessment.**

1. The council shall call for a referendum to continue the council established pursuant to section 184A.1A, and to continue the assessment established pursuant to section 184A.2. The council shall call and conduct the referendum by election as provided in this section. The department shall oversee the conduct of the referendum. The referendum shall be conducted in the fifth year following the referendum establishing the council and assessment.

2. The following procedures shall apply to a referendum conducted pursuant to this section:

a. The council shall publish a notice of the referendum for a period of not less than five days in at least one newspaper of general circulation in the state and for a similar period in other newspapers as prescribed by the council. The notice shall state the voting places, period of time for voting, manner of voting, and other information deemed necessary by the council. A referendum shall not be commenced until five days after the last date of publication.

b. Upon signing a statement certifying to the council that a producer is an eligible voter, the producer is entitled to one vote in each referendum conducted pursuant to this section. In order to be an eligible voter under this section, a producer must be a qualified producer who paid an assessment in the year in which the referendum is held. The council may conduct the referendum by mail, electronic means, or a general meeting of eligible voters. The council shall conduct the referendum and count and tabulate the ballots filed during the referendum within thirty days following the close of the referendum.

(1) If a majority of eligible voters who vote in the referendum approves the continuation of the council and the imposition of the assessment, the council and the imposition of the assessment shall continue as provided in this chapter.

(2) If a majority of eligible voters who vote in the referendum does not approve continuing the council and the imposition of the assessment, the department shall terminate the collection of the assessment on the first day of the year for which the referendum was to continue. The department shall terminate the activities of the council in an orderly manner as soon as practicable after the referendum. A subsequent referendum may be held as

provided in section 184A.1A. However, the subsequent referendum shall not be held within one hundred eighty days from the date of the last referendum.

[C73, 75, 77, 79, 81, §184A.12]

99 Acts, ch 158, §10, 18, 19

Referred to in §184A.1A, 184A.2, 184A.6

**184A.12A Referendum conducted to abolish the council and terminate the imposition of the assessment.**

1. A referendum may be called to abolish the council established pursuant to sections 184A.1A and 184A.1B, and to terminate the imposition of the assessment established pursuant to section 184A.2. The department shall call and conduct the referendum upon the department's receipt of a petition requesting the referendum. The petition must be signed by at least twenty eligible voters or fifty percent of all eligible voters, whichever is greater. In order to be an eligible voter under this section, a producer must be a qualified producer who paid an assessment in the year in which the referendum is held. The referendum shall be conducted by election within sixty days following receipt of the petition. The petitioners shall guarantee payment of the cost of the referendum by providing evidence of financial security as required by the department.

2. The following procedures shall apply to a referendum conducted pursuant to this section:

a. The department shall publish a notice of the referendum for a period of not less than five days in at least one newspaper of general circulation in the state and for a similar period in other newspapers as prescribed by the department. The notice shall state the voting places, period of time for voting, manner of voting, and other information deemed necessary by the department. A referendum shall not be commenced until five days after the last date of publication.

b. Upon signing a statement certifying to the department that a producer is an eligible voter, the producer is entitled to one vote in each referendum conducted pursuant to this section. The department may conduct the referendum by mail, electronic means, or a general meeting of eligible voters. The department shall conduct the referendum and count and tabulate the ballots filed during the referendum within thirty days following the close of the referendum.

(1) If a majority of eligible voters who vote in the referendum approves the continuation of the council and the imposition of the assessment, the council and the imposition of the assessment shall continue as provided in this chapter.

(2) If a majority of eligible voters who vote in the referendum does not approve continuing the council and the imposition of the assessment, the department shall terminate the collection of the assessment on the first day of the year for which the referendum was to continue. The department shall terminate the activities of the council in an orderly manner as soon as practicable after the referendum. A subsequent referendum may be held as provided in section 184A.1A. However, the subsequent referendum shall not be held within one hundred eighty days from the date of the last referendum.

99 Acts, ch 158, §11, 18, 19

**184A.13** Repealed by 99 Acts, ch 158, § 17, 19.

**184A.14 Examination of books.**

Any person subject to the provisions of this chapter shall furnish, on forms provided by the council, information required by the council to effectuate the provisions of this chapter. In order to administer this chapter, the council may examine books, papers, records, copies of tax returns, accounts, correspondence, contracts, or other documents and memoranda that it deems relevant which are in the control of a person subject to this chapter and which are not otherwise confidential as provided by law. The council may hold hearings, take testimony,

administer oaths, subpoena witnesses, and issue subpoenas duces tecum in connection with the administration of this section.

[C73, 75, 77, 79, 81, §184A.14]  
99 Acts, ch 158, §12, 18, 19

**184A.15 Misdemeanor.**

A person is guilty of a simple misdemeanor for willfully violating any provision of this chapter, or for willfully rendering or furnishing a false or fraudulent report, statement, or record required by the council.

[C73, 75, 77, 79, 81, §184A.15]  
99 Acts, ch 158, §13, 18, 19

**184A.16** Repealed by 99 Acts, ch 158, § 17, 19.

**184A.17 Report.**

The council shall prepare and submit a report summarizing the activities of the council under this chapter each year to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning assessments collected and expended under the provisions of this chapter.

[C73, 75, 77, 79, 81, §184A.17]  
94 Acts, ch 1146, §18; 99 Acts, ch 158, §14, 18, 19

**184A.18 Not a state agency.**

The council is not a state agency.

[C73, 75, 77, 79, 81, §184A.18]  
99 Acts, ch 158, §15, 18, 19

**184A.19 Prohibited activities.**

The council shall not do any of the following:

1. Operate with a deficit or use deficit financing for administration of this chapter.
2. Expend moneys from the account in a manner that is not authorized pursuant to section 184A.6.
3. Become involved in supporting a political campaign or issue, by making a contribution of moneys from the account, either directly or indirectly, to any political party or organization or in support of a political candidate for public office. The council shall not expend the moneys to a political candidate including but not limited to a member of Congress or the general assembly for honoraria, speeches, or for any other purposes above actual and necessary expenses.

[C73, 75, 77, 79, 81, §184A.19]  
99 Acts, ch 158, §16, 18, 19

## CHAPTER 185

## IOWA SOYBEAN ASSOCIATION

Referred to in §8A.502, 97B.1A, 179.5A

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**185.1 Definitions.**

As used in this chapter:

1. “*Association*” means the Iowa soybean association as recognized in section 185.1A.
2. “*Board*” means the Iowa soybean association board of directors established by this chapter.
3. “*Bushel*” means sixty pounds of soybeans by weight.
4. “*District*” means an official crop reporting district formed by the United States department of agriculture and set out in the annual farm census published by the Iowa department of agriculture and land stewardship.
5. “*First purchaser*” means a person, public or private corporation, governmental subdivision, association, cooperative, partnership, commercial buyer, dealer, or processor who purchases soybeans from a producer for the first time for any purpose except to feed it to the purchaser’s livestock or to manufacture a product from the soybeans purchased for the purchaser’s personal consumption.
6. “*Influencing legislation*” means the same as defined in 26 C.F.R. § 56.4911 as that section exists on July 1, 2005.
7. “*Market development*” means to engage in research and educational programs directed toward better and more efficient production and utilization of soybeans; to provide methods and means, including but not limited to, public relations and other promotion techniques for the maintenance of present markets; to provide for the development of new or larger domestic and foreign markets; and to provide for the prevention, modification, or elimination of trade barriers which obstruct the free flow of soybeans.
8. “*Marketed in this state*” refers to a sale of soybeans to a first purchaser who is a resident of or doing business in this state where actual delivery of the soybeans occurs in this state.
9. “*National assessment*” means the assessment on soybeans collected pursuant to 7 U.S.C. ch. 92.
10. “*Net market price*” means the sales price received by a producer for soybeans after adjustments for any premium or discount based on grading or quality factors.
11. “*Producer*” means a person engaged in this state in the business of producing and

marketing in the person's name at least two hundred fifty bushels of soybeans in the previous year.

12. *"Promotional order"* means an order administered pursuant to this chapter which establishes a program for the promotion, research, and market development of soybeans and provides for a state assessment to finance the program.

13. *"Qualified financial institution"* means a bank or credit union as defined in section 12C.1.

14. *"Sale"* or *"purchase"* includes but is not limited to the pledge or other encumbrance of soybeans as security for a loan extended under a federal price support loan program. Sale and actual delivery of the soybeans under the federal price support loan program occurs when the soybeans are marketed following redemption by the producer or when the soybeans are forfeited in lieu of loan repayment. If the soybeans are forfeited in lieu of repayment, the purchase price of the soybeans is the principal amount of the loan extended and the state assessment shall be collected at the time of loan settlement.

15. *"Secretary"* means the secretary of agriculture.

16. *"Soybeans"* means and includes all kinds of varieties of soybeans marketed or sold as soybeans by the producer.

17. *"State assessment"* or *"assessment"* means an excise tax on each bushel of soybeans marketed in this state which is imposed pursuant to a promotional order as provided in this chapter.

[C73, 75, 77, 79, 81, §185.1]

83 Acts, ch 22, §1, 2; 86 Acts, ch 1245, §633; 94 Acts, ch 1146, §19, 20; 2005 Acts, ch 82, §1 – 3; 2012 Acts, ch 1017, §52; 2012 Acts, ch 1023, §157

Further definitions; see §159.1

#### **185.1A Recognition of Iowa soybean association.**

The corporation known as the Iowa soybean association incorporated under the laws of this state shall be entitled to the benefits of this chapter by filing each year with the secretary a verified proof of its organization, the names of its officers, and any other information required by the secretary.

2005 Acts, ch 82, §4

Referred to in §185.1

#### **185.1B Duties and objects of the association.**

The Iowa soybean association shall aid in the promotion of the soybean industry through research, education, public relations, promotion, and market development projects and programs as directed by the board to accomplish its purposes as provided in section 185.11.

2005 Acts, ch 82, §5

#### **185.2 Petition for election.**

Upon receipt of a petition signed by at least five hundred producers requesting an initial referendum election to determine whether a promotional order shall be placed in effect, the secretary shall call an initial referendum election to be conducted within sixty days following receipt of the petition. Producers shall vote by written ballot in the manner provided by this chapter for referendum elections.

[C73, 75, 77, 79, 81, §185.2]

#### **185.3 Board established — elections.**

The Iowa soybean association board of directors shall administer this chapter.

1. a. The board shall consist of directors who are producers residing in Iowa at the time of the election. The directors shall be elected as follows:

(1) Four directors shall be elected from producers from the state at large.

(2) One director per district shall be elected from producers from each district in the state.

However, two directors shall be elected from the producers from a district if more than an average of twenty-five million bushels of soybeans were produced in that district in the three years prior to the election.

b. A producer shall be entitled to vote in the election regardless of whether the producer is a member of the association.

2. The following persons shall serve on the board as nonvoting, ex officio directors:

a. The secretary or the secretary's designee.

b. The dean of the college of agriculture and life sciences of Iowa state university of science and technology or the dean's designee.

c. The director of the economic development authority or the director's designee.

d. Any other person that the board appoints.

[C73, 75, 77, 79, 81, §185.3]

2005 Acts, ch 82, §6; 2008 Acts, ch 1031, §40; 2008 Acts, ch 1032, §33; 2011 Acts, ch 118, §85, 89

**185.4** Repealed by 88 Acts, ch 1134, § 116.

**185.5 Notice of election for directors.**

Notice of elections for directors of the board in a district shall be given by the board by publication in a newspaper of general circulation in the district and in any other reasonable manner as determined by the board and shall set forth the period of time for voting, voting procedures, and other information the board deems necessary.

[C73, 75, 77, 79, 81, §185.5]

88 Acts, ch 1134, §35; 2005 Acts, ch 82, §7

**185.6 Manner of election — tie votes.**

In districts electing one director, the candidate receiving the highest number of votes shall be elected. In districts electing two directors, producers shall vote for two directors, and the two candidates receiving the highest number of votes shall be elected. If the election results in a tie vote, the board shall appoint a director from among the candidates who received the same number of votes.

[C73, 75, 77, 79, 81, §185.6]

2005 Acts, ch 82, §8

**185.7 Terms.**

A director's term shall be for three years. A director shall not serve for more than three full terms.

[C73, 75, 77, 79, 81, §185.7]

88 Acts, ch 1134, §36; 2005 Acts, ch 82, §9

**185.8 Election administration — candidate nominations.**

The board shall administer elections for its directors with the assistance of the secretary. Prior to the expiration of a director's term of office, the board shall appoint a nominating committee of five producers. The nominating committee shall nominate two resident producers as candidates for each director position for which an election is to be held. Additional candidates may be nominated by a written petition of one hundred producers. Procedures governing the time and place of filing shall be adopted and publicized by the board. A place shall not be reserved on the ballot for write-in candidates, and votes cast for write-in candidates shall not be counted.

[C73, 75, 77, 79, 81, §185.8]

88 Acts, ch 1134, §37; 2005 Acts, ch 82, §10

**185.9 Vacancies — removal.**

1. The board shall by appointment fill an unexpired term if a vacancy occurs in the board.

2. The secretary may remove a director for any reason enumerated in section 66.1A.

[C73, 75, 77, 79, 81, §185.9]

2005 Acts, ch 82, §11

**185.10 Ex officio members.** Repealed by 2005 Acts, ch 82, § 28. See § 185.3.

**185.11 Purpose of board.**

The purposes of the board shall be to:

1. Provide for research and education programs directed toward better and more efficient production, marketing, and utilization of soybeans and soybean products.
2. Provide methods and means, including, but not limited to, public relations and other promotion techniques for the maintenance of present markets.
3. Assist in development of new or larger markets, both domestic and foreign, for soybeans and soybean products.
4. Work for prevention, modification, or elimination of trade barriers which obstruct the free flow of soybeans and soybean products to market.

[C73, 75, 77, 79, 81, §185.11]

2005 Acts, ch 82, §12

Referred to in §185.1B, 185.13, 185.26, 185.29

**185.12 Officers.**

The board shall:

1. Elect a chairperson and other officers as advisable.
2. Administer this chapter, and perform all acts reasonably necessary to effectuate the purposes of this chapter.

[C73, 75, 77, 79, 81, §185.12]

**185.13 Powers and duties.**

The board shall carry out its purposes as provided in section 185.11. The board shall administer this chapter, including by doing all of the following:

1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.
2. Acquire and establish offices, issue negotiable instruments, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.
3. Adopt, rescind, and amend all proper and necessary rules for the exercise of its powers and duties.
4. Enter into arrangements for collection of the state assessment on soybeans marketed in this state.
5. Periodically review or evaluate each program conducted pursuant to this chapter to ensure that the program contributes to one of the purposes of the board.
6. Administer the soybean checkoff account as provided in section 185.26.

[C73, 75, 77, 79, 81, §185.13]

94 Acts, ch 1146, §22; 2005 Acts, ch 82, §13 – 15; 2009 Acts, ch 95, §1

**185.14 Compensation — meetings.**

Each director of the board shall receive a per diem of one hundred dollars and actual expenses in performing official board functions, notwithstanding section 7E.6. A director of the board shall not be a salaried employee of the board or any organization or agency which is receiving moneys from the board. The board shall meet at least four times each year.

[C73, 75, 77, 79, 81, §185.14]

91 Acts, ch 258, §34; 2005 Acts, ch 82, §16; 2008 Acts, ch 1046, §1

**185.15 Term of promotional order.**

A promotional order shall be effective for four years from its effective date, and upon each four-year anniversary of its effective date shall be either extended or terminated as provided in this chapter.

[C73, 75, 77, 79, 81, §185.15]

86 Acts, ch 1195, §5; 88 Acts, ch 1134, §38

**185.16 Notice of referendum.**

Notice of a referendum election to initiate or extend a promotional order shall be given by publication in a newspaper of general circulation in this state at least ten days prior to the

date of the referendum and in any other reasonable manner as may be determined by the secretary for the initial referendum and by the board for extension of the promotional order.

[C73, 75, 77, 79, 81, §185.16]

**185.17 Contents of notice.**

The notice of referendum shall set forth the period of time for voting, voting places and such other information as the secretary may deem necessary in an initial referendum. The board shall make such determinations in any subsequent referendum.

[C73, 75, 77, 79, 81, §185.17]

**185.18 Counting.**

At the close of a referendum voting period, the secretary shall count and tabulate the ballots cast during the referendum period.

[C73, 75, 77, 79, 81, §185.18]

**185.19 Effect.**

The ballots shall constitute conclusive evidence as to the validity of the promotional order.

[C73, 75, 77, 79, 81, §185.19]

**185.20 Producers only to vote.**

Only producers are eligible to vote in an election for directors or a referendum election and only in the district in which they reside. A producer shall sign an affidavit at the time of voting certifying the producer's eligibility to vote. Each qualified producer shall be entitled to one vote.

[C73, 75, 77, 79, 81, §185.20]

2005 Acts, ch 82, §17

**185.21 Assessment.**

1. A state assessment which is adopted upon the initiation of a promotional order shall be collected during the effective period of the promotional order, and shall be of no force or effect upon termination of the promotional order.

2. The state assessment shall be paid into the soybean promotion fund established in section 185.26.

3. The rate of the state assessment shall be as follows:

a. If the national assessment is being collected, the rate of the state assessment shall be one-quarter of one percent of the net market price of the soybeans marketed in this state.

b. If the national assessment is not being collected, the rate of the state assessment shall be one-half of one percent of the net market price of soybeans marketed in this state.

[C73, 75, 77, 79, 81, §185.21]

94 Acts, ch 1146, §23; 2005 Acts, ch 82, §18

**185.22 Promotional order.**

After a promotional order has been issued, the first purchaser at the time of payment for soybeans shall show the total amount of state assessment deducted from the sale on the purchase invoice.

[C73, 75, 77, 79, 81, §185.22]

2005 Acts, ch 82, §19

**185.23 Deduction of assessment.**

The state assessment shall be deducted from the purchase price of soybeans at the time of sale, and forwarded to the board by the first purchaser in the manner and at intervals determined by the board.

[C73, 75, 77, 79, 81, §185.23]

2005 Acts, ch 82, §20

**185.24 Termination of a promotional order.**

If a promotional order is not extended as determined by a referendum, the secretary and the board shall terminate the promotional order in an orderly manner as soon as practicable. After all moneys collected from the state assessment are expended, the board shall remain in existence as provided in its articles of incorporation or bylaws. The directors shall no longer be elected as required in this chapter. The ex officio directors shall no longer serve on the board. The board shall cease to administer this chapter, and the board shall no longer carry out its duties or exercise its powers as provided in this chapter. However, if a future referendum passes, the board shall be reorganized by the secretary and the directors then serving on the board shall be deemed to be the same directors who served on the board when the promotional order was terminated. The directors shall serve out their terms as though there had been no lapse of time between the two effective orders.

[C73, 75, 77, 79, 81, §185.24]

94 Acts, ch 1146, §24; 2005 Acts, ch 82, §21

Referred to in §185.25

**185.25 Special referendum — producer petition.**

Upon receipt of a petition not less than one hundred fifty nor more than two hundred forty days from a four-year anniversary of the effective date of an initial promotional order signed within that same period by a number of producers equal to or greater than one percent of the number of producers reported in the most recent United States census of agriculture, requesting a referendum to determine whether to extend the promotional order, the secretary shall call a referendum to be conducted not earlier than thirty days before the four-year anniversary date. If the secretary determines that extension of the promotional order is not favored by a majority of the producers voting in the referendum, the promotional order shall be terminated as provided in section 185.24. If the promotional order is terminated, another referendum shall not be held within one hundred eighty days. A succeeding referendum shall be called by the secretary upon the petition of a number of producers equal to or greater than one percent of the number of producers reported in the most recent United States census of agriculture requesting a referendum, who shall guarantee the costs of the referendum.

If no valid petition is received by the secretary within the time period described above, or if a petition is received but the referendum to extend the promotional order passes, the promotional order shall continue in effect for four additional years from the anniversary of its effective date.

[C73, 75, 77, 79, 81, §185.25]

86 Acts, ch 1195, §6; 94 Acts, ch 1146, §25

**185.25A Special referendum — request by the board.** Repealed by 2005 Acts, ch 82, § 28.

**185.26 Administration of moneys.**

1. The state assessment collected by the board shall be deposited in a special fund known as the soybean promotion fund, in the office of the treasurer of state. The fund may also contain any gifts or federal or state grant received by the board. Moneys collected, deposited into the fund, and transferred to the board, as provided in this chapter, shall be subject to audit by the auditor of state. The department of administrative services shall transfer moneys from the fund to the board for deposit into an account known as the soybean checkoff account which shall be established by the board in a qualified financial institution. The department shall transfer the moneys into the account as provided in a resolution adopted by the board. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. From moneys collected, deposited, and transferred to the soybean checkoff account as provided in this section, the board shall first pay the costs of referendums, elections, and other expenses incurred in the administration of this chapter, before moneys may be expended to carry out the purposes of the board as provided in section 185.11. The board shall strictly segregate moneys in the soybean checkoff account from all other moneys of the board. Moneys in the soybean checkoff account shall

be expended by the board exclusively for carrying out the purposes of the board as provided in section 185.11. The account shall be subject to audit by the auditor of state.

2. The fiscal year of the association shall commence on October 1 and end on September 30.

[C73, 75, 77, 79, 81, §185.26]

94 Acts, ch 1146, §27; 2003 Acts, ch 145, §286; 2005 Acts, ch 82, §22; 2006 Acts, ch 1030, §18

Referred to in §185.13, 185.21, 185.29, 185.30, 185.34

#### **185.27 Refund of assessment.**

A producer who has sold soybeans and had the state assessment deducted from the sale price may, by application in writing to the board, secure a refund in the amount deducted. The refund shall be payable only when the application is made to the board within sixty days after the deduction. Application forms shall be given by the board to each first purchaser when requested and the first purchaser shall make the applications available to any producer. Each application for refund by a producer shall have attached thereto proof of assessment deducted. The proof of assessment may be in the form of a duplicate or certified copy of the purchase invoice by the first purchaser. The board shall have thirty days from the date the application for refund is received to remit the refund to the producer.

[C73, 75, 77, 79, 81, §185.27]

2005 Acts, ch 82, §23

Right to refund not subject to execution or transfer, §179.5A

#### **185.28 Use of moneys — appropriation.**

All moneys collected, deposited, and transferred to the board as provided in this chapter, are appropriated and shall be used for the administration of this chapter by the board and for the payment of claims by the board based upon obligations incurred in the performance of board activities and functions provided in this chapter.

[C73, 75, 77, 79, 81, §185.28]

94 Acts, ch 1146, §28

#### **185.29 Remission of remaining moneys.**

After the board has paid the costs of elections, referendum, necessary board expenses, and administrative costs, the remaining moneys collected, deposited in the fund, and transferred to the soybean checkoff account as provided in section 185.26 shall be expended by the board as is necessary to carry out its purposes as provided in section 185.11.

[C73, 75, 77, 79, 81, §185.29]

94 Acts, ch 1146, §29; 2005 Acts, ch 82, §24

#### **185.30 Bond.**

Every person occupying a position of trust under any provisions of this chapter shall provide a bond in an amount required by the board. The premium for the bond shall be paid out of moneys transferred from the soybean promotion fund to the board pursuant to section 185.26.

[C73, 75, 77, 79, 81, §185.30]

94 Acts, ch 1146, §30

#### **185.31 Penalty.**

It is a simple misdemeanor for any person to willfully violate any provision of this chapter or for any person to willfully render or furnish a false or fraudulent report, statement, or record required by the secretary.

[C73, 75, 77, 79, 81, §185.31]

#### **185.32 First purchaser information.**

Every first purchaser shall upon request furnish the secretary with such information as is necessary to enable the secretary and the board to carry out the provisions of this chapter. Such information shall be provided as prescribed by the secretary. The secretary may examine any records relating to the purchase, sale, storage, processing, handling,

or assessment of soybeans by any first purchaser. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas as may be necessary for the proper administration of this chapter.

[C73, 75, 77, 79, 81, §185.32]

#### **185.33 Report.**

The board shall each year prepare and submit a report summarizing the activities of the board under this chapter to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under the provisions of this chapter.

[C73, 75, 77, 79, 81, §185.33]

94 Acts, ch 1146, §31

#### **185.34 Not a state agency.**

1. The association is not a state agency.

2. *a.* Except as provided in paragraph “b”, the board is not a state agency or a governmental entity as defined in section 8A.101, public employer as defined in section 20.3, or an authority or instrumentality of the state.

*b.* The board is deemed to be all of the following:

(1) A department for purposes of chapter 11.

(2) A public body for purposes of chapter 12C. Moneys deposited into the soybean checkoff account as established in section 185.26 shall be deemed to be public funds under chapter 12C.

(3) An agency for purposes of an appeal from its final decision under chapter 17A. A person who is aggrieved or adversely affected by the board’s final agency action is entitled to judicial review as provided in section 17A.19.

(4) A governmental body for purposes of chapter 21.

[C73, 75, 77, 79, 81, §185.34]

2005 Acts, ch 82, §25

#### **185.35 Political activity — influencing legislation prohibited.**

1. Except as provided in subsection 2, all of the following shall apply:

*a.* The board shall not expend any moneys on political activity or on any attempt to influence legislation.

*b.* It shall be a condition of any allocation of moneys that an organization receives from the board, that the organization shall not expend the moneys on a political activity or on an attempt to influence legislation.

2. Subsection 1 does not apply to a communication or action taken by the board if any of the following applies:

*a.* The board may communicate or take action directed to an appropriate government official or government relating to the marketing of soybeans or soybean products to a foreign country.

*b.* The communication or action relates to the prevention, modification, or elimination of trade barriers.

2005 Acts, ch 82, §26

## CHAPTER 185A

### IOWA SOYBEAN ASSOCIATION

Repealed by 2005 Acts, ch 82, §27; see chapter 185

## CHAPTER 185B

## CORN GROWERS ASSOCIATION

185B.1 Recognition of organization.                      185B.2 Duties and objects of association.

**185B.1 Recognition of organization.**

The corporation known as the Iowa corn growers association incorporated under the laws of this state shall be entitled to the benefits of this chapter by filing each year with the department verified proofs of its organization, names of its officers, and five hundred persons who are bona fide members thereof together with such other information as the department may require.

[C71, 73, 75, 77, 79, 81, §185B.1]

**185B.2 Duties and objects of association.**

The Iowa corn growers association shall:

1. Aid the promotion of corn growers and the corn industry of Iowa through education, research, marketing, transportation study, and public relations programs, and to foster research designed to develop new additional and improved uses for corn products and determine better methods of converting them to various industrial and human uses.

2. Make an annual report of the proceedings to the secretary of agriculture.

[C71, 73, 75, 77, 79, 81, §185B.2]

## CHAPTER 185C

## CORN PROMOTION BOARD

Referred to in §8A.502, 97B.1A, 179.5A

For implementation and transition provisions relating to election of directors, see 2013 Acts, ch 140, §111

185C.1	Definitions.	185C.17	Contents of notice.
185C.2	Petition for election.	185C.18	Counting.
185C.3	Establishment of corn promotion board.	185C.19	Effect.
185C.4	Repealed by 88 Acts, ch 1134, §116.	185C.20	Producers only to vote.
185C.5	Notice of election.	185C.21	State assessment.
185C.6	Number and election of directors.	185C.22	State assessment on purchase invoice.
185C.7	Terms of directors.	185C.23	Deduction of state assessment.
185C.8	Administration of elections for directors.	185C.24	Cancellation and suspension.
185C.9	Vacancies.	185C.25	Effective period of promotional order — termination.
185C.10	Ex officio nonvoting members.	185C.25A	Collection of federal assessment.
185C.11	Purposes and powers of the board.	185C.26	Deposit of moneys — corn promotion fund.
185C.11A	Financial assistance program.	185C.27	Refund of assessment.
185C.12	Officers.	185C.28	Use of moneys — appropriation.
185C.13	Powers and duties.	185C.29	Remission of excess funds.
185C.14	Membership of board — compensation — meetings.	185C.30	Bond.
185C.15	Term of promotional order — automatic extension.	185C.31	Penalty.
185C.16	Notice of referendum.	185C.32	First purchaser information.
		185C.33	Report.
		185C.34	Not a state agency.

**185C.1 Definitions.**

As used in this chapter:

1. “Assessment” means a state or federal assessment.
2. “Board” means the Iowa corn promotion board established by this chapter.

3. “*Bushel*” means fifty-six pounds of corn by weight.
4. “*Corn*” means and includes all kinds of varieties of corn marketed or sold as corn by the producer but shall not include sweet corn or popcorn or seed corn.
5. “*Director*” means a district elected director or a board elected director as provided in section 185C.6.
6. “*District*” means an official crop reporting district formed by the United States department of agriculture for use on January 1, 2013, and set out in the annual farm census published in that year by the department of agriculture and land stewardship.
7. “*Federal assessment*” means a federal excise tax or other charge which is imposed for purposes related to market development.
8. “*First purchaser*” means a person, public or private corporation, governmental subdivision, association, cooperative, partnership, commercial buyer, dealer, or processor who purchases corn from a producer for the first time for any purpose except to feed it to the purchaser’s livestock or to manufacture a product from the corn purchased for the purchaser’s personal consumption.
9. “*Market development*” means to engage in research and educational programs directed toward better and more efficient utilization of corn; to provide methods and means, including but not limited to, public relations and other promotion techniques for the maintenance of present markets; to provide for the development of new or larger domestic and foreign markets; and to provide for the prevention, modification, or elimination of trade barriers which obstruct the free flow of corn.
10. “*Marketed in this state*” refers to a sale of corn to a first purchaser who is a resident of or doing business in this state where actual delivery of the corn occurs in this state.
11. “*Marketing year*” means the twelve-month period beginning the first day of September and ending on the following thirty-first day of August.
12. “*Producer*” means any individual, firm, corporation, partnership, or association engaged in this state in the business of producing and marketing in their name at least two hundred fifty bushels of corn in the previous marketing year.
13. “*Promotional order*” means an order pursuant to this chapter which provides for the administration of this chapter and provides for a state assessment necessary to provide for its administration.
14. “*Qualified financial institution*” means a bank or credit union as defined in section 12C.1.
15. “*Sale*” or “*purchase*” may, to the extent determined by the board, include the pledge or other encumbrance of corn as security for a loan extended under a federal price support loan program. Actual delivery of the corn occurs when the corn is pledged or otherwise encumbered to secure the loan. The purchase price of the corn is the principal amount of the loan extended and the purchase invoice for the corn is the documentation required for extension of the loan.
16. “*Secretary*” means the secretary of agriculture.
17. “*State assessment*” means a state excise tax on each bushel of corn marketed in this state which is imposed as part of a promotional order to administer this chapter.

[C77, 79, 81, §185C.1]

83 Acts, ch 22, §3, 4; 86 Acts, ch 1245, §634; 89 Acts, ch 198, §1 – 3; 94 Acts, ch 1146, §32, 33; 2004 Acts, ch 1024, §1, 2; 2012 Acts, ch 1017, §53; 2012 Acts, ch 1023, §157; 2013 Acts, ch 140, §103, 104, 112

Further definitions; see §159.1

NEW subsection 5 and former subsections 5 – 16 renumbered as 6 – 17

Subsection 6 amended

### **185C.2 Petition for election.**

Upon receipt of a petition signed by at least five hundred producers requesting an initial referendum election to determine whether a promotional order shall be placed in effect, the secretary shall call an initial referendum election to be conducted within sixty days following receipt of the petition. Producers shall vote by written ballot in the manner provided by this chapter for referendum elections.

[C77, 79, 81, §185C.2]

**185C.3 Establishment of corn promotion board.**

If a majority of the producers voting in the referendum election approve the passage of the promotional order, an Iowa corn promotion board shall be established.

[C77, 79, 81, §185C.3]

2013 Acts, ch 140, §105, 112

Referred to in §185C.6

Section amended

**185C.4 Repealed by 88 Acts, ch 1134, § 116.****185C.5 Notice of election.**

Notice of elections for directors of the board in a district shall be given by the board by publication in a newspaper of general circulation in the district and in any other reasonable manner as determined by the board and shall set forth the period of time for voting, voting places, and other information the board deems necessary.

[C77, 79, 81, §185C.5]

88 Acts, ch 1134, §39

Referred to in §185C.6, 185C.8

**185C.6 Number and election of directors.**

The Iowa corn promotion board established pursuant to section 185C.3 shall be composed of directors elected as provided in this chapter. The directors shall include all of the following:

1. Nine district elected directors. Each such director shall be elected from a district as provided in section 185C.5, this section, and sections 185C.7 and 185C.8. A candidate receiving the highest number of votes in each district shall be elected to represent that district.

2. Three board elected directors. Each such director shall be elected by the board. The candidate receiving the highest number of votes by the board shall be elected to represent the state on at-large basis.

[C77, 79, 81, §185C.6]

2013 Acts, ch 140, §106, 112

Referred to in §185C.1, 185C.8

Section stricken and rewritten

**185C.7 Terms of directors.**

1. A director's term of office shall be for three years. A district elected director shall not serve for more than three complete consecutive terms. A board elected director shall not serve for more than one complete term of office. A district elected director who is elected as board elected director shall not serve more than a total of four terms of office, regardless of whether any of the terms of office are complete or consecutive.

2. If the board is reconstituted pursuant to section 185C.8, the terms of the directors shall be controlled by this section. However, the initial terms of the reconstituted board shall be staggered. To the extent practicable, one-third of the elected directors shall serve an initial term of one year, one-third of the elected directors shall serve an initial term of two years, and one-third of the elected directors shall serve an initial term of three years. The initial terms of board elected directors shall be determined by board directors drawing lots.

[C77, 79, 81, §185C.7]

88 Acts, ch 1134, §40; 89 Acts, ch 198, §4; 2013 Acts, ch 140, §107, 112

Referred to in §185C.6, 185C.8

Section amended

**185C.8 Administration of elections for directors.**

1. The Iowa corn promotion board shall administer elections for district elected directors of the board with the assistance of the secretary. Prior to the expiration of a director's term of office, the board shall appoint a nominating committee for the district represented by that director. The nominating committee shall consist of five producers who are residents of the district from which a director must be elected. The nominating committee shall nominate two resident producers as candidates for each director position for which an election is to be

held. Additional candidates may be nominated by a written petition of twenty-five producers. Procedures governing the time and place of filing shall be adopted and publicized by the board.

2. Following recommencement of the promotional order, or termination of the promotional order's suspension as provided in section 185C.24, the secretary shall order the reconstitution of the board. An election of district elected directors shall be held within thirty days from the date of the order. The secretary shall call for, provide for notice of, conduct, and certify the results of the election in a manner consistent with sections 185C.5 through 185C.7. Directors shall serve terms as provided in section 185C.7. Rules or procedures adopted by the board and in effect at the date of suspension shall continue in effect upon reconstitution of the board. The Iowa corn growers association may nominate two resident producers as candidates for each director position. Additional candidates may be nominated by a written petition of at least twenty-five producers.

3. The Iowa corn promotion board shall administer elections for board elected directors. Prior to the expiration of a board elected director's term of office, the board may appoint a nominating committee. In order to be eligible for nomination and election, a candidate must have previously served on the board as an elected director. An officer of the board shall certify the results of the election.

[C77, 79, 81, §185C.8]

88 Acts, ch 1134, §41; 89 Acts, ch 198, §5; 2013 Acts, ch 140, §108, 112

Referred to in §185C.6, 185C.7, 185C.24

Section amended

#### **185C.9 Vacancies.**

The board shall by appointment fill an unexpired term if a vacancy occurs in the board.

[C77, 79, 81, §185C.9]

#### **185C.10 Ex officio nonvoting members.**

The following persons shall serve on the board as ex officio, nonvoting members:

1. The secretary or the secretary's designee.
2. The dean of the college of agriculture and life sciences of Iowa state university of science and technology or the dean's designee.
3. Two representatives of first purchaser organizations appointed by the board.

[C77, 79, 81, §185C.10]

86 Acts, ch 1100, §22; 94 Acts, ch 1146, §34; 2004 Acts, ch 1024, §3; 2008 Acts, ch 1032, §34; 2011 Acts, ch 118, §85, 89; 2013 Acts, ch 140, §109, 112

Subsection 3 stricken and subsection 4 renumbered as 3

#### **185C.11 Purposes and powers of the board.**

1. The purposes of the board shall be to:
  - a. Provide for market development.
  - b. Provide for research and education programs directed toward better and more efficient production, marketing, and utilization of corn and corn products.
  - c. Provide methods and means, including, but not limited to, public relations and other promotion techniques for the maintenance of present markets.
  - d. Assist in development of new or larger markets, both domestic and foreign, for corn and corn products.
  - e. Work for prevention, modification, or elimination of trade barriers which obstruct the free flow of corn and corn products to market.
  - f. Promote the production and marketing of ethanol.
  - g. Administer the financial assistance program as provided in section 185C.11A.
  - h. Support education and training programs, or demonstration projects, which improve the production and marketing of corn or corn products or which improve environmental stewardship practices when producing corn.
  - i. Grant academic scholarships to full-time graduate and postgraduate students engaged in the study of areas or subjects relating to improving or increasing the production, marketing, or utilization of corn or corn products.

2. The board may carry out these purposes directly or contract with recognized and qualified persons.

[C77, 79, 81, §185C.11]

91 Acts, ch 254, §13; 2004 Acts, ch 1024, §4

Referred to in §185C.26, 185C.29

#### **185C.11A Financial assistance program.**

1. The board shall assist in efforts to improve the economic conditions of corn producers by providing financial assistance to eligible persons for purposes of supporting projects which expand markets for all corn produced in this state and products derived from that corn. A project must relate to any of the following:

a. The planning, development, construction, operation, or improvement of a new or existing value-added facility which utilizes corn or corn products.

b. The development, production, or utilization of a variety of corn which expresses new or specialized traits.

c. The development of products or the delivery of services likely to increase the profits or reduce the risks associated with corn production or marketing.

2. The board may provide financial assistance in the form of an interest loan, low-interest loan, no-interest loan, forgivable loan, loan guarantee, grant, letter of credit, equity financing, principal buy-down, interest buy-down, or a combination of these forms. The board shall not approve an application for financial assistance under this section to refinance an existing loan.

3. A person is eligible for financial assistance under this section if all of the following apply:

a. The financial assistance will be used to support a project that will provide a demonstrable benefit to corn producers.

b. The board approves a business plan submitted by the person. The business plan must demonstrate the person's managerial and technical expertise to carry out the project.

c. The person agrees to comply with terms and conditions of the financial assistance as determined by the board.

4. The board shall award financial assistance to an eligible person based on all of the following criteria:

a. The degree to which the project will benefit corn producers.

b. The feasibility of the project to become a viable enterprise.

c. The amount of the investment in the project contributed by corn producers.

d. The economic and technical viability of the processes to be employed.

e. The economic and technical viability of the products to be produced.

2004 Acts, ch 1024, §5

Referred to in §185C.11

#### **185C.12 Officers.**

The board shall:

1. Elect a chairperson and other officers as advisable.

2. Administer this chapter, and perform all acts reasonably necessary to effectuate the purposes of this chapter.

[C77, 79, 81, §185C.12]

#### **185C.13 Powers and duties.**

The board may:

1. Employ and discharge assistants and professional counsel as necessary, prescribe their duties and powers, and fix their compensation.

2. Acquire and establish offices, issue negotiable instruments, incur expenses, and enter into any contracts or agreements necessary to carry out the purposes of this chapter.

3. Adopt, rescind, and amend all proper and necessary rules for the exercise of its powers and duties.

4. Enter into arrangements for collection of the assessment on corn marketed in this state.

5. To the extent provided by federal law, be responsible for collection of receipts from the federal assessment, and for expenditure of proceeds from the federal assessment.

[C77, 79, 81, §185C.13]

89 Acts, ch 198, §6; 2009 Acts, ch 95, §2

**185C.14 Membership of board — compensation — meetings.**

1. Each director of the board shall receive a per diem of one hundred dollars and actual expenses in performing official board functions, notwithstanding section 7E.6.

2. A director of the board shall not be a salaried employee of the board or any organization or agency which is receiving funds from the board.

3. The board shall meet at least three times each year, and at such other times as deemed necessary by the board.

[C77, 79, 81, §185C.14]

91 Acts, ch 258, §35; 2009 Acts, ch 95, §3; 2013 Acts, ch 140, §110, 112

Subsection 3 amended

**185C.15 Term of promotional order — automatic extension.**

A promotional order shall be effective for four years from its effective date. Upon the date that an order is due to expire the order shall automatically be extended for an additional four years from the date that the order or last extension would otherwise expire, except as provided in section 185C.24.

[C77, 79, 81, §185C.15]

88 Acts, ch 1134, §42; 89 Acts, ch 198, §7

Referred to in §185C.25

**185C.16 Notice of referendum.**

Notice of a referendum election to initiate or terminate a promotional order shall be given by publication in a newspaper of general circulation in this state at least ten days prior to the date of the referendum and in any other reasonable manner as determined by the secretary for the initial referendum and by the board for termination of the promotional order.

[C77, 79, 81, §185C.16]

89 Acts, ch 198, §8; 90 Acts, ch 1168, §31

Referred to in §185C.25

**185C.17 Contents of notice.**

The notice of referendum shall set forth the period of time for voting, voting places and such other information as the secretary may deem necessary in an initial referendum. The board shall make such determinations in any subsequent referendum.

[C77, 79, 81, §185C.17]

Referred to in §185C.25

**185C.18 Counting.**

At the close of a referendum voting period, the secretary shall count and tabulate the ballots cast during the referendum period.

[C77, 79, 81, §185C.18]

Referred to in §185C.25

**185C.19 Effect.**

The ballots shall constitute conclusive evidence as to the validity of the promotional order.

[C77, 79, 81, §185C.19]

Referred to in §185C.25

**185C.20 Producers only to vote.**

Only producers are eligible to vote in an election for directors or a referendum election and only in the district in which they reside. A producer shall sign an affidavit furnished by the secretary at the time of voting certifying the producer's eligibility to vote. Each qualified producer shall be entitled to one vote.

[C77, 79, 81, §185C.20]

Referred to in §185C.25

**185C.21 State assessment.**

1. The board shall determine and set the state assessment rate. State assessments collected pursuant to the promotional order shall be paid into the corn promotion fund established in section 185C.26. Except as provided in subsection 2, a state assessment shall not exceed one-quarter of one cent per bushel upon corn marketed in this state. The board shall establish the effective date of a rate change.

2. Upon request of the board, the secretary shall call a special referendum for producers to vote on whether to authorize an increase in the state assessment above one-quarter of one cent per bushel, notwithstanding subsection 1. The special referendum shall be conducted as provided in this chapter for referendum elections. However, the special referendum shall not affect the existence or length of the promotional order in effect. If a majority of the producers voting in the special referendum approve the increase, the board may increase the assessment to the amount approved in the special referendum. However, a state assessment shall not exceed one cent per bushel of corn marketed in this state.

[C77, 79, 81, §185C.21]

89 Acts, ch 198, §9; 94 Acts, ch 1146, §35; 98 Acts, ch 1030, §1

**185C.22 State assessment on purchase invoice.**

After a promotional order has been issued, the first purchaser at the time of payment for corn shall show the total amount of state assessment deducted from the sale on the purchase invoice.

[C77, 79, 81, §185C.22]

89 Acts, ch 198, §10

**185C.23 Deduction of state assessment.**

The state assessment shall be deducted from the purchase price of corn at the time of sale, and forwarded to the board by the first purchaser in the manner and at intervals determined by the board.

[C77, 79, 81, §185C.23]

89 Acts, ch 198, §11

**185C.24 Cancellation and suspension.**

1. The board shall be suspended and board operations and terms of members shall cease upon either of the following events:

- a. The state assessment is terminated pursuant to section 185C.25.
- b. The state assessment is suspended pursuant to section 185C.25A.

2. However, notwithstanding subsection 1, the board shall continue to operate until proceeds remaining in the corn promotion fund are disbursed. Disbursement shall be made as provided for payment of moneys under section 185C.26.

3. The secretary shall order that the board be reconstituted upon either of the following events:

- a. Recommencement of the promotional order, pursuant to section 185C.25.
- b. Termination of the promotional order's suspension, pursuant to section 185C.25A.

4. Until the board is reconstituted under section 185C.8, the secretary has the powers to perform the duties of the board as provided in this chapter, including the collection of the state assessment at the rate in effect on the date when collection of the state assessment was terminated pursuant to section 185C.25. However, the secretary shall not expend funds from state assessment.

[C77, 79, 81, §185C.24]

89 Acts, ch 198, §12

Referred to in §185C.8, 185C.15

**185C.25 Effective period of promotional order — termination.**

1. A state assessment adopted upon the initiation of a promotional order shall be collected during the effective period of the order, and shall have no effect upon termination of the promotional order. Upon adoption or extension of the promotional order, the order shall be

effective for the period described in section 185C.15 unless the order is terminated as provided in this section or suspended as provided in section 185C.25A.

2. The secretary shall call a referendum to terminate the promotional order if all the following conditions are met:

a. The secretary receives a petition signed by at least five percent of the state's producers reported in the most recent United States census of agriculture.

b. The petition is signed by at least five percent of the state's producers residing in each of five districts according to the most recent United States census of agriculture.

c. The secretary receives the petition not less than one hundred fifty days from the date that the order is due to expire, but receives the petition not more than two hundred forty days before the date that the order is due to expire.

3. The secretary shall conduct the election as provided for a referendum under this chapter, including sections 185C.16 through 185C.20. If upon counting and tabulating the ballots, the secretary determines that a majority of voting producers favor termination of the state assessment, the secretary, in cooperation with the board, shall terminate the state assessment in an orderly manner as soon as practicable.

4. If the assessment is terminated, another referendum shall not be held for at least one hundred eighty days from the date that the assessment is terminated. A succeeding referendum to restore the assessment shall be called by the secretary upon petition of at least five hundred producers requesting a referendum. The petitioners shall guarantee the costs of the succeeding referendum. The secretary shall conduct the election as provided for a referendum under this chapter not later than one hundred fifty days after the secretary receives the petition. If a referendum held pursuant to this subsection is approved by producers, the promotional order shall commence no later than two hundred ten days following the date that the petition is received by the secretary.

[C77, 79, 81, §185C.25]

89 Acts, ch 198, §13

Referred to in §185C.24

#### **185C.25A Collection of federal assessment.**

Prior to the collection of the federal assessment, the board may approve the continued collection of the state assessment during the collection of the federal assessment. If the collection of the state assessment would be in addition to, and not an offset against, the collection of the federal assessment, the board shall suspend the collection of the state assessment. On the date of the termination or suspension of the federal assessment, the promotional order shall recommence and the suspension of the state assessment shall terminate.

89 Acts, ch 198, §14

Referred to in §185C.24, 185C.25

#### **185C.26 Deposit of moneys — corn promotion fund.**

A state assessment collected by the board from a sale of corn shall be deposited in the office of the treasurer of state in a special fund known as the corn promotion fund. The fund may include any gifts, rents, royalties, interest, license fees, or a federal or state grant received by the board. Moneys collected, deposited in the fund, and transferred to the board as provided in this chapter shall be subject to audit by the auditor of state. The auditor of state may seek reimbursement for the cost of the audit from moneys deposited in the fund as provided in this chapter. The department of administrative services shall transfer moneys from the fund to the board for deposit into an account established by the board in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the board. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. From moneys collected, the board shall first pay all the direct and indirect costs incurred by the secretary and the costs of referendums, elections, and other expenses incurred in the administration of this chapter,

before moneys may be expended for the purpose of carrying out the purposes of this chapter as provided in section 185C.11.

[C77, 79, 81, §185C.26]

89 Acts, ch 198, §15; 94 Acts, ch 1146, §36; 98 Acts, ch 1030, §2; 2003 Acts, ch 145, §286; 2004 Acts, ch 1024, §6; 2010 Acts, ch 1189, §35

Referred to in §185C.21, 185C.24, 185C.27, 185C.28

#### **185C.27 Refund of assessment.**

A producer who has sold corn and had a state assessment deducted from the sale price, by application in writing to the board, may secure a refund in the amount deducted. The refund shall be payable only when the application shall have been made to the board within sixty days after the deduction. Application forms shall be given by the board to each first purchaser when requested and the first purchaser shall make the applications available to any producer. Each application for refund by a producer shall have attached to the application proof of the assessment deducted. The proof of assessment may be in the form of a duplicate or certified copy of the purchase invoice by the first purchaser. The board shall have thirty days from the date the application for refund is received to remit the refund to the producer. The board may provide for refunds of a federal assessment as provided by federal law. Unless inconsistent with federal law, refunds shall be made under section 185C.26.

[C77, 79, 81, §185C.27]

89 Acts, ch 198, §16

Right to refund not subject to execution or transfer, §179.5A

#### **185C.28 Use of moneys — appropriation.**

Moneys deposited in the corn promotion fund and transferred to the board as provided in section 185C.26, including federal moneys to the extent permitted by federal law, are appropriated and shall be used for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions provided in this chapter.

[C77, 79, 81, §185C.28]

89 Acts, ch 198, §17; 94 Acts, ch 1146, §37

#### **185C.29 Remission of excess funds.**

1. After the direct and indirect costs incurred by the secretary and the costs of elections, referendums, necessary board expenses, and administrative costs have been paid, at least seventy-five percent of the remaining moneys from a state assessment deposited in the corn promotion fund shall be used to carry out the purposes of the board as provided in section 185C.11.

2. The Iowa corn promotion board shall not expend any funds on political activity, and it shall be a condition of any allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

[C77, 79, 81, §185C.29]

89 Acts, ch 198, §18; 2004 Acts, ch 1024, §7; 2007 Acts, ch 126, §40; 2011 Acts, ch 34, §38

#### **185C.30 Bond.**

Every person occupying a position of trust under any provisions of this chapter shall give bond in such amount as may be required by the board, the premium for which shall be paid out of the corn promotion fund.

[C77, 79, 81, §185C.30]

#### **185C.31 Penalty.**

It is a simple misdemeanor for any person to willfully violate any provision of this chapter or for any person to willfully render or furnish a false or fraudulent report, statement, or record required by the secretary.

[C77, 79, 81, §185C.31]

**185C.32 First purchaser information.**

Every first purchaser shall upon request furnish the secretary with such information as is necessary to enable the secretary and the board to carry out the provisions of this chapter. Such information shall be provided as prescribed by the secretary. The secretary may examine any records relating to the purchase or the state assessment of corn by any first purchaser. The secretary may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas as may be necessary for the proper administration of this chapter. When requested by the board, the secretary shall employ these powers in the manner requested.

[C77, 79, 81, §185C.32]  
89 Acts, ch 198, §19

**185C.33 Report.**

The board shall each year prepare and submit a report summarizing the activities of the board under this chapter to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under the provisions of this chapter.

[C77, 79, 81, §185C.33]  
89 Acts, ch 198, §20; 94 Acts, ch 1146, §38

**185C.34 Not a state agency.**

The Iowa corn promotion board is not a state agency.  
[C77, 79, 81, §185C.34]

**CHAPTER 186**

**IOWA STATE HORTICULTURE SOCIETY**

Referred to in §159.6, 173.3

186.1	Meetings and organization of society.	186.3	Affiliation with allied societies.
186.2	Horticultural exposition.	186.4	Annual report.
		186.5	Appropriations.

**186.1 Meetings and organization of society.**

The Iowa state horticulture society shall hold meetings each year, at times as it may fix, for the transaction of business. The officers and board of directors of the society shall be chosen as provided for in the constitution of the society, for the period and in the manner prescribed therein, but the secretary of agriculture or the secretary’s designee shall be a member of the board of directors and of the executive committee. Any vacancy in the offices filled by the society may be filled by the executive committee for the unexpired portion of the term.

[C73, §1117; C97, §1669; C24, 27, 31, 35, 39, §2963; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §186.1]  
87 Acts, ch 115, §32; 2009 Acts, ch 41, §74

**186.2 Horticultural exposition.**

The society is authorized to hold, at such time and in such place in Iowa as it may select, a horticultural exposition, including honey products and manufactured plant products, with practical and scientific demonstrations of approved methods of crop production, grading, packing, marketing, and establishment of standard market grades pertaining to horticulture. It may delegate to its executive committee the duty and power to make and execute all plans for the holding of such an exposition.

[C24, 27, 31, 35, 39, §2964; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §186.2]

**186.3 Affiliation with allied societies.**

The society shall encourage the affiliation with itself of societies organized for the purpose of furthering the horticultural, honey bee, or forestry interests of the state.

[C73, §1118; C97, §1670; C24, 27, 31, 35, 39, §2965; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §186.3]

**186.4 Annual report.**

The secretary shall make an annual report to the department of agriculture and land stewardship at such time as the department may require. Such report shall contain the proceedings of the society, an account of the exposition, a summarized statement of the expenditures for the year, the general condition of horticultural, honey bee, and forestry interests throughout the state, together with such additional information as the department may require.

[C73, §1119; C97, §1671; C24, 27, 31, 35, 39, §2966; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §186.4]

**186.5 Appropriations.**

All money appropriated by the state for the use of the Iowa state horticulture society shall be paid on the warrant of the director of the department of administrative services, upon the order of the president and secretary of said society, in such sums and at such times as may be for the interests of said society. All expenditures from state funds for the use of the Iowa state horticulture society are to be approved by the secretary of agriculture.

[C27, 31, 35, §2966-a1; C39, §2966.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §186.5]  
2003 Acts, ch 145, §286; 2009 Acts, ch 41, §75

**CHAPTERS 186A to 188**

RESERVED

**SUBTITLE 4**

**AGRICULTURE-RELATED PRODUCTS AND ACTIVITIES**

Referred to in §159.6

**CHAPTER 189**

**AGRICULTURE — GENERAL PROVISIONS**

Referred to in §205.11, 205.13, 214.5, 215.6, 215.7

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**DIVISION I**

**DEFINITIONS AND DUTIES**

**189.1 Definitions.**

For the purpose of this subtitle, unless the context otherwise requires:

1. “*Article*” means food, commercial feed, agricultural seed, commercial fertilizer, drug, pesticide, and paint, in the sense in which they are defined in the various provisions of this subtitle.

2. “*Department*” means the department of agriculture and land stewardship, and if the department is required or authorized to do an act, the act may be performed by a regular assistant or a duly authorized agent of the department.

3. “*Official laboratory*” means a biological, chemical, or physical laboratory which performs testing or analysis pursuant to scientific procedures, to the extent the laboratory is recognized by the department as a reliable indicator of scientific results.

4. “*Package*” or “*container*”, unless otherwise defined, includes wrapper, box, carton, case, basket, can, bottle, jar, tube, cask, vessel, tub, keg, jug, barrel, tank, tank car, and other receptacles of a like nature; and the expression “*offered or exposed for sale or sold in package or wrapped form*” means the offering or exposing for sale, or selling of an article which is contained in a package or container as defined in this section.

5. “*Pasteurization*” or “*pasteurized*” means the procedure of processing milk or a milk product, in order to ensure its safety from contaminants, if the procedure of pasteurization is consistent with standards adopted by the department pursuant to section 192.102.

6. “*Person*” includes a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in that capacity shall also be liable for violations of this subtitle.

7. “*Rules*” includes regulations and orders by the department.

8. “*Secretary*” means the secretary of agriculture.

9. “*United States Pharmacopoeia*” or “*National Formulary*” means the latest revision of these publications official at the time of a transaction which is in question.

[S13, §2510-o, 3009-a; SS15, §4999-a31c; C24, 27, 31, 35, 39, §3029; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.1]

86 Acts, ch 1245, §636; 92 Acts, ch 1163, §44; 94 Acts, ch 1023, §17; 2003 Acts, ch 69, §24, 25; 2012 Acts, ch 1095, §62, 63

Referred to in §196.1

### 189.2 Duties.

The department shall do all of the following:

1. Execute and enforce this subtitle.

2. Adopt all necessary rules, not inconsistent with law, for enforcing the provisions of this subtitle.

3. Provide educational measures and exhibits, and conduct educational campaigns as are deemed advisable in fostering and promoting the production and sale of the articles dealt with in this subtitle, in accordance with the rules adopted pursuant to this subtitle.

4. Issue from time to time, bulletins showing the results of inspections, analyses, and prosecutions under this subtitle. These bulletins shall be posted on the department’s internet site.

1. [C97, §2515; S13, §2510-g, -t, -v4, 2528-f2, 3009-a, 4999-a31b, 5077-a22; SS15, §2515; C24, 27, 31, 35, 39, §3030; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.2]

2. [S13, §4999-a18, 5077-a22; C24, 27, 31, 35, 39, §3030; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.2]

3. [C97, §2515; SS15, §2515; C24, 27, 31, 35, 39, §3030; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.2]

4. [S13, §2510-g, -t, -v4, 2528-f2, 3009-s, 4999-a26, -a37, 5077-a11; C24, 27, 31, 35, 39, §3030; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.2]

83 Acts, ch 101, §33; 85 Acts, ch 67, §20; 89 Acts, ch 197, §25; 94 Acts, ch 1023, §18; 98 Acts, ch 1119, §25; 98 Acts, ch 1164, §40; 2003 Acts, ch 69, §26; 2003 Acts, ch 145, §204; 2012 Acts, ch 1095, §64

## DIVISION II

### INSPECTION — SAMPLES

#### 189.3 Procuring samples.

The department shall, for the purpose of examination or analysis, procure from time to time, or whenever the department has occasion to believe any of the provisions of this subtitle

are being violated, samples of the articles dealt with in these provisions which have been shipped into this state, offered or exposed for sale, or sold in the state.

[C97, §2521, 2524; S13, §2528-f2, 4999-a18, 5077-a11, -a22; C24, 27, 31, 35, 39, §3031; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.3]

94 Acts, ch 1023, §19; 2003 Acts, ch 69, §27; 2012 Acts, ch 1095, §65

#### **189.4 Access to factories and buildings.**

The department shall have full access to all places, factories, buildings, stands, or premises, and to all wagons, auto trucks, vehicles, or cars used in the preparation, production, distribution, transportation, offering or exposing for sale, or sale of any article dealt with in this subtitle.

[C97, §2505; S13, §2528-a, 5077-a22; SS15, §2505, 2510-4a, 3009-n; C24, 27, 31, 35, 39, §3032; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.4]

94 Acts, ch 1023, §20; 2003 Acts, ch 69, §28; 2012 Acts, ch 1095, §66

#### **189.5 Dealer to furnish samples.**

Upon request and tender of the selling price by the department any person who prepares, manufactures, offers or exposes for sale, or delivers to a purchaser any article dealt with in this subtitle shall furnish, within business hours, a sample of the same, sufficient in quantity for a proper analysis or examination as shall be provided by the rules of the department.

[S13, §4999-a24, 5077-a11; C24, 27, 31, 35, 39, §3033; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.5]

94 Acts, ch 1023, §21; 2003 Acts, ch 69, §29; 2012 Acts, ch 1095, §67

#### **189.6 Taking of samples.**

The department may, without the consent of the owner, examine or open any package containing, or believed to contain, any article or product which it suspects may be prepared, manufactured, offered, or exposed for sale, sold, or held in possession in violation of the provisions of this subtitle, in order to secure a sample for analysis or examination, and the sample and damage to container shall be paid for at the current market price out of the contingent fund of the department.

[C97, §2521, 2526; S13, §2528-b, -f2, 5077-a11, -a22; C24, 27, 31, 35, 39, §3034; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.6]

94 Acts, ch 1023, §22; 2003 Acts, ch 69, §30; 2012 Acts, ch 1095, §68

#### **189.7 Preservation of sample.**

After the sample is taken, it shall be carefully sealed and labeled with the name or brand of the article, the name of the party from whose stock it was taken, and the date and place of taking such sample. Upon request a duplicate sample, sealed and labeled in the same manner, shall be delivered to the person from whose stock the sample was taken. The label and duplicate shall be signed by the person taking the same. The method of taking samples of particular articles may be prescribed by the rules of the department.

[C97, §2521; S13, §4999-a24, 5077-a11, -a22; C24, 27, 31, 35, 39, §3035; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.7]

2012 Acts, ch 1095, §69

#### **189.8 Witnesses.**

In the enforcement of the provisions of this subtitle, the department shall have power to issue subpoenas for witnesses, enforce their attendance, and examine them under oath. The witnesses shall be allowed the same fees as witnesses in district court. The fees shall be paid out of the contingent fund of the department.

[C97, §2515; SS15, §2515; C24, 27, 31, 35, 39, §3036; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.8]

94 Acts, ch 1023, §23; 2003 Acts, ch 69, §31; 2012 Acts, ch 1095, §70

Contempts, chapter 665

Witness fees, §622.69 – 622.75

DIVISION III  
LABELING — ADULTERATIONS

**189.9 Labeling.**

1. All articles in package or wrapped form which are required by this subtitle to be labeled, unless otherwise provided, shall be conspicuously marked in the English language in legible letters on the principal label with the following items:

- a. The true name, brand, or trademark of the article.
- b. The quantity of the contents in terms of weight, measure, or numerical count. Under this requirement reasonable variations shall be permitted, and small packages shall be excepted in accordance with the rules of the department.
- c. The name and place of business of the manufacturer, packer, importer, dispenser, distributor, or dealer.

2. The above items shall be printed in such a way that there shall be a distinct contrast between the color of the letters and the background upon which printed.

[C73, §4042; C97, §2517, 4989 – 4991, 5070; S13, §2510-d, -q, -r, -v1, -v2, 2515-b – d, 2528-f, 4999-a35, 5070-a, 5077-a6; SS15, §4999-a31c; C24, 27, 31, 35, 39, §3037; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.9]

94 Acts, ch 1023, §24; 2003 Acts, ch 69, §32; 2009 Acts, ch 41, §263; 2012 Acts, ch 1095, §71  
Referred to in §189.10, 189.11, 191.1, 191.2, 196.10, 199.3, 210.12, 210.18

**189.10 Packages excepted.**

In case the size of the package or container will not permit the use of the type specified in section 189.9, the same may be reduced in size proportionately in accordance with the rules of the department.

[S13, §4999-a35; C24, 27, 31, 35, 39, §3038; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.10]

Referred to in §191.1, 191.2, 196.10, 210.18

**189.11 Labeling of mixtures — federal requirements.**

1. In addition to the requirements of section 189.9, unless otherwise provided, articles which are mixtures, compounds, combinations, blends, or imitations shall be marked as such and immediately followed, without any intervening matter and in the same size and style of type, by the names of all the ingredients contained therein, beginning with the one present in the largest proportion.

2. Notwithstanding any other requirements of this chapter or of chapter 190, food or food products, or pesticides, labeled in conformance with the labeling requirements of the government of the United States shall be deemed to be labeled in conformance with the laws of the state of Iowa.

[S13, §2510-d, -r, -v2, 5077-a7; SS15, §4999-a31c; C24, 27, 31, 35, 39, §3039; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.11]

2012 Acts, ch 1095, §72

Referred to in §189.12, 191.1, 191.2, 196.10, 199.3, 210.18

**189.12 Trade formulas.**

Nothing in section 189.11 shall be construed as requiring the printing of a patented or proprietary trade formula on a label.

[S13, §5077-a7; SS15, §4999-a31c; C24, 27, 31, 35, 39, §3040; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.12]

Referred to in §191.1, 191.2, 196.10, 210.18

**189.13 False labels — defacement.**

A person shall not use any label required by this subtitle which bears any representations of any kind which are deceptive as to the true character of the article or the place of its

production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this subtitle.

[C73, §4042; C97, §2517, 4989 – 4991; S13, §2510-s, -v3, 2515-b – d, 4999-a35, 5077-a7; SS15, §4999-a31c; C24, 27, 31, 35, 39, §3041; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.13]

94 Acts, ch 1023, §25; 2003 Acts, ch 69, §33; 2012 Acts, ch 1095, §73  
Referred to in §210.18

#### **189.14 Mislabeled articles.**

1. A person shall not knowingly introduce into this state, solicit orders for, deliver, transport, or have in possession with intent to sell, any article which is labeled in any other manner than that prescribed by this subtitle for the label of the article when offered or exposed for sale, or sold in package or wrapped form in this state.

2. No person shall package any liquid or semisolid product or label any such product as honey, imitation honey or honey blend, or use the word “honey” in any prominent location on the label of such product or sell or offer for sale any such product which is labeled as honey, imitation honey or honey blend or which contains a label with the word “honey” prominently displayed thereon, unless the entire product is honey as defined in section 190.1, subsection 4.

3. A person shall not package a liquid or semisolid product, or label the product, as sorghum, imitation sorghum, or sorghum blend, or use the word “sorghum” in a prominent location on the label of the product or sell or offer for sale a product labeled as sorghum, imitation sorghum, or sorghum blend or which contains a label with the word “sorghum” prominently displayed, unless the product label states that the product is sorghum syrup as defined in section 190.1, imitation sorghum, or a sorghum blend. As used in this subsection, “*imitation sorghum*” means a product that has the flavor of sorghum but contains no sorghum syrup as defined in section 190.1. “*Sorghum blend*” means a product that is not entirely sorghum syrup as defined in section 190.1.

[C73, §4042; C97, §2516, 2517, 2519, 4989 – 4991, 5070; S13, §2510-b, -q, -r, -v1, -v2, 2515-b – d, 2528-f, 4999-a20, 5070-a; SS15, §4999-a32; C24, 27, 31, 35, 39, §3042; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.14]

89 Acts, ch 151, §1; 94 Acts, ch 1023, §26; 2003 Acts, ch 69, §34; 2012 Acts, ch 1095, §74  
Referred to in §210.18

#### **189.15 Adulterated articles.**

A person shall not knowingly manufacture, introduce into the state, solicit orders for, sell, deliver, transport, have in possession with the intent to sell, or offer or expose for sale, any article which is adulterated according to the provisions of this subtitle.

[C73, §3901, 4042; C97, §2508, 2516, 4989 – 4991; S13, §2508, 2510-q, -r, -v1, -v2, 2515-b – d, 4999-a20; SS15, §4999-a32; C24, 27, 31, 35, 39, §3043; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.15]

94 Acts, ch 1023, §27; 2003 Acts, ch 69, §35; 2012 Acts, ch 1095, §75  
Referred to in §210.18

#### **189.16 Possession and control of adulterated and improperly labeled articles.**

1. Except as provided in subsection 2, a person in possession or having control of an article which is adulterated or which is improperly labeled according to the provisions of this subtitle shall be presumed to know that the article is adulterated or improperly labeled. A person’s possession of an adulterated or improperly labeled article shall be prima facie evidence that the person intends to violate the provisions of this subtitle.

2. This section does not apply to the possession or control of any of the following:

- a. Grain by a person regulated under chapter 203, 203C, or 203D.
- b. Mining materials including coal by a person regulated under chapter 207 or 208.

c. A controlled substance as provided in chapter 124.

[C97, §2519, 2521; S13, §4999-a24, -a40; C24, 27, 31, 35, 39, §3044; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §189.16]

94 Acts, ch 1023, §28; 99 Acts, ch 12, §7; 2003 Acts, ch 69, §36

Referred to in §210.18

#### **189.17 Confiscation or condemnation.**

Unless a procedure or method of seizure and confiscation or condemnation is otherwise provided, the secretary is hereby authorized to prohibit the entrance into channels of commerce or possession of any article found to be adulterated or improperly labeled according to the provisions of this division or rules established hereunder. Any articles found in channels of commerce or in possession by an inspector which are not in compliance with the adulteration or labeling provisions of this division shall be subject to immediate seizure by the department. Seized articles shall be condemned unless of such character that the articles can be made to conform with the provisions of this division by methods approved by the secretary. Condemned articles shall be effectively destroyed for the purpose for which they were intended by the owner of the article, or the owner's agent, under the supervision of an inspector in such manner as the secretary may prescribe.

[C71, 73, 75, 77, 79, 81, §189.17]

#### **189.18 Wrongful condemnation — restitution.**

A party whose article, item, commodity or product is wrongfully condemned or seized shall be entitled to maintain a cause of action against the state of Iowa, for the damage proximately caused by the wrongful condemnation or seizure. Such cause of action shall be a claim as defined in chapter 669 and shall be subject to the provisions of said chapter, notwithstanding the provisions of section 669.14.

[C71, 73, 75, 77, 79, 81, §189.18]

## DIVISION IV

### LICENSES

#### **189.19 Licenses.**

The following provisions apply to all licenses issued or authorized under this subtitle:

1. *Applications.* Applications for licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department.

2. *Refusal and revocation.* For good and sufficient grounds the department may refuse to grant a license to any applicant; and the department may revoke a license for a violation of any provision of this subtitle or for the refusal or failure of any licensee to obey the lawful directions of the department.

3. *Expiration.* Unless otherwise provided all licenses shall expire one year from the date of issue.

[C97, §2525; S13, §2515-a; SS15, §2515-f, 3009-m; C24, 27, 31, 35, 39, §3045; C46, 50, 54, 58, 62, 66, §189.17; C71, 73, 75, 77, 79, 81, §189.19]

94 Acts, ch 1023, §29; 2003 Acts, ch 69, §37, 38; 2012 Acts, ch 1095, §76, 77

#### **189.20 Injunction.**

Any person engaging in any business for which a license is required by this subtitle, without obtaining such license, may be restrained by injunction, and shall pay all costs made necessary by such procedure.

[C24, 27, 31, 35, 39, §3046; C46, 50, 54, 58, 62, 66, §189.18; C71, 73, 75, 77, 79, 81, §189.20]

94 Acts, ch 1023, §30; 2003 Acts, ch 69, §39; 2012 Acts, ch 1095, §78

DIVISION V  
OFFENSES — PENALTIES

**189.21 Penalty.**

Unless otherwise provided, any person violating any provision of this subtitle or any rule adopted by the department pursuant to such a provision, is guilty of a simple misdemeanor.

[C73, §2068, 3901; C97, §2508, 2527, 2592, 2594, 3029, 5070; S13, §2508, 2510-2a, -h, -j, -u, -v5, 2515-g, 2522, 2528-c, -f3, 2596-b, 4989-b, 4999-a25, -a39, 5070-a, 5077-a23; SS15, §2505, 2506, 3009-j, -r; C24, 27, 31, 35, 39, §3047; C46, 50, 54, 58, 62, 66, §189.19; C71, 73, 75, 77, 79, 81, §189.21]

94 Acts, ch 1023, §31; 2003 Acts, ch 69, §40; 2012 Acts, ch 1095, §79

**189.22 May charge more than one offense.**

In any criminal proceeding brought for violation of this subtitle, an information or indictment may charge as many offenses as it appears have been committed, and the defendant may be convicted of any or all of the offenses.

[C24, 27, 31, 35, 39, §3048; C46, 50, 54, 58, 62, 66, §189.20; C71, 73, 75, 77, 79, 81, §189.22]  
94 Acts, ch 1023, §32

**189.23 Common carrier.**

The penalties provided in this subtitle shall not be imposed upon any common carrier for introducing into the state, or having in its possession, any article which is adulterated or improperly labeled according to the provisions of this subtitle, when the same was received by the carrier for transportation in the ordinary course of its business and without actual knowledge of its true character.

[C97, §2516; S13, §4999-a20; SS15, §4999-a32; C24, 27, 31, 35, 39, §3049; C46, 50, 54, 58, 62, 66, §189.21; C71, 73, 75, 77, 79, 81, §189.23]

94 Acts, ch 1023, §33; 2003 Acts, ch 69, §41; 2012 Acts, ch 1095, §80

DIVISION VI  
ENFORCEMENT

**189.24 Report of violations.**

When it appears that any of the provisions of this subtitle have been violated, the department may certify the facts to the proper county attorney. The certification shall be accompanied with a copy of the results of any analysis, examination, or inspection the department may have made, duly authenticated by the proper person under oath, and with any additional evidence which may be in possession of the department.

[C97, §4998; S13, §4999-a19; C24, 27, 31, 35, 39, §3050; C46, 50, 54, 58, 62, 66, §189.22; C71, 73, 75, 77, 79, 81, §189.24]

94 Acts, ch 1023, §34; 2003 Acts, ch 69, §42; 2012 Acts, ch 1095, §81

**189.25 County attorney.**

The county attorney may at once institute the proper proceedings for the enforcement of the penalties provided in this subtitle for the violations.

[C97, §4998; S13, §2596-c, 4999-a19; C24, 27, 31, 35, 39, §3051; C46, 50, 54, 58, 62, 66, §189.23; C71, 73, 75, 77, 79, 81, §189.25]

94 Acts, ch 1023, §35

**189.26 Refusal to act.**

If the county attorney refuses to act, the governor may, in the governor's discretion, appoint an attorney to represent the state.

[S13, §4999-a19; C24, 27, 31, 35, 39, §3052; C46, 50, 54, 58, 62, 66, §189.24; C71, 73, 75, 77, 79, 81, §189.26]

**189.27 Institution of proceedings.**

In any case when it appears that any of the provisions of this subtitle have been violated, the inspector having the investigation in charge shall, when instructed by the department, file an information against the suspected party.

[C24, 27, 31, 35, 39, §3053; C46, 50, 54, 58, 62, 66, §189.25; C71, 73, 75, 77, 79, 81, §189.27] 94 Acts, ch 1023, §36

DIVISION VII  
MISCELLANEOUS

**189.28 Goods for sale in other states.**

Any person may keep articles specifically set apart in the person's stock for sale in other states which do not comply with the provisions of this subtitle as to standards, purity, or labeling.

[S13, §4999-a20, -a40; C24, 27, 31, 35, 39, §3054; C46, 50, 54, 58, 62, 66, §189.26; C71, 73, 75, 77, 79, 81, §189.28]

94 Acts, ch 1023, §37; 2003 Acts, ch 69, §43; 2012 Acts, ch 1095, §82  
Referred to in §196.11

**189.29 Reports by dealers.**

Every person who deals in or manufactures any of the articles dealt with in this subtitle shall make upon blanks furnished by the department such reports and furnish such statistics as may be required by the department and certify to the correctness of the same.

[C97, §2522; S13, §2522; C24, 27, 31, 35, 39, §3055; C46, 50, 54, 58, 62, 66, §189.27; C71, 73, 75, 77, 79, 81, §189.29]

94 Acts, ch 1023, §38; 2003 Acts, ch 69, §44; 2012 Acts, ch 1095, §83

**189.30 Contracts invalid.**

No action shall be maintained in any of the courts of the state upon any contract or sale made in violation of or with the intent to violate any provision of this subtitle by one who was knowingly a party thereto.

[C97, §2520; C24, 27, 31, 35, 39, §3056; C46, 50, 54, 58, 62, 66, §189.28; C71, 73, 75, 77, 79, 81, §189.30]

94 Acts, ch 1023, §39

**189.31 Fees paid into state treasury.**

All fees collected under the provisions of this subtitle shall be paid into the state treasury.

[C97, §2507; SS15, §2507, 2515-f, 3009-m; C24, 27, 31, 35, 39, §3057; C46, 50, 54, 58, 62, 66, §189.29; C71, 73, 75, 77, 79, 81, §189.31]

94 Acts, ch 1023, §40

## CHAPTER 189A

## MEAT AND POULTRY INSPECTION

Referred to in §163.6, 556H.1, 672.1

Poultry and domestic fowls, chapter 197

189A.1	Title.	189A.12	Seizure, detention and determination.
189A.2	Definitions.	189A.13	Rules.
189A.3	License — fee.	189A.14	Injunctive relief.
189A.4	Exemptions.	189A.15	Cooperation with other agencies.
189A.5	Veterinarians and inspectors.	189A.16	Forgery or counterfeiting.
189A.6	Health examination of employees.	189A.17	Penalties.
189A.7	Powers of secretary of agriculture.	189A.18	Humane slaughter practices.
189A.8	Prohibited acts.	189A.19	Bribery.
189A.9	Hours of operation.	189A.20	No inspection for products inedible as human food.
189A.10	Fraudulent practices.	189A.21	Appropriation authorized.
189A.11	Access by inspectors — acceptance by state agencies.	189A.22	Federal grants.

**189A.1 Title.**

This chapter shall be known as the “*Meat and Poultry Inspection Act*”.

[C66, 71, 73, 75, 77, 79, 81, §189A.1]

**189A.2 Definitions.**

As used in this chapter except as otherwise specified:

1. “*Adulterated*” shall apply to any livestock product or poultry product under any one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health.

b. (1) If it bears or contains, by reason of administration of any substance to the livestock or poultry or otherwise, any added poisonous or deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which may, in the judgment of the secretary, make such article unfit for human food.

(2) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the federal Food, Drug, and Cosmetic Act.

(3) If it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal Food, Drug, and Cosmetic Act.

(4) If it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal Food, Drug, and Cosmetic Act; however, an article which is not otherwise deemed adulterated under subparagraph (2), (3), or (4) of this paragraph shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the secretary in official establishments.

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

e. If it is, in whole or in part, the product of an animal, including poultry, which has died otherwise than by slaughter.

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

g. If it has been intentionally subjected to radiation, unless the use of the radiation was

in conformity with a regulation or exemption in effect pursuant to section 409 of the federal Food, Drug, and Cosmetic Act.

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

i. If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

2. “*Animal food manufacturer*” means any person engaged in the business of preparing animal food, including poultry, derived wholly or in part from livestock or poultry carcasses or parts or products of such carcasses.

3. “*Broker*” means any person engaged in the business of buying or selling livestock products or poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for the person’s own account or as an employee of another person.

4. “*Capable of use as human food*” shall apply to any livestock or poultry carcass, or part or product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the secretary to deter its use as human food, or it is naturally inedible by humans.

5. “*Container*” or “*package*” means any box, can, tin, cloth, plastic or other receptacle, wrapper, or cover.

6. “*Establishment*” means all premises where animals or poultry are slaughtered or otherwise prepared, either for custom, resale, or retail, for food purposes, meat or poultry canneries, sausage factories, smoking or curing operations, restaurants, grocery stores, brokerages, cold storage plants, and similar places.

6A. “*Farm deer*” means the same as defined in section 170.1.

7. “*Federal Food, Drug, and Cosmetic Act*” means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

8. “*Federal Meat Inspection Act*” means the Act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584); “*Federal Poultry Products Inspection Act*” means the Act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791); and “*federal Acts*” means these two federal laws.

9. “*Immediate container*” means any consumer package; or any other container in which livestock products or poultry products, not consumer packaged, are packed.

10. “*Inspector*” means an employee or official of the department authorized by the secretary or any employee or official of the government of any county or other governmental subdivision of this state, authorized by the secretary to perform any inspection functions under this chapter under an agreement between the secretary and such governmental subdivision.

11. “*Intrastate commerce*” means commerce within this state.

12. “*Label*” means a display of written, printed, or graphic matter upon any article or the immediate container, not including package liners, of any article.

13. “*Labeling*” means all labels and other written, printed, or graphic matter either upon any article or any of its containers or wrappers, or accompanying such article.

14. “*Livestock*” means a live or dead animal which is limited to cattle, sheep, swine, goats, farm deer, or which is classified as an equine including a horse or mule.

15. “*Livestock product*” means any carcass, part thereof, meat, or meat food product of any livestock.

16. “*Meat food product*” means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the secretary under such conditions as the secretary may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such

products are not represented as meat food products. This term as applied to food products of equines or farm deer shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

17. "Misbranded" shall apply to any livestock product or poultry product under any one or more of the following circumstances:

- a. If its labeling is false or misleading in any particular.
- b. If it is offered for sale under the name of another food.
- c. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation", and immediately thereafter the name of the food imitated.
- d. If its container is so made, formed, or filled as to be misleading.
- e. Unless it bears a label showing both:
  - (1) The name and place of business of the manufacturer, packer, or distributor.
  - (2) An accurate statement of the quantity of the product in terms of weight, measure, or numerical count; however, under this paragraph, exemptions as to livestock products not in containers may be established by regulations prescribed by the secretary, and under this subparagraph reasonable variations may be permitted, and exemptions as to small packages may be established for livestock products or poultry products by regulations prescribed by the secretary.
- f. If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the regulations of the secretary under section 189A.7, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.
- h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the secretary under section 189A.7, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.
- i. If it is not subject to the provisions of paragraph "g" of this subsection, unless its label bears both:
  - (1) The common or usual name of the food, if any.
  - (2) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the secretary, be designated as spices, flavorings, and colorings without naming each; however, to the extent that compliance with the requirements of this subparagraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the secretary.
- j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the secretary, after consultation with the secretary of agriculture of the United States, determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses.
- k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; however, to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the secretary.
- l. If it fails to bear, directly thereon and on its containers, as the secretary may by regulations prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and, unrestricted by any of the foregoing, such other information as the secretary may require in such regulations to assure that it will

not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

18. “*Official certificate*” means any certificate prescribed by regulations of the secretary for issuance by an inspector or other person performing official functions under this chapter.

19. “*Official device*” means any device prescribed or authorized by the secretary for use in applying any official mark.

20. “*Official establishment*” means any establishment as determined by the secretary at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this chapter.

21. “*Official inspection legend*” means any symbol prescribed by regulations of the secretary showing that an article was inspected and passed in accordance with this chapter.

22. “*Official mark*” means the official inspection legend or any other symbol prescribed by regulations of the secretary to identify the status of any article or livestock or poultry under this chapter.

23. “*Person*” includes any individual, partnership, corporation, association, or other business unit, and any officer, agent, or employee thereof.

24. “*Pesticide chemical*”, “*food additive*”, “*color additive*”, and “*raw agricultural commodity*” shall have the same meanings for purposes of this chapter as under the federal Food, Drug, and Cosmetic Act.

25. “*Poultry*” means any domesticated bird, whether live or dead.

26. “*Poultry product*” means any poultry carcass or part thereof, or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the secretary from definition as a poultry product under such conditions as the secretary may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

27. “*Prepared*” means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

28. “*Reinspection*” includes inspection of the preparation of livestock products and poultry products, as well as re-examination of articles previously inspected.

29. “*Renderer*” means any person engaged in the business of rendering livestock or poultry carcasses, or parts or products of such carcasses, except rendering conducted under inspection or exemption under this chapter.

30. “*Shipping container*” means any container used or intended for use in packaging the product packed in an immediate container.

31. “*Veterinary inspector*” means a graduate veterinarian with appropriate training to perform the inspection functions under the provisions of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §189A.2]

86 Acts, ch 1245, §637; 95 Acts, ch 134, §1 – 3; 2003 Acts, ch 149, §12, 23

Referred to in §163.6, 189A.5, 189A.17, 717A.1

Further definitions, see §189.1

### **189A.3 License — fee.**

1. No person shall operate an establishment other than a food establishment as defined in section 137F.1 without first obtaining a license from the department. The license fee for each establishment per year or any part of a year shall be:

a. For all meat and poultry slaughtered or otherwise prepared not exceeding twenty thousand pounds per year for sale, resale, or custom, twenty-five dollars.

b. For all meat and poultry slaughtered or otherwise prepared in excess of twenty thousand pounds per year for sale, resale, or custom, fifty dollars.

2. The funds shall be deposited with the department. The license year shall be from July 1 to June 30. Applications for licenses shall be in writing on forms prescribed by the department.

3. It is the objective of this chapter to provide for meat and poultry products inspection programs that will impose and enforce requirements with respect to intrastate operations

and commerce that are at least equal to those imposed and enforced under the federal Meat Inspection Act and the federal Poultry Products Inspection Act with respect to operations and transactions in interstate commerce; and the secretary is directed to administer this chapter so as to accomplish this purpose. A director of the meat and poultry inspection service shall be designated as the secretary's delegate to be the appropriate state official to cooperate with the secretary of agriculture of the United States in administration of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §189A.3]

98 Acts, ch 1162, §26, 30; 2009 Acts, ch 41, §263

Referred to in §137F.1, 189A.5, 189A.7

#### **189A.4 Exemptions.**

In order to accomplish the objectives of this chapter, the secretary may exempt the following types of operations from inspection:

1. Slaughtering and preparation by any person of livestock and poultry of the person's own raising exclusively for use by the person and members of the person's household, and the person's nonpaying guests and employees.

2. Any other operations which the secretary may determine would best be exempted to further the purposes of this chapter, to the extent such exemptions conform to the federal Meat Inspection Act and the federal Poultry Products Inspection Act and the regulations thereunder.

[C66, 71, 73, 75, 77, 79, 81, §189A.4]

Referred to in §189A.5

#### **189A.5 Veterinarians and inspectors.**

1. The secretary shall administer this chapter and may appoint a person to act as the secretary's designee in the administration of this chapter.

a. The secretary shall employ veterinarians licensed in the state of Iowa as veterinary inspectors.

b. The secretary is also authorized to employ as meat inspectors other persons who have qualified and are skilled in the inspection of meat and poultry products and any other additional employees the secretary deems necessary to carry out the provisions of this chapter. The meat inspectors shall be under the supervision of the secretary's designee or a veterinary inspector if no designee is appointed.

c. The secretary may also enter into contracts with qualified individuals to perform inspection services as the secretary may designate for a fee per head or per unit volume to be determined by the secretary provided the persons are not employed in an establishment in which the inspection takes place.

d. The secretary may utilize any employee, agent, or equipment of the department in the enforcement of this chapter, and may assign to inspectors other duties related to the acceptance of meat and poultry products.

2. In order to accomplish the objectives stated in section 189A.3 the secretary shall:

a. By regulations require antemortem and postmortem inspections, quarantine, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all establishments in this state, except those exempted by section 189A.4, at which livestock or poultry are slaughtered or livestock or poultry products are prepared for human food solely for distribution in intrastate commerce.

b. By regulations require the identification of livestock and poultry for inspection purposes and the marking and labeling of livestock products or poultry products or their containers, or both, as "Iowa Inspected and Passed" if the products are found upon inspection to be not adulterated, and as "Iowa Inspected and Condemned" if they are found upon inspection to be adulterated; and the destruction for food purposes of all such condemned products under the supervision of an inspector.

c. Prohibit the entry into official establishments of livestock products and poultry products not prepared under federal inspection or inspection pursuant to this chapter and further limit

the entry of such articles and other materials into such establishments under such conditions as the secretary deems necessary to effectuate the purposes of this chapter.

d. By regulations require that when livestock products and poultry products leave official establishments they shall bear directly thereon or on their containers, or both, all information required by subsection 17 of section 189A.2; and require approval of all labeling and containers to be used for such products when sold or transported in intrastate commerce to assure that they comply with the requirements of this chapter.

e. Investigate the sanitary conditions of each establishment within paragraph “a” of this subsection and withdraw or otherwise refuse to provide inspection service at any such establishment where the sanitary conditions are such as to render adulterated any livestock products or poultry products prepared or handled thereat.

f. Prescribe regulations relating to sanitation for all establishments required to have inspection under paragraph “a” of this subsection.

g. By regulations require that both of the following classes of persons shall keep such records and for such periods as are specified in the regulations to fully and correctly disclose all transactions involved in their business, and to afford the secretary and the secretary’s representatives, including representatives of other governmental agencies designated by the secretary, access to such places of business, and opportunity at all reasonable times to examine the facilities, inventory, and records thereof, to copy the records, and to take reasonable samples of the inventory upon payment of the fair market value therefor:

(1) Any person that engages in or for intrastate commerce in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling, as a broker, wholesaler, or otherwise, transporting, or storing any livestock products or poultry products for human or animal food.

(2) Any person that engages in or for intrastate commerce in business as a renderer or in the business of buying, selling, or transporting any dead, dying, disabled, or diseased livestock or poultry or parts of the carcasses of any such animals, including poultry, that died otherwise than by slaughter.

[C66, §170.20, 189A.5, 189A.7, 189A.8, 189A.10; C71, 73, 75, 77, 79, 81, §189A.5]

87 Acts, ch 144, §1; 2009 Acts, ch 41, §206

Referred to in §189A.7, 189A.10

#### **189A.6 Health examination of employees.**

The operator of any establishment shall require all employees of such establishment to have a health examination by a physician and a certified health certificate for each employee shall be kept on file by the operator. The secretary may at any time require an employee of an establishment to submit to a health examination by a physician. No person suffering from any communicable disease, including any communicable skin disease, and no person with infected wounds, and no person who is a “carrier” of a communicable disease shall be employed in any capacity in an establishment. No person shall work or be employed in or about any establishment during the time in which a communicable disease exists in the home in which such person resides unless such person has obtained a certificate from a physician to the effect that no danger of public contagion or infection will result from the employment of such person in such establishment. Every person employed by an establishment and engaged in direct physical contact with meat or poultry products during its preparation, processing, or storage, shall be clean in person, wear clean washable outer garments and a suitable cap or other head covering used exclusively in such work. Only persons specifically designated by the operator of an establishment shall be permitted to touch meat or poultry products with their hands, and the persons so designated shall keep their hands scrupulously clean.

[C66, 71, 73, 75, 77, 79, 81, §189A.6]

Section not amended; editorial change applied

#### **189A.7 Powers of secretary of agriculture.**

In order to accomplish the objective stated in section 189A.3 the secretary may:

1. Remove inspectors from any establishment that fails to destroy condemned products as required under section 189A.5, subsection 2, paragraph “b”.

2. Refuse to provide inspection service under this chapter with respect to any establishment for causes specified in section 401 of the federal Meat Inspection Act or section 18 of the federal Poultry Products Inspection Act.

3. Order labeling and containers to be withheld from use if the secretary determines that the labeling is false or misleading or the containers are of a misleading size or form.

4. By regulations prescribe the sizes and style of type to be used for labeling information required under this chapter, and definitions and standards of identity or composition or standards of fill of container, consistent with federal standards, when the secretary deems such action appropriate for the protection of the public and after consultation with the secretary of agriculture of the United States.

5. By regulations prescribe conditions of storage and handling of livestock products and poultry products by persons engaged in the business of buying, selling, freezing, storing, or transporting such articles in or for intrastate commerce to assure that such articles will not be adulterated or misbranded when delivered to the consumer.

6. Require that equines be slaughtered and prepared in establishments separate from establishments where other livestock are slaughtered or their products are prepared.

7. By regulations require that every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouse of livestock or poultry products, or engaged in the business of buying, selling, or transporting in intrastate commerce any dead, dying, disabled, or diseased livestock or poultry or parts of the carcasses of any such animals, including poultry, that died otherwise than by slaughter shall register with the secretary the person's name and the address of each place of business at which and all trade names under which the person conducts such business.

8. Adopt by reference or otherwise such provisions of the rules and regulations under the federal Acts, with such changes therein as the secretary deems appropriate to make them applicable to operations and transactions subject to this chapter, which shall have the same force and effect as if promulgated under this chapter, and promulgate such other rules and regulations as the secretary deems necessary for the efficient execution of the provisions of this chapter, including rules of practice providing opportunity for hearing in connection with issuance of orders under section 189A.5, subsection 2, paragraph "e", and subsection 1, 2, or 3 of this section and prescribing procedures for proceedings in such cases; however, this shall not preclude a requirement that a label or container be withheld from use, or a refusal of inspection pursuant to the sections cited herein pending issuance of a final order in any such proceeding.

9. Appoint and prescribe the duties of such inspectors and other personnel as the secretary deems necessary for the efficient execution of the provisions of this chapter.

10. Cooperate with the secretary of agriculture of the United States in administration of this chapter to effectuate the purposes stated in section 189A.3; accept federal assistance for that purpose and spend public funds of this state appropriated for administration of this chapter to pay the state's proportionate share of the estimated total cost of the cooperative program.

11. Recommend to the secretary of agriculture of the United States for appointment to the advisory committees provided for in the federal Acts, such officials or employees of the Iowa meat and poultry inspection service as the secretary shall designate.

12. Serve as a representative of the governor for consultation with said secretary under paragraph "c" of section 301 of the federal Meat Inspection Act and paragraph "c" of section 5 of the federal Poultry Products Inspection Act unless the governor selects another representative.

[C71, 73, 75, 77, 79, 81, §189A.7]

2009 Acts, ch 41, §207

Referred to in §189A.2, 189A.10

### **189A.8 Prohibited acts.**

1. No person shall sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce, any carcasses of horses, mules, or other equines or

parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the secretary to show the kinds of animals from which they were derived.

2. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any livestock products or poultry products which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the secretary or are naturally inedible by humans.

3. No person engaged in the business of buying, selling, or transporting in intrastate commerce, dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation in such commerce, any dead, dying, disabled, or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the secretary may prescribe to assure that such animals, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes.

[C71, 73, 75, 77, 79, 81, §189A.8]

#### **189A.9 Hours of operation.**

The secretary may require operations at licensed establishments to be conducted during reasonable hours. The owner or operator of each licensed establishment shall keep the secretary informed in advance of intended hours of operation.

A charge shall be made for overtime inspection in excess of eight hours per day or outside assigned work schedules and also on state legal holidays.

[C66, 71, 73, 75, 77, 79, 81, §189A.9]

#### **189A.10 Fraudulent practices.**

1. A person commits a fraudulent practice as defined in section 714.8 if the person does any of the following:

a. Slaughters livestock or poultry or prepares an article produced from livestock or poultry which is capable of use as human food, at any establishment preparing the article solely for intrastate commerce, except in compliance with the requirements of this chapter.

b. Sells, transports, offers for sale or transportation, or receives for transportation in intrastate commerce, any article produced from livestock or poultry which is both of the following:

(1) Capable of use as human food.

(2) Adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or required to be inspected under this chapter unless the article has passed inspection.

c. Commits any act which is intended to cause or has the effect of causing an article produced from livestock or poultry to be adulterated or misbranded, if the article is capable of use as human food and is being transported or held for sale after being transported in intrastate commerce.

2. A person commits a fraudulent practice as defined in section 714.8, if the person sells, transports, offers for sale or transportation, or receives for transportation in intrastate commerce, or receives from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the secretary.

3. No person shall violate any provision of the regulations or orders of the secretary under section 189A.5, subsection 2, paragraph "g", or section 189A.7.

[C71, 73, 75, 77, 79, 81, §189A.10]

88 Acts, ch 1036, §1; 2009 Acts, ch 41, §208

#### **189A.11 Access by inspectors — acceptance by state agencies.**

1. A person shall not deny access to any authorized inspectors upon the presentation of proper identification at any reasonable time to establishments and to all parts of such premises for the purposes of making inspections under this chapter.

2. When meat has been inspected and approved by the department, such inspection will be equal to federal inspection and therefore may be accepted by state agencies and political subdivisions of the state and no other inspection can be required.

a. An inspection of products placed in any container at any official establishment shall not be deemed to be complete until the products are sealed or enclosed therein under the supervision of an inspector.

b. For purposes of any inspection of products required by this chapter, inspectors authorized by the secretary shall have access at all times by day or night to every part of every establishment required to have inspection under this chapter, whether the establishment is operated or not.

[C66, 71, 73, 75, 77, 79, 81, §189A.11]

2013 Acts, ch 30, §40

Section amended

### **189A.12 Seizure, detention and determination.**

Whenever any livestock or poultry product or any product exempted from the definition of a livestock or poultry product, or any dead, dying, disabled, or diseased livestock or poultry is found by any authorized representative of the secretary upon any premises where it is held for purposes of, or during or after distribution in, intrastate commerce or is otherwise subject to this chapter, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected in violation of the provisions of this chapter, the federal Meat Inspection Act, the federal Poultry Products Inspection Act, or the federal Food, Drug, and Cosmetic Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under this section or notification of any federal authorities having jurisdiction over such article or animal, and shall not be moved by any person from the place at which it is located when so detained until released by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the secretary that the article or animal is eligible to retain such marks.

1. Any livestock or poultry product, or any dead, dying, disabled, or diseased livestock or poultry which is being transported in intrastate commerce, or is otherwise subject to this chapter, or is held for sale in this state after such transportation, and which is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter; or is capable of use as human food and is adulterated or misbranded; or is in any other way in violation of this chapter shall be liable to be proceeded against and seized and condemned at any time on a complaint filed in the district court of the particular county within the jurisdiction of which such article or animal is found. If such article or animal is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and any proceeds, less the court costs and fees, storage fees, and other proper expenses, shall be paid into the treasury of this state, but the article or animal shall not be sold contrary to the provisions of this chapter, the federal Meat Inspection Act, the federal Poultry Products Inspection Act, or the federal Food, Drug, and Cosmetic Act; however, upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this chapter or the laws of the United States, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the secretary as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the article or animal and it is released under bond or destroyed, court costs and fees, storage fees, and other proper expenses shall be awarded against any person intervening as claimant of the article or animal. The proceedings in such cases shall be held without a jury, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of this state.

2. The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this chapter or other applicable laws.

[C66, 71, 73, 75, 77, 79, 81, §189A.12]

#### **189A.13 Rules.**

The secretary shall promulgate such rules as may be necessary for the effective administration of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §189A.13]

#### **189A.14 Injunctive relief.**

1. Judicial review of the action of the secretary may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

2. The district court in the county where the violation occurs may enjoin a person from violating this chapter or a regulation promulgated by the secretary pursuant to this chapter. The department may apply to the district court for the injunction. In order to obtain injunctive relief the department shall not be required to post a bond or prove the absence of an adequate remedy at law, unless the court for good cause otherwise orders. The court may order any form of prohibitory or mandatory relief that is appropriate under principles of equity, including but not limited to issuing a temporary or permanent restraining order.

[C66, 71, 73, 75, 77, 79, 81, §189A.14]

88 Acts, ch 1036, §2; 2003 Acts, ch 44, §114

#### **189A.15 Cooperation with other agencies.**

The secretary is hereby authorized to cooperate with all other agencies, federal and state, in order to carry out the effective administration of this chapter.

[C66, 71, 73, 75, 77, 79, 81, §189A.15]

#### **189A.16 Forgery or counterfeiting.**

1. No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the secretary.

2. No person shall do any of the following:

a. Forge any official device, mark, or certificate.

b. Without authorization from the secretary, use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate.

c. Contrary to the regulations prescribed by the secretary, fail to use, or to detach, deface, or destroy any official device, mark, or certificate.

d. Knowingly possess, without promptly notifying the secretary or the secretary's representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, including poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark.

e. Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the secretary.

f. Knowingly represent that any article has been inspected and passed, or exempted, under this chapter when it has not been so inspected and passed, or exempted.

[C71, 73, 75, 77, 79, 81, §189A.16]

#### **189A.17 Penalties.**

1. Any person who violates any provisions of this chapter for which no other criminal penalty is provided shall be guilty of a simple misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated, except as defined in section 189A.2, subsection 1, paragraph "h" such person shall be guilty of a fraudulent practice.

2. Nothing in this chapter shall be construed as requiring the secretary to report, for

the institution of legal proceedings, minor violations of this chapter whenever the secretary believes that the public interest will be adequately served by a suitable written notice of warning.

3. The secretary shall also have power:

a. To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and the relation thereof to other persons.

b. To require persons engaged in intrastate commerce to file with the secretary in such form as the secretary may prescribe, annual or special reports or answers in writing to specific questions, furnishing to the secretary such information as the secretary may require as to the organization, business, conduct, practices, management, and relation to other persons of the person filing such reports or answers. Such reports and answers shall be made under oath, or otherwise as the secretary may prescribe, and shall be filed with the secretary within such reasonable period as the secretary may prescribe, unless additional time be granted in any case by the secretary.

4. a. For the purpose of this chapter the secretary may, at all reasonable times, examine and copy any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The secretary may sign subpoenas and administer oaths and affirmations, examine witnesses, and receive evidence.

b. Such attendance of witnesses, and the production of such documentary evidence may be required at any designated place of hearing. In case of disobedience to a subpoena the secretary may invoke the aid of the district court having jurisdiction over the matter in requiring the attendance and testimony of witnesses and the production of documentary evidence.

c. The district court may, in case of failure or refusal to obey a subpoena issued herein to any person, enter an order requiring such person to appear before the secretary or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey such order of the court may be punished by such court as contempt.

d. Upon the application of the attorney general of this state at the request of the secretary, the court shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any order of the secretary pursuant thereto.

e. The secretary may order testimony to be taken by deposition in any proceeding or investigation pending under this chapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the secretary and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the person's direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the secretary as herein provided.

f. Witnesses summoned before the secretary shall be paid the same fees and mileage that are paid witnesses in the district court, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such district court.

g. No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the secretary or in obedience to the subpoena of the secretary, whether such subpoena be signed or issued by the secretary or the secretary's delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this chapter for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but no person shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, documentary

or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

5. *a.* Any person who neglects or refuses to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if it is in the person's power to do so, in obedience to the subpoena or lawful requirement of the secretary shall be guilty of a serious misdemeanor.

*b.* Any person who willfully makes, or causes to be made, any false entry or statement of fact in any report required to be made under this chapter, or who willfully makes, or causes to be made, any false entry in any account, record, or memorandum kept by any person subject to this chapter, or who willfully neglects or fails to make or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions pertaining to the business of such person, or who willfully leaves the jurisdiction of this state, or willfully mutilates, alters, or by any other means falsifies any documentary evidence of any person subject to this chapter or who willfully refuses to submit to the secretary or to any of the secretary's authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this chapter in the person's possession or control, shall be deemed guilty of an aggravated misdemeanor.

*c.* If a person required by this chapter to file an annual or special report fails to do so within the time fixed by the secretary for filing it, and the failure continues for thirty days after notice of default, the person shall forfeit to this state the sum of one hundred dollars for each day of the continuance of the failure, which forfeiture is payable into the treasury of this state, and is recoverable in a civil suit in the name of the state brought in the district court of the county where the person has a principal office or in the district court of any county in which the person does business. The county attorneys shall prosecute for the recovery of such forfeitures.

*d.* Any officer or employee of this state who makes public any information obtained by the secretary, without the secretary's authority, unless directed by a court, or uses any such information to the officer's or employee's advantage, shall be deemed guilty of a serious misdemeanor.

6. The requirements of this chapter shall apply to persons, establishments, animals, and articles regulated under the federal Meat Inspection Act or the federal Poultry Products Inspection Act to the extent provided for in said federal Acts and also to the extent provided in this chapter and in regulations the secretary may prescribe to promulgate this chapter.

[C66, 71, 73, 75, 77, 79, 81, §189A.17]

83 Acts, ch 123, §79, 209; 2009 Acts, ch 41, §209

Referred to in §331.424, 331.756(35)

#### **189A.18 Humane slaughter practices.**

Every establishment subject to the provisions of this chapter engaged in the slaughter of bovine, porcine, or ovine animals or farm deer shall slaughter all such animals in an approved humane slaughtering method. For purposes of this section an approved humane slaughtering method shall include and be limited to slaughter by shooting, electrical shock, captive bolt, or use of carbon dioxide gas prior to the animal being shackle hoisted, thrown, cast or cut; however, the slaughtering, handling or other preparation of livestock in accordance with the ritual requirements of the Jewish or any other faith that prescribes and requires a method whereby slaughter becomes effected by severance of the carotid arteries with a sharp instrument is hereby designated and approved as a humane method of slaughter under the law.

[C66, 71, 73, 75, 77, 79, 81, §189A.18]

95 Acts, ch 134, §4

#### **189A.19 Bribery.**

Any person who gives, pays, or offers, directly or indirectly, to any officer or employee of this state authorized to perform any of the duties prescribed by this chapter or by the regulations of the secretary, any money or other thing of value, with intent to influence said officer or employee in the discharge of any such duty, shall be deemed guilty of a felony

and, upon conviction thereof, shall be punished by a fine not less than five thousand dollars nor more than ten thousand dollars and by imprisonment in the penitentiary not less than one year nor more than three years; and any officer or employee of this state authorized to perform any of the duties prescribed by this chapter who accepts any money, gift, or other thing of value from any person, given with intent to influence the officer's or employee's official action, or who receives or accepts from any person engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than one thousand dollars nor more than ten thousand dollars and by imprisonment in the penitentiary not less than one year nor more than three years.

[C71, 73, 75, 77, 79, 81, §189A.19]

**189A.20 No inspection for products inedible as human food.**

Inspection shall not be provided under this chapter at any establishment for the slaughter of livestock or poultry or the preparation of any livestock products or poultry products which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the secretary to deter their use for human food.

[C71, 73, 75, 77, 79, 81, §189A.20]

**189A.21 Appropriation authorized.**

There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §189A.21]

**189A.22 Federal grants.**

All federal grants to and the federal receipts of this department are hereby appropriated for the purpose set forth in such federal grants or receipts.

[C71, 73, 75, 77, 79, 81, §189A.22]

CHAPTER 190

ADULTERATION OF FOODS

Referred to in §189.11, 191.2, 191.4, 192.107, 192.108, 192.146

190.1	Definitions and standards.	190.9	Adulteration of candies.
190.2	Additional standards — milk and dairy products.	190.10	Sale by false name.
190.3	Food adulterations.	190.11	Artificial sweetening — labeling.
190.4	Adulterations of dairy products.	190.12	Standards for frozen desserts.
190.5	Adulterated milk or milk products.	190.13	Frozen desserts — edible containers.
190.6	Adulteration with fats and oils.	190.14	Administration — milk and dairy products.
190.7	Coloring imitation cheese.	190.15	Violations — injunction.
190.8	Coloring vinegar.		

**190.1 Definitions and standards.**

For the purpose of this subtitle, except chapters 192, 203, 203C, 203D, 207, and 208, the following definitions and standards of food are established:

1. *Butter.* Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, with or without the addition of salt, or harmless coloring matter, and containing at least eighty percent, by weight, of milk fat.
2. *Flavoring extract.* A flavoring extract is a solution in ethyl alcohol or other suitable

medium of the sapid and odorous principles derived from an aromatic plant, or parts of the plant, with or without its coloring matter, and conforms in name to the plant used in its preparation.

a. *Almond extract.* Almond extract is the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and contains not less than one percent by volume of oil of bitter almonds.

b. *Anise extract.* Anise extract is the flavoring extract prepared from oil of anise, and contains not less than three percent by volume of oil of anise.

c. *Cassia extract.* Cassia extract is the flavoring extract prepared from oil of cassia, and contains not less than two percent by volume of oil of cassia.

d. *Celery seed extract.* Celery seed extract is the flavoring extract prepared from celery seed or the oil of celery seed, or both, and contains not less than three-tenths percent by volume of oil of celery seed.

e. *Cinnamon extract.* Cinnamon extract is the flavoring extract prepared from oil of cinnamon, and contains not less than two percent by volume of oil of cinnamon.

f. *Clove extract.* Clove extract is the flavoring extract prepared from oil of cloves, and contains not less than two percent by volume of oil of cloves.

g. *Ginger extract.* Ginger extract is the flavoring extract prepared from ginger, and contains in each one hundred cubic centimeters the alcohol-soluble matters from not less than twenty grams of ginger.

h. *Lemon extract.* Lemon extract is the flavoring extract prepared from oil of lemon, or from lemon peel, or both, and contains not less than five percent by volume of oil of lemon.

i. *Terpeneless extract of lemon.* Terpeneless extract of lemon is the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of lemon in such medium, and contains not less than two-tenths percent by weight of citral derived from oil of lemon.

j. *Nutmeg extract.* Nutmeg extract is the flavoring extract prepared from oil of nutmeg, and contains not less than two percent by volume of oil of nutmeg.

k. *Orange extract.* Orange extract is the flavoring extract prepared from oil of orange, or from orange peel, or both, and contains not less than five percent by volume of oil of orange.

l. *Terpeneless extract of orange.* Terpeneless extract of orange is the flavoring extract prepared by shaking oil of orange with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of orange in such medium, and corresponds in flavoring strength to orange extract.

m. *Peppermint extract.* Peppermint extract is the flavoring extract prepared from oil of peppermint, or from peppermint, or both, and contains not less than three percent by volume of oil of peppermint.

n. *Rose extract.* Rose extract is the flavoring extract prepared from attar of roses, with or without red rose petals, and contains not less than four-tenths percent by volume of attar of roses.

o. *Savory extract.* Savory extract is the flavoring extract prepared from oil of savory, or from savory, or both, and contains not less than thirty-five hundredths percent by volume of oil of savory.

p. *Spearmint extract.* Spearmint extract is the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and contains not less than three percent by volume of oil of spearmint.

q. *Star anise extract.* Star anise extract is the flavoring extract prepared from oil of star anise, and contains not less than three percent by volume of oil of star anise.

r. *Sweet basil extract.* Sweet basil extract is the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and contains not less than one-tenth percent by volume of oil of sweet basil.

s. *Sweet marjoram extract.* Sweet marjoram extract is the flavoring extract prepared from the oil of marjoram, or from marjoram, or both, and contains not less than one percent by volume of oil of marjoram.

t. *Thyme extract.* Thyme extract is the flavoring extract prepared from oil of thyme, or from thyme, or both, and contains not less than two-tenths percent by volume of oil of thyme.

u. *Tonka extract.* Tonka extract is the flavoring extract prepared from tonka bean, with or without sugar or glycerin, and contains not less than one-tenth percent by weight of coumarin extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof.

v. *Vanilla extract.* Vanilla extract is the flavoring extract prepared from vanilla bean, with or without sugar or glycerin, and contains in one hundred cubic centimeters the soluble matters from not less than ten grams of the vanilla bean, and contains not less than thirty percent by volume of absolute ethyl alcohol, or other suitable medium.

w. *Wintergreen extract.* Wintergreen extract is the flavoring extract prepared from oil of wintergreen, and contains not less than three percent by volume of oil of wintergreen.

3. *Food.* Food shall include any article used by humans or domestic animals for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple, blended, mixed, or compound. The term "*blended*" shall be construed to mean a mixture of like substances.

4. *Honey.* Honey is the secretion of floral nectar collected by the honeybee and stored in wax combs constructed by the honeybee, or the liquid derived therefrom.

5. *Lard.* Lard is the fat rendered from fresh, clean, sound, fatty tissues from hogs in good health at the time of slaughter, with or without lard stearin or a hardened lard. The tissues do not include bones, detached skin, head fat, ears, tails, organs, windpipes, large blood vessels, scrap fat, skimmings, settlings, pressings and the like and are reasonably free from muscle tissue and blood.

6. *Oleomargarine.* Oleo, oleomargarine or margarine includes all substances, mixtures and compounds known as oleo, oleomargarine or margarine, or all substances, mixtures and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

7. *Oysters.* Oysters shall not contain ice, nor more than sixteen and two-thirds percent by weight of free liquid.

8. *Rendered pork fat.* Rendered pork fat is the fat other than lard, rendered from clean, sound carcasses, parts of carcasses, or edible organs from hogs in good health at the time of slaughter, except that stomachs, tails, bones from the head and bones from cured or cooked pork are not included. The tissues rendered are usually fresh, but may be cured, cooked, or otherwise prepared and may contain some meat food products. Rendered pork fat may be hardened by the use of lard stearin or hardened lard or rendered pork fat stearin or hardened rendered pork fat or any combination.

9. *Renovated butter.* Renovated butter is butter produced by taking original packing stock butter, or other butter, or both, and melting the same so that the milk fat can be extracted, then by mixing the said milk fat with skimmed milk, milk, cream, or some milk product, and rechurning or reworking the said mixture; or butter made by any method which produces a product commonly known as boiled, processed, or renovated butter.

10. *Sorghum syrup.* Sorghum syrup is liquid food derived by the concentration and heat treatment of the juice of sorghum cane including sorgo and sorghum vulgare. Sorghum syrup must contain not less than seventy-four percent by weight of soluble solids derived solely from juices of sorghum cane.

11. *Substitute for sugar.* Where sugar is given as one of the ingredients in a food product when the definition is established by law or by regulation, the following products may be used as optional ingredients: Dextrose (corn sugar) or corn syrup.

12. *Vinegar.* Vinegar is the product made by the alcoholic and subsequent fermentation of fruits, grain, vegetables, sugar, or syrups without the addition of any other substance and containing an acidity of not less than four percent by weight of absolute acetic acid. The product may be distilled, but when not distilled it shall not carry in solution any other substance except the extractive matter derived from the substances from which it was made.

a. *Cider or apple vinegar.* Cider or apple vinegar is a similar product made by the same process solely from the juice of apples. Such vinegar which during the course of manufacture has developed in excess of four percent acetic acid may be reduced to said strength.

b. *Corn sugar vinegar.* Corn sugar vinegar is a similar product made by the same process solely from solutions of starch sugar.

c. *Malt vinegar.* Malt vinegar is a similar product made by the same process solely from barley malt or cereals whose starch has been converted by malt.

d. *Sugar vinegar.* Sugar vinegar is a similar product made by the same process solely from sucrose.

[C73, §4042; C97, §2516, 2518, 4989 – 4991; S13, §2515-b, -d; SS15, §4999-a31, -a31c; C24, 27, 31, 35, 39, §3058; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §190.1; 81 Acts, ch 72, §1] 88 Acts, ch 1195, §1; 89 Acts, ch 151, §2; 91 Acts, ch 74, §2, 3; 94 Acts, ch 1023, §41; 2003 Acts, ch 69, §45

Referred to in §189.14, 191.6  
Further definitions, see §189.1  
“Person” also defined, §191.4

### 190.2 Additional standards — milk and dairy products.

The department may establish and publish standards for foods when such standards are not fixed by law. The standards shall conform with standards for foods adopted by federal agencies including, but not limited to, the United States department of agriculture.

The department shall adopt rules specifying standards for milk and dairy products which are consistent with the “Pasteurized Milk Ordinance”, as provided in chapter 192, and applicable federal standards of identity.

[S13, §4999-a18; C24, 27, 31, 35, 39, §3059; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §190.2]

91 Acts, ch 74, §4; 98 Acts, ch 1032, §6  
Section not amended; editorial change applied

### 190.3 Food adulterations.

1. For the purposes of this chapter, any food shall be deemed to be adulterated:

a. If any substance has been mixed or packed with it so as to reduce or injuriously affect its quality.

b. If any substance has been substituted to any extent.

c. If any valuable constituent has been removed to any extent.

d. If it has been mixed, colored, powdered, coated, or stained whereby damage or inferiority is concealed.

e. If it contains formaldehyde, sulphites or boron compound, or any poisonous or other ingredients injurious to health.

f. If it consists to any extent of a diseased, filthy, or decomposed animal or vegetable substance, whether manufactured or otherwise.

g. If it consists to any extent of an animal that has died otherwise than by slaughter.

h. If it is the product of or obtained from a diseased or infected animal.

i. If it has been damaged by freezing.

j. If it does not conform to the standards established by law or by the department.

2. The provisions of subsection 1, paragraphs “a” and “b”, shall not apply to the addition of vitamins approved by the United States Pharmacopoeia or the removal of milk fat from milk.

[C73, §4042; C97, §4989, 4990; S13, §2515-b, -d; SS15, §4999-a31e; C24, 27, 31, 35, 39, §3060; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §190.3]

91 Acts, ch 74, §5; 2009 Acts, ch 41, §263  
Referred to in §190.4, 190.9

### 190.4 Adulterations of dairy products.

In addition to the adulterations enumerated in section 190.3, milk, cream, or skimmed milk shall be deemed to be adulterated:

1. If it contains visible dirt or is kept or placed at any time in an unclean container.

2. If obtained from a cow within fifteen days before or five days after calving.

3. If obtained from a cow stabled in an unhealthful place, or fed upon any substance in a state of putrefaction or of unhealthful nature.

4. If obtained from a cow which has consumed chemical, medicinal, or radioactive agents capable of being secreted in milk.

5. If obtained from a cow in a mastitic condition.

[C97, §4989, 4990; S13, §2515-b, -d; C24, 27, 31, 35, 39, §3061; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §190.4]

#### **190.5 Adulterated milk or milk products.**

Any milk or milk product shall further be deemed to be adulterated:

1. If it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health.

2. If it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal regulation, or in excess of such tolerance if one has been established.

3. If it consists, in whole or in part, of any substance unfit for human consumption.

4. If it has been produced, processed, prepared, packed, or held under insanitary conditions.

5. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

6. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

[C71, 73, 75, 77, 79, 81, §190.5]

#### **190.6 Adulteration with fats and oils.**

No milk, cream, skimmed milk, buttermilk, condensed or evaporated milk, powdered or desiccated milk, condensed skimmed milk, ice cream, or any fluid derivatives of any of them shall be made from or have added thereto any fat or oil other than milk fat, and no product so made or prepared shall be sold, offered or exposed for sale, or possessed with the intent to sell, under any trade name or other designation of any kind. Provided however, that it shall be lawful to produce and sell a condensed or evaporated milk product in which the milk fat has been replaced by an edible vegetable fat made from soybean oil. Such a product shall be given a distinctive name to distinguish it from natural, condensed, or evaporated milk, which name shall not include the words "milk" or "milk products" or any derivative thereof, and the label under which such a product is sold at retail shall clearly state the vegetable fat content of the product.

[C24, 27, 31, 35, 39, §3062; C46, 50, 54, 58, 62, 66, §190.5; C71, 73, 75, 77, 79, 81, §190.6]

Section not amended; editorial change applied

#### **190.7 Coloring imitation cheese.**

No imitation cheese shall be colored with any substance and no such imitation cheese shall be made by mixing animal fats, vegetable oils, or other substances for the purpose or with the effect of imparting to the mixture the color of yellow cheese.

[C97, §2518; C24, 27, 31, 35, 39, §3063; C46, 50, 54, 58, 62, 66, §190.6; C71, 73, 75, 77, 79, 81, §190.7]

#### **190.8 Coloring vinegar.**

Vinegar shall not be colored with coloring matter and distilled vinegar shall not have a brown color in imitation of cider vinegar.

[SS15, §4999-a31; C24, 27, 31, 35, 39, §3064; C46, 50, 54, 58, 62, 66, §190.7; C71, 73, 75, 77, 79, 81, §190.8]

#### **190.9 Adulteration of candies.**

In addition to the adulterations enumerated in section 190.3, candy shall be deemed to be adulterated if it contains terra alba, barytes, talc, paraffin, chrome yellow, or other mineral substance.

[SS15, §4999-a31e; C24, 27, 31, 35, 39, §3065; C46, 50, 54, 58, 62, 66, §190.8; C71, 73, 75, 77, 79, 81, §190.9]

**190.10 Sale by false name.**

No person shall offer or expose for sale, sell, or deliver any article of food which is defined in this chapter under any other name than the one herein specified or offer or expose for sale, sell, or deliver any article of food which is not defined in this chapter under any other name than its true name, trade name, or trademark name.

[C24, 27, 31, 35, 39, §3066; C46, 50, 54, 58, 62, 66, §190.9; C71, 73, 75, 77, 79, 81, §190.10]

**190.11 Artificial sweetening — labeling.**

Where any approved artificial sweetening product such as saccharin or sulfamate is used by any person in the manufacture or sale of any article of food intended for human consumption, the container in which any such food or beverage is sold or offered for sale to the public shall be clearly, legibly and noticeably labeled with the name of the sweetening product used. The portion of the store, display counter, shelving, or other place where such food or beverage is displayed or offered for sale, shall be clearly and plainly identified by an appropriate sign reading “FOR DIETARY PURPOSES”.

[C54, 58, 62, 66, §190.10; C71, 73, 75, 77, 79, 81, §190.11]

**190.12 Standards for frozen desserts.**

1. Frozen desserts and the pasteurized dairy ingredients used in the manufacture thereof, shall comply with the following standards:

Milk, cream, and fluid dairy ingredient	Temperature	Storage at 45 degrees Fahrenheit.
	Bacterial limit	50,000 per milliliter
	Coliform limit	10 per milliliter
Frozen dessert mixes, frozen desserts (plain)	Temperature	Storage at 45 degrees Fahrenheit.
	Bacterial limit	50,000 per gram
	Coliform limit	10 per gram
Dry dairy ingredient	Extra grade or better as defined by U. S. Standards for grades for the particular product.	
Dry powder mix	Bacterial limit	50,000 per gram
	Coliform limit	10 per gram

2. The bacteria count and coliform determination shall not exceed these standards in three out of the last five consecutive samples taken by the regulatory agency.

3. This section shall not preclude holding mix at a higher temperature for a short period of time immediately prior to freezing where applicable to the particular manufacturing or processing practices.

4. This section shall not apply to sterilized mix in hermetically sealed containers.

5. The coliform determination for bulky flavored frozen desserts shall not be more than twenty per gram.

[C71, 73, 75, 77, 79, 81, §190.12]

2009 Acts, ch 133, §74; 2013 Acts, ch 30, §41

Subsection 1 amended

**190.13 Frozen desserts — edible containers.**

Notwithstanding any other labeling provision of the Code, frozen dessert of any kind or flavor may be dispensed and sold at retail in edible containers or as a part of any food

preparation intended for consumption without further preparation, including but not limited to the preparations commonly termed milk shakes, malted milks, sundaes, and floats.  
 [C71, 73, 75, 77, 79, 81, §190.13]

**190.14 Administration — milk and dairy products.**

1. The department shall administer this chapter consistent with the provisions of the “Grade ‘A’ Pasteurized Milk Ordinance”, as provided in section 192.102.
2. The department, as provided in section 192.108, may contract with a person qualified by the department to perform inspection of dairy farms, milk plants, receiving stations, or transfer stations to ensure compliance with this chapter.  
 91 Acts, ch 74, §6; 94 Acts, ch 1198, §37; 97 Acts, ch 33, §4

**190.15 Violations — injunction.**

The department may restrain a person violating this chapter or a rule adopted by the department under this chapter by petitioning the district court where the violation occurs for injunctive relief. Each day that a violation continues constitutes a separate violation.  
 91 Acts, ch 74, §7

**CHAPTER 190A**

**FARM-TO-SCHOOL PROGRAM**

190A.1	Farm-to-school program.	190A.3	Goals and strategies.
190A.2	Farm-to-school council. Repealed by 2013 Acts, ch 129, §65.	190A.4	Agency cooperation.

**190A.1 Farm-to-school program.**

A farm-to-school program is established to encourage and promote the purchase of locally and regionally produced or processed food in order to improve child nutrition and strengthen local and regional farm economies.  
 2007 Acts, ch 215, §93

**190A.2 Farm-to-school council.** Repealed by 2013 Acts, ch 129, § 65.

**190A.3 Goals and strategies.**

1. The farm-to-school program shall seek to link elementary and secondary public and nonpublic schools in this state with Iowa farms to provide schools with fresh and minimally processed food for inclusion in school meals and snacks, encourage children to develop healthy eating habits, and provide Iowa farmers access to consumer markets.
2. The farm-to-school program may include activities that provide students with hands-on learning opportunities, such as farm visits, cooking demonstrations, and school gardening and composting programs.
3. The department of agriculture and land stewardship and the department of education shall seek to establish partnerships with public agencies and nonprofit organizations to implement a structure to facilitate communication between farmers and schools.
4. The department of agriculture and land stewardship and the department of education shall actively seek financial or in-kind contributions from organizations or persons to support the program.

2007 Acts, ch 215, §95; 2009 Acts, ch 41, §76; 2013 Acts, ch 129, §62, 63  
 Subsections 3 and 4 amended

**190A.4 Agency cooperation.**

The department of agriculture and land stewardship and the department of education shall provide information regarding the Iowa farm-to-school program in an electronic format on the department’s internet site.

2007 Acts, ch 215, §96; 2013 Acts, ch 90, §257

Code editor directive applied

**CHAPTER 190B**

**FROM FARM TO FOOD DONATION TAX CREDIT**

Referred to in §422.11R, 422.33

190B.101	Definitions.	190B.105	From farm to food donation tax credit — claims filed by individuals who belong to business entities.
190B.102	Department of revenue — cooperation with other departments.	190B.106	From farm to food donation tax credit — limits on claims.
190B.103	From farm to food donation tax credit.		
190B.104	From farm to food donation tax credit — eligibility.		

**190B.101 Definitions.**

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

1. “*Department*” means the department of revenue.
2. “*Tax credit*” means the from farm to food donation tax credit as established in this chapter.

2013 Acts, ch 140, §139, 147

Section takes effect July 1, 2013, and applies to tax years beginning on or after January 1, 2014; 2013 Acts, ch 140, §147

NEW section

**190B.102 Department of revenue — cooperation with other departments.**

1. This chapter shall be administered by the department of revenue.
2. The department shall adopt all rules necessary to administer this chapter.
3. The department of agriculture and land stewardship, the department of public health, the department of human services, and the department of inspections and appeals shall cooperate with the department of revenue to administer this chapter.

2013 Acts, ch 140, §140, 147

Section takes effect July 1, 2013, and applies to tax years beginning on or after January 1, 2014; 2013 Acts, ch 140, §147

NEW section

**190B.103 From farm to food donation tax credit.**

A from farm to food donation tax credit is allowed against the taxes imposed in chapter 422, divisions II and III, as provided in this chapter.

2013 Acts, ch 140, §141, 147

Section takes effect July 1, 2013, and applies to tax years beginning on or after January 1, 2014; 2013 Acts, ch 140, §147

NEW section

**190B.104 From farm to food donation tax credit — eligibility.**

In order to qualify for a from farm to food donation tax credit, all of the following must apply:

1. The taxpayer must produce the donated food commodity.
2. The taxpayer must transfer title to the donated food commodity to an Iowa food bank, or an Iowa emergency feeding organization, recognized by the department. The taxpayer shall not receive remuneration for the transfer.
3. The donated food commodity cannot be damaged or out-of-condition and declared to be unfit for human consumption by a federal, state, or local health official. A food commodity

that meets the requirements for donated foods pursuant to the federal emergency food assistance program satisfies this requirement.

4. A taxpayer claiming the tax credit shall provide documentation supporting the tax credit claim in a form and manner prescribed by the department by rule.

2013 Acts, ch 140, §142, 147

Section takes effect July 1, 2013, and applies to tax years beginning on or after January 1, 2014; 2013 Acts, ch 140, §147

NEW section

**190B.105 From farm to food donation tax credit — claims filed by individuals who belong to business entities.**

An individual may claim a from farm to food donation tax credit of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

2013 Acts, ch 140, §143, 147

Section takes effect July 1, 2013, and applies to tax years beginning on or after January 1, 2014; 2013 Acts, ch 140, §147

NEW section

**190B.106 From farm to food donation tax credit — limits on claims.**

A from farm to food donation tax credit is subject to all of the following limitations:

1. The tax credit shall not exceed a qualifying amount for the tax year that the tax credit is claimed. The qualifying amount is the lesser of the following:

a. Fifteen percent of the value of the commodities donated during the tax year for which the credit is claimed. The value of the commodities shall be determined in the same manner as a charitable contribution of food for federal tax purposes under section 170(e)(3)(C) of the Internal Revenue Code.

b. Five thousand dollars.

2. A tax credit in excess of the taxpayer's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

3. If a tax credit is allowed, the amount of the contribution for which the tax credit is claimed shall not be deductible in determining taxable income for state tax purposes.

4. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

2013 Acts, ch 140, §144, 147

Section takes effect July 1, 2013, and applies to tax years beginning on or after January 1, 2014; 2013 Acts, ch 140, §147

NEW section

## CHAPTER 190C

## ORGANIC AGRICULTURAL PRODUCTS

Referred to in §184.1, 200.20

	SUBCHAPTER 1	190C.5	State fees — deposit into general fund of the state.
	DEFINITIONS	190C.6	Regional organic associations.
190C.1	Definitions.	190C.7	through 190C.11 Reserved.
190C.1A	Other definitions.	190C.12	through 190C.15 Repealed by 2003 Acts, ch 104, §20, 21.
190C.1B	General authority.	190C.16	through 190C.20 Reserved.
	SUBCHAPTER 2		
	ADMINISTRATION		SUBCHAPTER 3
190C.2	Organic products — advisory council.	190C.21	ENFORCEMENT
190C.2A	Duties of the council.	190C.22	General enforcement.
190C.2B	Establishment and implementation of this chapter.	190C.23	Investigations, complaints, inspections, and examinations.
190C.3	Duties and powers of the department.	190C.24	Disciplinary action.
190C.4	Administrative authority. Repealed by 2003 Acts, ch 104, §20, 21.	190C.25	Stop sale order.
		190C.26	Injunctions.
			Selling, labeling, or representing agricultural products as organic — penalties.

## SUBCHAPTER 1

## DEFINITIONS

**190C.1 Definitions.**

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

1. “*Agricultural product*” means any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock, that is marketed in this state for human or livestock consumption.

2. “*Council*” means the organic advisory council established pursuant to section 190C.2.

3. “*Crop*” means a plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

4. “*Department*” means the department of agriculture and land stewardship.

5. “*Handler*” means a person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products.

6. “*Label*” means a display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

7. “*Livestock*” means any cattle, sheep, goats, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.

8. “*National organic program*” means the program administered by the United States department of agriculture pursuant to 7 C.F.R. pt. 205, which implements the federal Organic Food Production Act of 1990, 7 U.S.C. § 6501 et seq.

9. “Organic” means a labeling term that refers to an agricultural product produced in accordance with this chapter.

10. “Organic agricultural product” means an agricultural product that is certified or otherwise qualifies as organic in accordance with the provisions of this chapter as they existed on and after May 20, 1998.

11. “Processing” means cooling, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing in a food container.

12. “Processor” means a person engaged in the business of processing.

13. “Producer” means a person who engages in the business of growing or producing food, fiber, feed, or other agricultural-based consumer products.

14. “Regional organic association” means a corporation authorized pursuant to section 190C.6.

15. “Retailer” means a person who sells agricultural products on a retail basis. “Retailer” includes a food establishment as defined in section 137F.1. “Retailer” also includes a restaurant, delicatessen, bakery, grocery store, or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat food.

16. “Secretary” means the secretary of agriculture who is the director of the department of agriculture and land stewardship.

98 Acts, ch 1205, §1, 20; 99 Acts, ch 96, §19; 2003 Acts, ch 104, §1, 21; 2003 Acts, ch 108, §43; 2003 Acts, ch 149, §13, 23

Referred to in §190C.1A, 200.3

#### **190C.1A Other definitions.**

For purposes of this chapter, words and phrases that are not defined in section 190C.1 shall have the same meanings as provided in 7 C.F.R. pt. 205.

2003 Acts, ch 104, §2, 21

#### **190C.1B General authority.**

Any provision in this chapter referring generally to compliance with the requirements of this chapter also includes compliance with requirements in rules adopted by the department pursuant to this chapter, orders issued by the department as authorized under this chapter, and the terms and conditions applicable to any certification made pursuant to this chapter.

2003 Acts, ch 104, §3, 21

## SUBCHAPTER 2

### ADMINISTRATION

#### **190C.2 Organic products — advisory council.**

1. An organic advisory council is established within the department. The council is composed of eleven members appointed by the governor and secretary, as provided in this section. The governor and secretary shall accept nominations from persons or organizations representing persons who serve on the council, as determined by the governor and secretary making appointments under this section.

2. The members shall serve staggered terms of four years beginning and ending as provided in section 69.19. Members appointed under this section shall be persons knowledgeable regarding the production, handling, processing, and retailing of organic agricultural products. The members of the council shall be appointed as follows:

a. Five persons who operate farms producing organic agricultural products. The governor shall appoint two of the persons, at least one of which shall be a producer of livestock, who may be a dairy or egg producer. The secretary shall appoint three of the persons, at least one of which shall be a producer of an agricultural commodity other than livestock. To qualify

for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from the production of organic agricultural products for three years prior to appointment.

b. Two persons who operate businesses processing organic agricultural products. One person shall be appointed by the governor and one person shall be appointed by the secretary. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from processing organic agricultural products for three years prior to appointment.

c. One person appointed by the secretary, who shall be either of the following:

(1) A person who operates a business handling organic agricultural products. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from handling organic agricultural products for three years prior to appointment.

(2) A person who operates a business selling organic agricultural products. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from selling organic agricultural products on a retail basis for three years prior to appointment.

d. Two persons who have an educational degree and experience in agricultural or food science. One person shall be appointed by the governor and one person shall be appointed by the secretary. To qualify for appointment, a person must not have a financial interest in the production, handling, processing, or selling of organic agricultural products.

e. One person appointed by the governor, who represents the public interest, the natural environment, or consumers. To qualify for appointment, the person must be a member of an organization representing the public interest, consumers, or the natural environment. The person must not have a financial interest in the production, handling, processing, or selling of organic agricultural products.

3. A vacancy on the council shall be filled in the same manner as an original appointment. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. The governor may remove a member appointed by the governor and the secretary may remove a member appointed by the secretary, if the removal is based on the member's misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

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

5. The members are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

6. If a member has an interest, either direct or indirect, in a contract to which the council is or is to be a party, the member shall disclose the interest to the council in writing. The writing stating the conflict shall be set forth in the minutes of the council. The member having the interest shall not participate in any action by the council relating to the contract.

7. The council shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more members. The department shall provide administrative support to the council.

98 Acts, ch 1205, §2, 20; 2003 Acts, ch 104, §4 - 6, 21

Referred to in §190C.1

#### **190C.2A Duties of the council.**

The organic advisory council shall assist the department in implementing and administering the provisions of this chapter as requested by the department. Upon request by the department, the council shall do all of the following:

1. Develop rules, policies, and procedures required to implement and administer this chapter.
2. Collect information required by the department in implementing and administering this chapter.
3. Interpret the requirements of this chapter, including rules adopted and orders issued pursuant to this chapter, and requirements of the national organic program.
4. Establish and change fees as provided in section 190C.5.
5. Provide advice regarding the most effective manner to use services provided by regional organic associations as provided in section 190C.6.
6. Provide information and expert opinions relating to organic agricultural products to the department.
7. Provide information relating to organic agricultural products to interested persons.
8. Promote organic agricultural products to consumers.

2003 Acts, ch 104, §7, 21

Referred to in §190C.3

#### **190C.2B Establishment and implementation of this chapter.**

1. The department shall implement and administer the provisions of this chapter for agricultural products that have been produced and handled within this state using organic methods as provided in this chapter. The department may consult with the council in implementing and administering this chapter. The department may certify agricultural products that have been produced and handled outside this state using an organic method as provided in this chapter.

2. The department may establish a state organic program as provided in 7 U.S.C. § 6501 et seq. and 7 C.F.R. pt. 205. The secretary may apply for any approval or accreditation or execute any agreement required under the national organic program in order to implement, administer, and enforce this chapter.

3. Unless prohibited by the national organic program, the attorney general may be joined as a party authorized to enforce the provisions of this chapter.

4. All provisions of this chapter shall be deemed in compliance with the national organic program, unless expressly provided otherwise by the United States department of agriculture.

2003 Acts, ch 104, §8, 21

#### **190C.3 Duties and powers of the department.**

In implementing the provisions of this chapter consistent with the national organic program, the department shall provide for the administration and enforcement of this chapter, including by adopting rules and issuing orders pursuant to chapter 17A. The department may adopt any part of the national organic program by reference.

1. The department shall be a state certifying agent and the department shall be the certifying agent's operation as provided in the national organic program.

2. The department may request assistance from the council as provided in section 190C.2A or from one or more regional organic associations as provided in section 190C.6.

3. *a.* The secretary may serve as the state organic program's governing state official. However, no other person shall serve in that position without approval by the secretary.

*b.* The secretary may designate a person within the department to act on the secretary's behalf in carrying out the duties of the state organic program's governing state official.

4. The department may assume enforcement obligations under the national organic program in this state for the requirements of this chapter. The department shall provide for on-site inspections. The department and the attorney general may coordinate the enforcement activities as provided in section 190C.21.

98 Acts, ch 1205, §3, 20; 2003 Acts, ch 104, §9, 21

Referred to in §190C.6

**190C.4 Administrative authority.** Repealed by 2003 Acts, ch 104, § 20, 21. See § 190C.3.

**190C.5 State fees — deposit into general fund of the state.**

1. The department acting as a state certifying agent shall establish a schedule of fees by rule.

a. The department shall establish the rate of fees based on an estimate of the amount of revenues from the fees required by the department to administer and enforce this chapter.

b. The department shall annually review the estimate and may change the rate of fees. The fees must be adjusted in order to comply with this subsection.

c. The fees shall be charged to persons who are certified under this chapter, including production operations and handling operations, in a manner that is consistent with the national organic program.

2. a. The department acting as a state certifying agent may charge additional fees for carrying out the duties of that position to the extent that the fees are consistent with the national organic program.

b. The secretary acting as the state organic program’s governing state official may charge fees for carrying out the duties of that position to the extent consistent with the national organic program.

3. The department shall collect state fees under this chapter which shall be deposited into the general fund of the state.

98 Acts, ch 1205, §5, 20; 2003 Acts, ch 104, §10, 21; 2009 Acts, ch 41, §77

Referred to in §190C.2A

Exception for fees collected under 21 IAC ch 47, which are increased by ten percent for fiscal year beginning July 1, 2010, and ending June 30, 2011; amount representing the ten percent increase to be retained by the department for department purposes; 2010 Acts, ch 1031, §253

**190C.6 Regional organic associations.**

1. Regional organic associations may be established as provided in this section. A regional organic association must be organized as a corporation under chapter 504 which has certified members, elects its own officers and directors, and is independent from the department.

2. The department may authorize a regional organic association to assist the department in acting as a state certifying agent pursuant to section 190C.3. The regional organic association must be registered with the department. Upon request by the department, a registered regional organic association may do all of the following:

a. Review applications and provide applicants with technical assistance in completing applications. The department may authorize a regional organic association to process applications, including collecting and forwarding applications to the department.

b. Prepare a summary of an application, including materials accompanying the application, for review by the department. A regional organic association may include a recommendation for approval, modification, or disapproval of an application.

98 Acts, ch 1205, §6, 20; 2003 Acts, ch 104, §11, 21; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §394

Referred to in §190C.1, 190C.2A, 190C.3

**190C.7 through 190C.11** Reserved.

**190C.12 through 190C.15** Repealed by 2003 Acts, ch 104, § 20, 21.

**190C.16 through 190C.20** Reserved.

SUBCHAPTER 3  
ENFORCEMENT

**190C.21 General enforcement.**

1. The department acting as a state certifying agent and on behalf of the secretary who elects to act as the state organic program’s governing state official shall enforce this chapter.

2. To the extent authorized by the national organic program, the attorney general shall

assist the department in enforcing this chapter. The department or the attorney general may commence legal proceedings in district court to enforce a provision of this chapter. If the attorney general assists the department under this section, the attorney general may commence the legal proceedings at the request of the department or upon the attorney general's own initiative.

3. This chapter does not require the department or attorney general to institute a proceeding for a minor violation if the department or attorney general concludes that the public interest will be best served by a suitable notice of warning in writing.

98 Acts, ch 1205, §11, 20; 2003 Acts, ch 104, §12, 21

Referred to in §190C.3, 190C.26

#### **190C.22 Investigations, complaints, inspections, and examinations.**

In enforcing the provisions of this chapter consistent with the national organic program, the department may conduct an investigation to determine if a person is complying with the requirements of this chapter. To the extent consistent with the national organic program, all of the following shall apply:

1. The department may receive a complaint from any person regarding a violation of this chapter. The department shall adopt procedures for persons filing complaints. The department shall establish procedures for processing complaints including requiring minimum information to determine the verifiability of a complaint.

2. The department may conduct inspections at times and places and to an extent that the department determines necessary in order to conclude whether there is a violation of this chapter. The department may enter upon any public or private premises during regular business hours in a manner consistent with the laws of this state and the United States, including Article I, section 8, of the Constitution of the State of Iowa, or the fourth amendment to the Constitution of the United States for purposes of carrying out an inspection.

3. The department may conduct examinations of agricultural products in order to determine if the agricultural products are in compliance with this chapter. Unless the national organic program otherwise requires, all of the following shall apply:

a. The methods for examination shall be the official methods adopted by the association of official agricultural chemists in all cases where methods have been adopted by the association.

b. A sworn statement by the state chemist or the state chemist's deputy stating the results of an analysis of a sample taken from a lot of agricultural products shall constitute prima facie evidence of the correctness of the analysis of that lot in a contested case proceeding or court proceeding.

98 Acts, ch 1205, §12, 20; 2003 Acts, ch 104, §13, 21

#### **190C.23 Disciplinary action.**

1. The department may take disciplinary action against a person who is certified pursuant to this chapter for noncompliance with a provision of this chapter or a willful violation of this chapter. The procedures of the disciplinary action shall be consistent with the national organic program. The disciplinary action shall proceed as provided in chapter 17A unless contrary to the national organic program. The department may do any of the following:

a. Issue a letter of warning or reprimand.

b. Suspend or revoke the person's certification.

2. Any other disciplinary action provided in the national organic program shall be implemented by the secretary acting as the state organic program's governing state official.

98 Acts, ch 1205, §13, 20; 2003 Acts, ch 104, §14, 21

#### **190C.24 Stop sale order.**

Unless prohibited by the national organic program, the department may issue a stop order to a person who sells, labels, or represents an agricultural product as organic in violation of this chapter.

1. The department may issue a written order to stop the sale of the agricultural product by a person in control of the agricultural product. The person named in the order shall not

sell, label, or represent the agricultural product as organic until the department determines that the agricultural product is in compliance with this chapter.

2. The department may require that the product be held at a designated place until released by the department.

3. The department or the attorney general may enforce the order by petitioning the district court in the county where the agricultural product is being sold.

4. The department shall release the agricultural product when the department issues a release order upon satisfaction that legal requirements compelling the issuance of the stop sale order are satisfied. If the person is found to have violated this chapter, the person shall pay all expenses incurred by the department in connection with the agricultural product's removal.

98 Acts, ch 1205, §14, 20; 2003 Acts, ch 104, §15, 16, 21

**190C.25 Injunctions.**

Unless prohibited by the national organic program, the department, the attorney general, an individual, a private organization or association, a county, or a city may bring an action in district court to restrain a producer, handler, or retailer from selling an agricultural product by false or misleading advertising claiming that the agricultural product is organic. A petitioner shall not be required to allege facts necessary to show, or tending to show, a lack of adequate remedy at law, or that irreparable damage or loss will result if the action is brought at law or that unique or special circumstances exist.

98 Acts, ch 1205, §15, 20; 2003 Acts, ch 104, §17, 21

**190C.26 Selling, labeling, or representing agricultural products as organic — penalties.**

A person shall not knowingly sell, label, or represent an agricultural product as organic, except in accordance with this chapter. A person who violates this section shall be subject to a civil penalty of not more than ten thousand dollars. Civil penalties shall be assessed by the district court in an action initiated by the department or attorney general as provided in section 190C.21. Unless prohibited by the national organic program, each day that the violation continues constitutes a separate violation. Civil penalties collected under this section shall be deposited in the general fund of the state.

98 Acts, ch 1205, §16, 20; 2003 Acts, ch 104, §18, 21

**CHAPTER 191**

**LABELING FOODS**

Referred to in §192.107, 192.108, 192.146, 210.12

See also reference in §210.12

191.1	Label requirements.	191.6	Standards for oleomargarine.
191.2	Dairy products and imitations.	191.7	Enforcement of oleomargarine law.
191.3	Sale of imitation products — notice to public — penalties.	191.8	Baking powder and vinegar.
191.4	Definitions.	191.9	Administration — milk and dairy products.
191.5	Advertising oleomargarine — restrictions.	191.10	Violations — injunction.

**191.1 Label requirements.**

All food offered or exposed for sale, or sold in package or wrapped form, shall be labeled on the package or container as prescribed in sections 189.9 to 189.12, inclusive, unless otherwise provided in this chapter.

[C97, §2517, 2519, 4989; S13, §2515-b, -c; SS15, §4999-a31c; C24, 27, 31, 35, 39, §3067; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.1]

### 191.2 Dairy products and imitations.

The products enumerated below shall be labeled on the side or top of the container or package in which placed, kept, offered or exposed for sale, or sold as prescribed in sections 189.9 to 189.12, inclusive, except that the label shall be printed in letters not less than three-quarters inch in height and one-half inch in width and subject to the following regulations:

1. *Renovated butter.* Renovated butter shall be labeled with the words "Renovated Butter", and if offered or exposed for sale or sold in prints or rolls the wrapper of each and the container as required above shall be so labeled. If such butter is offered or exposed for sale uncovered and not in a container or package, a placard containing the required label shall be attached to the mass so as to be easily seen by the purchaser.

2. *Oleomargarine.*

a. No person shall sell or offer for sale, colored oleo, oleomargarine, or margarine unless — such oleo, oleomargarine, or margarine is packaged; the net weight of the contents of any package sold in a retail establishment is one pound or less; there appears on the label of the package the word "oleo", "oleomargarine", or "margarine" in type or lettering at least as large as any other type or lettering on such label, and a full and accurate statement of all the ingredients contained in such oleo, oleomargarine, or margarine; and each part of the contents of the package is contained in a wrapper which bears the word "oleo", "oleomargarine", or "margarine" in type or lettering not smaller than twenty point type.

b. Whenever coloring of any kind has been added it shall be clearly stated on both the inside wrapper and the outside package. The ingredients of oleo, oleomargarine, or margarine shall be listed on both the inside wrapper and outside package in the order of the amounts of ingredients in the package.

c. Such oleo, oleomargarine, or margarine shall contain vitamin "A" in such quantity that the finished oleo, oleomargarine, or margarine contains not less than fifteen thousand United States Pharmacopoeia units of vitamin "A" per pound, as determined by the method prescribed in the Pharmacopoeia of the United States for the total biological vitamin "A" activity.

3. *Imitation cheese.* Imitation cheese shall be labeled with the words "Imitation Cheese" on the cheese and on the package.

4. *Nonfat dry milk.* For the purposes of this chapter the product resulting from the removal of fat and water from milk and containing the lactose, milk proteins, and milk minerals in the same relative proportions as in the fresh milk from which it was made may be labeled and sold as "nonfat dry milk". It shall contain not over five percent by weight of moisture and the fat content shall not be over one and one-half percent by weight unless otherwise indicated.

5. All bottles, containers, and packages enclosing milk or milk products shall be conspicuously labeled or marked with:

a. The name of the contents as given in the definitions of this chapter and chapters 190 and 192.

b. The word "reconstituted" or "recombined" if the product is made by reconstitution or recombination.

c. The grade of the contents.

d. The word "pasteurized" if the contents are pasteurized and the identity of the plant where pasteurized.

e. The word "raw" if the contents are raw and the name or other identity of the producer.

f. The designation vitamin "D" and the number of U.S.P. units per quart in the case of vitamin "D" milk or milk products.

g. The volume or proportion of water to be added for recombining in the case of concentrated milk or milk products.

h. The words "nonfat milk solids added" and the percentage added if such solids have been added, except that this requirement shall not apply to reconstituted or recombined milk and milk products.

i. The words "artificially sweetened" in the name if nonnutritive or artificial sweeteners or both are used.

j. The common name of stabilizers, distillates, and ingredients, provided that:

(1) Only the identity of the milk producer shall be required on cans delivered to a milk plant as provided in chapter 192 which receives only grade "A" raw milk for pasteurization, and which immediately dumps, washes, and returns the cans to the milk producer.

(2) The identity of both milk producer and the grade shall be required on cans delivered to a milk plant as provided in chapter 192 which receives both grade "A" raw milk for pasteurization and ungraded raw milk and which immediately dumps, washes, and returns the cans to the milk producer.

(3) In the case of concentrated milk products, the specific name of the product shall be substituted for the generic term "concentrated milk products", e.g., "homogenized concentrated milk", "concentrated skim milk", "concentrated chocolate milk", "concentrated chocolate flavored low fat milk".

(4) In the case of flavored milk or flavored reconstituted milk, the name of the principal flavor shall be substituted for the word "flavored".

(5) In the case of cultured milk and milk products, the special type culture used may be substituted for the word "cultured", e.g., "acidophilus buttermilk", "Bulgarian buttermilk", and "yogurt".

6. All vehicles and transport tanks containing milk or milk products shall be legibly marked with the name and address of the milk plant or hauler in possession of the contents.

7. a. Tanks transporting raw milk and milk products to a milk plant from sources of supply not under the supervision of the secretary or authorized municipal corporation are required to be marked with the name and address of the milk plant or hauler and shall be sealed; in addition, for each such shipment, a shipping statement shall be prepared containing at least the following information:

- (1) Shipper's name, address, and permit number.
- (2) Permit number of hauler, if not employee of shipper.
- (3) Point of origin of shipment.
- (4) Tanker identity number.
- (5) Name of product.
- (6) Weight of product.
- (7) Grade of product.
- (8) Temperature of product.
- (9) Date of shipment.
- (10) Name of supervising health authority at the point of origin.
- (11) Whether the contents are raw, pasteurized, or otherwise heat treated.

b. Such statement shall be prepared in triplicate and shall be kept on file by the shipper, the consignee, and the carrier for a period of six months for the information of the secretary.

8. The labeling information which is required on all bottles, containers, or packages of milk or milk products shall be in letters of an acceptable size, kind, and color satisfactory to the secretary and shall contain no marks or words which are misleading.

9. Milk and milk products are misbranded:

a. When their container bears or accompanies any false or misleading written, printed, or graphic matter.

b. When such milk and milk products do not conform to their definitions as contained in this chapter and chapters 190 and 192.

c. When such products are not labeled in accordance with this section.

[C97, §2517, 4989; S13, §2515-b, -c; C24, 27, 31, 35, 39, §3068; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.2]

91 Acts, ch 74, §8; 92 Acts, ch 1163, §45; 2006 Acts, ch 1010, §60; 2009 Acts, ch 133, §208

### 191.3 Sale of imitation products — notice to public — penalties.

Every person owning or in charge of any place where food or drink is sold who uses or serves therein imitation cheese shall display at all times opposite each table or place of service a placard for such imitation, with the words "Imitation ..... served here", without other matter, printed in black roman letters not less than three inches in height and two inches in width, on a white card twelve by twenty-two inches in dimensions.

No person shall serve colored oleo, oleomargarine or margarine at a public eating place unless a notice that oleo, oleomargarine or margarine is served is displayed prominently and conspicuously in such place and in a manner as to render it likely to be read and understood by the ordinary individual being served in the eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than that normally used to designate the serving of other food items or unless each separate serving bears or is accompanied by labeling identifying it as oleo, oleomargarine or margarine, or each separate serving thereof is triangular in shape.

Any person violating any provision of this section shall be guilty of a simple misdemeanor, and the person shall have all licenses issued by the state for the public eating place in which a violation occurred suspended for one year.

[C97, §2517; C24, 27, 31, 35, 39, §3069; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.3] 97 Acts, ch 23, §16

#### **191.4 Definitions.**

1. “*Oleo*”, “*oleomargarine*”, or “*margarine*”, for purposes of this chapter, includes all substances, mixtures, and compounds known as oleo, oleomargarine, or margarine, and all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter. For the purposes of this chapter, colored oleo, oleomargarine, or margarine is oleo, oleomargarine, or margarine to which any color has been added.

2. “*Person*” as used in this chapter and chapters 190 and 192 means any individual, plant operator, partnership, corporation, company, firm, trustee, or association.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.4]

2009 Acts, ch 133, §209

See also §189.1

#### **191.5 Advertising oleomargarine — restrictions.**

No person, in person or by an agent, shall, by any means whatever, directly or indirectly, advertise or represent by statement, printing, writing, circular, poster, design, device, grade designation, advertisement, symbol, sound, or any combination thereof, that oleo, oleomargarine or margarine, or any brand of oleo, oleomargarine or margarine, is a dairy product for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase for consumption of oleo, oleomargarine or margarine, or any brand thereof. Whoever shall violate this provision shall be deemed guilty of a simple misdemeanor.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.5]

#### **191.6 Standards for oleomargarine.**

The department may prescribe and establish standards for oleo, oleomargarine, or margarine manufactured or sold in this state and may adopt the standards set up by regulations of the food and drug administration of the United States department of health and human services, 21 C.F.R. § 166.110, or any amendments thereto. Any standards so established shall not be contrary to or inconsistent with the provisions of section 190.1, subsection 6, entitled “*Oleomargarine*”.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.6]

2007 Acts, ch 22, §46; 2009 Acts, ch 133, §75

#### **191.7 Enforcement of oleomargarine law.**

It shall be the duty of the secretary of agriculture and the secretary’s agents to enforce this chapter and of the county attorneys and of the attorney general of the state to cooperate with the secretary in the enforcement of this chapter.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.7]

Referred to in §331.756(36)

#### **191.8 Baking powder and vinegar.**

Baking powder and distilled vinegar shall show on the label the name of each ingredient from which made. Distilled vinegar shall be marked as such; and cider vinegar which, having

been in excess of the standard of acidity, has been reduced to the standard, shall have that fact indicated on the label.

[SS15, §4999-a31, -a31c; C24, 27, 31, 35, 39, §3070; C46, 50, §191.4; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §191.8]

**191.9 Administration — milk and dairy products.**

1. The department shall administer this chapter consistent with the provisions of the “Grade ‘A’ Pasteurized Milk Ordinance”, as provided in section 192.102.

2. The department, as provided in section 192.108, may contract with a person qualified by the department to perform inspection of dairy farms, milk plants, receiving stations, or transfer stations to ensure compliance with this chapter.

91 Acts, ch 74, §9; 94 Acts, ch 1198, §38; 97 Acts, ch 33, §5

**191.10 Violations — injunction.**

The department may restrain a person violating this chapter or a rule adopted by the department under this chapter by petitioning the district court where the violation occurs for injunctive relief. Each day that a violation continues constitutes a separate violation.

91 Acts, ch 74, §10

**CHAPTER 191A**

RESERVED

**CHAPTER 192**

**GRADE “A” MILK INSPECTION**

Referred to in §190.1, 190.2, 191.2, 191.4

	GENERAL PROVISIONS	192.113	Penalties.
		192.114	Reserved.
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192.101	Short title.		
192.101A	Definitions.		
192.102	Grade “A” pasteurized milk ordinance.	192.115	SANITATION — LABORATORIES
192.103	Sale of grade “A” milk to final consumer — impoundment of adulterated or misbranded milk.	192.116	Sanitary regulations.
		192.117	Bacteriologists.
		192.118	Duties.
		192.119	Certified laboratories.
192.104	Coloring rejected milk.		and 192.120 Reserved.
192.105	and 192.106	Reserved.	
	PERMITS — INSPECTIONS	192.121	CONTAINERS
		192.122	Container defined.
192.107	Milk or milk products permit.	192.123	Milk bottles to be marked.
192.108	Administration of the chapter — inspections required.	192.124	Adoption of brand.
192.109	Certification of grade “A” label.	192.125	Retention of marked container.
192.110	Rating required to receive or retain a permit.	192.126	Return of bottles.
		192.127	Stray containers.
192.111	Permit and inspection fees — deposit in general fund — appropriation.	192.128	Registered mark.
			through 192.130 Reserved.
			TESTING FOR MILK FAT
192.112	Regulation — milk haulers, milk graders, and bulk milk tankers.	192.131	Repealed by 2002 Acts, ch 1148, §9, 11.

192.132	Repealed by 2002 Acts, ch 1119, §110; 2002 Acts, ch 1148, §9, 11.	192.142	Repealed by 2002 Acts, ch 1148, §9, 11.
192.133	through 192.137 Repealed by 2002 Acts, ch 1148, §9, 11.	192.143	Imitation butter.
192.138	through 192.140 Reserved.	192.144	and 192.145 Reserved.
			INJUNCTIONS
	COTTAGE CHEESE — BUTTER	192.146	Injunction for violations.
192.141	Grade standards for cottage cheese.		

## GENERAL PROVISIONS

**192.1 through 192.100** Reserved.

### **192.101 Short title.**

This chapter shall be known and may be cited as the “*Iowa Grade ‘A’ Milk Inspection Law*”. 91 Acts, ch 74, §11

### **192.101A Definitions.**

As used in this chapter, all terms shall have the same meaning as defined in the “Grade ‘A’ Pasteurized Milk Ordinance” as provided in section 192.102. However, notwithstanding the ordinance, the following definitions shall apply:

1. “*Bulk milk tanker*” means a mobile bulk container used to transport milk or fluid milk products from a dairy farm to a milk plant or from a milk plant to another milk plant, including an over-the-road semitrailer or a tanker that is permanently mounted on a motor vehicle.

2. “*Milk grader*” means a person, including dairy industry milk intake personnel, other than a milk hauler, who collects a milk sample from a bulk tank or a bulk milk tanker.

3. “*Milk hauler*” means a person who takes farm samples or transports raw milk or raw milk products to or from a milk plant, receiving station, or transfer station, including a dairy industry milk field person. However, a milk hauler does not include a person who drives a bulk milk tanker, if the person does not take a milk sample or handle raw milk or raw milk products.

97 Acts, ch 94, §1; 2001 Acts, ch 129, §3; 2003 Acts, ch 44, §44; 2004 Acts, ch 1082, §12

Referred to in §194.3

Further definitions, see §189.1, 191.4(2)

### **192.102 Grade “A” pasteurized milk ordinance.**

The department shall adopt, by rule, the “Grade ‘A’ Pasteurized Milk Ordinance, 2005 Revision”, including a subsequent revision of the ordinance. If the ordinance specifies that compliance with a provision of the ordinance’s appendices is mandatory, the department shall also adopt that provision. The department shall not amend the ordinance, unless the department explains each amendment and reasons for the amendment in the Iowa administrative bulletin when the rules are required to be published pursuant to chapter 17A. The department shall administer this chapter consistent with the provisions of the ordinance.

91 Acts, ch 74, §12; 94 Acts, ch 1198, §39; 97 Acts, ch 33, §6; 2001 Acts, ch 129, §4; 2003 Acts, ch 44, §45; 2004 Acts, ch 1082, §13; 2006 Acts, ch 1030, §19

Referred to in §189.1, 190.14, 191.9, 192.101A, 192.110, 194.3

### **192.103 Sale of grade “A” milk to final consumer — impoundment of adulterated or misbranded milk.**

Only grade “A” pasteurized milk and milk products shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments; except in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the secretary, in which case, such products shall be labeled “ungraded”.

No person shall within the state produce, provide, sell, offer, or expose for sale, or have in possession with intent to sell, any milk or milk product which is adulterated or misbranded; except, in an emergency, the sale of pasteurized milk and milk products which have not been graded, or the grade of which is unknown, may be authorized by the secretary, in which case such products shall be labeled “ungraded”.

Any adulterated or misbranded milk or milk product may be impounded by the secretary or authorized municipal corporation and disposed of in accordance with applicable laws or regulations.

[C24, 27, 31, 35, 39, §3077; C46, 50, 54, 58, 62, 66, §192.10; C71, 73, 75, 77, 79, 81, §192.11]  
88 Acts, ch 1152, §2; 91 Acts, ch 74, §14  
CS91, §192.103

#### **192.104 Coloring rejected milk.**

A milk hauler or a milk grader may mix a harmless coloring matter in rejected milk to prevent the rejected milk from being offered for sale.

[C54, 58, 62, 66, §192.41; C71, 73, 75, 77, 79, 81, §192.64]  
CS91, §192.104  
97 Acts, ch 94, §2

#### **192.105 and 192.106 Reserved.**

### PERMITS — INSPECTIONS

#### **192.107 Milk or milk products permit.**

A person who does not possess a permit issued by the department shall not bring, send, or receive into the state for sale, or sell, offer for sale, or store any milk or milk product as provided in this chapter and in chapters 190 and 191. However, the department may exempt from this requirement grocery stores, restaurants, soda fountains, or similar establishments where milk or a milk product is served or sold at retail, but not processed.

Only a person who complies with the requirements of this chapter and chapters 190 and 191 shall be entitled to receive and retain a permit from the department. Permits shall not be transferable with respect to persons or locations.

The department shall suspend a permit whenever there is reason to believe that a public health hazard exists, whenever the permit holder has violated any of the requirements of this chapter, chapter 190, or chapter 191, or whenever the permit holder has interfered with the department in the performance of its duties. However, where the milk or milk product involved creates, or appears to create, an imminent hazard to the public health, or in any case of a willful refusal to permit authorized inspection, the department shall serve upon the holder a written notice of intent to suspend the permit. The notice shall specify with particularity the violations in question and afford the holder such reasonable opportunity to correct such violations as may be agreed to by the parties, or in the absence of agreement, established by the secretary before making any order of suspension effective. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the department. As used in this section, the terms “*public health hazard*” and “*imminent hazard*” shall be defined by rules adopted by the department. The rules shall include examples of public health hazards and imminent hazards.

Upon written application of any person whose permit has been suspended, or upon application within forty-eight hours of any person who has been served with a notice of intention to suspend, and in the latter case before suspension, the department shall within seventy-two hours proceed to a hearing to ascertain the facts of such violation or interference and upon evidence presented at such hearing shall affirm, modify, or rescind the suspension or intention to suspend.

Upon repeated violation, the department may revoke a permit following reasonable notice

to the permit holder and an opportunity for a hearing. This section is not intended to preclude the institution of a court action provided in this chapter, chapter 190, or chapter 191.

The provisions of this section are intended for the regulation of the production, processing, labeling, and distribution of grade "A" milk and grade "A" milk products under sanitary requirements which are uniform throughout the state.

[C71, 73, 75, 77, 79, 81, §192.5]

91 Acts, ch 74, §13

CS91, §192.107

Referred to in §192.108, 192.109, 192.110

#### **192.108 Administration of the chapter — inspections required.**

The department shall administer this chapter and rules adopted pursuant to this chapter. The department is responsible for the inspection of a dairy farm, milk plant, transfer station, or receiving station to ensure compliance with this chapter and chapters 190 and 191. The department may enter into an inspection contract with a person qualified to perform inspection services if the agreement for the services is cost-effective and the quality of inspection ensures compliance with state and federal law. A person entering into an inspection contract with the department for the purpose of inspecting premises, taking samples, or testing samples, shall be deemed to be an agent of the department, and shall have the same authority under this chapter provided to the department, unless the contract specifies otherwise. The department shall review inspection services performed by a person under an inspection contract to ensure quality cost-effective inspections. If a person is acting in a manner which is inconsistent with the provisions of the applicable chapter or contract, the department may revoke the inspection contract after notice and hearing, in the manner described for permit revocation in section 192.107 and perform such acts as are necessary to enforce this chapter. Except as provided in this chapter or chapter 194, a person shall not charge a milk plant, receiving station, or transfer station a fee for inspection relating to milk or milk products.

88 Acts, ch 1152, §6

C89, §192.48

91 Acts, ch 74, §19

CS91, §192.108

97 Acts, ch 94, §3

Referred to in §190.14, 191.9, 192.110

#### **192.109 Certification of grade "A" label.**

The department of agriculture and land stewardship shall annually survey and certify all milk labeled grade "A" pasteurized and grade "A" raw milk for pasteurization, and, in the event a survey shows the requirements for production, processing, and distribution for such grade are not being complied with, the fact thereof shall be certified by the department to the secretary of agriculture who shall proceed with the provisions of section 192.107 for suspending the permit of the violator or who, if the secretary did not issue such permit, shall withdraw the grade "A" declared on the label.

[C71, 73, 75, 77, 79, 81, §192.31]

CS91, §192.109

2011 Acts, ch 89, §1

Continuing effectiveness of rules, regulations, forms, orders, or directives promulgated by department of public health until amended, repealed, or supplemented by department of agriculture and land stewardship; effect on administrative hearing or court proceeding arising out of pending enforcement action or cause of action or statute of limitations relating to action taken by department of public health; transfer of personnel; replacement of signs and related items; 2011 Acts, ch 89, §2

#### **192.110 Rating required to receive or retain a permit.**

A person shall not receive or retain a permit under section 192.107, unless both of the following conditions are satisfied:

1. The person has a pasteurized milk and milk products sanitation compliance rating of ninety percent or more as calculated according to the rating system as contained in the federal public health service publications, "Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of

Interstate Milk Shippers 2003” and “Method of Making Sanitation Ratings of Milk Supplies, 2003 Revision”. The applicable provisions of these publications are incorporated into this section by this reference. A copy of each publication shall be on file with the department or in the office of the person subject to an inspection contract as provided in section 192.108.

2. The facilities and equipment used to produce, store, or transport milk or milk products comply with requirements of the “Grade ‘A’ Pasteurized Milk Ordinance” as provided in section 192.102.

[C71, 73, 75, 77, 79, 81, §192.33; 81 Acts, ch 72, §6]

90 Acts, ch 1168, §33; 91 Acts, ch 74, §18

CS91, §192.110

93 Acts, ch 132, §1; 94 Acts, ch 1198, §40; 97 Acts, ch 33, §7; 97 Acts, ch 94, §4; 2001 Acts, ch 129, §5; 2003 Acts, ch 44, §46; 2004 Acts, ch 1082, §14

### **192.111 Permit and inspection fees — deposit in general fund — appropriation.**

1. The department shall issue and renew permits under this subsection as provided by rules adopted by the department. A permit, unless earlier revoked, is valid until the second July 1 following the issuance or renewal. The department shall establish and assess the fees for the issuance and renewal of permits annually as provided in this subsection. A permit fee for the renewal period shall be due on the date that the permit expires. Except as otherwise provided in this section, all of the following shall apply:

a. The following persons must receive a permit from and pay an accompanying permit fee to the department:

(1) A milk plant other than a receiving station which must obtain a milk plant permit and pay a permit fee not greater than two thousand dollars.

(2) A transfer station which must obtain a transfer station permit and pay a permit fee not greater than four hundred dollars.

(3) A receiving station other than a milk plant which must obtain a receiving station permit and pay a permit fee of not greater than four hundred dollars.

(4) A milk hauler which must obtain a milk hauler permit and pay a permit fee not greater than twenty dollars.

(5) A milk grader which must obtain a milk grader permit and pay a license fee not greater than twenty dollars.

b. A bulk milk tanker must operate pursuant to a bulk milk tanker permit obtained from the department. The person obtaining the permit must pay a permit fee not greater than fifty dollars.

c. The following fees, which shall be in addition to any fee required to accompany a permit as required in this section, shall be assessed:

(1) A reinspection fee that shall be paid by a person holding a permit under this subsection for which reinspection is required as a condition of retaining the permit. The amount of the reinspection fee shall not be more than forty dollars for each such reinspection.

(2) A resealing fee that shall be paid by a person holding a milk plant permit, for resealing a milk plant’s pasteurizer. The amount of the resealing fee shall not be more than one hundred dollars for each such resealing.

d. A person who renews a permit and submits any accompanying renewal fee under this subsection more than thirty days after the date that the renewal period expires shall pay a late fee. The amount of the late fee shall be equal to ten percent of the permit renewal fee. However, in no instance shall the late fee be less than twenty-five dollars.

2. A purchaser of milk from a grade “A” milk producer shall pay an inspection fee not greater than one point five cents per hundredweight. The fee shall be payable monthly to the department in a manner prescribed by the secretary.

3. a. Fees collected under this section and section 194.20 shall be deposited in the general fund of the state. All moneys deposited under this section are appropriated to the department for the costs of inspection, sampling, analysis, and other expenses necessary for the administration of this chapter and chapter 194, and shall be subject to the requirements of section 8.60.

b. In each fiscal year, the secretary shall calculate the balance of funds deposited under

this section by subtracting all moneys expended for the costs of inspection, sampling, analysis and other expenses necessary for the administration of this chapter and chapter 194. If the calculation shows a balance of funds deposited under this section on June 30 of any fiscal year equal to or exceeding one hundred fifty thousand dollars, the secretary shall reduce the fees provided for in subsection 2 of this section and section 194.20 for the next fiscal year in an amount which will result in an ending estimated balance of such funds for June 30 of the next fiscal year of one hundred fifty thousand dollars.

88 Acts, ch 1152, §5

C89, §192.47

91 Acts, ch 260, §1214

CS91, §192.111

92 Acts, ch 1163, §46; 93 Acts, ch 131, §5; 94 Acts, ch 1107, §38; 97 Acts, ch 94, §5; 2002 Acts, ch 1148, §1, 2, 11

Referred to in §192.113, 194.3A, 194.18, 194.20

### **192.112 Regulation — milk haulers, milk graders, and bulk milk tankers.**

The department shall adopt rules pursuant to chapter 17A which provide standards for milk haulers, milk graders, and bulk milk tankers. The standards shall include, but need not be limited to, all of the following:

1. The construction of bulk milk tankers.
  2. The cleaning, maintenance, and sanitization of bulk milk tankers.
  3. Recordkeeping relating to the use and cleaning of bulk milk tankers.
  4. Supplies needed to perform the duties of milk hauling and milk grading.
  5. Proper milk hauling and milk grading procedures, including but not limited to sanitation, the examination and measurement of milk, the handling of milk, and the taking and handling of milk samples.
  6. Recordkeeping required for milk haulers and milk graders.
  7. Ongoing training requirements, if any, for milk haulers and milk graders.
- 97 Acts, ch 94, §6; 2002 Acts, ch 1148, §3, 11

### **192.113 Penalties.**

1. *a.* A person shall not act as a milk hauler unless the person holds a milk hauler permit required pursuant to section 192.111. A person shall not solicit another person to act as a milk hauler or procure the services of a person to act as a milk hauler unless the person solicited or from whom the services are procured holds a milk hauler permit.

*b.* A person shall not act as a milk grader unless the person holds a milk grader permit required pursuant to section 192.111. A person shall not solicit another person to act as a milk grader or procure the services of a person to act as a milk grader unless the person solicited or from whom the services are procured holds a milk grader permit.

*c.* A person shall not operate a bulk milk tanker unless the bulk milk tanker operates pursuant to a bulk milk tanker permit required pursuant to section 192.111. A person shall not solicit another person to operate a bulk milk tanker or procure the services of a person to operate a bulk milk tanker unless the bulk milk tanker operates pursuant to a bulk milk tanker permit.

2. A person who violates this section is subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars for each violation. Each day that a violation continues shall constitute a new violation. However, a person shall not be subject to a civil penalty of more than ten thousand dollars for a continuing violation. Civil penalties shall be deposited in the general fund of the state.

97 Acts, ch 94, §7; 2002 Acts, ch 1148, §4, 11

Referred to in §194.25

**192.114** Reserved.

## SANITATION — LABORATORIES

**192.115 Sanitary regulations.**

Every person who deals in or manufactures dairy products or imitations thereof shall maintain the person’s premises, utensils, wagons, and equipment in a clean and hygienic condition.

[C97, §2522; S13, §2522; C24, 27, 31, 35, 39, §3078; C46, 50, 54, 58, 62, 66, §192.11; C71, 73, 75, 77, 79, 81, §192.34]

CS91, §192.115

**192.116 Bacteriologists.**

The department of agriculture and land stewardship may employ dairy specialists or bacteriologists who shall devote their full time to the improvement of sanitation in the production, processing and marketing of dairy products. Said dairy specialists and bacteriologists shall have qualifications as to education and experience and such other requirements as the secretary may require.

[C46, 50, 54, 58, 62, 66, §192.12; C71, 73, 75, 77, 79, 81, §192.35]

CS91, §192.116

**192.117 Duties.**

Said dairy specialists and bacteriologists employed by the department shall cooperate with the dairy and food inspectors of the department and with the health departments of cities for sanitary control of the production, processing, and marketing of dairy products. The department shall provide adequate laboratory facilities for the efficient performance of their duties.

[C46, 50, 54, 58, 62, 66, §192.13; C71, 73, 75, 77, 79, 81, §192.36]

CS91, §192.117

**192.118 Certified laboratories.**

To insure uniformity in the tests and reporting, an employee certified by the United States public health service of the bacteriological laboratory of the department shall annually certify, in accordance with the United States food and drug administration publication “Evaluation of Milk Laboratories” (1995 revision), all laboratories doing work in the sanitary quality of milk and dairy products for public report. The approval by the department shall be based on the evaluation of these laboratories as to personnel training, laboratory methods used, and reporting. The results on tests made by approved laboratories shall be reported to the department on request, on forms prescribed by the secretary of agriculture, and such reports may be used by the department.

The department shall annually certify, in accordance with the United States food and drug administration publication “Evaluation of Milk Laboratories” (1995 revision), every laboratory in the state doing work in the sanitary quality of milk and dairy products for public report. The certifying officer may enter any such place at any reasonable hour to make the survey. The management of the laboratory shall afford free access to every part of the premises and render all aid and assistance necessary to enable the certifying officer to make a thorough and complete examination.

[C54, 58, 62, 66, §192.40; C71, 73, 75, 77, 79, 81, §192.63]

CS91, §192.118

91 Acts, ch 74, §21; 97 Acts, ch 94, §8

**192.119 and 192.120** Reserved.

## CONTAINERS

**192.121 Container defined.**

As used in this chapter, "container" means a rigid or nonrigid receptacle, including but not limited to a can, bottle, case, paper carton, cask, keg, or barrel.

[C24, 27, 31, 35, 39, §3094; C46, 50, 54, 58, 62, 66, §192.33; C71, 73, 75, 77, 79, 81, §192.56]  
CS91, §192.121  
91 Acts, ch 74, §20

**192.122 Milk bottles to be marked.**

Bottles or jars used for the sale of milk shall have clearly blown or permanently marked in the side of the bottle, the capacity of the bottle, and on the bottom of the bottle the name, initials, or certification mark of the manufacturer. The designating number shall be furnished by the department on request.

[S13, §3009-k; C24, 27, 31, 35, 39, §3095; C46, 50, 54, 58, 62, 66, §192.34; C71, 73, 75, 77, 79, 81, §192.57]  
CS91, §192.122

**192.123 Adoption of brand.**

With the approval of the department any person who deals in or transports milk, cream, skimmed milk, buttermilk, or ice cream may adopt a distinctive mark or brand to be placed upon any container owned or used by the person, and the same may be registered with the department.

[C24, 27, 31, 35, 39, §3096; C46, 50, 54, 58, 62, 66, §192.35; C71, 73, 75, 77, 79, 81, §192.58]  
CS91, §192.123

**192.124 Retention of marked container.**

A person shall not, without the consent of the owner, retain for a longer period than three days a container bearing a registered mark, and any person receiving such a container shall immediately return it to the owner by a common carrier. A receipt from a common carrier is prima facie evidence that the container was returned.

[C24, 27, 31, 35, 39, §3097; C46, 50, 54, 58, 62, 66, §192.36; C71, 73, 75, 77, 79, 81, §192.59]  
CS91, §192.124  
92 Acts, ch 1076, §1; 95 Acts, ch 67, §14

**192.125 Return of bottles.**

Milk and cream bottles bearing registered marks shall be returned by delivering them to the owner or the owner's agent in person or by leaving them where they may be picked up by the owner.

[C24, 27, 31, 35, 39, §3098; C46, 50, 54, 58, 62, 66, §192.37; C71, 73, 75, 77, 79, 81, §192.60]  
CS91, §192.125

**192.126 Stray containers.**

When any person comes into possession of a container bearing a registered mark which belongs to another whose name and address the person does not know, the person shall immediately notify the department in writing, giving the size, shape, and mark of the container. Upon receipt of shipping directions from the department the person shall at once forward the container by a common carrier, collect, to the address furnished. Milk or cream bottles need not be returned when the cost of return is greater than the market value of the bottles.

[C24, 27, 31, 35, 39, §3099; C46, 50, 54, 58, 62, 66, §192.38; C71, 73, 75, 77, 79, 81, §192.61]  
CS91, §192.126

**192.127 Registered mark.**

No person shall for any purpose use any registered mark or any container bearing such mark, or remove or alter any such mark placed upon a container without the consent of the owner.

[C24, 27, 31, 35, 39, §3100; C46, 50, 54, 58, 62, 66, §192.39; C71, 73, 75, 77, 79, 81, §192.62] CS91, §192.127

**192.128 through 192.130** Reserved.

## TESTING FOR MILK FAT

**192.131** Repealed by 2002 Acts, ch 1148, § 9, 11.

**192.132** Repealed by 2002 Acts, ch 1119, § 110; 2002 Acts, ch 1148, § 9, 11.

**192.133 through 192.137** Repealed by 2002 Acts, ch 1148, § 9, 11.

**192.138 through 192.140** Reserved.

## COTTAGE CHEESE — BUTTER

**192.141 Grade standards for cottage cheese.**

The department may establish grade “A” standards for cottage cheese dry curd, cottage cheese, and low fat cottage cheese as a part of the ordinance required by this chapter. However, a governmental body, including the department, a county as provided in chapter 331, or a city as provided in chapter 364 shall not require a grade “A” rating for these products as a condition precedent to their sale.

[C71, 73, 75, 77, 79, 81, §192.30; 81 Acts, ch 72, §5]  
88 Acts, ch 1152, §3; 90 Acts, ch 1168, §32; 91 Acts, ch 74, §15, 16, 25  
CS91, §192.141

**192.142** Repealed by 2002 Acts, ch 1148, § 9, 11.

**192.143 Imitation butter.**

Imitation butter shall be sold only under the name of oleomargarine, and no person shall use in any way, in connection or association with the sale or exposure for sale or advertisement of any such product, the word “butter”, “creamery”, or “dairy”, or the name or representation of any breed of dairy cattle, or any combination of such word or words and representation, or any other words or symbols or combination thereof commonly used in the sale of butter.

[C97, §2517; C24, 27, 31, 35, 39, §3093; C46, 50, 54, 58, 62, 66, §192.31; C71, 73, 75, 77, 79, 81, §192.54]  
CS91, §192.143

**192.144 and 192.145** Reserved.

INJUNCTIONS

**192.146 Injunction for violations.**

A person who violates any provision of this chapter, chapter 190, or chapter 191, or a rule adopted under any of those chapters may be enjoined from continuing such violations. Each day upon which such a violation occurs constitutes a separate violation.

[C71, 73, 75, 77, 79, 81, §192.32]

91 Acts, ch 74, §17

CS91, §192.146

CHAPTER 192A

MARKETING OF DAIRY PRODUCTS

Repealed by 2000 Acts, ch 1091, §1

CHAPTER 193

RESERVED

CHAPTER 194

GRADES OF MILK

Referred to in §192.108, 192.111

194.1	Citation of chapter.	194.11	Price differential.
194.2	Enforcement — rules.	194.12	through 194.16 Repealed by
194.3	Definitions.		2002 Acts, ch 1148, §9, 11.
194.3A	Permit requirements.	194.17	Records.
194.4	Physical characteristics.	194.18	Coloring unlawful milk.
194.5	Frequency of tests.	194.19	Repealed by 2002 Acts, ch 1148,
194.6	Bacterial test.		§9, 11.
194.7	Acceptable milk.	194.20	Inspection fees — grade “B” milk.
194.8	Unacceptable milk.	194.21	Bulk tanks on farms for milk.
194.9	Unlawful milk.	194.22	through 194.24 Reserved.
194.10	Milk purchased on basis of grade.	194.25	Violations and penalties.

**194.1 Citation of chapter.**

This chapter may be cited as the “*Iowa Grading Law for Milk Used for Manufacturing Purposes*”.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.1]

**194.2 Enforcement — rules.**

The secretary of agriculture shall enforce the provisions hereof, and to this end may adopt such rules and regulations as may appear necessary, but not inconsistent herewith.

The secretary may adopt by rule requirements recommended by the United States Department of Agriculture for the production and processing of milk for manufacturing purposes, including, but not limited to, requirements for the inspection and certification of grade “B” dairy farms and grade “B” dairy plants.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.2]

88 Acts, ch 1152, §7

**194.3 Definitions.**

For the purpose of this chapter:

1. “*Bulk milk tanker*” means all of the following:
  - a. A bulk milk tanker as defined in section 192.101A.
  - b. A vehicle that transports milk stored in milk cans.
2. “*Milk grader*” means the same as defined in section 192.101A.
3. “*Milk hauler*” means the same as defined in section 192.101A.
4. “*Milk processing plant*” means an establishment receiving milk from diverse producers, if the milk is manufactured into butter, cheese, dry milk, or other dairy products for commercial purposes.
5. “*Milk used for manufacturing purposes*” means milk or milk products manufactured into butter, cheese, ungraded dry milk, or other dairy products except milk and milk products as defined in the “Grade ‘A’ Pasteurized Milk Ordinance” provided in section 192.102.
6. “*Organoleptic examination or grading of milk*” means examination by the senses of sight, smell, and taste.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.3]

86 Acts, ch 1245, §639; 92 Acts, ch 1081, §1; 2002 Acts, ch 1148, §5, 11

Further definitions, see §189.1

**194.3A Permit requirements.**

1. The department shall issue and renew permits under this chapter as provided by rules adopted by the department. The following persons must receive a permit from and pay a permit fee to the department:

- a. A milk hauler which must obtain a milk hauler permit.
- b. A milk grader which must obtain a milk grader permit.
- c. A bulk milk tanker which must operate pursuant to a bulk milk tanker permit.

2. The department shall provide for the issuance and renewal of permits under this section as provided by rules adopted by the department, in the same manner as provided in section 192.111. The amount of the permit fee shall be the same as provided in section 192.111. A person shall not be required to obtain a milk hauler permit, milk grader permit, or bulk milk tanker permit under this section if the person has obtained the same permit under section 192.111.

3. The department may suspend or revoke a permit issued or renewed under this section in the same manner that the department may suspend or revoke a permit issued or renewed under section 192.111.

4. A person who does any of the following is in violation of this section:

a. (1) Acts as a milk hauler or milk grader, unless the person holds a milk hauler permit or milk grader permit as required in this section.

(2) Solicits another person to act as a milk hauler or milk grader or procures the services of a person to act as a milk hauler or milk grader, unless the person solicited or from whom the services are procured holds a milk hauler permit or milk grader permit as required in this section.

b. (1) Operates a bulk milk tanker, unless the bulk milk tanker operates pursuant to a bulk milk tanker permit as required in this section.

(2) Solicits another person to operate a bulk milk tanker or procures the services of a person to operate a bulk milk tanker, unless the bulk milk tanker operates pursuant to a bulk milk tanker permit as required in this section.

2002 Acts, ch 1148, §6, 11

Referred to in §194.25

**194.4 Physical characteristics.**

All milk received at a creamery, cheese factory, or milk-processing plant shall be examined for physical characteristics, off-flavors and off-odors, including those associated with developed acidity. The condition of the raw milk shall be wholesome and characteristic of normal milk. The flavor and odor of the raw milk shall be fresh and sweet; however, slight feed flavors may be present.

Any raw milk that shows an abnormal condition including, but not limited to, curdled, ropy, clotted and bloody, or that contains extraneous matter or which shows significant bacterial deterioration, or which contains matter evidencing production from a mastitic cow; or which contains chemicals, medicines, or radioactive agents deleterious to health is unlawful milk and shall be rejected to the producer, seller, or shipper and shall not be used in the processing or manufacturing of dairy products for human consumption.

At least once within each thirty days a test shall be made of a producer's milk to determine the existence of evidence of production from mastitic cows. The secretary shall determine and adopt the standards and methods of testing the milk for this purpose. The secretary shall be guided by recommendations or regulations established by federal agencies regulating this field.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.4]  
92 Acts, ch 1081, §2

**194.5 Frequency of tests.**

A test shall be made on the first purchase of milk from a new producer and at least once within each thirty-day interval thereafter. One lot of milk from each producer shall be selected at random and tested for extraneous matter by an appropriate method. The secretary shall determine and promulgate the standards and methods of testing the milk for extraneous matter. The method and standards shall be no less strict than those recommended by the agricultural marketing service, U.S. department of agriculture.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.5]

**194.6 Bacterial test.**

At least once every thirty days an estimate of the bacterial quality shall be made of each producer's milk by use of a standard plate count or an equivalent plate counting procedure in an officially designated laboratory.

For the purpose of quality improvement and payment, the following classifications of milk for bacterial estimate are applicable:

Bacterial Estimate Classification	Standard Plate Count or Equivalent
Class 1	Not over 100,000 per Milliliter
Class 2	Not over 300,000 per Milliliter
Undergrade	Over 300,000 per Milliliter

[C62, 66, 71, 73, 75, 77, 79, 81, §194.6]  
84 Acts, ch 1120, §1; 92 Acts, ch 1081, §3

**194.7 Acceptable milk.**

Milk acceptable from the standpoint of organoleptic examination, containing no excessive extraneous matter and complying with class 1 or 2 for bacterial estimate shall be acceptable for use in the processing and manufacturing of dairy products for human consumption.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.7]

**194.8 Unacceptable milk.**

Milk acceptable from the standpoint of organoleptic examination, containing no excessive extraneous matter and classified in excess of three hundred thousand for bacterial estimate, may be used in the processing and manufacturing of dairy products for human consumption for a period of seven consecutive days.

After a week another quality test must be performed on the producer's milk. If two of the last four consecutive bacterial counts exceed the class 2 standard, the department shall deliver, or require the purchaser to deliver, a written notice to the producer. An additional sample shall be taken at least three days after taking the previous sample, but within twenty-one days following delivery of the notice. The department shall immediately suspend

the permit of the producer or immediately institute legal proceedings to restrain production if the class 2 standard is violated according to three of the last five bacterial counts.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.8]  
84 Acts, ch 1120, §2; 92 Acts, ch 1081, §4

#### **194.9 Unlawful milk.**

Milk, which from the standpoint of organoleptic examination is not acceptable, or which contains excessive extraneous matter or which by three out of five bacterial estimate tests is classified in excess of three hundred thousand, or which contains material evidencing production from a mastitic cow, or which contains chemicals, medicines, or radioactive agents deleterious to health, is unlawful for the manufacture of dairy products for human consumption.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.9]  
84 Acts, ch 1120, §3; 92 Acts, ch 1081, §5  
Referred to in §194.18

#### **194.10 Milk purchased on basis of grade.**

All purchases and deliveries of milk and cream for the manufacture of dairy products shall be made on the basis of grades and definitions set forth in this chapter.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.10]

#### **194.11 Price differential.**

All purchasers and receivers of milk for the manufacture of dairy products for human consumption shall maintain a reasonable price differential between the grades of milk as defined by the bacterial estimate tests. This price differential shall not be less than five percent of the price for grade one milk.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.11]

**194.12 through 194.16** Repealed by 2002 Acts, ch 1148, § 9, 11.

#### **194.17 Records.**

Each creamery, cheese factory or milk processing plant shall maintain records of all purchases and receipts of milk from individual producers. These records must show:

1. Name of producer.
2. Date of delivery.
3. Quantity delivered.
4. Grade assigned.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.17]

#### **194.18 Coloring unlawful milk.**

A person who holds a milk hauler permit or a milk grader permit pursuant to section 192.111 may mix a harmless coloring matter in unlawful milk as provided in section 194.9 to prevent the unlawful milk from being processed and used in any form for human consumption.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.18]  
97 Acts, ch 94, §9; 2002 Acts, ch 1148, §7, 11

**194.19** Repealed by 2002 Acts, ch 1148, § 9, 11.

#### **194.20 Inspection fees — grade “B” milk.**

A purchaser of milk from a grade “B” milk producer shall pay an inspection fee not greater than one-half cent per hundredweight. The fee is payable monthly to the department at a time prescribed by the department. Fees collected under this section shall be deposited and used as required in section 192.111.

88 Acts, ch 1152, §10; 91 Acts, ch 74, §22; 92 Acts, ch 1081, §8; 92 Acts, ch 1163, §47; 94 Acts, ch 1107, §43  
Referred to in §192.111

**194.21 Bulk tanks on farms for milk.**

Any producer using a bulk tank for cooling and storage of milk to be used for manufacturing purposes shall have an enclosed milk room which shall conform to the standards provided by this section. The floor shall be constructed of concrete or other impervious material, maintained in good repair, and graded to provide proper drainage. The walls and ceilings of the room shall be sealed and constructed of smooth easily cleaned material. All windows shall be screened and doors shall be self-closing. It shall be well ventilated and must meet the following requirements:

1. The bulk tank shall not be located over a drain or under a ventilator.
2. The hose port shall be located in an exterior wall and fitted with a tight self-closing door.
3. A two hundred twenty volt lock type electrical connection with ground and weatherproof type receptacle and switchbox shall be provided near the hose port.
4. Each milk room shall have an adequate supply of water readily accessible with facilities for heating the water, to insure the cleaning and sanitizing of the bulk tank, utensils and equipment and the keeping of the milk room clean.
5. No lights shall be placed directly over the bulk tank.
6. The bulk tank shall be properly located in the milk room for easy access to all areas for cleaning and servicing.
7. The enforcement of this section shall be administered by the department of agriculture and land stewardship.
8. Any person violating any provisions of this section shall be guilty of a simple misdemeanor.

[C66, §192.43; C71, 73, 75, 77, 79, 81, §192.66]  
CS91, §194.21

**194.22 through 194.24** Reserved.

**194.25 Violations and penalties.**

1. Except as provided in subsection 2, a person who, in person or by an agent or employee, willfully violates any requirement of this chapter shall be guilty of a simple misdemeanor.
2. A person in violation of section 194.3A is subject to the same civil penalty as applied to that person as provided in section 192.113.

[C62, 66, 71, 73, 75, 77, 79, 81, §194.20]  
C89, §194.25  
2002 Acts, ch 1148, §8, 11

## CHAPTER 195

RESERVED

## CHAPTER 196

### EGG HANDLERS

For transition of powers and duties from the department of inspections and appeals to the department of agriculture and land stewardship under this chapter, and for related administrative provisions, see 2011 Acts, ch 16

196.1	Definitions.	196.8	Quality — storage.
196.2	Enforcement.	196.9	Eggs unfit for human food.
196.3	Egg handler’s license and fee.	196.10	Labeling.
196.4	Producers and hatcheries exempt.	196.11	Storage.
196.5	Candling and grading capability.	196.12	Transportation.
196.6	Candling and grading room.	196.13	Records.
196.7	Candling and grading prior to sale.	196.14	Penalty.

**196.1 Definitions.**

Unless the context otherwise requires:

1. “*Candling*” means the careful examination of each shell egg and the elimination of those eggs determined unfit for human consumption.
2. “*Consumer*” means a person who buys eggs for personal consumption.
3. “*Department*” means the department of agriculture and land stewardship.
4. “*Egg handler*” or “*handler*” means a person who buys or sells eggs, or uses eggs in the preparation of human food. “*Egg handler*” or “*handler*” does not include a retailer, a consumer, an establishment, or a producer who sells eggs as provided in section 196.4.
5. “*Establishment*” means any place in which eggs are offered or sold as human food for consumption by its employees, students, patrons, customers, residents, inmates or patients or as an ingredient in food offered or sold in a form ready for immediate consumption.
6. “*Grading*” means classifying each shell egg by weight and grading in accordance with egg grading standards approved by the United States government as of July 1, 1985, pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. § 1621 et seq.
7. “*Nest run eggs*” means eggs which have not been denatured, candled, graded, processed or labeled.
8. “*Package*” means the same as defined in section 189.1.
9. “*Producer*” means a person who owns layer type chickens.
10. “*Retailer*” means a person who sells eggs directly to consumers except a producer who sells eggs under the provisions of section 196.4.

[C24, 27, 31, 35, 39, §3107; C46, 50, 54, §196.7; C58, 62, 66, 71, 73, 75, §196.3, 196.11; C77, 79, 81, §196.1]

85 Acts, ch 195, §20; 95 Acts, ch 7, §1, 2; 2011 Acts, ch 16, §2, 5

Further definitions, see §189.1

**196.2 Enforcement.**

The department shall enforce this chapter, and may adopt rules pursuant to chapter 17A and consistent with regulations of the United States government as they exist on July 1, 1985, pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. § 1621 et seq., and the Egg Products Inspection Act of 1970, 21 U.S.C. § 1044 et seq.

[C24, 27, 31, 35, 39, §3111; C46, 50, 54, §196.11; C58, 62, 66, 71, 73, 75, 77, 79, 81, §196.2] 85 Acts, ch 195, §21; 95 Acts, ch 7, §3

**196.3 Egg handler’s license and fee.**

1. Every egg handler shall obtain an annual license from the department. The fee for the license shall be determined on the basis of the total number of eggs purchased or handled during the preceding month of April in each calendar year as follows:

- a. Less than one hundred twenty-five cases ..... \$20.20
- b. One hundred twenty-five cases or

more but less than two hundred fifty cases ..... \$47.25

    c. Two hundred fifty cases or more but less than one thousand cases ..... \$67.50

    d. One thousand cases or more but less than five thousand cases ..... \$135.00

    e. Five thousand cases or more but less than ten thousand cases ..... \$236.25

    f. Ten thousand cases or more ..... \$337.50

2. The license shall expire one year after its date of issue. For the purpose of determining fees, a case shall be thirty dozen eggs. All fees collected shall be remitted to the treasurer of state for deposit in the general fund of the state.

3. If an egg handler is not operating during the month of April, the department shall estimate the volume of eggs purchased or handled, or both, and may revise the fee based on three months of operation.

[C24, 27, 31, 35, 39, §3101, 3103; C46, 50, 54, §196.1, 196.3; C58, 62, 66, 71, 73, 75, §196.4, 196.6; C77, 79, 81, §196.3]

2007 Acts, ch 215, §218  
 Referred to in §196.4

**196.4 Producers and hatcheries exempt.**

Producers who sell eggs produced exclusively by their own flocks directly to handlers, or to consumers, shall not be required to demonstrate to the department or the United States department of agriculture inspector their capability to perform candling and grading.

A hatchery shall obtain an egg handler’s license pursuant to section 196.3 if it purchases eggs which are not used for hatching purposes.

[C24, 27, 31, 35, 39, §3102; C46, 50, 54, §196.2; C58, 62, 66, 71, 73, 75, §196.5; C77, 79, 81, §196.4]

Referred to in §196.1

**196.5 Candling and grading capability.**

Each person who candles and grades eggs shall demonstrate to the satisfaction of the department or the United States department of agriculture inspector, the capability to perform candling and grading.

[C24, 27, 31, 35, 39, §3109; C46, 50, 54, §196.9; C58, 62, 66, 71, 73, 75, §196.7, 196.8; C77, 79, 81, §196.5]

**196.6 Candling and grading room.**

An egg handler’s license shall be obtained from the department for each location at which eggs will be candled and graded. Before a license is issued for each location candling eggs, the department shall make a careful survey of the premises and determine that the premises contain proper facilities for candling and grading.

[C24, 27, 31, 35, 39, §3109; C46, 50, 54, §196.6, 196.9; C58, 62, 66, 71, 73, 75, §196.13; C77, 79, 81, §196.6]

**196.7 Candling and grading prior to sale.**

All eggs offered for sale by an egg handler to a retailer, an establishment or a consumer, shall be candled and graded.

[C24, §3108; C27, 31, 35, §3108, 3112-b1; C39, §3112.1; C46, 50, 54, §196.8, 196.13; C58, 62, 66, 71, 73, 75, §196.12, 196.14; C77, 79, 81, §196.7]

**196.8 Quality — storage.**

1. All eggs offered for sale to an establishment must be no lower than United States department of agriculture consumer grade “B”. From the time of candling and grading until they reach the consumer, all eggs designated for human consumption shall be held at a temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius ambient temperature. The forty-five degrees Fahrenheit or seven degrees Celsius ambient

temperature requirement applies to any place or room in which eggs are stored, except inside a vehicle during transportation where the ambient temperature may exceed forty-five degrees Fahrenheit or seven degrees Celsius, provided the transport vehicle is equipped with refrigeration units capable of delivering air at a temperature not greater than forty-five degrees Fahrenheit or seven degrees Celsius and capable of cooling the vehicle to a temperature not greater than forty-five degrees Fahrenheit or seven degrees Celsius. All shell eggs shall be kept from freezing.

2. Notwithstanding subsection 1, eggs gathered for sale at a poultry show from fowl exhibited at the show, which show has received financial assistance from the state in prior fiscal years, shall be exempt from the storage temperature and consumer grade quality requirements contained in subsection 1.

[C27, 31, 35, §3112-b1; C39, §3112.1; C46, 50, 54, §196.13; C58, 62, 66, 71, 73, 75, §196.14; C77, 79, 81, §196.8]

97 Acts, ch 192, §1; 2001 Acts, ch 176, §15

#### **196.9 Eggs unfit for human food.**

Eggs determined to be unfit for human food under 21 U.S.C. § 1034 as amended to July 1, 1985, shall not be bought or sold or offered for purchase or sale by any person unless the eggs are denatured so that they cannot be used for human food.

[C24, 27, 31, 35, 39, §3104, 3105, 3108; C46, 50, 54, §196.4, 196.5, 196.8; C58, 62, 66, 71, 73, 75, §196.10; C77, 79, 81, §196.9]

85 Acts, ch 195, §22; 2010 Acts, ch 1061, §40

#### **196.10 Labeling.**

Sections 189.9 to 189.12 shall apply to the labeling of packaged eggs which have been candled and graded if not inconsistent with the provisions of this chapter. All cases of loose packed eggs sold in this state shall identify the egg handler's name or license number or United States department of agriculture plant number, and, the grade of the eggs contained in the case. Each carton containing eggs for retail sale in Iowa which have been candled and graded shall be marked with the grade and size of the eggs contained, the date they were packed, and the name and address of the distributor or packer.

[C24, 27, 31, 35, 39, §3110; C46, 50, 54, §196.10; C58, 62, 66, 71, 73, 75, §196.16; C77, 79, 81, §196.10]

#### **196.11 Storage.**

The provisions of section 189.28 shall not apply to eggs.

[C58, 62, 66, 71, 73, 75, §196.19; C77, 79, 81, §196.11]

#### **196.12 Transportation.**

Vehicles used to transport eggs from the point of production to an egg handler or between handlers shall be kept in sanitary condition and shall be enclosed. However, this section shall not apply to producers transporting their own eggs to a handler.

[C58, 62, 66, 71, 73, 75, §196.20; C77, 79, 81, §196.12]

#### **196.13 Records.**

Handlers shall keep a record for three years of each of their purchases and sales of eggs, including the date of the transaction, the names of the parties, the grade, or nest run, and the quantity of eggs being purchased or sold.

[C77, 79, 81, §196.13]

#### **196.14 Penalty.**

Any person who violates a provision of this chapter shall be guilty of a simple misdemeanor. In addition, if the offender is a handler or a retailer, the court for the third offense shall suspend the offender's license for thirty days; for the fourth and any subsequent offense, such license shall be revoked for a period of one year.

[C58, 62, 66, 71, 73, 75, §196.18; C77, 79, 81, §196.14]

## CHAPTER 196A

RESERVED

## CHAPTER 197

## POULTRY AND DOMESTIC FOWLS

Meat and poultry inspection, chapter 189A

197.1	License.	197.4	Inspection of.
197.2	Fee.	197.5	Enforcement.
197.3	Record.	197.6	Violations.

**197.1 License.**

Every person, partnership, or corporation engaged in the business of buying for the market, poultry or domestic fowls from the producer thereof, shall obtain a license from the department for each establishment at which said business is conducted.

The word “*producer*” as herein used shall include anyone not a licensed dealer who has acquired such poultry or domestic fowls other than through a licensed dealer.

[C27, 31, 35, §3112-b2; C39, §**3112.2**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.1]

Further definitions, see §189.1

**197.2 Fee.**

The license fee shall be three dollars per annum, and each license shall expire on March 1 after the date of issue.

[C27, 31, 35, §3112-b3; C39, §**3112.3**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.2]

**197.3 Record.**

Each licensee shall keep such records as the department shall require, as to date of purchase, name and residence of seller and number and description of such poultry or domestic fowls purchased from the producer.

[C27, 31, 35, §3112-b4; C39, §**3112.4**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.3]

**197.4 Inspection of.**

Such records as are required by the department to be kept by such licensee shall be open to inspection by any peace officer at any reasonable time.

[C27, 31, 35, §3112-b5; C39, §**3112.5**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.4]

**197.5 Enforcement.**

The department shall be charged with the duty of the enforcement of this chapter.

[C27, 31, 35, §3112-b6; C39, §**3112.6**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.5]

**197.6 Violations.**

Any person who shall violate the provisions of this chapter shall, for each offense, be deemed guilty of a simple misdemeanor.

[C27, 31, 35, §3112-b7; C39, §**3112.7**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §197.6]

## CHAPTER 198

## COMMERCIAL FEED

Referred to in §126.20, 203.1, 203C.1

198.1	Short title.	198.9	Inspection fees and reports.
198.2	Enforcing official.	198.10	Rules.
198.3	Definitions.	198.11	Inspection, sampling, and analysis.
198.4	Licenses.	198.12	Detained commercial feeds.
198.5	Labeling.	198.13	Penalties.
198.6	Misbranding.	198.14	Cooperation with other entities.
198.7	Adulteration.	198.15	Publication.
198.8	Prohibited acts.		

**198.1 Short title.**

This chapter shall be known as the “*Iowa Commercial Feed Law*”.

[C66, 71, 73, 75, 77, 79, 81, §198.1]

90 Acts, ch 1165, §1

**198.2 Enforcing official.**

This chapter shall be administered by the secretary of agriculture.

[C66, 71, 73, 75, 77, 79, 81, §198.2]

**198.3 Definitions.**

For the purposes of this chapter:

1. “*Advertise*” means to present a commercial message in any medium, including but not limited to print, radio, television, sign, display, label, tag, or articulation.

2. “*Brand name*” means any word, name, symbol, or device or any combination thereof, identifying the commercial feed of a distributor and distinguishing it from that of others.

3. “*Broker*” means a person, other than a licensed manufacturer, who distributes commercial feed or commercial feed ingredients to a manufacturer.

4. “*Commercial feed*” means all materials or a combination of materials which are distributed or intended for distribution for use as feed or for mixing in feed, unless such materials are specifically exempted. Except as otherwise provided in this chapter, unmixed whole seeds and physically altered entire unmixed seeds, when such whole or physically altered seeds are not chemically changed or are not adulterated within the meaning of section 198.7, subsection 1, are exempt. The secretary by rule may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 198.7, subsection 1.

5. “*Contract feeder*” means a person who as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished or otherwise provided to such person and whereby such person’s remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product.

6. “*Customer-formula feed*” means commercial feed which consists of a mixture of commercial feeds or feed ingredients, or both, each batch of which is manufactured according to the specific instructions of the final purchaser.

7. “*Distribute*” means either of the following:

a. To offer for sale, sell, exchange, or barter commercial feed.

b. To supply, furnish, or otherwise provide commercial feed to a contract feeder.

8. “*Distributor*” means any person who distributes.

9. “*Drug*” means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

10. “*Feed ingredient*” means each of the constituent materials making up a commercial feed.

11. “*Label*” means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

12. “*Labeling*” means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrappers or, accompanying such commercial feed.

13. “*Manufacture*” means to grind, mix or blend or further process a commercial feed for distribution.

14. “*Mineral feed*” means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

15. “*Official sample*” means a sample of feed taken by the secretary or the secretary’s agent in accordance with the provisions of section 198.11, subsection 3, 5, or 6.

16. “*Percent*” or “*percentages*” means percentages by weight.

17. “*Pet*” means any domesticated animal normally maintained in or near the household of the owner thereof.

18. “*Pet food*” means any commercial feed prepared and distributed for consumption by dogs or cats.

19. “*Product name*” means the name of the commercial feed which identifies it as to kind, class, or specific use.

20. “*Specialty pet*” means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

21. “*Specialty pet food*” means any commercial feed prepared and distributed for consumption by specialty pets.

22. “*Ton*” means a net weight of two thousand pounds avoirdupois.

[S13, §5077-a8; C24, 27, 31, 35, 39, §3113; C46, 50, 54, 58, 62, §198.1; C66, 71, 73, 75, 77, 79, 81, §198.3]

86 Acts, ch 1245, §642; 90 Acts, ch 1165, §2 – 4; 91 Acts, ch 97, §24; 98 Acts, ch 1046, §1; 2004 Acts, ch 1082, §8, 9

Referred to in §169.3, 169.4, 198.6, 198.10, 198.11, 205.8, 570A.1

Further definitions, see §189.1

#### **198.4 Licenses.**

1. This section shall apply to any person:

- a. Who manufactures a commercial feed within the state.
- b. Who distributes a commercial feed in or into the state.
- c. Whose name appears on the label of a commercial feed as guarantor.

2. A person shall obtain a license, for each facility which distributes in or into the state, authorizing the person to manufacture or distribute commercial feed before the person engages in such activity. Any person who makes only retail sales of commercial feed which bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for the tonnage inspection fee due under section 198.9 is not required to obtain a license.

3. A broker shall not distribute a commercial feed in this state without first obtaining a license from the secretary issued on forms provided by the secretary. The forms must identify the broker’s name and place of business.

4. A person obtaining a license under this section shall pay to the secretary a license fee of ten dollars. Fees relating to the issuance of licenses shall be paid by July 1 of each year.

[S13, §5077-a9; C24, 27, 31, 35, 39, §3117; C46, 50, 54, 58, 62, §198.7; C66, 71, 73, §198.4, 198.5; C75, 77, 79, 81, §198.4]

90 Acts, ch 1165, §5; 98 Acts, ch 1046, §2; 2009 Acts, ch 41, §78

Referred to in §198.8

#### **198.5 Labeling.**

A commercial feed shall be labeled as follows:

1. In case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information:

- a. The net weight.
  - b. The product name and the brand name, if any, under which the commercial feed is distributed.
  - c. The guaranteed analysis stated in such terms as the secretary by rule determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the association of official analytical chemists.
  - d. An ingredient statement containing the common or usual name of each ingredient used in the manufacture of the commercial feed. However, the secretary by rule may permit the use of a collective term for a group of ingredients which perform a similar function, or the secretary may exempt such commercial feeds, or any group of them, from this requirement if the secretary finds that a statement is not required in the interest of consumers.
  - e. The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.
  - f. Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the secretary may require by rule as necessary for their safe and effective use.
  - g. Such precautionary statements as the secretary by rule determines are necessary for the safe and effective use of the commercial feed.
2. In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip or other shipping document, bearing the following information:
    - a. Name and address of the manufacturer.
    - b. Name and address of the purchaser.
    - c. Date of delivery.
    - d. The product name and brand name, if any, and the net weight of each commercial feed used in the mixture, and the net weight of each other ingredient used.
    - e. Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the secretary may require by rule as necessary for their safe and effective use.
    - f. Such precautionary statements as the secretary by rule determines are necessary for the safe and effective use of the customer-formula feed.
    - g. If a drug-containing product is used, information relating to the purpose of the medication in the form of a claim statement, plus the established name of each active drug ingredient and the level of each drug used in the final mixture.
- [S13, §5077-a6, -a7; SS15, §5077-a6, -a7; C24, 27, 31, 35, 39, §3114 – 3116; C46, 50, 54, 58, 62, §198.2, 198.5, 198.6; C66, 71, 73, § 198.6; C75, 77, 79, 81, §198.5]  
 90 Acts, ch 1165, §6, 7; 91 Acts, ch 97, §25  
 Referred to in §198.6

### **198.6 Misbranding.**

A commercial feed shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.
2. If it is distributed under the name of another commercial feed.
3. If it is not labeled as required in section 198.5.
4. If it is not a commercial feed as defined in section 198.3.
5. If any word, statement, or other information required by this chapter to appear on the label is not prominently and conspicuously placed thereon and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

[C66, 71, 73, §198.9; C75, 77, 79, 81, §198.6]

90 Acts, ch 1165, §8

### **198.7 Adulteration.**

A commercial feed shall be deemed to be adulterated:

1. a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed

shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health.

b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal Food, Drug, and Cosmetic Act, other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive.

c. If it is, or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal Food, Drug, and Cosmetic Act.

d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408, subparagraph "a" of the federal Food, Drug, and Cosmetic Act, provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agriculture commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408, subparagraph "a" of the federal Food, Drug, and Cosmetic Act.

e. If it is, or it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal Food, Drug, and Cosmetic Act.

f. If it is, or it bears or contains a new animal drug which is unsafe within the meaning of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 512.

2. If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

3. If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

4. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules promulgated by the secretary to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such rules, the secretary shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the federal Food, Drug, and Cosmetic Act, unless the secretary determines that they are not appropriate to the conditions which exist in this state.

5. If it contains viable weed seeds in amounts exceeding the limits which the secretary shall establish by rule.

[S13, §5077-a13; C24, 27, 31, 35, §3114-d2, 3126; C39, §3114.2; C46, 50, 54, 58, 62, §198.4, 198.13; C66, 71, 73, §198.8; C75, 77, 79, 81, §198.7]

90 Acts, ch 1165, §9

Referred to in §198.3, 198.8, 198.11

### **198.8 Prohibited acts.**

It shall be unlawful for any person to:

1. Manufacture or distribute any commercial feed that is adulterated or misbranded.
2. Adulterate or misbrand any commercial feed.
3. Distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks and hulls, which are adulterated within the meaning of section 198.7, subsection 1.
4. Remove or dispose of a commercial feed in violation of an order under section 198.12.
5. Fail or refuse to obtain a license in accordance with section 198.4.
6. Violate section 198.13, subsection 6.

7. Fail to pay inspection fees and file reports as required by section 198.9.  
[C75, 77, 79, 81, §198.8]  
90 Acts, ch 1165, §10

### **198.9 Inspection fees and reports.**

1. *a.* An inspection fee to be fixed annually by the secretary at a rate of not more than sixteen cents per ton, shall be paid on commercial feed distributed in this state by the person who first distributes the commercial feed, subject to the following:

(1) The inspection fee is not required on the first distribution, if made to a qualified buyer who, with approval from the secretary, shall become responsible for the fee.

(2) A fee shall not be paid on a commercial feed if the payment has been made by a previous distributor.

(3) A fee shall not be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as components of the customer-formula feeds.

(4) A minimum semiannual fee shall be twenty dollars.

(5) A licensed manufacturer shall pay the inspection fee on commercial feed that is fed to livestock owned by the licensee.

*b.* In the case of a pet food or specialty pet food, which is distributed in this state in packages of ten pounds or less, each product shall be registered and an annual registration fee of fifty dollars for each product shall be paid by January 1 of each year in lieu of the per ton rate as provided in this subsection. The inspection fee shall apply to those same products distributed in packages of more than ten pounds.

2. *a.* Each person who is liable for the payment of such fee shall:

(1) File, not later than the last day of January and July of each year, a semiannual statement, setting forth the number of net tons of commercial feeds distributed in this state during the preceding six months and upon filing the statement shall pay the inspection fee at the rate stated in subsection 1. Inspection fees which are due and owing and have not been remitted to the secretary within fifteen days following the due date shall have a delinquency fee of ten percent of the amount due or fifty dollars, whichever is greater, added to the amount due when payment is finally made. The assessment of this delinquency fee does not prevent the department from taking other actions as provided in this chapter.

(2) Keep such records as may be necessary or required by the secretary to indicate accurately the tonnage of commercial feed distributed in this state, and the secretary shall have the right to examine such records to verify statements of tonnage.

*b.* Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this section is sufficient cause for cancellation of the license of the distributor.

3. Fees collected shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60. Moneys deposited under this section shall be used for the payment of the costs of inspection, sampling, analysis, supportive research, and other expenses necessary for the administration of this chapter.

4. If there is an unencumbered balance of funds from the fees deposited under this section on June 30 of any fiscal year equal to or exceeding one hundred thousand dollars, the secretary of agriculture shall reduce the per ton fee provided for in subsection 1 for the next fiscal year in such amount as will result in an ending estimated balance of the fees deposited less costs paid for from those fees for June 30 of the next fiscal year of one hundred thousand dollars.

[S13, §5077-a10; C24, 27, 31, 35, 39, §3118 – 3121; C46, 50, 54, 58, 62, §198.8 – 198.12; C66, 71, 73, §198.7; C75, 77, 79, 81, §198.9]

83 Acts, ch 122, §1; 90 Acts, ch 1165, §11 – 14; 91 Acts, ch 97, §26; 91 Acts, ch 260, §1216; 93 Acts, ch 131, §7; 94 Acts, ch 1107, §45; 95 Acts, ch 42, §1; 98 Acts, ch 1032, §7; 2009 Acts, ch 41, §210

Referred to in §198.4, 198.8

### **198.10 Rules.**

1. The secretary may adopt rules for commercial feeds and pet foods as specifically

authorized in this chapter and other reasonable rules necessary in order to carry out the purpose and intent of this chapter or to secure the efficient enforcement of this chapter.

2. The secretary may adopt rules to do all of the following:

a. Regulate the movement of cottonseed into this state or within this state, even if the cottonseed would otherwise be exempt as whole seed under section 198.3. The secretary may adopt rules prescribing standards for cottonseed consistent with regulations prescribing the quality and uses of cottonseed as promulgated by the United States food and drug administration.

b. Regulating the advertisement of commercial feed, including but not limited to labeling commercial feed as specifically provided in this chapter.

3. In the interest of uniformity the secretary shall adopt any rule based on regulations promulgated under the authority of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., provided the secretary has the authority under this chapter to adopt the rule. However, the secretary is not required to adopt such a rule if the secretary determines that the rule would be inconsistent with this chapter or not appropriate to conditions which exist in this state.

4. Before the issuance, amendment, or repeal of a rule authorized by this chapter, the secretary shall publish the proposed rule, amendment, or notice to repeal an existing rule in a manner reasonably calculated to give interested parties, including all current licensees, adequate notice, and shall afford all interested persons an opportunity to be heard, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the secretary shall take appropriate action to issue the proposed rule or to amend or repeal an existing rule. However, if the secretary adopts rules based on regulations promulgated under the authority of the federal Food, Drug, and Cosmetic Act, any amendment or modification adopted by the United States secretary of health and human services shall be adopted automatically under this chapter without regard to publication of the notice required by this subsection, unless the secretary by order specifically determines that an amendment or modification shall not be adopted.

[C66, 71, 73, §198.11; C75, 77, 79, 81, §198.10]

90 Acts, ch 1165, §15; 91 Acts, ch 97, §27; 95 Acts, ch 42, §2; 2004 Acts, ch 1082, §10

### **198.11 Inspection, sampling, and analysis.**

1. For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the secretary, upon presenting appropriate credentials, and a written notice to the owner, operator or agent in charge, are authorized:

a. To enter, during normal business hours, any factory, warehouse or establishment within the state in which commercial feeds are manufactured, processed, packed or held for distribution, or to enter any vehicle being used to transport or hold such feed.

b. To inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice regulations established under section 198.7, subsection 4.

2. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

3. If the officer or employee making such inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the officer or employee shall give to the owner, operator or agent in charge a receipt describing the samples obtained.

4. If the owner of any factory, warehouse, or establishment described in subsection 1,

or the owner's agent, refuses to admit the secretary or the secretary's agent to inspect in accordance with subsections 1 and 2, the secretary may obtain from any state court a warrant directing such owner or the owner's agent to submit the premises described in such warrant to inspection.

5. For the purpose of the enforcement of this chapter, the secretary or the secretary's duly designated agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

6. Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.

7. The results of all analyses of official samples shall be forwarded by the secretary to the person named on the label. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within thirty days following receipt of the analysis the secretary shall furnish to the licensee a portion of the sample concerned.

8. The secretary, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in section 198.3, and obtained and analyzed as provided for in subsections 3, 5, and 6.

[C66, 71, 73, §198.10; C75, 77, 79, 81, §198.11]

90 Acts, ch 1165, §16

Referred to in §198.3

#### **198.12 Detained commercial feeds.**

1. When the secretary or the secretary's authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the rules adopted under this chapter, the secretary or agent may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the secretary or the court. The secretary shall release the lot of commercial feed so withdrawn when the provisions and rules have been complied with. If compliance is not obtained within thirty days, the secretary may begin, or upon request of the distributor shall begin, proceedings for condemnation.

2. Any lot of commercial feed not in compliance with said provisions and rules shall be subject to seizure on complaint of the secretary to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this chapter and order the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state, provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this chapter.

[C66, 71, 73, 75, 77, 79, 81, §198.12]

91 Acts, ch 97, §28

Referred to in §198.8

#### **198.13 Penalties.**

1. Any person convicted of violating any of the provisions of this chapter or who shall impede, hinder or otherwise prevent, or attempt to prevent, said secretary or the secretary's authorized agent in performance of that person's duty in connection with the provisions of this chapter, shall be guilty of a simple misdemeanor.

2. Nothing in this chapter shall be construed as requiring the secretary or the secretary's representative to:

- a. Report for prosecution.
- b. Institute seizure proceedings.
- c. Issue a withdrawal from distribution order, as a result of minor violations of the chapter,

or when the secretary or representative believes the public interest will best be served by suitable notice of warning in writing.

3. It shall be the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the secretary reports a violation for such prosecution, an opportunity shall be given the distributor to present the distributor's view to the secretary.

4. The secretary may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies at law. If granted, the injunction shall be issued without bond.

5. Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter may within forty-five days thereafter bring action in the district court for judicial review of such actions. The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies, or in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs or prohibitory or mandatory injunctions.

6. Any person who uses to the person's own advantage, or reveals to other than the secretary, or officers of the department or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this chapter, concerning any method, records, formulations or processes which as a trade secret is entitled to protection, is guilty of a serious misdemeanor. This prohibition shall not be deemed as prohibiting the secretary, or the secretary's duly authorized agent, from exchanging information of a regulatory nature with appointed officials of the United States government, or of other states, who are similarly prohibited by law from revealing this information.

[C66, 71, 73, 75, 77, 79, 81, §198.13]

Referred to in §198.8, 331.756(37)

#### **198.14 Cooperation with other entities.**

The secretary may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this chapter.

[C75, 77, 79, 81, §198.14]

#### **198.15 Publication.**

The secretary shall publish at least annually, in forms the secretary deems proper, information concerning the sales of commercial feeds, together with data on their production and use as the secretary considers advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed on the label. However, the information concerning production and use of commercial feed shall not disclose the operations of any person.

[C66, 71, 73, §198.14; C75, 77, 79, 81, §198.15]

91 Acts, ch 97, §29

## CHAPTER 199

### AGRICULTURAL SEEDS

Referred to in §203.1

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#### 199.1 Definitions.

For the purpose of this chapter or as used in labeling of seed:

1. “*Advertisement*” means all representations, other than those on the label, relating to seed within the scope of this chapter.

2. “*Agricultural seed*” means grass, forage, cereal, oil, fiber, and any other kind of crop seed commonly recognized within this state as agricultural seed, lawn seed, vegetable seed, or seed mixtures. Agricultural seed may include any additional seed the secretary designates by rules.

3. “*Certifying agency*” means an agency authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States secretary of agriculture to assure genetic purity and identity of the seed certified, or an agency of a foreign country determined by the United States secretary of agriculture to adhere to the procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies in the United States.

4. “*Coated seed*” means seed that has been encapsulated or covered with a substance other than those defined as “*inoculated seed*” or “*treated seed*”. Pelleted seed is a subclass of “*coated seed*”.

5. “*Conditioning*” means cleaning to remove chaff, sterile florets, immature seed, weed seed, inert matter, and other crop seed; scarifying; blending to obtain uniform quality; or any other operation which may change the purity or germination of the seed and require retesting to determine the quality of the seed.

6. “*Cultivar*” or “*variety*” means a cultivated subdivision of a kind of plant that may be characterized by growth habits, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind.

7. “*Hybrid*” means the first generation seed produced by controlled pollination of two inbred lines to produce a single cross; an inbred line and a single cross of two unrelated inbred lines to produce a three-way cross; an inbred line and a single cross of two related lines to produce a modified single cross; two single crosses to produce a double cross; an inbred line or a single cross with an open-pollinated or synthetic cultivar to produce a modified cultivar cross; or a cross of two open-pollinated or synthetic cultivars to produce a cultivar cross. The second or subsequent generation from such crosses are not hybrids. Hybrid designations shall be treated as cultivar names.

8. “*Inoculant for leguminous plants*” means a bacterial culture, or material containing bacteria, that is represented as causing the formation of nodules and aiding the growth of leguminous plants by the fixation of nitrogen.

9. “*Inoculated seed*” means seed to which has been added a substance containing the cells, spores or mycelia of microorganisms for which a claim is made.

10. “*Kind*” means one or more related species or subspecies which singly or collectively are known by one common name.

11. “*Labeling*” means all labels and other written, printed, or graphic representations,

in any form, accompanying and pertaining to seed, whether in bulk or in containers, and includes invoices.

12. *a.* “Local governmental entity” means any political subdivision, or any state authority which is not any of the following:

(1) The general assembly.

(2) A principal central department as enumerated in section 7E.5, or a unit of a principal central department.

*b.* “Local governmental entity” includes but is not limited to a county, special district, township, or city as provided in Title IX of this Code.

13. “Local legislation” means any ordinance, motion, resolution, amendment, regulation, or rule adopted by a local governmental entity.

14. “Mixture” or “blend” means a combination of seed of more than one kind or variety if present in excess of five percent of the whole.

15. “Multiline cultivar” means a planned combination of two or more near-isogenic lines of a normally self-fertilizing kind of crop.

16. “Noxious weed seed” shall be divided into two classes, “primary noxious weed seed” and “secondary noxious weed seed” which are defined in paragraphs “a” and “b” of this subsection. The secretary, upon the recommendation of the dean of agriculture, Iowa state university of science and technology, shall adopt as a rule, after public hearing, pursuant to chapter 17A, the list of seed classified as “primary noxious weed seed” and “secondary noxious weed seed”.

*a.* “Primary noxious weed seed” are the seed of perennial weeds that reproduce by seed and by underground roots or stems and which, when established, are highly destructive and difficult to control in this state by good cultural practices. For the purpose of this chapter and the sale of seed, primary noxious weeds in this state are the seeds of:

(1) Quack grass — *Agropyron repens* (L.) Beauv.

(2) Canada thistle — *Cirsium arvense* (L.) Scop.

(3) Perennial sow thistle — *Sonchus arvensis* L.

(4) Perennial pepper grass (hoary cress) — *Cardaria draba* (L.) Desv.

(5) European morning-glory (field bindweed) — *Convolvulus arvensis* L.

(6) Horse nettle — *Solanum carolinense* L.

(7) Leafy spurge — *Euphorbia esula* L.

(8) Russian knapweed — *Centaurea repens* L.

*b.* “Secondary noxious weed seed” are the seed of weeds that are very objectionable in fields, lawns, or gardens in this state, but can be controlled by good cultural practices. For the purpose of this chapter and the sale of seed, the secondary noxious weed seeds in this state are the seeds of:

(1) Wild carrot — *Daucus carota* L.

(2) Sour dock (curly dock) — *Rumex crispus* L.

(3) Smooth dock — *Rumex altissimus* Wood.

(4) Sheep sorrel (red sorrel) — *Rumex acetosella* L.

(5) Butterprint (velvet leaf) — *Abutilon theophrasti* Medic.

(6) Mustards — *Brassica juncea* (L.) Coss., *Sinapis arvensis* L. and *B. nigra* (L.) Koch.

(7) Cocklebur — *Xanthium strumarium* L.

(8) Buckhorn — *Plantago lanceolata* L.

(9) Dodders — *Cuscuta* species.

(10) Giant foxtail — *Setaria faberii* Herrm.

(11) Poison hemlock — *Conium maculatum*.

(12) Wild sunflower — Wild strain of *Helianthus annuus* (L.).

(13) Puncture vine — *Tribulus terrestris*.

17. “Permit holder” is a person who has obtained a permit from the department as required under sections 199.15 and 199.16.

18. “Person” means an individual, partnership, corporation, company, society, or association.

19. “Purity” means the pure seed percentage by weight, exclusive of inert matter and of

other agricultural or weed seed which are distinguishable by their appearance from the crop seed in question.

20. “*Record*” means all information relating to a shipment of agricultural seed and includes a file sample of each lot of seed.

21. “*Registered seed technologist*” is a person who has attained registered membership in the society of commercial seed technologists through qualifying tests and experience as required by this society.

22. “*Tolerance*” means the allowable deviation from any figure used on a label to designate the percentage of any component or the number of seeds given for the lot in question and is based on the law of normal variation from a mean. The secretary shall prepare tables of tolerances allowable in the enforcement of this chapter and may be guided in the preparation by the regulations under the Federal Seed Act, 7 C.F.R. § 201.59 et seq.

23. “*Treated seed*” means agricultural seed that has been given an application of a substance, or subjected to a procedure, for which a claim is made or which is designed to reduce, control or repel disease organisms, insects, or other pests which attack seed or seedlings.

24. “*Vegetable seed*” means the crops which are grown in gardens or truck farms and are generally sold under the name of vegetable or herb seed in this state.

25. “*Weed seed*” means the seed of all plants listed as weeds in this chapter or listed as weeds in the rules of the department or commonly recognized as weeds in this state.

26. The Iowa secretary of agriculture shall, by rule, define the terms “*breeder*”, “*foundation*”, “*registered*”, “*certified*”, and “*inbred*”, as used in this chapter.

[S13, §5077-a14 – a17; C24, 27, 31, §3127, 3128; C35, §3137-e1; C39, §3127, 3128, 3137.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.1, 199.5; 82 Acts, ch 1191, §1]

2005 Acts, ch 21, §2; 2009 Acts, ch 41, §211

Referred to in §199.5, 570A.1, 717A.1

Weeds, chapter 317

Further definitions, see §189.1

### 199.2 Dean of agriculture as advisor.

The dean of agriculture of Iowa state university of science and technology or the dean's designee shall be the technical advisor to the secretary in the administration of this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.2; 82 Acts, ch 1191, §2]

### 199.3 Labeling of seed.

Each container of agricultural or vegetable seed which is sold, offered for sale, exposed for sale, or transported within this state shall be labeled according to the following schedule:

1. Seed for sowing purposes shall be labeled as follows:

a. Agricultural or vegetable seed that is treated, inoculated, or coated shall contain a word or statement indicating that the treatment, inoculation, or coating has been done. A separate label may be used.

b. If treated, the label shall indicate the commonly accepted chemical or abbreviated chemical name of the applied substance or substances or a description of the type and purpose of procedure used. If the substance in the amount present with the seed is harmful to human or vertebrate animals, the label shall bear a caution statement such as “Do not use for food, feed, or oil purposes”. In addition, for highly toxic substances, a poison statement or symbol shall be shown on the label.

c. If the seed is inoculated, the label shall indicate the month and year beyond which the inoculant is not claimed to be effective.

d. If the seed is coated, the label shall show the percentage by weight in the container of pure seed, inert matter, coating material, other crop seed, and weed seed. The percentage of germination shall be labeled on the basis of a determination made on at least four hundred pellets or capsules, whether or not they contain seed.

e. All seed in package or wrapped form which are required to be labeled, unless otherwise provided, shall conform to the requirements of sections 189.9 and 189.11.

2. Except for seed mixtures for lawn or turf purposes, agricultural seed shall bear a label indicating:

a. The name of the kind or kind and variety for each agricultural seed present in excess of five percent of the whole and the percentage by weight of each. If the variety of those kinds generally labeled as to variety is not stated, the label shall show the name of the kind and the words, "variety not stated". Hybrids shall be labeled as hybrids. Seed shall not be labeled or advertised under a trademark or brand name in a manner that may create the impression that the trademark or brand name is a variety name.

b. Lot number or other lot identification.

c. State or foreign country of origin, if known, of alfalfa and red clover. If the origin is unknown, the fact shall be stated.

d. Percentage by weight of all weed seed.

e. The name and rate of occurrence per unit of weight of each kind of secondary noxious weed seed present.

f. Percentage by weight of agricultural seed which may be designated as "other crop seed" other than those required to be named on the label.

g. Percentage by weight of inert matter.

h. (1) For each named agricultural seed:

(a) Percentage of germination, exclusive of hard seed.

(b) Percentage of hard seed, if present.

(c) The calendar month and year the test was completed to determine the percentages.

(2) Following (a) and (b), the "total germination and hard seed" may be stated as such, if desired.

i. Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this state.

3. For seed mixtures for lawn or turf purposes, the label shall indicate:

a. The word "mixed" or "mixture" along with the name of the mixture.

b. The heading "pure seed" and "germination" or "germ" where appropriate.

c. Commonly accepted name of kind or kind and variety of each turf seed component in excess of five percent of the whole, and the percentage by weight of pure seed in order of its predominance and in columnar form.

d. Name and percentage by weight of other agricultural seed than those required to be named on the label which shall be designated as "other crop seed". If the mixture contains no "other crop seed" that fact may be indicated by the words "contains no other crop seed".

e. Percentage by weight of inert matter.

f. Percentage by weight of all weed seed. Maximum weed seed content not to exceed one percent by weight.

g. The name and rate of occurrence per unit of weight of each kind of secondary noxious weed seed present.

h. For each turf seed named under paragraph "c":

(1) Percentage of germination, exclusive of hard seed.

(2) Percentage of hard seed, if present.

(3) Calendar month and year the test was completed to determine such percentages. The oldest current test date applicable to any single kind in the mixture shall appear on the label.

i. Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within the state.

4. The labeling requirements for vegetable seed sold from containers of more than one pound shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser. Packets of vegetable seed prepared for use in home gardens or household plantings or vegetable seed in preplanted containers, mats, tapes, or other planting devices, shall bear labels with the following information:

a. Name of kind and variety of seed.

b. Lot identification.

c. The year for which the seed was packed for sale or the percentage of germination and the calendar month and year the test to determine such percentage was completed.

d. Name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within the state.

e. For seed which germinate less than the standard last established by the secretary in rules adopted under chapter 17A:

- (1) Percentage of germination, exclusive of hard seed.
- (2) Percentage of hard seed, if present.
- (3) The words “below standard” in not less than eight point type.

f. For seed placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seed from the medium, mat, tape, or device, a statement to indicate the minimum number of seed in the container.

g. The last date on which the variety of seed will normally germinate according to standards established by rules adopted by the department.

5. All other vegetable seed containers shall be labeled, indicating:

a. The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance.

b. Lot number or other lot identification.

c. (1) For each named vegetable seed:

(a) Percentage germination exclusive of hard seed.

(b) Percentage of hard seed, if present.

(c) The calendar month and year the test was completed to determine such percentages.

(2) Following (a) and (b), the “total germination and hard seed” may be stated as such, if desired.

d. Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within the state.

6. Seed sold on or from the farm, which is exempt from the permit requirements by section 199.15, shall be labeled on the basis of tests performed by the Iowa state university of science and technology seed laboratory, department of agriculture and land stewardship seed laboratory, or a commercial seed laboratory personally supervised by a registered seed technologist. Tests for labeling shall be as provided in section 199.10.

[S13, §5077-a6, -a18, -a19, -a21; C24, 27, 31, 35, 39, §3129, 3130, 3131, 3132; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.3; 82 Acts, ch 1191, §3]

92 Acts, ch 1239, §34; 2009 Acts, ch 41, §212, 213

Referred to in §199.4, 199.9

#### **199.4 Sales from bulk.**

In case agricultural or vegetable seed is offered or exposed for sale in bulk or sold from bulk, the information required under section 199.3 may be supplied by a placard conspicuously displayed with the several required items thereon or a printed or written statement to be furnished to any purchaser of the seed.

[S13, §5077-a6; C24, 27, 31, 35, 39, §3133; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.4; 82 Acts, ch 1191, §4]

#### **199.5 Hybrid corn.**

It is unlawful for any person to sell, offer or expose for sale, or falsely mark or tag, within the state any seed corn as hybrid unless it falls within the definition of hybrid in section 199.1.

[C35, §3137-e1; C39, §3137.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.5; 82 Acts, ch 1191, §5]

#### **199.6 Inoculant for legumes.**

The container of any inoculant for leguminous plants which is sold, offered for sale, or exposed for sale within the state shall bear a label giving in the English language in legible letters the following information:

1. The kind or kinds of leguminous plants for which the contents are to be used.
2. The quantity of seed to which the contents are to be applied.
3. An expiry date after which the inoculant might be ineffective.
4. The name and place of business of the manufacturer or laboratory of origin, or

alternately of the vendor only, if the vendor accepts responsibility for the accuracy of the declarations made in subsections 1, 2, and 3 of this section.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.6]

#### **199.7 Certified seed.**

1. The classes of certified seed are breeder, foundation, registered, and certified and shall be recognized by the certifying agency.

2. It shall be unlawful for any person to sell, offer for sale, or expose for sale in the state:

a. Any agricultural seed, including seed potatoes, as a recognized class of certified seed unless:

(1) Such seed has been certified by a duly constituted state authority or state association recognized by the Iowa secretary of agriculture.

(2) Each container bears an official label approved by the certifying agency stating that the seed has met the certification requirements established by the certifying agency.

(3) Each container of the certified class of certified seed bears a label blue in color with the word "certified" thereon.

(4) Each container of the foundation and registered classes of certified seed bears a label with a color or colors approved by the certifying agency.

b. Any agricultural seed, including seed potatoes, with a blue label unless such seed is a class of certified seed.

[C35, §3137-g1, -g2; C39, §3137.3, 3137.4; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.7; 82 Acts, ch 1191, §6]

2009 Acts, ch 41, §263

#### **199.8 Prohibited acts.**

1. It is unlawful for a person to sell, transport, offer for sale, expose for sale, or advertise an agricultural or vegetable seed:

a. Unless the test to determine the percentage of germination as required by this chapter has been completed within nine months, excluding the month of the test, immediately prior to selling, transporting, offering, exposing, or advertising for sale. A retest is not required for seed in hermetically sealed containers or packages provided they have not reached the thirty-six month expiration date.

b. Not labeled in accordance with the provisions of this chapter, or having a false or misleading label.

c. For which there has been false or misleading advertising.

d. Consisting of or containing primary noxious weed seed, subject to recognized tolerances.

e. Consisting of or containing secondary noxious weed seed per weight unit in excess of the number prescribed by rules adopted under this chapter, or in excess of the number declared on the label attached to the container of the seed or associated with the seed.

f. Containing more than one and one-half percent by weight of all weed seed.

g. If any labeling, advertising, or other representation subject to this chapter represents the seed to be certified seed or any class thereof, unless:

(1) It has been determined by a seed certifying agency that the seed conforms to standards of varietal purity and identity as to kind in compliance with the rules and regulations of the agency.

(2) The seed bears an official label issued for the seed by a seed certifying agency stating that the seed is of a specified class and a specified kind or variety.

h. Labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which a United States certificate of plant variety protection under the Plant Variety Protection Act, 7 U.S.C. § 2321 et seq., specifies sale only as a class of certified seed. Seed from a certified lot may be labeled as to variety name and used in a blend, by or with the approval of the owner of the variety.

2. It is unlawful for a person to:

a. Detach, alter, deface, or destroy a label provided for in this chapter or the rules adopted

under this chapter, or to alter or substitute seed in a manner that may defeat the purpose of this chapter.

b. Disseminate false or misleading advertisements concerning seed subject to this chapter.

c. Hinder or obstruct in any way an authorized person in the performance of duties under this chapter.

d. Fail to comply with a “stop sale” order or to move or otherwise handle or dispose of any lot of seed held under a “stop sale” order or tags attached thereto, except with express permission of the enforcing officer, and for the purpose specified thereby.

e. Use the word “trace” as a substitute for any statement which is required.

f. Use the word “type” in labeling in connection with the name of an agricultural seed variety.

3. It is unlawful for a person to sell, transport, offer for sale, expose for sale, or advertise screenings of any agricultural seed subject to this chapter, unless it is stated on the label if in containers or on the invoice if in bulk, that they are not intended for seeding purposes. For the purpose of this subsection, “screenings” includes chaff, empty florets, immature seed, weed seed, inert matter, and other materials removed by cleaning from any agricultural seed subject to this chapter.

[S13, §5077-a15; C24, 27, 31, 35, 39, §3137; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.8; 82 Acts, ch 1191, §7]

Referred to in §199.9, 199.12

#### **199.9 Exemptions.**

1. Sections 199.3 and 199.8 do not apply to:

a. Seed or grain not intended for sowing purposes.

b. Seed in storage in, or consigned to, or for sale to, a seed cleaning or conditioning establishment for cleaning or conditioning; provided that any labeling or other representation which is made with respect to the unclean or unconditioned seed is subject to this chapter.

c. A carrier in respect to seed transported or delivered for transportation in the ordinary course of its business as a carrier provided that the carrier is not engaged in producing, conditioning, or marketing seed, and subject to this chapter.

2. A person is not subject to the penalties of this chapter for having sold, offered or exposed for sale in this state any agricultural seeds which were incorrectly labeled or represented as to kind, species, variety, or origin when those seeds cannot be identified by examination, unless the person has failed to obtain an invoice or genuine grower’s declaration or other labeling information and to take other precautions as reasonable to ensure the identity. A genuine grower’s declaration of variety shall affirm that the grower holds records of proof concerning parent seed such as invoices and labels.

[S13, §5077-a20; C24, 27, 31, 35, 39, §3136; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.9; 82 Acts, ch 1191, §8]

#### **199.10 Testing methods — cooperation of facilities.**

1. *Testing methods when seed is for sale.* Seed lots of all kinds of agricultural seed intended for sale in this state shall be tested in accordance with the association of official seed analysts’ rules for testing seed or the regulations under the Federal Seed Act. The tests required shall be:

a. Purity analysis.

b. Noxious weed examination.

c. Germination.

2. *Charges for testing.* Charges for seed testing by the Iowa state university or department of agriculture and land stewardship seed laboratory shall be determined by the Iowa state university laboratory. Separate fee schedules shall be published for:

a. Tests for seed dealers, permit holders, and farmers who plan to sell seed.

b. Tests for out-of-state persons.

3. *Cooperation between the Iowa state university and the department of agriculture and*

*land stewardship.* To furnish farmers and seed dealers with information as to seed quality and guide them in the proper labeling of seed for sale, these organizations shall:

a. Integrate seed testing so as to avoid unnecessary duplication of personnel and equipment. The department of agriculture and land stewardship seed laboratory shall be primarily concerned with seed testing for seed law enforcement purposes. The Iowa state university seed laboratory shall promote seed education and research and shall conduct service testing for farmers and seed dealers.

b. Exchange information which will be mutually beneficial to both agencies in matters pertaining to agricultural seed.

c. Guide seed testing by all individuals or organizations so as to promote uniformity of seed testing in Iowa.

[S13, §5077-a12; C24, 27, 31, 35, 39, §3135; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.10; 82 Acts, ch 1191, §9 – 11]

85 Acts, ch 67, §21, 22

Referred to in §199.3

### **199.11 Authority of the department.**

1. For the purpose of carrying out the provisions of this chapter, the department shall do all of the following:

a. Sample, inspect, analyze, and test agricultural seed, if the agricultural seed is transported, sold, offered, or exposed for sale within this state for sowing. The department shall perform these duties at a time and place and to an extent necessary to determine whether the agricultural seed is in compliance with this chapter. The department shall promptly notify the person who transported, sold, offered, or exposed the seed for sale, of a violation.

b. Adopt rules governing methods of sampling, inspecting, analyzing, testing, and examining agricultural seed. The rules shall include tolerances to be followed in the administration of this chapter, which shall be in general accord with officially prescribed practice in interstate commerce under the Federal Seed Act and other rules or regulations necessary for the efficient enforcement of this chapter.

2. For the purpose of carrying out the provisions of this chapter, the department may:

a. Enter upon public or private premises during regular business hours in order to have access to commercial seed, subject to this chapter and departmental rules.

b. Issue and enforce a written or printed “*stop sale*” order to the owner or custodian of any lot of agricultural seed which the department believes is in violation of this chapter or departmental rules. The order shall prohibit further sale of the seed until the department has evidence of compliance. However, the owner or custodian of the seed shall be permitted to remove the seed from a salesroom open to the public. Judicial review of the order may be sought in accordance with chapter 17A. However, notwithstanding chapter 17A, petitions for judicial review may be filed in the district court. This subsection does not limit the right of the department to proceed as authorized by other sections of this chapter.

c. Establish and maintain or make provision for seed testing facilities essential to the enforcement of this chapter. The department may employ qualified persons, and incur expenses necessary to comply with these provisions.

d. Cooperate with the United States department of agriculture in seed law enforcement.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.11]

92 Acts, ch 1239, §35; 93 Acts, ch 40, §1, 2

### **199.12 Seizure of unlawful seed.**

Upon the recommendation of the secretary or the secretary’s duly authorized agents, the court of competent jurisdiction in the area in which the seed is located shall cause the seizure and subsequent denaturing, conditioning, or destruction to prevent the use for sowing purposes of any lot of agricultural seed found to be prohibited from sale as set forth in section 199.8, provided that in no instance shall the denaturing, conditioning, or

destruction be ordered without first having given the claimant of the seed an opportunity to apply to the court for the release of the seed.

[C35, §3137-g3; C39, §3137.5; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.12; 82 Acts, ch 1191, §12]

**199.13 Penalty.**

A violation of this chapter is a simple misdemeanor. The department may institute criminal or civil proceedings in a court of competent jurisdiction to enforce this chapter. When in the performance of the secretary’s duties in enforcing this chapter the secretary applies to a court for a temporary or permanent injunction restraining a person from violating or continuing to violate any of the provisions of this chapter or rules adopted under this chapter, the injunction is to be issued without bond and the person restrained by the injunction shall pay the costs made necessary by the procedure.

[C35, §3137-e2; C39, §3137.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.13; 82 Acts, ch 1191, §13]

**199.13A Local legislation — prohibition.**

1. The provisions of this chapter and rules adopted by the department pursuant to this chapter shall preempt local legislation adopted by a local governmental entity relating to the production, use, advertising, sale, distribution, storage, transportation, formulation, packaging, labeling, certification, or registration of an agricultural seed. A local governmental entity shall not adopt or continue in effect such local legislation regardless of whether a statute or a rule adopted by the department specifically preempts the local legislation. Local legislation in violation of this section is void and unenforceable.

2. This section does not apply to any of the following:

a. Local legislation of general applicability to commercial activity.

b. A motion or resolution that provides for any activity relating to agricultural seed which is owned by the local governmental entity and which is kept or used on land held by the local governmental entity.

2005 Acts, ch 21, §3

**199.14 Enforcement.**

It shall be the duty of the secretary of agriculture, and the secretary’s agents, to enforce this chapter and of the county attorneys and of the attorney general of the state to cooperate with the secretary in the enforcement of this chapter.

[C35, §3137-g4; C39, §3137.6; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.14]

2012 Acts, ch 1023, §157

Referred to in §331.756(38)

**199.15 Permit — fee — fraud.**

1. A person shall not sell, distribute, advertise, solicit orders for, offer or expose for sale, agricultural or vegetable seed without first obtaining from the department a permit to engage in the business. A permit is not required of persons selling seeds which have been packed and distributed by a person holding and having in force a permit. A permit is not required of persons selling or advertising seed of their own production, provided that the seed is stored or delivered to a purchaser only on or from the farm or premises where grown.

2. a. The fee for a new permit is ten dollars and the fee for a renewed permit is based on the gross annual sales of seeds in Iowa during the previous twelve-month period under the permit holder’s label and all permits expire on the first day of July following date of issue.

b. Permits shall be issued subject to the following fee schedule:

Gross sales of seeds	Fee
Not more than \$ 25,000	\$30
Over \$25,000 but not exceeding 50,000	60
Over \$50,000 but not exceeding 100,000	90
Over \$100,000 but not exceeding 200,000	120

c. For each additional increment of one hundred thousand dollars of sales in Iowa the fee shall increase by thirty dollars. The fee shall not exceed one thousand five hundred dollars for a permit holder.

3. After due notice given at least ten days prior to a date of hearing fixed by the secretary, the department may revoke or refuse to renew a permit issued under this section if a violation of this chapter or if intent to defraud is established. The failure to fulfill a contract to repurchase the seed crop produced from any agricultural seed, if the crop meets the requirements set forth in the contract and the standards specified in this chapter, is prima facie evidence of intent to defraud the purchaser at the time of entering into the contract. However, this does not apply when seed stock is furnished by the contractor to the grower at no cost.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §199.15; 82 Acts, ch 1191, §14]  
 88 Acts, ch 1272, §20; 2009 Acts, ch 41, §214  
 Referred to in §199.1, 199.3

**199.16 Permit holder’s bond.**

It is unlawful for the permit holder to enter into a contract with a grower who purchases agricultural seed in which the permit holder agrees to repurchase the seed crop produced from the purchased seed at a price in excess of the current market price, unless the permit holder has on file with the department a bond, in a penal sum of twenty-five thousand dollars running to the state of Iowa, with sureties approved by the secretary, for the use and benefit of a person holding a repurchase contract who might have a cause of action of any nature arising from the purchase or contract. However, the aggregate liability of the surety to all purchasers of seed holding repurchase contracts shall not exceed the sum of the bond.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §199.16; 82 Acts, ch 1191, §15]  
 85 Acts, ch 84, §1  
 Referred to in §199.1

**199.17 Records and seed samples.**

A person whose name appears on the label as handling agricultural or vegetable seed subject to this chapter shall keep for a period of two years complete records of each lot of agricultural or vegetable seed handled and shall keep for one year a file sample of each lot of seed after final disposition of the lot. The records and samples pertaining to the shipments involved shall be accessible for inspection by the department during the customary business hours.

[82 Acts, ch 1191, §16]

**CHAPTER 200**

**FERTILIZERS AND SOIL CONDITIONERS**

Referred to in §200A.2, 455B.390

200.1	Title.	200.14	Rules.
200.2	Enforcing official.	200.15	Refusal to register, or cancellation of registration and licenses.
200.3	Definitions of words and terms.	200.16	“Stop sale” orders.
200.4	Licenses.	200.17	Seizure, condemnation and sale.
200.5	Registration.	200.17A	Ammonium nitrate security.
200.6	Labeling.	200.18	Violations.
200.7	Fertilizer-pesticide mixture.	200.19	Exchanges between manufacturers.
200.8	Inspection fees.	200.20	Phosphoric acid, nitrogen, and potash requirements.
200.9	Fertilizer fees.	200.21	Compliance — a defense to certain nuisance actions.
200.10	Inspection, sampling, and analysis.	200.22	Local legislation — prohibition.
200.11	Filler material.		
200.12	False or misleading statements.		
200.13	Reports and publications.		

**200.1 Title.**

This chapter shall be known and may be cited by the short title of “Iowa Fertilizer Law”.  
 [C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §200.1]

**200.2 Enforcing official.**

This chapter shall be administered by the secretary of agriculture, hereinafter referred to as the secretary.  
 [C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §200.2]

**200.3 Definitions of words and terms.**

When used in this chapter:

1. “*Ammonium nitrate*” means a compound that is chiefly composed of ammonium salt of nitric acid which contains not less than thirty-three percent nitrogen, one-half of which is in the ammonium form and one-half in the nitrate form.

2. The term “*anhydrous ammonia*” means the compound formed by the combination of two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume.

3. “*Anhydrous ammonia plant*” means a facility used for the manufacture or distribution of the compound formed by the combination of two gaseous elements, nitrogen and hydrogen, in the proportion of one part nitrogen to three parts hydrogen by volume.

4. The term “*brand*” means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

5. The term “*bulk fertilizer*” shall mean commercial fertilizer delivered to the purchaser in the solid, liquid, or gaseous state, in a nonpackaged form to which a label cannot be attached.

6. The term “*commercial fertilizer*” includes fertilizer and fertilizer materials and fertilizer-pesticide mixtures.

7. The term “*distributor*” means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer, or who offers for sale, sells, barter, or otherwise distributes commercial fertilizer in this state.

8. “*Established date of operation*” means the date on which an anhydrous ammonia plant commenced operating. If the physical facilities of the plant are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent “established date of operation” established as of the date of commencement of the expanded operations. The commencement of expanded operations does not divest the plant of a previously established date of operation.

9. “*Established date of ownership*” means the date of the recording of an appropriate instrument of title establishing the ownership of real estate.

10. The term “*fertilizer*” means any substance containing one or more recognized plant nutrient which is used for its plant nutrient content and which is designed for use and claimed to have value in promoting plant growth except unmanipulated animal and vegetable manures or calcium and magnesium carbonate materials used primarily for correcting soil acidity.

11. The term “*fertilizer material*” means any substance used as a fertilizer or for compounding a fertilizer containing one or more of the recognized plant nutrients which are used for promoting plant growth or altering plant composition.

12. The term “*grade*” means the percentages of total nitrogen, available phosphorus or P<sub>2</sub>O<sub>5</sub> or both, and soluble potassium or K<sub>2</sub>O or both stated in whole numbers in same terms, order and percentages as in the “*guaranteed analysis*”.

13. *Guaranteed analysis*:

a. (1) The term “*guaranteed analysis*” shall mean the minimum percentage of plant nutrients claimed and reported as Total Nitrogen (N), Available Phosphorus (P) or P<sub>2</sub>O<sub>5</sub> or both, Soluble Potassium (K) or K<sub>2</sub>O or both and in the following form:

Total Nitrogen (N)	.....	percent
Available Phosphorus (P) or P <sub>2</sub> O <sub>5</sub> or both	.....	percent
Soluble Potassium (K) or K <sub>2</sub> O or both	.....	percent

(2) Registration and guarantee of water soluble phosphorus (P) or (P<sub>2</sub>O<sub>5</sub>) shall be permitted.

b. The term “*guaranteed analysis*”, in the form specified in paragraph “a”, includes:

(1) For unacidulated mineral phosphatic materials and basic slag, both total and available phosphorus or P<sub>2</sub>O<sub>5</sub> or both and the degree of fineness. For bone tankage and other organic phosphatic materials, total phosphorus or P<sub>2</sub>O<sub>5</sub> or both.

(2) When any additional plant nutrient elements contained in a substance as identified in subsection 10 of this section, are claimed in writing, they shall be identified in the guarantee, expressed as the element, and shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the association of official agricultural chemists.

14. “*Licensee*” means a person licensed under section 200.4.

15. “*Nuisance*” means public or private nuisance as defined by statute or by the common law.

16. “*Nuisance action or proceeding*” means an action, claim or proceeding brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

17. The term “*official sample*” means any sample of commercial fertilizer taken by the secretary or the secretary’s agent.

18. “*Organic agricultural product*” means the same as defined in section 190C.1.

19. “*Owner*” means the person holding record title to real estate, and includes both legal and equitable interest under recorded real estate contracts.

20. The term “*percent or percentage*” means the percentage by weight.

21. The term “*person*” includes individual, partnership, association, firm, and corporation.

22. The term “*pesticide*” as used in this chapter means insecticides, miticides, nematodes, fungicides, herbicides and any other substance used in pest control.

23. “*Rule*” means a rule as defined in section 17A.2 which materially affects the operation of an anhydrous ammonia plant. The term includes a rule which was in effect prior to July 1, 1984.

24. The term “*sell*” or “*sale*” includes exchange.

25. A “*soil conditioner*” is any substance which when added to the soil or applied to plants will produce a favorable growth, yield or quality of crop or soil flora or fauna or other soil characteristics, other than a fertilizer, recognized pesticide, unmanipulated animal and vegetable manures or calcium and magnesium carbonate materials used primarily for correcting soil acidity.

26. A “*specialty fertilizer*” is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries and may include commercial fertilizers used for research or experimental purposes.

27. The term “*ton*” means a net weight of two thousand pounds avoirdupois.

28. The term “*unmanipulated manures*” means any substances composed primarily of excreta, plant remains, or mixtures of such substances which have not been processed in any manner.

29. Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §200.3]

84 Acts, ch 1269, §1; 2000 Acts, ch 1082, §1; 2005 Acts, ch 73, §1; 2009 Acts, ch 41, §263

Referred to in §200.5, 200.10, 200.12, 202.1, 570A.1, 579B.1

Further definitions, see §189.1

#### **200.4 Licenses.**

1. Any person who manufactures, mixes, blends, mixes to customers order, offers for sale, sells, or distributes any fertilizer or soil conditioner in Iowa must first obtain a license from the secretary of agriculture and shall pay a ten-dollar license fee for each place of manufacture or distribution from which fertilizer or soil conditioner products are sold or distributed in Iowa. Such license fee shall be paid annually on July 1 of each year.

2. Said licensee shall at all times produce an intimate and uniform mixture of fertilizers

or soil conditioners. When two or more fertilizer materials are delivered in the same load, they shall be thoroughly and uniformly mixed unless they are in separate compartments.

[C46, 50, 54, §200.2, 200.4, 200.6; C58, 62, §200.6; C66, 71, 73, 75, 77, 79, 81, §200.4]

87 Acts, ch 225, §205

Referred to in §200.3, 200.7, 200.9, 200.18

### **200.5 Registration.**

1. Each brand and grade of commercial fertilizer and each soil conditioner shall be registered before being offered for sale, sold or otherwise distributed in this state; except that a commercial fertilizer formulated according to special specifications furnished by a consumer to fill the consumer's order shall not be required to be registered, but shall be labeled as provided in subsection 3 of section 200.6. The application for registration shall be submitted to the secretary on forms furnished by the secretary and shall be accompanied by a label setting forth the guaranteed analysis which shall be the same as that appearing on the registered product.

2. All registration will be permanent, provided, however, that the secretary may request a listing of products to be currently manufactured. The application shall include the following information in the following order:

- a. Net weight, if sold in packaged form.
- b. Name and address of the registrant.
- c. Name of product.
- d. Brand.
- e. Grade.
- f. Guaranteed analysis.

3. In addition to the information required in subsection 2 of this section, applications for registration of soil conditioners must include the name or chemical designation and percentage of content of each of the active ingredients.

4. The secretary is authorized, after public hearing, following due notice, to adopt rules regulating the labeling and registration of specialty fertilizers and other fertilizer products, when necessary in the secretary's opinion. The secretary may require any reasonable information in addition to subsection 13 of section 200.3, which is necessary and useful to the purchasers of specialty fertilizers of this state and to promote uniformity among states.

5. The secretary is authorized after public hearing, following due notice, to establish minimum acceptable levels of trace and secondary elements recognized as effective to aid crops produced in Iowa and to require such warning statements as may be deemed necessary to prevent injury to crops.

6. The secretary, whenever the secretary deems it necessary in the administration of this chapter, may require the submission of additional data about any fertilizer or product to support the claims made for it. If it appears to the secretary that the composition of the article is such as to warrant the claims made for it, and if the article, its labeling and other material required to be submitted, comply with the requirements of this chapter, the secretary shall register the product.

7. If it does not appear to the secretary that the article is such as to warrant the proposed claims for it, or if the article and its labeling and other material required to be submitted does not comply with the provision of this chapter, the secretary shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fails to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections before resubmitting the label.

8. It shall be the responsibility of the registrant to submit satisfactory evidence of favorable effects and safety of the product.

9. A distributor shall not be required to register any brand and grade of commercial fertilizer which is already registered under this chapter by another person.

10. The advisory committee created in section 206.23 shall advise and assist the secretary

on the registration of a product of commercial fertilizer or soil conditioner under the provisions of this chapter.

[S13, §2528-f, -f1; C24, 27, 31, 35, 39, §3139 – 3141; C46, 50, 54, 58, 62, §200.4; C66, 71, 73, 75, 77, 79, 81, §200.5]

Referred to in §200.6, 200.13

### **200.6 Labeling.**

1. Any commercial fertilizer offered for sale or sold or distributed in this state in bags, or other containers, shall have placed on or affixed to the container in legibly written or printed form, the information required by subsection 2 of section 200.5; either on tags affixed to the end of the package or directly on the package.

2. If distributed in bulk, the shipment must be accompanied by a written or printed statement giving the purchaser's name and address in addition to the labeling requirement set forth in subsection 2 of section 200.5.

3. A commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis, and the name and address of the distributor and may show the net weight and guaranteed analysis of each of the fertilizer materials or soil conditioners used. It is the responsibility of the distributor to mix these materials uniformly and intimately so that when sampled in the prescribed manner the resulting analysis would meet the guarantee.

4. All bulk bins or intermediate storage of bulk commercial fertilizer where being offered for sale or distributed direct to the consumer shall be labeled showing brand, name and grade of product.

5. All fertilizers distributed or stored in bulk, unless in the manufacturers authorized containers shall be labeled as the responsibility of the possessor.

6. Soil conditioners shall be labeled in accordance with subsection 1 of this section and in addition shall show the name or chemical designation and content or the active ingredients.

[S13, §2528-f; C24, 27, 31, 35, 39, §3142; C46, 50, 54, 58, 62, §200.5; C66, 71, 73, 75, 77, 79, 81, §200.6]

Referred to in §200.5, 200.13

### **200.7 Fertilizer-pesticide mixture.**

Only those persons licensed under section 200.4 shall be permitted to add pesticides to commercial fertilizers. These persons shall at all times produce a uniform mixture of fertilizer and pesticide and shall register and label their product in compliance with both chapter 206 and this chapter.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §200.7]

2001 Acts, ch 24, §36

### **200.8 Inspection fees.**

1. a. There shall be paid by the licensee to the secretary for all commercial fertilizers and soil conditioners sold, or distributed in this state, an inspection fee to be fixed annually by the secretary of agriculture at not more than twenty cents per ton. Sales for manufacturing purposes only are hereby exempted from fees but must still be reported showing manufacturer who purchased same. Payment of said inspection fee by any licensee shall exempt all other persons, firms or corporations from the payment thereof.

b. On individual packages of specialty fertilizer containing twenty-five pounds or less, there shall be paid by the manufacturer in lieu of the semiannual inspection fee as set forth in this chapter, an annual registration and inspection fee of one hundred dollars for each brand and grade sold or distributed in the state. In the event that any manufacturer sells specialty fertilizer in packages of twenty-five pounds or less and also in packages of more than twenty-five pounds, this annual registration and inspection fee shall apply only to that portion sold in packages of twenty-five pounds or less, and that portion sold in packages of more than twenty-five pounds shall be subject to the same inspection fee as fixed by the secretary of agriculture as provided in this chapter.

c. Any person other than a manufacturer who annually offers for sale, sells, or distributes specialty fertilizer in the amount of four thousand pounds or more or applies specialty

fertilizer for compensation shall pay an annual inspection fee of thirty dollars in lieu of the semiannual inspection fee as set forth in this chapter.

2. Every licensee and any person required to pay an annual registration and inspection fee under this chapter in this state shall:

a. File not later than the last day of January and July of each year, on forms furnished by the secretary, a semiannual statement setting forth the number of net tons of commercial fertilizer or soil conditioners distributed in this state by grade for each county during the preceding six months' period; and upon filing such statement shall pay the inspection fee at the rate stated in subsection 1 of this section. However, in lieu of the semiannual statement by grade for each county, as hereinabove provided for, the registrant, on individual packages of specialty fertilizer containing twenty-five pounds or less, shall file not later than the last day of July of each year, on forms furnished by the secretary, an annual statement setting forth the number of net tons of specialty fertilizer distributed in this state by grade during the preceding twelve-month period.

b. If the tonnage report is not filed or the payment of inspection fees, or both, is not made within ten days after the last day of January and July of each year as required in paragraph "a" of this subsection, a penalty amounting to ten percent of the amount due, if any, shall be assessed against the licensee. In any case, the penalty shall be no less than fifty dollars. The amount of fees due, if any, and penalty shall constitute a debt and become the basis of a judgment against the licensee.

3. If there is an unencumbered balance of funds from the amount of the fees deposited in the general fund pursuant to sections 200.9 and 201A.11 on June 30 of any fiscal year equal to or exceeding three hundred fifty thousand dollars, the secretary of agriculture shall reduce the per ton fee provided for in subsection 1 and the annual license fee established pursuant to section 201A.3 for the next fiscal year in such amount as will result in an ending estimated balance of such funds for June 30 of the next fiscal year of three hundred fifty thousand dollars.

4. In addition to the fees imposed under subsection 1, a groundwater protection fee shall be imposed upon nitrogen-based fertilizer. The fee shall be based upon the percentage of actual nitrogen contained in the product. An eighty-two percent nitrogen solution shall be taxed at a rate of seventy-five cents per ton. Other nitrogen-based product formulations shall be taxed on the percentage of actual nitrogen contained in the formulations with the eighty-two percent nitrogen solution serving as the base. The fee shall be paid by each licensee registering to sell fertilizer to the secretary of agriculture. The fees collected shall be deposited in the agriculture management account of the groundwater protection fund. The secretary of agriculture shall adopt rules for the payment, filing, and collection of groundwater protection fees from licensees in conjunction with the collection of registration and inspection fees. The secretary shall, by rule, allow an exemption to the payment of this fee for fertilizers which contain trace amounts of nitrogen.

[C46, 50, 54, §200.15; C58, 62, 66, 71, 73, 75, 77, 79, 81, §200.8]

85 Acts, ch 142, §1; 87 Acts, ch 225, §206, 207; 88 Acts, ch 1169, §1; 94 Acts, ch 1107, §46; 96 Acts, ch 1096, §2, 15; 96 Acts, ch 1219, §34; 2009 Acts, ch 41, §263

Referred to in §200.9, 455E.11

### **200.9 Fertilizer fees.**

Fees collected for licenses and inspection fees under sections 200.4 and 200.8, with the exception of those fees collected for deposit in the agriculture management account of the groundwater protection fund, shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60. Moneys deposited under this section to the general fund shall be used only by the department for the purpose of inspection, sampling, analysis, preparation, and publishing of reports and other expenses necessary for administration of this chapter. The secretary may assign moneys to the Iowa agricultural

experiment station for research, work projects, and investigations as needed for the specific purpose of improving the regulatory functions for enforcement of this chapter.

[C46, 50, 54, §200.15; C58, 62, 66, 71, 73, 75, 77, 79, 81, §200.9]

87 Acts, ch 225, §208; 91 Acts, ch 260, §1217; 93 Acts, ch 131, §8; 94 Acts, ch 1107, §47

Referred to in §200.8

### **200.10 Inspection, sampling, and analysis.**

1. It shall be the duty of the secretary, who may act through an authorized agent, to sample, inspect, make analysis of, and test commercial fertilizers or soil conditioners distributed within this state at time and place and to such an extent as the secretary may deem necessary, to determine whether such commercial fertilizers and soil conditioners are in compliance with the provisions of this chapter. In the performance of the foregoing duty, the secretary shall counsel with the director of the Iowa agricultural experimental station in respect to the time, place and extent of sampling. The secretary individually or through an agent is authorized to enter upon any public or private premises or conveyances during regular business hours in order to have access to commercial fertilizers or soil conditioners subject to the provisions of this chapter and the rules and regulations pertaining thereto. It shall be the duty of the secretary to maintain a laboratory with the necessary equipment and to employ such employees as may be necessary to aid in the administration and enforcement of this chapter.

2. *a.* The methods of sampling and analysis shall be the official methods of the association of official agricultural chemists in all cases where methods have been adopted by the association.

*b.* The findings of the state chemist or the state chemist's deputy, as shown by the sworn statement of the results of analysis of official samples of any brand and grade of commercial fertilizer, fertilizer material or soil conditioner, shall constitute prima facie evidence of their correctness in the courts of this state, as to the particular lots sampled and analyzed.

3. The secretary, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, or soil conditioner deficient in guaranteed active ingredients, shall be guided by the official sample as defined in subsection 17 of section 200.3, and obtained and analyzed as provided for in subsection 2 of this section.

4. The results of official analysis of any commercial fertilizer or soil conditioner which has been found to be in violation of any provision of this chapter, shall be forwarded by the secretary to the registrant. Upon request, the secretary shall furnish to the registrant a portion of any sample.

[C46, 50, 54, §200.7 – 200.9; C58, 62, §200.11; C66, 71, 73, 75, 77, 79, 81, §200.10]

2009 Acts, ch 41, §263

### **200.11 Filler material.**

It shall be unlawful for any person to manufacture, offer for sale or sell in this state, any commercial fertilizer, or soil conditioner containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such commercial fertilizer, or soil conditioner as a filler any substance that contains inert or useless plant food material for the purpose or with the effect of deceiving or defrauding the purchaser.

[C46, 50, 54, §200.10; C58, 62, §200.12; C66, 71, 73, 75, 77, 79, 81, §200.11]

### **200.12 False or misleading statements.**

A commercial fertilizer or soil conditioner is misbranded if it does not identify substances promoting plant growth as defined in subsection 10 of section 200.3, or if it carries any false or misleading statement upon or attached to the container or stated on the invoice or delivery ticket, or if the container or on the invoice or delivery ticket or in any advertising matter whatsoever connected with, accompanying or associated with the commercial fertilizer or soil conditioner. Further, the burden of proof of the desirable effect of the product on plant growth shall be the responsibility of the registrant.

[C46, 50, 54, §200.11; C58, 62, §200.13; C66, 71, 73, 75, 77, 79, 81, §200.12]

**200.13 Reports and publications.**

The secretary shall publish at least annually, in such forms as the secretary may deem proper, information concerning the sales of commercial fertilizers, together with such data on their production and use as the secretary may consider advisable. The secretary shall report semiannually the results of the analysis based on official samples taken of commercial fertilizers sold within the state as compared with the analyses guaranteed under section 200.5 and section 200.6, together with name and address of the manufacturer or distributor of such commercial fertilizer at the time the official sample was taken. A copy of this semiannual report will be mailed by the secretary to each corresponding county extension director in the state.

[C46, 50, 54, §200.13; C58, 62, §200.14; C66, 71, 73, 75, 77, 79, 81, §200.13]

**200.14 Rules.**

1. The secretary is authorized, after public hearing, following due notice, to adopt rules setting forth minimum general safety standards for the design, construction, location, installation and operation of equipment for storage, handling, transportation by tank truck or tank trailer, and utilization of anhydrous ammonia.

a. The rules shall be such as are reasonably necessary for the protection and safety of the public and persons using anhydrous ammonia, and shall be in substantial conformity with the generally accepted standards of safety.

b. Rules that are in substantial conformity with the published standards of the agricultural ammonia institute for the design, installation and construction of containers and pertinent equipment for the storage and handling of anhydrous ammonia, shall be deemed to be in substantial conformity with the generally accepted standards of safety.

2. Anhydrous ammonia equipment shall be installed and maintained in a safe operating condition and in conformity with rules adopted by the secretary.

3. The secretary shall enforce this chapter and, after due publicity and due public hearing, may adopt such reasonable rules as may be necessary in order to carry into effect the purpose and intent and to secure the efficient administration of this chapter.

4. This chapter does not prohibit the use of storage tanks smaller than transporting tanks nor the transfer of all kinds of fertilizer including anhydrous ammonia directly from transporting tanks to implements of husbandry, if proper safety precautions are observed.

[C46, 50, 54, §200.13; C58, 62, §200.15; C66, 71, 73, 75, 77, 79, 81, §200.14]

98 Acts, ch 1004, §1, 3; 98 Acts, ch 1223, §22, 38; 99 Acts, ch 12, §8; 2009 Acts, ch 133, §76, 210

Referred to in §200.21

**200.15 Refusal to register, or cancellation of registration and licenses.**

The secretary is authorized and empowered to cancel the registration of any product of commercial fertilizer or soil conditioner or license or to refuse to register any product of commercial fertilizer or soil conditioner or refuse to license any applicant as herein provided, upon satisfactory evidence that the registrant or licensee has used fraudulent or deceptive practices or who willfully violates any provisions of this chapter or any rules and regulations promulgated thereunder: Except no registration or license shall be revoked or refused until the registrant or licensee shall have been given the opportunity to appear for a hearing by the secretary.

[C46, 50, 54, §200.11; C58, 62, §200.16; C66, 71, 73, 75, 77, 79, 81, §200.15]

**200.16 “Stop sale” orders.**

The secretary may issue and enforce a written or printed “stop sale, use or removal” order to the owner or custodian of any lot of commercial fertilizer or soil conditioner, and to hold at a designated place when the secretary finds said commercial fertilizer or soil conditioner is being offered or exposed for sale in violation of any of the provisions of this chapter or any of the rules and regulations promulgated hereunder until the law has been complied with and said commercial fertilizer or soil conditioner is released in writing by the secretary or

said violation has been otherwise legally disposed of by written authority, and all costs and expenses incurred in connection with the withdrawal have been paid.

[C58, 62, §200.17; C66, 71, 73, 75, 77, 79, 81, §200.16]

#### **200.17 Seizure, condemnation and sale.**

Any lot of commercial fertilizer or soil conditioner not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the secretary to a court of competent jurisdiction in the county or adjoining county in which said commercial fertilizer or soil conditioner is located. In the event the court finds the said commercial fertilizer or soil conditioner to be in violation of this chapter and orders the condemnation of said commercial fertilizer or soil conditioner, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil conditioner and the laws of the state: Except in no instance shall the disposition of said commercial fertilizer or soil conditioner be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or soil conditioner or for permission to reprocess or relabel said commercial fertilizer or soil conditioner to bring it into compliance with this chapter.

[C58, 62, §200.18; C66, 71, 73, 75, 77, 79, 81, §200.17]

#### **200.17A Ammonium nitrate security.**

A licensee who sells ammonium nitrate on a retail basis shall comply with all of the following:

1. The licensee shall store the ammonium nitrate in a location which secures it from unauthorized access, and which prevents and provides for the detection of its theft.

2. A licensee shall only sell ammonium nitrate to a purchaser who presents a current official identification issued by the federal government or a state government which includes the purchaser's photograph and identifying information including the person's legal name and home address.

3. The licensee shall maintain a record of each sale of ammonium nitrate as follows:

a. The record shall be on a form promulgated or approved by the department. The form shall include at least all of the following:

(1) The date of sale.

(2) The quantity of ammonium nitrate purchased.

(3) The information contained in the purchaser's official identification as provided in this section. If the official identification is a driver's license, the information shall include the driver's license number. A photocopy of the purchaser's current official identification on file with the licensee shall comply with the requirements of this subparagraph.

(4) The purchaser's telephone number.

(5) The purchaser's signature.

b. The licensee shall maintain the record for at least two years after the date of the sale.

4. The department, a law enforcement officer as defined in section 80B.3, or an agent of the United States department of justice may examine and photocopy the record during regular business hours.

2005 Acts, ch 73, §2

Referred to in §200.18

#### **200.18 Violations.**

1. If it shall appear from the examination of any commercial fertilizer or soil conditioner or any anhydrous ammonia installation, equipment, or operation that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the secretary shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the secretary. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the secretary may certify the facts to the proper prosecuting attorney.

2. *a.* Except as otherwise provided in this subsection, a person violating this chapter or rules adopted by the secretary pursuant to this chapter is guilty of a simple misdemeanor.

*b.* A person who tampers with, possesses, or transports anhydrous ammonia or anhydrous ammonia equipment is guilty of a serious misdemeanor under section 124.401F.

*c.* A person who intentionally presents false identification or other information required in section 200.17A in order to purchase ammonium nitrate commits a serious misdemeanor. A person who purchases ammonium nitrate from a person required to be licensed under section 200.4 with the intention of manufacturing an explosive or incendiary device or material is guilty of a class "D" felony.

3. A person who is licensed pursuant to section 200.4 who fails to comply with the requirements of section 200.17A shall be subject to disciplinary action by the department. For a first violation, the department may suspend the person's license for up to ninety days. For a subsequent violation, the department may suspend the person's license for a longer period or revoke the person's license.

4. Nothing in this chapter shall be construed as requiring the secretary or the secretary's representative to report for prosecution or for the institution of seizure proceedings minor violations of the chapter when the secretary believes that the public interest will be best served by a suitable notice of warning in writing.

5. It shall be the duty of each county attorney to whom any violation is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

6. The secretary is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under the chapter notwithstanding the existence of other remedies at law, said injunction to be issued without bond.

[C46, 50, 54, §200.11, 200.14; C58, 62, §200.19; C66, 71, 73, 75, 77, 79, 81, §200.18]  
98 Acts, ch 1004, §2, 3; 99 Acts, ch 12, §9; 2005 Acts, ch 73, §3  
Referred to in §331.756(39)

#### **200.19 Exchanges between manufacturers.**

Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil conditioners to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil conditioner to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter.

[C46, 50, 54, §200.5, 200.12; C58, 62, §200.20; C66, 71, 73, 75, 77, 79, 81, §200.19]

#### **200.20 Phosphoric acid, nitrogen, and potash requirements.**

1. Except as provided in subsection 2, a person shall not sell, offer for sale, or distribute any of the following:

*a.* Phosphatic fertilizer containing less than eighteen percent available phosphoric acid ( $P_2O_5$ ).

*b.* Nitrogen fertilizer containing less than fifteen percent total nitrogen (N).

*c.* Potash fertilizer containing less than fifteen percent soluble potash ( $K_2O$ ).

*d.* Mixed fertilizer in which the sum of the guaranteed analysis of total nitrogen (N), available phosphoric acid ( $P_2O_5$ ), and soluble potash ( $K_2O$ ) totals less than twenty percent.

2. Subsection 1 shall not apply to any of the following:

*a.* A specialty fertilizer.

*b.* A fertilizer designed to be applied and ordinarily applied directly to growing plant foliage to stimulate further growth.

*c.* Compost materials to be applied on land, if any of the following apply:

(1) The land is being used to produce an agricultural commodity that is an organic agricultural product as provided in chapter 190C, including rules adopted by the department under that chapter.

(2) The land is in the transition of being used to produce an agricultural commodity that

is an organic agricultural product, pursuant to rules adopted by the department as provided in chapter 190C.

[C77, 79, 81, §200.20]  
 2000 Acts, ch 1082, §2

**200.21 Compliance — a defense to certain nuisance actions.**

In a nuisance action or proceeding against an anhydrous ammonia plant brought by or on behalf of the person whose established date of ownership is subsequent to the established date of operation of an anhydrous ammonia plant, proof of compliance with applicable provisions of this chapter and applicable rules adopted pursuant to section 200.14 shall be a defense to a nuisance action or proceeding.

84 Acts, ch 1269, §2

**200.22 Local legislation — prohibition.**

1. As used in this section:

a. “Local governmental entity” means any political subdivision, or any state authority which is not the general assembly or under the direction of a principal central department as enumerated in section 7E.5, including a city as defined in section 362.2, a county as provided in chapter 331, or any special purpose district.

b. “Local legislation” means any ordinance, motion, resolution, amendment, regulation, or rule adopted by a local governmental entity.

2. The provisions of this chapter and rules adopted by the department pursuant to this chapter shall preempt local legislation adopted by a local governmental entity relating to the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufacture of a fertilizer or soil conditioner. A local governmental entity shall not adopt or continue in effect local legislation relating to the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufacture of a fertilizer or soil conditioner, regardless of whether a statute or rule adopted by the department applies to preempt the local legislation. Local legislation in violation of this section is void and unenforceable.

3. This section does not apply to local legislation of general applicability to commercial activity.

94 Acts, ch 1002, §1; 94 Acts, ch 1198, §41

**CHAPTER 200A**

**BULK DRY ANIMAL NUTRIENT PRODUCTS**

200A.1	Title.	200A.9	Fees.
200A.2	Purpose.	200A.10	Examinations.
200A.3	Definitions.	200A.11	Prohibited acts.
200A.4	Rulemaking.	200A.12	Enforcement.
200A.5	License.	200A.13	Violations.
200A.6	Registration.	200A.14	Exchange between producers.
200A.7	Distribution statement required.	200A.15	Use of fees.
200A.8	Distribution reports.		

**200A.1 Title.**

This chapter shall be known and may be cited by the short title of “Bulk Dry Animal Nutrient Products Law”.

98 Acts, ch 1145, §1

**200A.2 Purpose.**

The purpose of this chapter is to regulate certain bulk dry animal manure for use as a fertilizer or soil conditioner, which is unmanipulated and therefore not subject to regulation under chapter 200.

98 Acts, ch 1145, §2

**200A.3 Definitions.**

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

1. “*Advertise*” means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag, or articulation.
  2. “*Bulk dry animal nutrient product*” or “*bulk product*” means a dry animal nutrient product delivered to a purchaser in bulk form to which a label cannot be attached.
  3. “*Department*” means the department of agriculture and land stewardship.
  4. “*Distribute*” means to offer for sale, sell, hold out for sale, exchange, barter, supply, or furnish a bulk dry animal nutrient product on a commercial basis.
  5. “*Distributor*” means a person who distributes a bulk dry animal nutrient product.
  6. “*Dry animal nutrient product*” means any unmanipulated animal manure composed primarily of animal excreta, if all of the following apply:
    - a. The manure contains one or more recognized plant nutrients which are used for their plant nutrient content.
    - b. The manure promotes plant growth.
    - c. The manure does not flow perceptibly under pressure.
    - d. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
    - e. The constituent molecules of the manure do not flow freely among themselves but do show the tendency to separate under stress.
  7. “*Guaranteed analysis*” means the minimum percentage of plant nutrients claimed and reported to the department pursuant to section 200A.6.
  8. “*Official sample*” means any sample of a bulk dry animal nutrient product taken by the department according to procedures established by the department consistent with this chapter.
  9. “*Percent*” or “*percentage*” means percentage by weight.
  10. “*Purchaser*” means a person to whom a dry animal nutrient product is distributed.
  11. “*Ton*” means a net weight of two thousand pounds avoirdupois.
- 98 Acts, ch 1145, §3; 99 Acts, ch 96, §21; 99 Acts, ch 114, §11

**200A.4 Rulemaking.**

The department shall adopt all rules necessary to administer this chapter including but not limited to rules regulating licensure, labeling, registration, distribution, and storage of bulk dry animal nutrient products. A violation of this chapter includes a violation of any rule adopted pursuant to this section as provided in chapter 17A.

98 Acts, ch 1145, §4

**200A.5 License.**

A person who distributes a bulk dry animal nutrient product in this state must first obtain a license from the department. A license application must be submitted to the department on a form furnished by the department according to procedures required by the department. A license shall expire on July 1 of each year.

98 Acts, ch 1145, §5

Referred to in §200A.8, 200A.9, 200A.12, 200A.14

**200A.6 Registration.**

1. A person shall not distribute a bulk dry animal nutrient product unless the bulk product is registered with the department under this section. The department shall register each bulk product which complies with the requirements of this chapter. If the department determines that a registration application does not comply with the requirements of this

chapter, the department shall notify the applicant of the department’s determination and the reasons why the application failed to comply with the requirements of this chapter. The department shall provide the applicant with an opportunity to make the necessary corrections before resubmitting the application.

2. A registration application must be submitted to the department on a form furnished by the department according to procedures required by the department. A completed application shall include all of the following:

a. (1) An accompanying label setting forth the guaranteed analysis of the bulk product, in the following form:

Total Nitrogen (N)	.....	percent
Available Phosphate (P) or P <sub>2</sub> O <sub>5</sub> or both	.....	percent
Soluble Potassium (K) or K <sub>2</sub> O or both	.....	percent

(2) Registration and guarantee of water soluble phosphate (P) or (P<sub>2</sub>O<sub>5</sub>) shall be permitted.

b. A description of how the distributor plans to obtain the acres necessary for proper application of the bulk product which is not distributed.

c. Evidence of favorable effects and safety of the bulk product necessary to satisfy the department according to rules adopted by the department.

d. Additional data about a bulk product necessary to support claims made about the product, if required by the department.

3. A distributor shall not be required to register any bulk product which is already registered under this chapter by another person.

4. Upon request of the department, the advisory committee created in section 206.23 may advise and assist the department regarding the registration of bulk dry animal nutrient products under the provisions of this chapter.

98 Acts, ch 1145, §6; 2009 Acts, ch 41, §263  
Referred to in §200A.3, 200A.7, 200A.11, 200A.12, 200A.14

**200A.7 Distribution statement required.**

1. The distribution of a bulk dry animal nutrient product must be accompanied by a written or printed distribution statement which may be prepared on a form furnished by the department. The distribution statement shall include all of the following information:

a. The bulk product’s guaranteed analysis in the same form as required pursuant to section 200A.6.

b. The name and address of the bulk product’s purchaser.

c. A notice to the bulk product’s purchaser stating the number of acres needed to apply the purchased bulk product based on the average corn yields in the county where the bulk product is to be applied.

d. A warning that application of a bulk product should not exceed the nitrogen levels necessary to obtain optimum crop yields for the crop being grown based on crop nitrogen usage rate factors.

2. Before transferring possession of a bulk product, the distributor shall present the purchaser with an acknowledgment for the purchaser’s signature or initials indicating that the purchaser has read the distribution statement and understands the number of acres required to apply the product according to the information in the distribution statement.

98 Acts, ch 1145, §7  
Referred to in §200A.12

**200A.8 Distribution reports.**

1. A person required to be licensed pursuant to section 200A.5 shall file a distribution report with the department on forms furnished by the department reporting information regarding the person’s distribution of bulk products.

2. The report shall be filed with the department not later than the last day of January and

the last day of July excluding weekends and state-recognized holidays as provided in section 1C.2.

3. The report shall include all of the following:

a. The number of tons of bulk products distributed by the person in the state during the preceding six-month period. The report shall include the number of tons distributed to each county named in the report and the grade of the distributed bulk product.

b. The name and address of each purchaser and the number of tons purchased.

c. An inspection fee as provided in section 200A.9.

98 Acts, ch 1145, §8

Referred to in §200A.9

#### **200A.9 Fees.**

1. A person required to obtain a license as provided in section 200A.5 shall pay a ten dollar fee for each place from which a bulk product is distributed in this state.

2. a. The first person who distributes a bulk product, who is required to be licensed pursuant to section 200A.5, shall pay an inspection fee twice each year. The inspection fee shall be paid at the time of filing each distribution report as required in section 200A.8. The amount of the fee shall be calculated based on the number of tons of bulk dry animal nutrient product distributed by the person as reported in the distribution report.

b. The rate for inspection fees shall be established by the department not more than once each year and shall be not more than twenty cents per ton.

c. An inspection fee shall not be imposed upon a purchaser regardless of whether the purchaser subsequently distributes the product.

3. An inspection fee is delinquent after ten days following the date that a distribution report and fee are due as provided in section 200A.8. A delinquency penalty of not more than ten percent of the amount due shall be assessed against the person who is delinquent. However, the penalty shall be at least fifty dollars. The amount of fees and delinquency penalties due shall constitute a debt and become the basis of a judgment against the delinquent person.

98 Acts, ch 1145, §9

Referred to in §200A.8, 200A.15

#### **200A.10 Examinations.**

1. The department shall maintain a laboratory with the equipment and employees necessary to conduct examinations of bulk dry animal nutrient products and to effectively administer and enforce this chapter.

2. The department, or a person authorized as an agent by the department, shall examine bulk products distributed in this state. An examination may include taking samples, conducting inspections and tests, and analyzing the bulk product.

98 Acts, ch 1145, §10; 2011 Acts, ch 46, §3

#### **200A.11 Prohibited acts.**

1. A person shall not distribute a bulk dry animal nutrient product containing any substance used as filler material if any of the following applies:

a. The filler injures plant growth or is deleterious to soil.

b. The person distributing the bulk product misrepresents or deceives the person receiving the bulk product regarding the attributes of the filler material or its effect upon plant growth or soil condition.

2. A person shall not advertise a bulk product by making false or misleading statements regarding the bulk product.

3. A person shall not misbrand a bulk product by providing a distribution statement to a purchaser which fails to identify a substance promoting plant growth according to the bulk product's guaranteed analysis as provided in section 200A.6.

4. The burden of proof regarding a claim made by a person distributing a bulk product, including but not limited to the positive effects of the bulk product on plant growth, shall be the responsibility of the distributor.

5. A distributor shall not store a bulk product in a manner which pollutes the waters of the state.

98 Acts, ch 1145, §11

#### **200A.12 Enforcement.**

In enforcing this chapter the department may do any of the following:

1. *a.* Take disciplinary action concerning a registration of a bulk dry animal nutrient product as provided in section 200A.6 or the license of a person distributing a bulk product as provided in section 200A.5. The department may do any of the following:

- (1) Cancel the registration or deny an application for registration.
- (2) Suspend or terminate the license or deny an application for a license.

*b.* The disciplinary action must be based upon evidence satisfactory to the department that the registrant, licensee, or applicant has used fraudulent or deceptive practices in violation of this chapter or has willfully disregarded the requirements of this chapter.

2. Issue and enforce a “stop sale, use, or removal” order against the owner or distributor of any lot of a bulk product.

*a.* The order may require that the bulk product be held at a designated place until released by the department.

*b.* The department shall release the bulk product pursuant to a release order upon satisfaction that legal issues compelling the issuance of the “stop sale, use, or removal order” have been resolved and all expenses incurred by the department in connection with the bulk product’s removal have been paid to the department.

3. Seize and dispose of any lot of a bulk product which is not in compliance with the provisions of this chapter upon petition to the district court in the county or adjoining county in which the bulk product is located.

*a.* If the court finds that the bulk product is in violation of this chapter, the court may order the condemnation of the bulk product. However, the court shall not order the seizure and disposition of a bulk product without first providing the owner of the bulk product with an opportunity to apply to the court for release of the bulk product, consent to reprocess the bulk product, or consent to amend a legal record to accurately describe the composition of the bulk product, including a distribution statement as provided in section 200A.7.

*b.* The department shall, as provided in the court order, dispose of the bulk product in a manner consistent with the quality of the bulk product and the laws of this state.

4. Apply to the district court in the county where a violation of this chapter occurs for a temporary or permanent injunction restraining a person from violating or continuing to violate this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without a bond.

5. This section does not require the department to institute a proceeding for a minor violation if the department concludes that the public interest will be best served by a suitable written warning.

98 Acts, ch 1145, §12

#### **200A.13 Violations.**

1. A person violating a provision of this chapter is guilty of a simple misdemeanor.

2. *a.* If, after a departmental investigation, it appears that a person is in violation of this chapter, the department shall notify the person of the violation and provide the person with an opportunity to be heard under rules adopted by the department consistent with chapter 17A contested case proceedings.

*b.* If, after a hearing, the department determines that a violation has occurred, the department may report the violation to the appropriate county attorney for prosecution. The report shall include a certified copy of evidence presented during the hearing. This section does not require the department to report a minor violation for prosecution if the department concludes that the public interest will be best served by a suitable written warning.

*c.* A county attorney who receives a report of a violation from the department shall institute and prosecute the case in district court without delay.

98 Acts, ch 1145, §13

**200A.14 Exchange between producers.**

Nothing in this chapter shall be construed to restrict or prohibit any of the following:

1. The distribution of a bulk product to importers, manufacturers, or manipulators who mix bulk dry animal nutrient products for distribution.
2. The shipment of a bulk product to a person licensed as a distributor pursuant to section 200A.5 who has registered the bulk product as provided in section 200A.6.

98 Acts, ch 1145, §14

**200A.15 Use of fees.**

Fees and delinquency penalties collected by the department pursuant to this chapter, including section 200A.9, shall be deposited in the general fund of the state. However, the department may allocate moneys to the Iowa agricultural experiment station for research, work projects, and investigations as needed for the specific purpose of improving the regulatory functions to improve the enforcement of this chapter.

98 Acts, ch 1145, §15

CHAPTER 201

RESERVED

CHAPTER 201A

AGRICULTURAL LIMING MATERIAL

Referred to in §8.60

201A.1	Short title.	201A.7	Toxic materials prohibited.
201A.2	Definitions.	201A.8	Rules.
201A.3	License required.	201A.9	Enforcement actions.
201A.4	Labeling and advertising.	201A.10	Violations.
201A.5	Inspection and investigation.	201A.11	Fees and appropriation.
201A.6	Certification of effective calcium carbonate equivalent — reporting.		

**201A.1 Short title.**

This chapter shall be known and may be cited as the “*Iowa Agricultural Liming Material Act*”.

96 Acts, ch 1096, §3, 15

**201A.2 Definitions.**

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

1. “*Agricultural liming material*” means a product having calcium and magnesium compounds capable of neutralizing soil acidity.
2. “*Brand*” means the term, designation, trade name, product name, or other specific designation under which individual agricultural liming material is offered for sale.
3. “*Bulk*” means material which is in a nonpackaged form.
4. “*Effective calcium carbonate equivalent*” means the acid-neutralizing capacity of an agricultural liming material.

96 Acts, ch 1096, §4, 15

**201A.3 License required.**

Agricultural liming material shall not be distributed in this state unless the manufacturer of the agricultural liming material obtains a license for each facility owned by the manufacturer

for distribution in this state. The manufacturer shall obtain the license prior to the facility's manufacture of the agricultural liming material. The license shall expire on January 1 of each year, and may be renewed for a period expiring on January 1 of the following year. The manufacturer shall apply for the license on forms prescribed and according to procedures required by the department. An application for a license, including a license renewal, must be accompanied by a license fee established by the department, which shall not exceed forty dollars.

96 Acts, ch 1096, §5, 15  
Referred to in §200.8

#### **201A.4 Labeling and advertising.**

1. Agricultural liming material shall not be sold, offered for sale, or exposed for sale in this state unless a label accompanies the agricultural liming material which provides the following information:

- a. The name and address of the principal office of the manufacturer or distributor.
- b. The brand or trade name of the agricultural liming material.
- c. The identification of the type of the agricultural liming material.
- d. The undried net weight of the agricultural liming material.
- e. The effective calcium carbonate equivalent of the agricultural liming material as determined according to rules adopted by the department.

2. The label must be plainly readable. If the agricultural liming material is in packaged form, the label must be affixed to the outside of the package in a conspicuous manner. The label shall be printed, stamped, or otherwise marked in a manner required by the department. If the agricultural liming material is in bulk form, the label may be contained on a delivery slip.

3. The label or advertising which provides information regarding the agricultural liming material shall not be false or misleading to the purchaser, including information relating to the quality, analysis, type, or composition of the agricultural liming material.

4. If the agricultural liming material is adulterated after it has been packaged, labeled, or loaded, but prior to delivery to a purchaser, the vendor shall provide a notice of the adulteration, which shall be placed on the agricultural liming material as an additional label as provided in this section.

5. For each brand of agricultural liming material sold in bulk, a statement shall be conspicuously posted at the location where the agricultural liming material is delivered for resale or where purchase orders for deliveries of the agricultural liming material are placed. The statement shall include the effective calcium carbonate equivalent of the agricultural liming material as determined according to rules adopted by the department.

96 Acts, ch 1096, §6, 15

#### **201A.5 Inspection and investigation.**

The department shall inspect agricultural liming material distributed in this state and investigate persons engaged in the business of manufacturing, distributing, selling, offering for sale, or exposing for sale agricultural liming material in this state. Inspections and investigations shall be performed as determined necessary or practicable by the department, in order to ensure compliance with this chapter. The inspection may include the sampling, analysis, and testing of agricultural liming material, as provided by rules adopted by the department. The department may enter premises of a business engaged in the manufacture, distribution, sale, offer for sale, or exposure for sale of agricultural liming material in this state. The business shall provide timely, convenient, and free access to its agricultural liming material and to its books, records, accounts, papers, documents, and any computer or other recordings relating to the business, during normal business hours. The business shall facilitate the examination and aid in the examination to every extent feasible.

96 Acts, ch 1096, §7, 15

**201A.6 Certification of effective calcium carbonate equivalent — reporting.**

The department shall certify the effective calcium carbonate equivalent for all agricultural liming material, as provided by rules adopted by the department. The department may establish a fee for analyzing samples of agricultural liming material. The department shall issue a report at least once every three months which lists the agricultural liming material certified by the department. The report shall list the manufacturers of the agricultural liming material, the locations of facilities used to manufacture the agricultural liming material, and the identification of the type of the agricultural liming material produced by the manufacturer.

96 Acts, ch 1096, §8, 15

**201A.7 Toxic materials prohibited.**

A person shall not sell, offer for sale, or expose for sale agricultural liming material which includes material which is toxic to plants, animals, human, or aquatic life, or which causes soil or water contamination, as provided by rules adopted by the department.

96 Acts, ch 1096, §9, 15

**201A.8 Rules.**

The department shall adopt rules pursuant to chapter 17A required to administer and enforce the provisions of this chapter.

96 Acts, ch 1096, §10, 15

**201A.9 Enforcement actions.**

If the department finds that agricultural liming material is being manufactured, used, sold, offered for sale, or exposed for sale in violation of this chapter, the department may enforce the provisions of this chapter by doing any of the following:

1. Issuing and enforcing a stop order to prevent the manufacture, sale, or removal of agricultural liming material. The order may require that the owner or custodian hold the agricultural liming material at a place designated in the order. The stop order shall be in writing and served upon the person owning or controlling the manufacture or sale of the agricultural liming material. The department shall provide for the termination of the stop order upon compliance with the provisions of this chapter. The termination of the stop order shall be in writing and served upon the person as provided for in the stop order. The department may place conditions upon the termination of the stop order, including the payment of reasonable expenses incurred by the department in issuing and enforcing the stop order.

2. Obtaining a court order upon petition filed in district court for the county where the agricultural liming material is being manufactured, sold, offered for sale, or exposed for sale. The court may be petitioned by the department, or, upon request by the department, the attorney general or the county attorney. The court shall hear from all parties in the case. The court may issue an order for any of the following:

a. The seizure of the agricultural liming material. The court shall issue an order, if the court finds that the petition is supported by facts that agricultural liming material is being manufactured, sold, offered for sale, or exposed for sale in violation of this chapter, and the agricultural liming material must be condemned because it fails to meet standards required in this chapter. If warranted, the court shall order that the agricultural liming material be disposed of in a manner provided by rules adopted by the department, which may include reprocessing or relabeling the agricultural liming material in order to ensure that it complies with this chapter. The court may provide that any party to the case dispose of the agricultural liming material.

b. A temporary or permanent injunction against a person violating the provisions of this chapter. The court shall issue an order, if the court finds that the petition is supported by facts that agricultural liming material is being manufactured, sold, offered for sale, or exposed for sale in violation of this chapter. In order to obtain injunctive relief, the department shall not be required to post a bond or prove the absence of an adequate remedy at law, unless the court

for good cause otherwise orders. The court may order any form of prohibitory or mandatory relief that is appropriate under principles of equity.

96 Acts, ch 1096, §11, 15

**201A.10 Violations.**

1. A person violating this chapter or rules adopted by the department under this chapter is guilty of a simple misdemeanor.

2. The department shall provide for the prosecution of a violation of this chapter by referring the violation to the county attorney in the county where the violation occurs. The department shall compile evidence of the violation for prosecution. The county attorney shall prosecute any case determined by the county attorney to be meritorious without delay. The department shall not refer a violation to the county attorney until the department provides the person subject to the violation with an opportunity to be heard by the department according to procedures adopted by the department. A right to a hearing is not a contested case proceeding as provided in chapter 17A. The department is not required to refer a minor violation to a county attorney, and may instead issue a warning to the person subject to the minor violation.

96 Acts, ch 1096, §12, 15

**201A.11 Fees and appropriation.**

Fees collected under this chapter shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60. Moneys deposited under this section to the general fund shall be used only by the department for the purpose of administering and enforcing the provisions of this chapter, including inspection, sampling, analysis, and the preparation and publishing of reports.

96 Acts, ch 1096, §13, 15

Referred to in §200.8

**CHAPTER 202**

**COMMODITY PRODUCTION CONTRACTS**

Referred to in §459.400

202.1	Definitions.	202.4	Enforcement.
202.2	Production contracts governed by this chapter.	202.5	Penalties.
202.3	Production contracts — confidentiality prohibited.		

**202.1 Definitions.**

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

1. “Active contractor” means a person who owns a commodity that is produced by a contract producer at the contract producer’s contract operation pursuant to a production contract executed pursuant to section 202.2.

2. “Commodity” means livestock, raw milk, or a crop.

3. “Contract crop field” means farmland where a crop is produced according to a production contract executed pursuant to section 202.2 by a contract producer who holds a legal interest in the farmland.

4. “Contract livestock facility” means an animal feeding operation as defined in section 459.102, in which livestock or raw milk is produced according to a production contract executed pursuant to section 202.2 by a contract producer who holds a legal interest in the animal feeding operation. “Contract livestock facility” includes a confinement feeding operation as defined in section 459.102, an open feedlot operation as defined in section 459A.102, or an area which is used for the raising of crops or other vegetation and upon which livestock is fed for slaughter or is allowed to graze or feed.

5. “*Contract operation*” means a contract livestock facility or contract crop field.
6. “*Contract producer*” means a person who holds a legal interest in a contract operation and who produces a commodity at the contract producer’s contract operation under a production contract executed pursuant to section 202.2.
7. “*Contractor*” means an active contractor or a passive contractor.
8. *a.* “*Crop*” means a plant used for food, animal feed, fiber, or oil, if the plant is classified as a forage or cereal plant, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses used for forage or silage.
- b.* A “*crop*” does not include trees or nuts or fruit grown on trees; sod; shrubs; greenhouse plants; or plants or plant parts produced for precommercial, experimental, or research purposes.
9. “*Farmland*” means agricultural land that is suitable for use in farming as defined in section 9H.1.
10. “*Livestock*” means beef cattle, dairy cattle, sheep, or swine.
11. “*Passive contractor*” means a person who furnishes management services to a contract producer, and who does not own a commodity that is produced by the contract producer at the contract producer’s contract operation according to a production contract which is executed pursuant to section 202.2.
12. “*Produce*” means to do any of the following:
  - a.* Provide feed or services relating to the care and feeding of livestock. If the livestock is dairy cattle, “*produce*” includes milking the dairy cattle and storing raw milk at the contract producer’s contract livestock facility.
  - b.* Provide for planting, raising, harvesting, and storing a crop. “*Produce*” includes preparing the soil for planting and nurturing the crop by the application of fertilizers or soil conditioners as defined in section 200.3 or pesticides as defined in section 206.2.
13. “*Production contract*” means an oral or written agreement executed pursuant to section 202.2 that provides for the production of a commodity or the provision of management services relating to the production of a commodity by a contract producer.

99 Acts, ch 169, §2, 22 – 24; 2006 Acts, ch 1030, §20, 21  
 Referred to in §101.21, 459A.103, 459B.103

### **202.2 Production contracts governed by this chapter.**

1. This chapter applies to a production contract that relates to the production of a commodity owned by an active contractor and produced by a contract producer at the contract producer’s contract operation, if one of the following applies:
  - a.* The contract is executed by an active contractor and a contract producer for the production of the commodity.
  - b.* The contract is executed by an active contractor and a passive contractor for the provision of management services to the contract producer in the production of the commodity.
  - c.* The contract is executed by a passive contractor and a contract producer, if all of the following apply:
    - (1) The contract provides for management services furnished by the passive contractor to the contract producer in the production of the commodity.
    - (2) The passive contractor has a contractual relationship with the active contractor involving the production of the commodity.
2. A production contract is executed when it is signed or orally agreed to by each party or by a person who is authorized by a party to act on the party’s behalf.

99 Acts, ch 169, §3, 22 – 24  
 Referred to in §202.1

### **202.3 Production contracts — confidentiality prohibited.**

1. A contractor shall not on or after May 24, 1999, enforce a provision in a production contract if the provision provides that information contained in the production contract is confidential.

2. A provision which is part of a production contract is void if the provision states that information contained in the production contract is confidential. The confidentiality provision is void whether the confidentiality provision is express or implied; oral or written; required or conditional; contained in the production contract, another production contract, or in a related document, policy, or agreement. This section does not affect other provisions of a production contract or a related document, policy, or agreement which can be given effect without the voided provision. This section does not require a party to a production contract to divulge the information in the production contract to another person.

99 Acts, ch 169, §4, 22 – 24

Referred to in §202.5, 714.8

#### **202.4 Enforcement.**

1. The attorney general's office is the primary agency responsible for enforcing this chapter.

2. In enforcing the provisions of this chapter, the attorney general may do all of the following:

a. Apply to the district court for an injunction to do any of the following:

(1) Restrain a contractor from engaging in conduct or practices in violation of this chapter.

(2) Require a contractor to comply with a provision of this chapter.

b. Apply to district court for the issuance of a subpoena to obtain a production contract for purposes of enforcing this chapter.

c. Bring an action in district court to enforce penalties provided in section 202.5, including the assessment and collection of civil penalties.

99 Acts, ch 169, §5, 22 – 24

#### **202.5 Penalties.**

A contractor who executes a production contract that includes a confidentiality provision in a production contract in violation of section 202.3 is guilty of a fraudulent practice as provided in section 714.8.

99 Acts, ch 169, §6, 22 – 24

Referred to in §202.4

## CHAPTER 202A

### LIVESTOCK MARKETING PRACTICES

For future repeal provisions, see 99 Acts, ch 88, §11

202A.1	Definitions.	202A.5	Rules.
202A.2	Purchase reports — filing.	202A.6	Enforcement.
202A.3	Purchase notice — posting.	202A.7	Penalties.
202A.4	Confidentiality provisions in contracts prohibited.		

#### **202A.1 Definitions.**

1. “*Department*” means the department of agriculture and land stewardship.

2. “*Livestock*” means live cattle, swine, or sheep.

3. “*Packer*” means a person who is engaged in the business of slaughtering livestock or receiving, purchasing, or soliciting livestock for slaughter, if the meat products of the slaughtered livestock which are directly or indirectly to be offered for resale or for public consumption have a total annual value of ten million dollars or more. As used in this chapter, “*packer*” includes an agent of the packer engaged in buying or soliciting livestock for slaughter on behalf of a packer.

99 Acts, ch 88, §2, 13; 99 Acts, ch 208, §49, 74; 2002 Acts, ch 1119, §144

**202A.2 Purchase reports — filing.**

1. A packer shall file purchase reports with the department which include information relating to the purchase of livestock as required by the department. The purchase reports shall be completed in a manner prescribed by the department. The department may require that purchase reports be filed in an electronic format. A packer shall file purchase reports at times determined practicable by the department, but not later than two business days following the event being reported.

2. *a.* The information required to be reported may include but is not limited to livestock purchased, committed for delivery, or slaughtered. The information may include the volume of daily purchases and the weight, grade, and price paid for livestock, including all premiums, discounts, or adjustments. If livestock is purchased pursuant to contract, the department may require that information in the purchase report be categorized by the type of contract. The purchase reports shall allow the department to compare prices paid under contract with cash market prices.

*b.* This section does not require that information reported include future plans, events, or transactions, unless provided for by contract.

3. The department may provide for the public dissemination of information contained in purchase reports.

*a.* The department may enter into an agreement with the United States department of agriculture or any private marketing service in order to disseminate information contained in purchase reports.

*b.* The department, in consultation with the office of attorney general, shall designate information in purchase reports that reveals the identity of a packer or livestock seller as confidential pursuant to section 22.7.

99 Acts, ch 88, §3, 11, 13

Referred to in §22.7, 202A.3, 202A.5, 202A.6, 202A.7

Future repeal of section if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; see 99 Acts, ch 88, §11

**202A.3 Purchase notice — posting.**

1. *a.* A packer shall post a purchase notice which includes information relating to the purchase of livestock as required by the department. The information contained in the purchase notice shall include a summary of information required to be filed in purchase reports as provided in section 202A.2.

*b.* This section does not require that information contained in a purchase notice include future plans, events, or transactions unless provided for by contract.

2. The information contained in the purchase notice shall appear in a format that can be understood by a reasonable person familiar with selling livestock. The notice shall be posted in a conspicuous place at the point of delivery in a manner prescribed by the department.

99 Acts, ch 88, §4, 13

Referred to in §202A.5, 202A.7

Future repeal of section if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; see 99 Acts, ch 88, §11

**202A.4 Confidentiality provisions in contracts prohibited.**

1. A packer shall not include a provision in a contract executed on or after April 29, 1999, for the purchase of livestock providing that information contained in the contract is confidential.

2. A provision which is part of a contract for the purchase of livestock executed on and after April 29, 1999, for the purchase of livestock is void, if the provision states that information contained in the contract is confidential. The provision is void regardless of whether the confidentiality provision is express or implied; oral or written; required or conditional; contained in the contract, another contract, or in a related document, policy, or agreement. This section does not affect other provisions of a contract or a related document, policy, or agreement which can be given effect without the voided provision. This section

does not require either party to the contract to divulge the information in the contract to another person.

99 Acts, ch 88, §5, 13

Referred to in §202A.7, 714.8

#### **202A.5 Rules.**

1. The department, in consultation with the office of attorney general, shall adopt rules necessary in order to administer this chapter.

2. The department may establish different rules according to the species of livestock governing all of the following:

a. Purchase reporting requirements pursuant to section 202A.2.

b. Purchase notice posting requirements pursuant to section 202A.3.

99 Acts, ch 88, §6, 13

Future repeal of all or a portion of subsection 2 if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; see 99 Acts, ch 88, §11

#### **202A.6 Enforcement.**

1. a. The attorney general's office is the primary agency responsible for enforcing this chapter.

b. The department shall notify the attorney general's office if the department has reason to believe that a violation of section 202A.2 has occurred.

2. In enforcing the provisions of this chapter, the attorney general may do all of the following:

a. Apply to the district court for an injunction to do any of the following:

(1) Restrain a packer from engaging in conduct or practices in violation of this chapter.

(2) Require a packer to comply with a provision of this chapter.

b. Apply to district court for the issuance of a subpoena to obtain contracts, documents, or other records for purposes of enforcing this chapter.

c. Bring an action in district court to enforce penalties provided in this chapter, including the imposition, assessment, and collection of monetary penalties.

3. The attorney general shall have access to all information reported by packers pursuant to section 202A.2, regardless of whether the information is confidential. The attorney general may use the information in order to enforce this chapter or may submit the information to a federal agency.

99 Acts, ch 88, §7, 11, 13

Future repeal of subsection 1, paragraph b, and subsection 3 if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; see 99 Acts, ch 88, §11

#### **202A.7 Penalties.**

1. A packer who fails to file a timely, accurate, or complete purchase report as required pursuant to section 202A.2 is subject to a civil penalty of not more than five thousand dollars. Each failure by a packer to file a timely, accurate, or complete purchase report constitutes a separate violation.

2. A packer who fails to post a timely, accurate, or complete purchase notice as required pursuant to section 202A.3 is subject to a civil penalty of not more than one thousand dollars. Each failure by a packer to post a timely, accurate, or complete purchase notice constitutes a separate violation.

3. A packer who includes a confidentiality provision in a contract with a livestock seller in violation of section 202A.4 is guilty of a fraudulent practice as provided in section 714.8.

99 Acts, ch 88, §8, 11, 13

Future repeal of subsections 1 and 2 if substantially similar federal legislation or regulation is implemented; finding and order by secretary of agriculture; see 99 Acts, ch 88, §11

## CHAPTER 202B

## SWINE AND BEEF PROCESSORS

Referred to in §331.756(33)

Transferred from portions of chapter 9H in Code Supplement 2003  
pursuant to Code editor directive in 2003 Acts, ch 115, §16, 19

	SUBCHAPTER I		SUBCHAPTER III
202B.101	Purpose.	202B.301	Reports by contract feeders.
202B.102	Definitions.	202B.302	Reports by processors.
		202B.303	Signing reports.
		202B.304	Duties of secretary of state.
		202B.305	Additional information.
	SUBCHAPTER II		SUBCHAPTER IV
202B.201	Prohibited operations and activities — exceptions.	202B.401	Penalties — injunctive relief.
202B.202	Compliance requirements.	202B.402	Penalties — reports.

## SUBCHAPTER I

**202B.101 Purpose.**

The purpose of this chapter is to preserve free and private enterprise, prevent monopoly, and also to protect consumers by regulating the balance of competitive forces in beef and swine production, by enhancing the welfare of the farming community, and also by preventing processors from gaining control of beef or swine production.

2003 Acts, ch 115, §4, 16, 19

**202B.102 Definitions.**

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

1. “*Base price*” means the price paid for swine, delivered to the processor, before application of any premiums or discounts, and expressed in dollars per hundred pounds of hot carcass weight as calculated in the same manner as provided in 7 C.F.R. § 59.30.

2. “*Business association*” means a person organized under statute or common law in this state or another jurisdiction for purposes of engaging in a commercial activity on a profit, cooperative, or not-for-profit basis, including but not limited to a corporation or entity taxed as a corporation under the Internal Revenue Code, nonprofit corporation, cooperative association, partnership, limited partnership, limited liability company, limited liability partnership, investment company, joint stock company, joint stock association, or trust, including but not limited to a business trust.

3. “*Cash or spot market purchase*” means the purchase of swine by a processor from a seller, if the swine are slaughtered not more than fourteen days after the date that the seller and the processor agree on a date of delivery of the swine for slaughter and the base price for purchasing the swine is determined by an oral or written agreement between seller and processor executed on the day the swine are delivered for slaughter.

4. “*Cattle operation*” means a location including but not limited to a building, lot, yard, corral, or other place where cattle for slaughter are fed or otherwise maintained.

5. “*Contract feeder*” means a person owning in the applicable reporting year, as provided in section 202B.301, more than two thousand five hundred swine or five thousand head of poultry, if the swine or poultry are subject to a contract or contracts for care and feeding by a person or persons other than the owner on land which is not owned, leased, or held by the owner.

6. “*Contract for the care and feeding of swine*” means an oral or written agreement executed between a person and the owner of swine, under which the person agrees to care for and feed the owner’s swine on the person’s premises. A contract for the care and feeding of swine does not include an agreement for the sale or purchase of swine.

7. “Cooperative association” means the same as defined in section 10.1.

8. “Indirect” means to act or attempt to accomplish an act through an interest in a business association, through one or more affiliates or intermediaries, or by any method other than a direct approach, including by any circuitous or oblique method.

9. “Person” means an individual, business association, government or governmental subdivision or agency, or any other legal entity.

10. “Processor” means a person who alone or in conjunction with others directly or indirectly controls the manufacturing, processing, or preparation for sale of beef or pork products, including the slaughtering of cattle or swine or the manufacturing or preparation of carcasses or goods originating from the carcasses, if the beef or pork products have a total annual wholesale value of eighty million dollars or more for the person’s tax year. A person shall be deemed to be a processor if any of the following apply:

a. The person has a threshold interest in a processor which is a business association. “Threshold interest” means a direct or indirect interest in the business association, calculated as follows:

(1) For a processor of beef products, the person’s threshold interest begins at ten percent.

(2) For a processor of pork products, the person’s threshold interest begins at ten percent for a processor of pork products having a total annual wholesale value of at least eighty million dollars and decreases to one percent for a processor of pork products having a total annual wholesale value of at least two hundred sixty million dollars. The amount of the decrease in the amount of the threshold interest shall equal one percent for each increased increment of twenty million dollars in total annual wholesale value.

b. The person holds an executive position in a processor of pork products or owes a processor of pork products a fiduciary duty if the processor directly or indirectly controls the processing of pork products having a total annual wholesale value of two hundred sixty million dollars or more. A person who held such an executive position or owed a fiduciary duty shall be deemed to still hold the position or owe the duty for a two-year period following the date that the person relinquishes the position or duty. An executive position in a processor organized as a business association includes but is not limited to a member of a board of directors or an officer of a corporation or cooperative association, a director or officer of a joint stock company or joint stock association, a manager of a limited liability company, a general partner of a limited partnership, or a trustee of a trust.

11. “Qualified processor” means a processor of pork products if all of the following apply:

a. (1) (a) Swine producers exercise a controlling interest in the processor. “Controlling interest” means actual control or the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a processor, whether through the ownership of voting securities, by contract, or otherwise.

(b) Of the total interest held by all persons in the processor, swine producers hold at least sixty percent of the interest. In addition, of the total interest held by all persons in the processor, swine producers hold at least sixty percent of interests with voting rights.

(2) Of the total interest held by all persons in the processor, all retailers hold a total of not more than twenty percent of the interest.

b. Another processor does not hold a direct or indirect interest in the processor. However, this paragraph does not apply to a person deemed to be a processor solely because the person holds a threshold interest in the processor.

c. Not less than ten percent of the swine slaughtered by the processor each day are purchased through cash or spot market purchases.

d. The processor makes cash or spot market purchases of swine under the same terms and conditions from both sellers of swine who hold a direct or indirect interest in the processor and sellers of swine who do not hold a direct or indirect interest in the processor. In making such cash or spot market purchases of swine, the processor shall not provide sellers of swine who hold a direct or indirect interest in the processor with a preference over sellers of swine who do not hold a direct or indirect interest in the processor.

12. “Retailer” means a person who is engaged in the business of selling pork products, if all of the following apply:

a. The pork products are sold only on a retail basis directly to the ultimate purchasers of the pork products for consumption and not for resale.

b. The person is not engaged in the slaughter of swine.

c. A processor does not have a direct or indirect interest in the person.

13. “*Swine operation*” means a location where swine are fed or otherwise maintained, including a building, lot, yard, or corral; and swine which are fed or otherwise maintained at the location.

14. “*Swine producer*” means a person who owns, controls, or operates a swine operation or who contracts for the care and feeding of swine.

2003 Acts, ch 115, §1 – 3, 10, 16, 19

Referred to in §202B.201, 202B.202, 202B.301, 203.1, 203C.1, 459.102, 459A.103, 459B.103, 579A.1

## SUBCHAPTER II

### **202B.201 Prohibited operations and activities — exceptions.**

1. Except as provided in subsections 2 and 3, and section 202B.202, all of the following apply:

a. For cattle, a processor shall not own, control, or operate a cattle operation in this state.

b. For swine, a processor shall not do any of the following:

(1) (a) (i) Directly or indirectly own, control, or operate a swine operation in this state.

(ii) Finance a swine operation in this state or finance a person who directly or indirectly contracts for the care and feeding of swine in this state.

(iii) Obtain a benefit of production associated with feeding or otherwise maintaining swine, by directly or indirectly assuming a morbidity or mortality production risk, if the swine are fed or otherwise maintained as part of a swine operation in this state or by a person who contracts for the care and feeding of swine in this state.

(iv) Directly or indirectly receive the net revenue derived from a swine operation in this state or from a person who contracts for the care and feeding of swine in this state.

(b) For purposes of subparagraph division (a), subparagraph subdivisions (i) and (ii), both of the following apply:

(i) “*Finance*” means an action by a processor to directly or indirectly loan money or to guarantee or otherwise act as a surety.

(ii) “*Finance*” or “*control*” does not include executing a contract for the purchase of swine by a processor, including but not limited to a contract that contains an unsecured ledger balance or other price risk sharing arrangement. “*Finance*” also does not include providing an unsecured open account or an unsecured loan, if the unsecured open account or unsecured loan is used for the purchase of feed for the swine and the outstanding amount due by the debtor does not exceed five hundred thousand dollars. However, the outstanding amount due to support a single swine operation shall not exceed two hundred fifty thousand dollars.

(2) Directly or indirectly contract for the care and feeding of swine in this state.

2. Subsection 1 shall not apply to a swine producer who holds a threshold interest in a qualified processor in the manner provided in section 202B.102, if all of the following apply:

a. The swine producer’s threshold interest in the qualified processor is not more than ten percent.

b. The swine producer is not a processor. However, this paragraph does not apply to a swine producer deemed to be a processor solely because the swine producer holds a threshold interest in the qualified processor as otherwise allowed under this subsection or because the swine producer holds an executive position in the qualified processor or owes the qualified processor a fiduciary duty.

3. This section shall not preclude a processor from doing any of the following:

a. Contracting for the purchase of cattle or swine, provided that where the contract sets a date for delivery which is more than twenty days after the making of the contract, the contract shall do one of the following:

(1) Specify a calendar day for delivery of the cattle or swine.

(2) Specify the month for the delivery, and shall allow the farmer to set the week for the delivery within such month and the processor to set the date for delivery within such week.

b. Carrying on legitimate research, educational, or demonstration activities.

c. Owning and operating facilities to provide normal care and feeding of cattle or swine for a period not to exceed ten days immediately prior to slaughter, or for a longer period in an emergency.

[C77, 79, 81, §172C.2]

88 Acts, ch 1191, §3; 92 Acts, ch 1151, §5

C93, §9H.2

93 Acts, ch 39, §5, 6; 2000 Acts, ch 1048, §2, 3; 2002 Acts, ch 1095, §4, 10 – 12; 2003 Acts, ch 115, §5, 16, 19

CS2003, §202B.201

2009 Acts, ch 41, §79

Referred to in §202B.302, 202B.401

### **202B.202 Compliance requirements.**

1. A cooperative association which is a party to a contract for the care and feeding of swine in compliance with section 9H.2 prior to May 9, 2003, and which is in violation of section 9H.2, as amended by 2003 Iowa Acts, ch 115, shall have until June 30, 2007, to comply with section 9H.2, as amended by 2003 Iowa Acts, ch 115.

Notwithstanding any provision of this section, a cooperative association shall not take an action on or after May 9, 2003, that would be in violation of section 9H.2, as amended by 2003 Iowa Acts, ch 115.

2. A processor that was in compliance with section 9H.2, Code 2001, prior to January 1, 2002, and which is in violation of section 9H.2, as amended by 2002 Acts, chapter 1095, shall have until June 30, 2006, to comply with section 9H.2, as amended by 2002 Acts, chapter 1095.

3. Notwithstanding any provision of this section, a processor shall not take an action on or after January 1, 2002, that would be in violation of section 9H.2, as amended by 2002 Acts, chapter 1095.

4. The two-year period that a person who holds an executive position in a processor or owes a processor a fiduciary duty and thus is deemed to be a processor as provided in section 202B.102, subsection 10, paragraph “b”, shall not apply if the person held the position or owed the duty on January 1, 2002, and relinquishes the position or duty on or before June 30, 2006.

2002 Acts, ch 1095, §5, 10 – 12

C2003, §9H.2A

2003 Acts, ch 115, §6 – 9, 16, 19

CS2003, §202B.202

Referred to in §202B.201

## SUBCHAPTER III

### **202B.301 Reports by contract feeders.**

A contract feeder shall file with the secretary of state on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state an annual report containing all of the following information, if applicable:

1. The name and address of the person.

2. For each county, which the contractor shall identify, the approximate total number of swine or head of poultry subject to a contract for feeding and care as described in section 202B.102, subsection 6.

3. The name and address of the purchaser of the swine or poultry.

88 Acts, ch 1191, §6

C89, §172C.5B

C93, §9H.5B

2002 Acts, ch 1095, §10 – 12; 2003 Acts, ch 115, §16, 19  
CS2003, §202B.301  
Referred to in §202B.102

### **202B.302 Reports by processors.**

A processor shall file a report with the secretary of state on or before March 31 of each year, as follows:

1. For all processors, the report shall include all of the following:
  - a. The number of swine and the number of cattle owned and fed more than thirty days by the processor in this state during the processor's preceding tax year.
  - b. The total number of swine and the total number of cattle owned and fed more than thirty days by the processor during the processor's preceding tax year.
  - c. The number of swine and the number of cattle slaughtered in this state by the processor during the processor's preceding tax year.
  - d. The total number of swine and the total number of cattle slaughtered by the processor during the processor's preceding tax year.
  - e. The total wholesale value of beef or pork products that have been processed by the processor during the preceding tax year.
  - f. The total number of swine for which the processor has contracted for feeding as provided in section 202B.201.
2. For a qualified processor, the report shall include all of the following:
  - a. The total number of swine slaughtered each day during the qualified processor's preceding tax year.
  - b. The total number of swine slaughtered each day that are purchased through cash or spot market purchases during the qualified processor's preceding tax year.

[C77, 79, 81, §172C.9]

88 Acts, ch 1191, §7

C93, §9H.9

2000 Acts, ch 1022, §1; 2002 Acts, ch 1095, §7, 11, 12; 2003 Acts, ch 115, §16, 19

CS2003, §202B.302

### **202B.303 Signing reports.**

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

[C77, 79, 81, §172C.10]

C93, §9H.10

93 Acts, ch 39, §19; 2003 Acts, ch 115, §16, 19

CS2003, §202B.303

### **202B.304 Duties of secretary of state.**

The secretary of state shall notify the attorney general when the secretary of state has reason to believe a violation of this chapter has occurred. It is the intent of this section that information shall be made available to members of the general assembly and appropriate committees of the general assembly in order to determine the extent of production operations being carried out in this state by contract feeders and processors and the effect of such practices upon the economy of this state. The reports of contract feeders and processors required in this chapter shall be confidential reports except as to the attorney general for review and appropriate action when necessary. The secretary of state shall assist any committee of the general assembly existing or established for the purposes of studying the effects of this chapter and the practices this chapter seeks to study and regulate.

[C77, 79, 81, §172C.14]

88 Acts, ch 1191, §9; 91 Acts, ch 172, §7

C93, §9H.14

93 Acts, ch 39, §20; 2003 Acts, ch 115, §13, 16, 19  
CS2003, §202B.304

**202B.305 Additional information.**

The secretary of state shall request additional information as may be necessary or appropriate to enable the secretary of state to administer this chapter.

[C77, 79, 81, §172C.15]

C93, §9H.15

2003 Acts, ch 115, §16, 19

CS2003, §202B.305

SUBCHAPTER IV

**202B.401 Penalties — injunctive relief.**

1. The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

2. *a.* A processor who violates section 202B.201 is subject to a civil penalty of not more than twenty-five thousand dollars. Each day that a violation continues shall be considered a separate offense.

*b.* If the attorney general or a county attorney is the prevailing party in an action for a violation of section 202B.201, the prevailing party shall be awarded court costs and reasonable attorney fees, which shall be taxed as part of the costs of the action. If the attorney general is the prevailing party, the moneys shall be deposited in the general fund of the state. If the county is the prevailing party, the moneys shall be deposited in the general fund of the county.

[C77, 79, 81, §172C.3]

91 Acts, ch 172, §3

C93, §9H.3

2002 Acts, ch 1095, §6, 11, 12; 2003 Acts, ch 115, §16, 19

CS2003, §202B.401

**202B.402 Penalties — reports.**

Failure to timely file a report or the filing of false information is punishable by a civil penalty not to exceed one thousand dollars.

For purposes of this section a report is timely filed if the report is filed prior to May 1 of the year in which it is required to be filed.

The secretary of state shall notify a person who the secretary has reason to believe is required to file a report as provided by this chapter and who has not filed a timely report, that the person may be in violation of this section. The secretary of state shall include in the notice, a statement of the penalty which may be assessed if the required report is not filed within thirty days. The secretary of state shall refer to the attorney general any person who the secretary has reason to believe is required to report under this chapter if, after thirty days from receipt of the notice, the person has not filed the required report. The attorney general may, upon referral from the secretary of state, file an action in district court to seek the assessment of a civil penalty of one hundred dollars for each day the report is not filed.

[C77, 79, 81, §172C.11]

91 Acts, ch 172, §6

C93, §9H.11

2003 Acts, ch 115, §16, 19

CS2003, §202B.402

## CHAPTER 202C

### FEEDER PIG DEALERS

202C.1	Definitions.	202C.3	Surety or issuer — liability.
202C.2	Evidence of financial responsibility — requirements.	202C.4	Departmental rules.

#### 202C.1 Definitions.

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

1. “*Dealer*” means a person required to be licensed as a dealer pursuant to section 163.30. However, a dealer does not include a person who operates a livestock market, as defined in section 459.102.

2. “*Department*” means the department of agriculture and land stewardship.

3. “*Feeder pig*” means an immature swine fed for purposes of direct slaughter which weighs one hundred pounds or less.

4. “*Financial institution*” means a bank or savings association authorized by the laws of the United States, which is a member of the federal deposit insurance corporation, the federal savings and loan insurance corporation, or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

5. “*Purchaser*” means the owner or operator of a farm as provided in section 163.30 who is delivered feeder pigs pursuant to a sales agreement in which the owner or operator is a party.

6. “*Sales agreement*” means an oral or written contract executed between a dealer and a purchaser for the sale of feeder pigs.

2003 Acts, ch 90, §2; 2004 Acts, ch 1095, §2, 6; 2012 Acts, ch 1017, §54

#### 202C.2 Evidence of financial responsibility — requirements.

1. A dealer shall provide the department with evidence of financial responsibility as required by the department. The evidence of financial responsibility shall consist of a surety bond furnished by a surety or an irrevocable letter of credit issued by a financial institution.

2. The evidence of financial responsibility shall be provided to the department before the dealer’s license is issued or renewed pursuant to section 163.30.

3. The amount of the evidence of financial responsibility shall be established by rules which shall be adopted by the department. Unless the department otherwise has good cause, the rules shall be based upon the volume of sales reported by the dealer to the United States department of agriculture grain inspection, packers and stockyards administration. However, the evidence of financial responsibility shall not be for less than five thousand dollars or for more than twenty-five thousand dollars. The department may increase the amount of the evidence of financial responsibility for a dealer upon a showing of good cause.

4. The evidence of financial responsibility must be conditioned upon the dealer’s faithful performance of the terms and conditions of the sales agreement. The surety’s or issuer’s liability extends to each such sales agreement executed while the surety bond or letter of credit is in force and until performance or the rescission of the sales agreement.

5. The evidence of financial responsibility shall be continuous in nature until canceled by the surety or issuer. The surety or issuer shall provide at least ninety days’ notice in writing to the dealer and the department indicating the surety’s or issuer’s intent to cancel the surety bond or letter of credit and the effective date of the cancellation. The dealer shall have sixty days from the date of receipt of the surety’s or issuer’s notice of cancellation to file a replacement. However, the surety or issuer remains liable for damages arising from sales agreements which were executed during the effective period of the evidence of financial responsibility.

2003 Acts, ch 90, §3; 2004 Acts, ch 1095, §3, 6

Referred to in §163.30

#### 202C.3 Surety or issuer — liability.

1. The purchaser may bring a legal action arising from the breach of a sales agreement

against the surety on the bond or issuer on the irrevocable letter of credit in the purchaser's own name in district court to recover any damages as allowed by law. The purchaser may also be awarded interest as determined pursuant to section 668.13, beginning from the date that the sales agreement was executed. The purchaser may also be awarded court costs and reasonable attorney fees, which shall be taxed as part of the costs of the legal action.

2. The aggregate liability of the surety or issuer due to a breach of a sales agreement shall not exceed the amount of the evidence of financial responsibility.

3. A legal action brought by a purchaser against the surety on the bond or the issuer of the irrevocable letter of credit shall be brought not later than one hundred eighty days after the date that the dealer delivers the feeder pigs to the purchaser pursuant to the sales agreement.

2003 Acts, ch 90, §4; 2004 Acts, ch 1095, §4, 6

#### 202C.4 Departmental rules.

The department shall adopt rules as required to administer this chapter, including but not limited to rules providing for amounts of evidence of financial responsibility, qualifications for a surety or financial institution, procedures for filing evidence of financial responsibility, including replacement bonds or letters of credit, requirements for the cancellation of the evidence of financial responsibility, and the liability of a surety or issuer after cancellation.

2003 Acts, ch 90, §5

## CHAPTER 203

### GRAIN DEALERS

Referred to in §22.7, 159.6, 189.16, 190.1, 203C.6, 203C.24, 203D.3A, 203D.4, 203D.5A, 554.7204, 669.14

203.1	Definitions.	203.11B	Grain industry peer review panel.
203.2	Powers and duties of the department.	203.12	Claims — cessation of a license and notice of license revocation.
203.2A	Grain purchasers who are not licensed grain dealers — special notice requirements.	203.12A	Lien on grain dealer assets.
203.3	License required — financial responsibility.	203.12B	Appointment of department as receiver.
203.4	Participation in indemnity fund required.	203.13	Enforcement officers. Repealed by 2003 Acts, ch 69, §21.
203.5	License.	203.14	No obligation of state.
203.6	Fees.	203.15	Credit-sale contracts.
203.7	Posting of license.	203.16	Confidentiality of records.
203.8	Payment.	203.17	Documents and records.
203.9	Inspection of premises and records — reconstruction of records.	203.18	Reserved.
203.10	Action affecting a license.	203.19	Cooperative agreements.
203.11	Penalties — injunctions.	203.20	Shrinkage adjustments — disclosures — penalties.
203.11A	Civil penalties.	203.21	Reserved.
		203.22	Prioritization of inspections of grain dealers.

#### 203.1 Definitions.

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

1. “*Bond*” means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 7.

2. “*Check*” means a paper instrument used for ordering, instructing, or authorizing a financial institution to make payment or credit a presenter's account and debit the issuer's account. “*Check*” includes instruments commonly referred to as a check, draft, share draft, or other negotiable instrument for the payment of money. An instrument may be a check even though it is described on its face by another term, such as “money order”.

3. “*Credit-sale contract*” means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer,

or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

4. “*Custom livestock feeder*” means a person who buys grain for the sole purpose of feeding it to livestock owned by another person in a feedlot as defined in section 172D.1, subsection 6, or a confinement building owned or operated by the custom livestock feeder and located in this state.

5. “*Department*” means the department of agriculture and land stewardship.

6. “*Electronic funds transfer*” means a remote electronic transmission used for ordering, instructing, or authorizing a financial institution to pay money to or credit the account of the payee and debit the account of the payer. The remote electronic transmission may be initiated by telephone, terminal, computer, or similar device.

7. “*Financial institution*” means any of the following:

a. A bank or savings association authorized by the laws of any other state or the United States, which is a member of the federal deposit insurance corporation.

b. A bank or association chartered by the farm credit system under the federal Farm Credit Act, as amended, 12 U.S.C. ch. 23.

8. “*Good cause*” means that the department has cause to believe that the net worth or current asset to current liability ratio of a grain dealer presents a danger to sellers with whom the grain dealer does business, based on evidence of any of the following:

a. The making of a payment by use of a check or electronic funds transfer, and a financial institution refuses payment because of insufficient moneys in a grain dealer’s account.

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in section 203.22.

9. “*Grain*” means any grain for which the United States department of agriculture has established standards pursuant to the United States Grain Standards Act, 7 U.S.C. ch. 3.

10. “*Grain dealer*” means a person who cumulatively purchases at least one thousand bushels of grain from producers during any calendar month, if such grain is delivered within or into this state for purposes of resale, milling, or processing in this state. However, “*grain dealer*” does not include any of the following:

a. A producer of grain who is buying grain for the producer’s own use as seed or feed.

b. A person solely engaged in buying grain future contracts on the board of trade.

c. A person who purchases grain only for sale in a feed regulated under chapter 198.

d. A person who purchases grain only from grain dealers licensed under this chapter.

e. A person engaged in the business of selling agricultural seeds regulated by chapter 199.

f. A person buying grain only as a farm manager.

g. An executor, administrator, trustee, guardian, or conservator of an estate.

h. A custom livestock feeder.

i. A cooperative organized under chapter 501 or 501A, if the cooperative only purchases grain from its members who are producers or from a licensed grain dealer, and the cooperative does not resell that grain.

j. A limited liability company as defined in section 489.102 that meets all of the following requirements:

(1) The majority of voting rights in the limited liability company are held by its members who are producers.

(2) The purpose of the limited liability company is to produce renewable fuel as defined in section 214A.1.

(3) The limited liability company only purchases grain from its members who are producers or from a licensed grain dealer.

(4) The limited liability company does not resell grain that it purchases.

11. “*Person*” means the same as defined in section 4.1 and includes a business association as defined in section 202B.102 or joint or common venture regardless of whether it is organized under a chapter of the Code.

12. “*Producer*” means the owner, tenant, or operator of land in this state who has an interest in and receives all or a part of proceeds from the sale of grain produced on that land.

13. “*Seller*” means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes a person who executes a credit-sale contract as a seller.

14. “*United States Warehouse Act*” means the United States Warehouse Act, 7 U.S.C. ch. 10.

15. “*Warehouse operator*” means the same as defined in section 203C.1.

[C75, 77, 79, 81, §542.1; 81 Acts, ch 180, §1 – 3]

85 Acts, ch 80, §1, 2; 86 Acts, ch 1006, §1; 86 Acts, ch 1152, §1, 2; 86 Acts, ch 1245, §669; 87 Acts, ch 147, §1; 89 Acts, ch 143, §1001; 92 Acts, ch 1239, §55

C93, §203.1

95 Acts, ch 28, §1; 96 Acts, ch 1010, §2; 99 Acts, ch 106, §1 – 3; 2001 Acts, ch 36, §1, 2; 2003 Acts, ch 69, §1, 2, 46; 2004 Acts, ch 1038, §1; 2005 Acts, ch 135, §106; 2007 Acts, ch 22, §47; 2008 Acts, ch 1083, §1, 2; 2008 Acts, ch 1162, §133, 154, 155; 2012 Acts, ch 1017, §55; 2012 Acts, ch 1095, §85, 86

Referred to in §10.1, 203C.1, 203D.1, 714.8, 715A.2

### **203.2 Powers and duties of the department.**

The department may exercise general supervision over the business operations of grain dealers. The supervisory and regulatory powers authorized by this chapter shall be the responsibility of the warehouse bureau of the department. The department may inspect or cause to be inspected any grain dealer operating in this state and may require the filing of reports pertaining to the operation of the dealer’s business. The department shall adopt rules to provide for the efficient administration and regulation of the provisions of this chapter, and may designate an employee of the department to act for the department in any details connected with such administration, including the issuance of licenses and approval of grain dealers’ bonds in the name of the department.

[C75, 77, 79, 81, §542.2]

89 Acts, ch 143, §101

C93, §203.2

### **203.2A Grain purchasers who are not licensed grain dealers — special notice requirements.**

1. This section applies to a person who is not required to be issued a license as a grain dealer pursuant to section 203.3. The person shall not purchase grain from a producer for purposes of resale, milling, feeding, or processing.

2. Subsection 1 does not apply to any of the following:

a. A person who purchases less than fifty thousand bushels of grain from all producers in the twelve months prior to purchasing grain from the producer.

b. A person who provides notice to the producer as provided in subsection 3.

3. a. The notice must be in the following form:

#### Attention to Producers:

The person purchasing this grain is not a licensed grain dealer and this is not a covered transaction eligible for indemnification from the grain dealers and sellers indemnity fund as provided in Iowa Code section 203D.3

b. The notice must be provided to the producer prior to or at the time of the purchase. The notice may appear on a separate statement or as part of a document received by the producer, including a contract or receipt, as required by the department.

c. The notice must appear in a printed boldface font in at least ten point type.

99 Acts, ch 106, §4; 2012 Acts, ch 1095, §87

**203.3 License required — financial responsibility.**

1. A person shall not engage in the business of a grain dealer in this state without having obtained a license issued by the department.

2. The type of license required shall be determined as follows:

a. A class 1 license is required if the grain dealer purchases any grain by credit-sale contract, or if the value of grain purchased by the grain dealer from producers during the grain dealer's previous fiscal year exceeds five hundred thousand dollars. Any other grain dealer may elect to be licensed as a class 1 grain dealer.

b. A class 2 license is required for any grain dealer not holding a class 1 license. A class 2 licensee whose purchases from producers during a fiscal year exceed a limit of five hundred thousand dollars in value shall file within thirty days of the date the limit is reached a complete application for a class 1 license. If a class 1 license is denied, the person immediately shall cease doing business as a grain dealer.

3. An application for a license to engage in business as a grain dealer shall be filed with the department and shall be in a form prescribed by the department. The application shall include the name of the applicant, its principal officers if the applicant is a corporation or the active members of a partnership if the applicant is a partnership and the location of the principal office or place of business of the applicant. A separate license shall be required for each location at which records are maintained for transactions of the grain dealer. The application shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and the net worth of the applicant. The financial statement must be prepared according to generally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon a written request filed with the department, the department or a designated employee may allow asset valuations in accordance with a competent appraisal. Unpriced contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared.

4. In order to receive and retain a class 1 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least seventy-five thousand dollars, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 grain dealer if the person has a net worth of less than thirty-seven thousand five hundred dollars.

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer, except as provided in section 203.15, may elect to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause. A grain dealer shall submit financial statements to the department in addition to those required in this paragraph if the department determines that it is necessary to verify the grain dealer's financial status or compliance with this subsection.

c. A grain dealer shall submit a report to the department according to procedures required by the department, if the grain dealer provides a bond based in part on the number of bushels of unpaid grain purchased by the grain dealer, as provided in rules adopted by the department, in order to satisfy the current assets to current liabilities ratio requirement of this section. The report shall contain information required by the department, including the number of bushels of unpaid grain purchased by the grain dealer. The grain dealer shall submit the report not

more than once each month. However, the department may require that a grain dealer submit a report on a more frequent basis, if the department has good cause.

d. The grain dealer shall have and maintain current assets equal to at least one hundred percent of current liabilities or provide a bond under the following conditions:

(1) A grain dealer with current assets equal to at least fifty percent of current liabilities shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. After the amount of the bond equals one million dollars, the grain dealer may elect to base the remainder of the amount of the bond on the number of bushels of unpaid grain being purchased by the grain dealer, as provided for by rules which shall be adopted by the department. The remaining amount shall equal two thousand dollars for each one thousand dollars of the highest amount of bushels of unpaid grain purchased by the grain dealer during each month.

(2) A grain dealer with current assets equal to less than fifty percent of current liabilities shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond shall not be used for longer than thirty consecutive days in a twelve-month period.

5. In order to receive and retain a class 2 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least thirty-seven thousand five hundred dollars, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net deficiency. However, a person shall not be licensed as a class 2 grain dealer if the person has a net worth of less than seventeen thousand five hundred dollars.

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause. A grain dealer shall submit financial statements to the department in addition to those required in this paragraph if the department determines that it is necessary to verify the grain dealer's financial status or compliance with this section.

c. A grain dealer shall submit a report to the department according to procedures required by the department, if the grain dealer provides a bond based in part on the number of bushels of unpaid grain purchased by the grain dealer, as provided in rules adopted by the department, in order to satisfy the current assets to current liabilities ratio requirement of this section. The report shall contain information required by the department, including the number of bushels of unpaid grain purchased by the grain dealer. The grain dealer shall submit the report not more than once each month. However, the department may require that a grain dealer submit a report on a more frequent basis, if the department has good cause.

d. The grain dealer shall have and maintain current assets equal to at least one hundred percent of current liabilities or provide a bond under the following conditions:

(1) A grain dealer with current assets equal to at least fifty percent of current liabilities shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. After the amount of the bond equals one million dollars, the grain dealer may elect to base the remainder of the amount of the bond on the number of bushels of unpaid grain being purchased by the grain dealer, as provided for by rules which shall be adopted

by the department. The remaining amount shall equal two thousand dollars for each one thousand dollars of the highest amount of bushels of unpaid grain purchased by the grain dealer during each month.

(2) A grain dealer with current assets equal to less than fifty percent of current liabilities shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond shall not be used for longer than thirty consecutive days in a twelve-month period.

6. The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification with respect to the financial resources of the applicant and the applicant's ability to pay producers for grain purchased from them.

7. a. When the net worth or current ratio of a licensee in good standing is less than that required by this section, the grain dealer shall correct the deficiency or file a deficiency bond or an irrevocable letter of credit within thirty days of written notice by the department. Unless the deficiency is corrected or the deficiency bond or irrevocable letter of credit is filed within thirty days, the grain dealer license shall be suspended.

b. If the department finds that the welfare of grain producers requires emergency action, and incorporates a finding to that effect in its order, immediate suspension of a license may be ordered notwithstanding the thirty-day period otherwise allowed by paragraph "a".

8. A deficiency bond or irrevocable letter of credit filed with the department pursuant to this section shall not be canceled by the issuer on less than ninety days' notice by certified mail to the secretary of agriculture and the principal.

[C75, 77, 79, 81, §542.3; 81 Acts, ch 180, §4; 82 Acts, ch 1093, §1]

83 Acts, ch 18, §1; 83 Acts, ch 54, §1; 83 Acts, ch 175, §1, 2; 84 Acts, ch 1224, §1; 85 Acts, ch 234, §1, 2; 86 Acts, ch 1152, §3, 4; 87 Acts, ch 147, §2, 3; 89 Acts, ch 143, §201, 202, 301, 302, 401, 402; 92 Acts, ch 1239, §56, 57

C93, §203.3

94 Acts, ch 1086, §1 – 4; 2008 Acts, ch 1083, §3, 4

Referred to in §203.2A, 203.4, 203.6, 203.8, 203.9, 203.11, 203.11B, 203.12B, 203.15, 203D.1

### **203.4 Participation in indemnity fund required.**

A grain dealer licensed or required to be licensed pursuant to section 203.3 shall participate in and comply with the grain depositors and sellers indemnity fund provided in chapter 203D.

[C75, 77, 79, 81, §542.4; 81 Acts, ch 180, §5]

86 Acts, ch 1006, §2; 86 Acts, ch 1152, §5

C93, §203.4

2003 Acts, ch 69, §3

### **203.5 License.**

1. a. Upon the filing of an application on a form prescribed by the department and compliance with the terms and conditions of this chapter including rules of the department, the department shall issue the applicant a grain dealer's license. The license expires at the end of the third calendar month following the close of the grain dealer's fiscal year. A grain dealer's license may be renewed annually by filing a renewal application on a form prescribed by the department. An application for renewal must be received by the department on or before the end of the third calendar month following the close of the grain dealer's fiscal year.

b. The department shall not issue a grain dealer's license unless the applicant pays all of the following fees:

(1) For the issuance of a license, all of the following:

(a) A license fee imposed under section 203.6.

(b) A participation fee imposed under section 203D.3A, and any delinquent participation fee imposed under a previous license as provided in that section.

(2) For the renewal of a license, all of the following:

(a) A renewal fee imposed under section 203.6.

(b) A participation fee imposed under section 203D.3A, and any delinquent participation fee as provided in that section.

(c) A per-bushel fee as provided in section 203D.3A, and any delinquent per-bushel fee and penalty as provided in that section.

2. The department shall notify a licensed grain dealer of any delinquency in the payment of a participation fee or per-bushel fee as provided in section 203D.3A. The department shall suspend the grain dealer's license thirty days after delivering the notice unless the licensed grain dealer pays the delinquent fee.

3. The department may suspend or revoke the license of a grain dealer who discounts the purchase price paid for grain nominally for the participation fee or per-bushel fee as provided in section 203D.3A while that fee is not in effect.

4. A grain dealer license which has expired may be reinstated by the department upon receipt of a proper renewal application, the renewal fee and a reinstatement fee as provided in section 203.6, and any delinquent participation fee or per-bushel fee and penalty as provided in section 203D.3A. The applicant must file the renewal application and pay the fees and penalty to the department within thirty days from the date of expiration of the grain dealer license.

5. The department may cancel a license upon request of the licensee unless a complaint or information is filed against the licensee alleging a violation of a provision of this chapter.

6. a. The department shall refund a fee paid by an applicant to the department under this section if the department does not issue or renew a grain dealer's license.

b. The department shall prorate a fee paid by an applicant to the department under this section for the issuance or renewal of a license for less than a full year.

7. The department may deny a license to an applicant if the applicant has had a license issued under this chapter or chapter 203C revoked within the past three years, the applicant has been convicted of a felony involving a violation of this chapter or chapter 203C, or the applicant is owned or controlled by a person who has had a license so revoked or who has been so convicted.

8. The department may deny a license to an applicant if any of the following apply:

a. The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund in regard to a license issued under this chapter or chapter 203C, and the liability has not been discharged, settled, or satisfied.

b. The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 203C and the liability has not been discharged, settled, or satisfied.

[C75, 77, 79, 81, §542.5; 81 Acts, ch 180, §6]

84 Acts, ch 1100, §1; 89 Acts, ch 143, §701; 92 Acts, ch 1239, §58

C93, §203.5

2003 Acts, ch 69, §47; 2007 Acts, ch 22, §48; 2010 Acts, ch 1082, §1; 2012 Acts, ch 1095, §88

Referred to in §203.10, 203D.3A, 203D.5

### **203.6 Fees.**

The department shall charge the following fees for deposit in the general fund:

1. a. For the issuance or renewal of a license required under section 203.3, and for any inspection of a grain dealer, the fee shall be determined on the basis of all bushels of grain purchased during the grain dealer's previous fiscal year according to the grain dealer's financial statement required in section 203.3. The fee shall be calculated according to the following schedule:

(1) If the total number of bushels purchased is thirty-five thousand or less, the license fee is sixty-six dollars and the inspection fee is eighty-three dollars.

(2) If the total number of bushels purchased is more than thirty-five thousand, but not more than two hundred fifty thousand, the license fee is one hundred sixteen dollars and the inspection fee is one hundred twenty-five dollars.

(3) If the total number of bushels purchased is more than two hundred fifty thousand, but not more than five hundred thousand, the license fee is one hundred sixty-six dollars and the inspection fee is one hundred ninety-one dollars.

(4) If the total number of bushels purchased is more than five hundred thousand, but not more than one million, the license fee is two hundred ninety-one dollars and the inspection fee is two hundred forty-nine dollars.

(5) If the total number of bushels purchased is more than one million, but not more than one million eight hundred fifty thousand, the license fee is four hundred ninety-eight dollars and the inspection fee is three hundred seven dollars.

(6) If the total number of bushels purchased is more than one million eight hundred fifty thousand, but not more than three million two hundred thousand, the license fee is seven hundred six dollars and the inspection fee is three hundred seventy-four dollars.

(7) If the total number of bushels purchased is more than three million two hundred thousand, the license fee is nine hundred fifty-five dollars and the inspection fee is four hundred forty dollars.

b. If the applicant did not purchase grain in the applicant's previous fiscal year, the applicant shall pay the fee specified in paragraph "a", subparagraph (1). If during the licensee's fiscal year the number of bushels of grain actually purchased exceeds thirty-five thousand, the licensee shall notify the department and the license and inspection fee shall be adjusted accordingly. Subsequent adjustments shall be made as necessary. An applicant may elect licensing in any category of this subsection. Fees for new licenses issued for less than a full year shall be prorated from the date of application.

2. For an amendment to a license, the fee is ten dollars.

3. For a duplicate license, the fee is five dollars.

4. For reinstatement of a license the fee is fifty dollars.

[C75, 77, 79, 81, §542.6; 81 Acts, ch 180, §7, 32]

83 Acts, ch 18, §2; 83 Acts, ch 175, §3, 4; 84 Acts, ch 1100, §2; 92 Acts, ch 1239, §59

C93, §203.6

2009 Acts, ch 41, §215

Referred to in §203.5

**203.7 Posting of license.**

The grain dealer's license shall be posted in a conspicuous location in the place of business. A grain dealer's license is not transferable.

[C75, 77, 79, 81, §542.7; 81 Acts, ch 180, §8]

83 Acts, ch 18, §3

C93, §203.7

**203.8 Payment.**

1. a. A grain dealer licensed or required to be licensed pursuant to section 203.3 shall pay the purchase price to the seller for grain upon delivery or demand by the seller, but not later than thirty days after delivery by the seller unless in accordance with the terms of a credit-sale contract that satisfies the requirements of this chapter. The department shall adopt rules for payment by check and electronic funds transfer.

b. A grain dealer licensed or required to be licensed pursuant to section 203.3 shall not hold a check for the purchase of grain more than five days after the grain dealer issues a check to the seller. After that date, the grain dealer shall deliver the check in person or by mail to the seller's last known address.

2. As used in this section:

a. "Delivery" means the transfer of title to and possession of grain by a seller to a grain dealer or to another person in accordance with the agreement of the seller and the grain dealer.

b. "Payment" means the actual payment or tender of payment by a grain dealer to a seller of the agreed purchase price, or in the case of disputes as to sales of grain, the undisputed

portion of the purchase price without reduction for any separate claim of the grain dealer against the seller.

[C75, 77, 79, 81, §542.8; 81 Acts, ch 180, §9]

C93, §203.8

96 Acts, ch 1030, §1; 2003 Acts, ch 69, §4

Referred to in §203.12B

See §203.15

### **203.9 Inspection of premises and records — reconstruction of records.**

1. The department may inspect the premises used by any grain dealer in the conduct of the dealer's business at any time. The department may inspect a grain dealer's records that pertain to grain transactions during ordinary business hours. The department shall inspect a grain dealer's records at least once each eighteen-month period without justification. The department shall prioritize inspections based on the system provided in section 203.22. The department may use a risk rating produced by a statistical model provided in section 203.22 as justification to conduct an inspection. A transporter of grain in transit shall possess bills of lading or other documents covering the grain, and shall present them to any law enforcement officer on demand. If there is justification to believe that a grain dealer is engaged without a license as required pursuant to section 203.3, the department may inspect the grain dealer's records which pertain to grain transactions at any time.

2. If a grain dealer does not maintain a place of business in this state, the department is not required to inspect the grain dealer's records. A grain dealer shall submit the grain dealer's records relating to grain transactions occurring within this state to the department for purposes of an inspection as provided in this section at any reasonable time and place, including the offices of the department during regular business hours, as ordered by the department.

3. A grain dealer shall keep complete and accurate records. A grain dealer shall keep records for the previous six years. If the grain dealer's records are incomplete or inaccurate, the department may reconstruct the grain dealer's records in order to determine whether the grain dealer is in compliance with the provisions of this chapter. The department may charge the grain dealer the actual cost for reconstructing the grain dealer's records, which shall be considered repayment receipts as defined in section 8.2.

4. The department may suspend or revoke the license of a grain dealer for failing to consent to a departmental inspection or cooperate with the department during an inspection as provided in this chapter.

[C75, 77, 79, 81, §542.9; 81 Acts, ch 180, §10]

84 Acts, ch 1224, §2; 86 Acts, ch 1152, §6; 89 Acts, ch 143, §101; 92 Acts, ch 1239, §60

C93, §203.9

2003 Acts, ch 69, §5; 2012 Acts, ch 1095, §89

Referred to in §203.11, 203.15, 203.22

### **203.10 Action affecting a license.**

1. The cessation of a grain dealer's license occurs from any of the following:

- a. The revocation of the license by the department as provided in subsection 2.
- b. The cancellation of the license as provided in section 203.5.
- c. The expiration of the license according to the terms of the license as provided in this chapter, including a rule adopted in accordance with this chapter pursuant to chapter 17A.

2. The department may issue an order to suspend or revoke the license of a grain dealer who violates a provision of this chapter, including a rule adopted in accordance with this chapter, pursuant to chapter 17A.

[C75, 77, 79, 81, §542.10]

86 Acts, ch 1152, §7; 89 Acts, ch 143, §101

C93, §203.10

2003 Acts, ch 69, §6; 2012 Acts, ch 1095, §90; 2013 Acts, ch 90, §33

Referred to in §203.12B, 203D.6

Subsection 1, paragraph c amended

**203.11 Penalties — injunctions.**

1. A person who knowingly submits false information to or knowingly withholds information from the department or any of its employees when required to be submitted or maintained under this chapter, commits a fraudulent practice.

2. *a.* Except as provided in paragraph “*b*”, a person commits a serious misdemeanor if the person does any of the following:

(1) Engages in business as a grain dealer without a license as required in section 203.3.

(2) Obstructs an inspection of the person’s business premises or records required to be kept by a grain dealer pursuant to section 203.9.

(3) Uses a scale ticket or credit-sale contract in violation of this chapter or a requirement established by the department under this chapter.

*b.* A person who commits an offense specified in paragraph “*a*” after having been found guilty of the same offense commits an aggravated misdemeanor.

3. Except as provided in subsections 1 and 2, a person who violates any provision of this chapter commits a simple misdemeanor. With respect to a continuing violation, each day that the violation continues is a separate offense.

4. A person in violation of this chapter, or in violation of chapter 714 or 715A, which violation involves the business of a grain dealer, is subject to prosecution by the county attorney in the county where the business is located. However, if the county attorney fails to initiate prosecution within thirty days and upon request by the department, the attorney general may initiate and carry out the prosecution in cooperation, if possible, with the county attorney. The person in violation may be restrained by an injunction in an action brought by the department or the attorney general upon request by the department.

[C75, 77, 79, 81, §542.11; 81 Acts, ch 180, §11]

92 Acts, ch 1239, §61

C93, §203.11

2003 Acts, ch 69, §7

**203.11A Civil penalties.**

1. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed against a grain dealer for a violation of this chapter.

2. The amount of a civil penalty shall not exceed one thousand five hundred dollars. Each day that a violation continues shall constitute a separate violation. The amount of the civil penalty that may be assessed in a case shall not exceed the amount recommended by the grain industry peer review panel established pursuant to section 203.11B. Moneys collected in civil penalties by the department or the attorney general shall be deposited in the general fund of the state.

3. A civil penalty may be administratively assessed only after an opportunity for a contested case hearing under chapter 17A. The department may be represented in an administrative hearing or judicial proceeding by the attorney general. A civil penalty shall be paid within thirty days from the date that an order or judgment for the penalty becomes final. When a person against whom a civil penalty is administratively assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final until all judicial review processes are completed. When a person against whom a civil penalty is judicially assessed under this section seeks a timely appeal of judgment, the judgment is not final until the right of appeal is exhausted.

4. A person who fails to timely pay a civil penalty as provided in this section shall pay, in addition to the penalty, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

99 Acts, ch 106, §5

Referred to in §203.11B

**203.11B Grain industry peer review panel.**

1. The department shall establish a grain industry peer review panel to assist the department in assessing civil penalties pursuant to this section and section 203C.36A. The secretary of agriculture shall appoint to the panel the following members:

a. Two natural persons who are grain dealers licensed under this chapter and actively engaged in the grain dealer business.

b. Two natural persons who are warehouse operators licensed pursuant to chapter 203C and actively engaged in the grain warehouse business.

c. One natural person who is a producer actively engaged in grain farming.

2. a. The members appointed pursuant to this section shall serve four-year terms beginning and ending as provided in section 69.19. However, the secretary of agriculture shall appoint initial members to serve for less than four years to ensure that members serve staggered terms. A member is eligible for reappointment. A vacancy on the panel shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

b. The panel shall elect a chairperson who shall serve for a term of one year. The panel shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of three or more members. Three members constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the panel. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the panel.

c. Notwithstanding section 7E.6, the members shall only receive reimbursement for actual expenses for performance of their official duties, as provided by the department.

d. The panel shall be staffed by employees of the department.

3. The panel may propose a schedule of civil penalties for minor and serious violations of this chapter and chapter 203C. The department may adopt rules based on the recommendations of the panel as approved by the secretary of agriculture.

4. a. The panel shall review cases of grain dealers regulated under this chapter and warehouse operators regulated under chapter 203C who are subject to civil penalties as provided in section 203.11A or 203C.36A. A review shall be performed upon the request of the department or the person subject to the civil penalty.

b. The department shall present reports to the panel in regard to investigations of cases under review which may result in the assessment of a civil penalty against a person. The reports may be reviewed by the panel in closed session pursuant to section 21.5, and are confidential records. In presenting the reports, the department shall make available to the panel records of persons which are otherwise confidential under section 22.7, 203.16, or 203C.24. The panel members shall maintain the confidentiality of records made available to the panel. However, a determination to assess a civil penalty against a person shall be made exclusively by the department.

c. The panel may establish procedures for the review and establish a system of prioritizing cases for review, consistent with rules adopted by the department. The department shall adopt rules establishing a period for the review and response by the panel which must be completed prior to a contested case hearing under chapter 17A. A hearing shall not be delayed after the required period for review and response, except as provided in chapter 17A or the Iowa rules of civil procedure. The rules adopted by the department may exclude review of minor violations. The review may also include the manner of assessing and collecting the civil penalty.

d. The findings and recommendations of the panel shall be included in a response delivered to the department and the person subject to the civil penalty. The response may include a recommendation that a proposed civil penalty be modified or suspended, that an alternative method of collection be instituted, or that conditions be placed upon the license of a grain dealer as provided in section 203.3 or the license of a warehouse operator as provided in section 203C.6.

5. This section does not apply to an action by the department for a license suspension or revocation. This section also does not require a review or response if the case is subject to criminal prosecution or involves a petition seeking injunctive relief.

6. A response by the panel may be used as evidence in an administrative hearing or in

a civil or criminal case except to the extent that information contained in the response is considered confidential pursuant to section 22.7, 203.16, or 203C.24.

99 Acts, ch 106, §6; 2008 Acts, ch 1083, §5

Referred to in §203.11A, 203.16, 203C.24, 203C.36A

### **203.12 Claims — cessation of a license and notice of license revocation.**

1. Upon the cessation of a grain dealer license by revocation, cancellation, or expiration, any claim for the purchase price of grain against the grain dealer shall be made in writing and filed with the grain dealer and with the issuer of a deficiency bond or of an irrevocable letter of credit and with the department within one hundred twenty days after the date of the cessation. A failure to make this timely claim relieves the issuer and the grain depositors and sellers indemnity fund provided in chapter 203D of all obligations to the claimant.

2. Upon the revocation of a grain dealer license, the department shall cause notice of the revocation to be published once each week for two consecutive weeks in a newspaper of general circulation within the state of Iowa and in a newspaper of general circulation within the county of the grain dealer's principal place of business when that dealer's principal place of business is located in the state of Iowa. The notice shall state the name and address of the grain dealer and the effective date of revocation. The notice shall also state that any claims against the grain dealer shall be made in writing and sent by ordinary mail or delivered personally within one hundred twenty days after revocation to the grain dealer, to the issuer of a deficiency bond or of an irrevocable letter of credit, and to the department, and the notice shall state that the failure to make a timely claim does not relieve the grain dealer from liability to the claimant.

[C79, 81, §542.12]

86 Acts, ch 1152, §8

C93, §203.12

2012 Acts, ch 1095, §91

Referred to in §203D.6

### **203.12A Lien on grain dealer assets.**

1. a. As used in this section:

(1) "*Grain dealer assets*" includes proceeds received or due a grain dealer upon the sale, including exchange, collection, or other disposition, of grain sold by the grain dealer. "*Grain dealer assets*" also includes any other funds or property of the grain dealer which can be directly traced as being from the sale of grain by the grain dealer, or which were utilized in the business operation of the grain dealer.

(2) "*Proceeds*" means noncash and cash proceeds as defined in section 554.9102.

b. A court, upon petition by an affected party, may order that claimed grain dealer assets are not grain dealer assets as defined in this section. The burden of proof shall be upon the petitioner to establish that the assets are not grain dealer assets as defined in this section.

2. A statutory lien is imposed on all grain dealer assets in favor of sellers who have surrendered warehouse receipts or other written evidence of ownership as part of a grain sale transaction or who possess written evidence of the sale of grain to a grain dealer, without receiving full payment for the grain.

3. The lien shall arise at the time of surrender of warehouse receipts or other written evidence of ownership as part of a grain sale transaction or the time of delivery of the grain for sale, and shall terminate when the liability of the grain dealer to the seller has been discharged. The lien of all sellers is hereby assigned to the Iowa grain indemnity fund board, on behalf of the grain depositors and sellers indemnity fund.

4. To perfect the lien, the Iowa grain indemnity fund board must file a lien statement with the office of the secretary of state. The lien statement is valid only if filed on or after the date of suspension but not later than sixty days after the incurrence date as provided in section 203D.6. The lien statement shall disclose the name of the grain dealer, the address of the dealer's principal place of business, a description of identifiable grain dealer assets, and the amount of the lien. The lien amount shall be the board's estimate of the final cost of reimbursing the grain depositors and sellers indemnity fund for the payment of claims

against the fund resulting from the breach of the grain dealer's obligations. The board shall correct the amount not later than one hundred eighty days following the incurrence date. A court, upon petition by an affected person, may correct the amount. The board shall have the burden of proving that the amount is an accurate estimate.

5. The Iowa grain indemnity fund board, upon written demand of the grain dealer, shall file a termination statement with the secretary of state, if after one hundred eighty days from the date that the lien is perfected the grain dealer's license has not ceased by revocation, cancellation, or expiration. Upon filing the termination statement, the lien becomes unperfected. The board shall also deliver a copy of the termination statement to the grain dealer.

6. The secretary of state shall note the filing of a lien statement under this section in a manner provided by chapter 554, the uniform commercial code. The secretary shall note the filing of a termination statement with the lien statement.

7. A lien statement filed under this section shall be a security interest perfected under chapter 554 and subject to the same priority as provided under section 554.9322.

8. If the grain dealer is also licensed under chapter 203C, and in the event the department is appointed as a receiver under section 203C.3, assets under the authority of the receiver are free from this statutory lien. However, if there are receivership assets in excess of those necessary to fully reimburse depositors, the perfected lien will attach to those excess assets.

9. *a.* The board may enforce the lien in the manner provided in chapter 554, article 9, part 6, for the enforcement of security interests. If, upon enforcement of the lien, the lien amount is satisfied in full without exhaustion of the grain dealer assets, the remaining assets shall be returned to the grain dealer or, if there are competing claims to those remaining assets by other creditors, shall place those assets in the custody of the district court and implead the known creditors.

*b.* For purposes of enforcement of the lien, the board is deemed to be the secured party and the grain dealer is deemed to be the debtor, and each has the respective rights and duties of a secured party and a debtor as provided in chapter 554, article 9, part 6. If a right or duty under chapter 554, article 9, part 6, is contingent upon the existence of express language in a security agreement, or may be waived by express language in a security agreement, the requisite language is deemed not to exist for purposes of enforcement of the lien created by this section.

10. Actions relating to this section shall be brought in the district court in the county in which the grain dealer's primary place of business is located or in Polk county.

92 Acts, ch 1239, §62; 2000 Acts, ch 1149, §163, 187; 2009 Acts, ch 133, §211; 2012 Acts, ch 1095, §92

Referred to in §203.12B, 203D.5A

### **203.12B Appointment of department as receiver.**

1. As used in this section:

*a.* "Grain dealer assets" means the same as defined in section 203.12A, including any proceeds from a deficiency bond or irrevocable letter of credit, or any insurance policy relating to those assets.

*b.* "Interested seller" means a person who delivers or has delivered grain to a grain dealer who has not been paid as provided in section 203.8 or according to the terms of a credit-sale contract breached by the grain dealer.

*c.* "Issuer" means a person who issues a deficiency bond or an irrevocable letter of credit pursuant to section 203.3, or an issuer of grain assets.

2. *a.* The department may file a verified petition in district court requesting that the department be appointed as a receiver, and the district court shall appoint the department as receiver, in order to protect interested sellers, if any of the following apply:

(1) The grain dealer's license is revoked or suspended under section 203.10.

(2) There is evidence that the grain dealer has engaged or is engaging in business under this chapter without obtaining a license as required pursuant to section 203.3.

*b.* Upon being appointed as a receiver, the department shall take custody and provide for the disposition of the grain dealer assets of the grain dealer under the supervision of the court.

(1) The petition shall be filed in the county in which the grain dealer maintains its principal place of business in this state. The court may issue ex parte any temporary order as it determines necessary to preserve or protect the grain dealer assets and the rights of interested sellers.

(2) The petition shall be accompanied by the department's plan for disposition of grain dealer assets which shall provide terms as may be necessary to preserve or protect the grain dealer assets and the rights of interested sellers, less expenses incurred by the department in connection with the receivership. The plan may provide for the delivery or sale of grain as provided in section 203C.4. The plan may provide for the operation of the business of the grain dealer on a temporary basis and any other course of action or procedure which will serve the interests of interested sellers.

(3) The petition shall be filed with the clerk of the district court who shall set a date for a hearing in the same manner as provided in section 203C.3.

(4) Copies of the petition, the notice of hearing, and the department's plan of disposition shall be delivered to the following:

(a) The grain dealer and each issuer who shall receive copies delivered in the manner required for service of an original notice.

(b) Interested sellers as determined by the department who shall receive copies delivered by ordinary mail.

(5) The failure of a person to receive the required notification shall not invalidate the proceedings on the petition or any part of the petition for the appointment of the department as the receiver.

(6) A person is not a party to the action unless admitted by the court upon application.

3. When appointed as a receiver, the department shall publish notice of the appointment in the same manner provided in section 203C.3.

4. The department may employ or appoint a person to appear on behalf of the department in any proceedings before the court as provided in section 203C.3.

5. An action of the department shall not be subject to the provisions of chapter 17A. A person employed or appointed by the department as receiver shall be deemed to be an employee of the state as defined in section 669.2. Chapter 669 is applicable to any claim as defined in section 669.2 against the person carrying out the duties of the department acting as receiver.

6. When the department is appointed as a receiver, the issuer shall be joined as a party, and may be ordered by the court to pay indemnification proceeds, and shall be discharged from further liability as provided in section 203C.4. The department shall provide notice to interested sellers within one hundred twenty days after the date of appointment. A failure of a person to file a timely claim as provided by the department shall defeat the claim, except to the extent of any excess grain dealer assets remaining after all timely claims are paid in full.

7. If the court approves the sale of grain, the department shall employ or appoint a merchandiser who shall enjoy the same status, exercise the same powers, and receive compensation to the same extent as a merchandiser employed or appointed pursuant to section 203C.4. A person employed or appointed as a merchandiser must meet the following requirements:

a. Be experienced or knowledgeable in the operation of grain dealers as provided in this chapter.

b. Be experienced or knowledgeable in the marketing of grain.

c. Not have had a grain dealer's license issued pursuant to section 203.3 suspended or revoked as provided in section 203.10.

d. Not have any pecuniary interest in the grain dealer assets of the grain dealer and not have a business relationship with the grain dealer.

8. The sale of the grain shall proceed in the same manner as grain sold pursuant to section 203C.4. The department may, with the approval of the court, continue the operation of all or any part of the business of the grain dealer on a temporary basis and take any other course of action or procedure which will serve the interests of interested sellers. The department is entitled to reimbursement out of grain dealer assets for costs directly attributable to the receivership. The department shall be reimbursed from the grain dealer

assets in the same manner as provided in section 203C.4. If the approved plan of disposition requires a distribution of cash proceeds, the department shall submit to the court a proposed plan of distribution of those proceeds. The plan shall be approved and executed and the department shall be discharged and the receivership terminated in the same manner as provided in section 203C.4.

96 Acts, ch 1030, §2; 2009 Acts, ch 41, §216; 2012 Acts, ch 1095, §93

**203.13 Enforcement officers.** Repealed by 2003 Acts, ch 69, § 21.

**203.14 No obligation of state.**

Nothing in this chapter shall be construed to imply any guarantee or obligation on the part of the state of Iowa, or any of its agencies, employees or officials, either elective or appointive, in respect to any agreement or undertaking to which the provisions of this chapter relate.

[C79, 81, §542.14]

C93, §203.14

**203.15 Credit-sale contracts.**

A grain dealer shall not purchase grain by a credit-sale contract except as provided in this section.

1. The grain dealer shall be licensed pursuant to section 203.3. All of the following shall apply to a grain dealer required to be licensed under that section who purchases grain by credit-sale contract:

a. The grain dealer shall give written notice to the department prior to engaging in the purchase of grain by credit-sale contract. The notice shall contain information required by the department.

b. All credit-sale contract forms in the possession of the grain dealer shall have been permanently and consecutively numbered at the time of printing of the forms. The grain dealer shall maintain an accurate record of all credit-sale contract forms and numbers obtained by that dealer. The record shall include the disposition of each numbered form, whether by execution, destruction, or otherwise.

c. The grain dealer who purchases grain by credit-sale contract shall maintain records as required by the department in compliance with this section.

2. In addition to other information as may be required, a credit-sale contract shall contain or provide for all of the following:

a. The seller's name and address.

b. The conditions of delivery.

c. The amount and kind of grain delivered.

d. The price per bushel or basis of value.

e. The date payment is to be made.

f. The duration of the credit-sale contract, which shall not exceed twelve months from the date the contract is executed.

3. Title to all grain sold by a credit-sale contract is in the purchasing grain dealer as of the time the contract is executed, unless the contract provides otherwise. The contract must be signed and dated by both parties and executed in duplicate. One copy shall be retained by the grain dealer and one copy shall be delivered to the seller. Upon the cessation of the grain dealer's license by revocation, cancellation, or expiration, the payment date for all credit-sale contracts shall be advanced to a date not later than thirty days after the effective date of the cessation, and the purchase price for all unpriced grain shall be determined as of the effective date of the cessation in accordance with all other provisions of the contract. However, if the business of the grain dealer is sold to another licensed grain dealer, credit-sale contracts may be assigned to the purchaser of the business.

4. a. A grain dealer shall not purchase grain on credit-sale contract during any time period in which the grain dealer fails to maintain fifty cents of net worth for each outstanding bushel of grain purchased under credit. The grain dealer may maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of deficiency in net worth.

b. A grain dealer who is also a warehouse operator licensed by the department under chapter 203C or the United States department of agriculture under the United States Warehouse Act, and who does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department or the United States department of agriculture shall not purchase grain on credit-sale contract to correct the shortage of grain.

c. (1) A grain dealer must meet at least either of the following conditions:

(a) The grain dealer's last financial statement required to be submitted to the department pursuant to section 203.3 is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state.

(b) The grain dealer files a bond with the department in the amount of one hundred thousand dollars payable to the department.

(2) (a) The bond filed with the department under this paragraph shall be used to indemnify sellers for losses resulting from a breach of a credit-sale contract as provided by rules adopted by the department. The rules shall include but are not limited to procedures and criteria for providing notice, filing claims, valuing losses, and paying claims. The bond provided in this paragraph shall be in addition to any other bond required in this chapter.

(b) The bond shall not be canceled by the issuer on less than ninety days' notice by certified mail to the department and the principal. However, if an adequate replacement bond is filed with the department, the department may authorize the cancellation of the original bond before the end of the ninety-day period.

(c) If an adequate replacement bond is not received by the department within sixty days of the issuance of the notice of cancellation, the department shall suspend the grain dealer's license. The department shall cause an inspection of the licensed grain dealer immediately at the end of the sixty-day period. If a replacement bond is not filed within another thirty days following the suspension, the department shall revoke the grain dealer's license .

(3) When a license is revoked, the department shall provide notice of the revocation by ordinary mail to the last known address of each holder of an outstanding credit-sale contract and all known sellers.

5. The department may suspend the right of a grain dealer to purchase grain by credit-sale contract based on any of the following conditions:

a. The grain dealer who is also a warehouse operator licensed by the department under chapter 203C or the United States department of agriculture under the United States Warehouse Act does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department or the United States department of agriculture.

b. The grain dealer who is also a warehouse operator licensed by the department under chapter 203C or the United States department of agriculture under the United States Warehouse Act issues back to the grain dealer a warehouse receipt for purposes of providing collateral, if the grain which is the subject of the warehouse receipt was purchased on credit and is unpaid for by the grain dealer.

c. The grain dealer fails to maintain requirements relating to net worth or fails to maintain a ratio of current assets to current liabilities, as required in section 203.3.

d. The grain dealer violates this section.

e. The grain dealer's total liabilities are greater than seventy-five percent of the grain dealer's total assets.

f. The grain dealer has made payment by use of a check or electronic funds transfer, and a financial institution refuses payment because of insufficient funds in a grain dealer's account.

g. The department discovers that a grain dealer has delayed payment for grain purchased since the department last inspected the grain dealer pursuant to section 203.9.

6. A grain dealer who purchases grain by credit-sale contract shall obtain from the seller a signed acknowledgment stating that the seller has received notice that grain purchased by credit-sale contract is not protected by the grain depositors and sellers indemnity fund. The form for the acknowledgment shall be prescribed by the department, and the licensed grain dealer and the seller shall each be provided a copy.

[C71, 73, 75, 77, §543.17; C79, 81, §542.8, 543.17; 81 Acts, ch 180, §12]

C83, §542.15

85 Acts, ch 234, §3; 86 Acts, ch 1152, §9; 87 Acts, ch 147, §4; 89 Acts, ch 143, §403; 92 Acts, ch 1239, §63, 64

C93, §203.15

99 Acts, ch 106, §7; 2003 Acts, ch 69, §8 – 11; 2008 Acts, ch 1083, §6, 7; 2009 Acts, ch 41, §80; 2009 Acts, ch 133, §212; 2012 Acts, ch 1095, §94 – 98

Referred to in §203.3, 203D.1

### **203.16 Confidentiality of records.**

Notwithstanding chapter 22, all financial statements of grain dealers under this chapter shall be kept confidential by the department and its agents and employees and are not subject to disclosure except as follows:

1. Upon waiver by the licensee.
2. In actions or administrative proceedings commenced under this chapter or chapter 203C.
3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.
4. When required by subpoena or court order.
5. Disclosure to law enforcement agencies in regard to the detection and prosecution of public offenses.
6. When released to a bonding company approved by the department, or released to the United States department of agriculture or any of its divisions.
7. Where released at the request of the Iowa accountancy examining board for licensee review and discipline in accordance with chapters 272C and 542 and subject to the confidentiality requirements of section 272C.6.

8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

[81 Acts, ch 180, §13]

C83, §542.16

83 Acts, ch 101, §1; 89 Acts, ch 143, §601

C93, §203.16

99 Acts, ch 106, §8; 2001 Acts, ch 55, §23, 38

Referred to in §203.11B, 203D.4

### **203.17 Documents and records.**

1. The department may adopt rules specifying the form, content, use, and maintenance of documents issued by a grain dealer under this chapter including but not limited to scale tickets, settlement sheets, daily position records, and credit-sale contracts. The department may adopt rules for both printed and electronic documents, including rules for the transmission, receipt, authentication, and archiving of electronically generated or stored documents.

2. All scale ticket forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing. A grain dealer shall maintain an accurate record of all scale ticket numbers. The record shall include the disposition of each numbered form, whether issued, destroyed, or otherwise disposed of.

[81 Acts, ch 180, §14]

C83, §542.17

C93, §203.17

2003 Acts, ch 69, §12; 2008 Acts, ch 1083, §8

### **203.18 Reserved.**

### **203.19 Cooperative agreements.**

1. Notwithstanding the other provisions of this chapter, the department may enter into cooperative agreements with other states for the purpose of making available to those states the information acquired under the bonding, licensing, and examination procedures of this chapter.

2. If a cooperative agreement is in effect under this section, the indemnification

requirements of this chapter may be satisfied by filing with the department evidence of a bond or an irrevocable letter of credit on file with a state or of participation in an indemnity fund in a state with which Iowa has a cooperative agreement as provided for by this section.

3. *a.* Indemnification proceeds shall be copayable to the state of Iowa for the benefit of sellers of grain under this chapter.

*b.* Indemnification proceeds required by this chapter may be made copayable to any state with whom this state has entered into contracts or agreements as authorized by this section, for the benefit of sellers of grain in that state.

[81 Acts, ch 180, §16]

C83, §542.19

86 Acts, ch 1152, §11

C93, §203.19

2009 Acts, ch 41, §263; 2010 Acts, ch 1069, §25

### **203.20 Shrinkage adjustments — disclosures — penalties.**

1. A person who, in connection with the receipt of corn or soybeans for storage, processing, or sale, adjusts the scale weight of the grain to compensate for the moisture content of the grain shall compute the amount of the adjustment by multiplying the scale weight of the grain by that factor which results in a rate of adjustment of one and eighteen hundredths percent of weight per one percent of moisture content. The use of any rate of weight adjustment for moisture content other than the one prescribed by this subsection is a fraudulent practice. The person shall post on the business premises in a conspicuous place notice of the rate of adjustment for moisture content that is prescribed by this subsection. Failure to make this disclosure is a simple misdemeanor.

2. A person who, in connection with the receipt of grain for storage, processing or sale, adjusts the quantity of the grain received to compensate for losses to be incurred during the handling, processing, or storage of the grain shall post on the business premises in a conspicuous place notice of the rate of adjustment to be made for this shrinkage. Failure to make the required disclosure is a simple misdemeanor.

3. A person who adjusts the scale weight of corn or soybeans both for moisture content and for handling, processing, or storage losses may combine the two adjustment factors into a single factor and may use this resulting factor to compute the amount of weight adjustment in connection with storage, processing, or sale transactions, provided that the person shall post on the business premises in a conspicuous place a notice that discloses the moisture shrinkage factor prescribed by subsection 1, the handling shrinkage factor to be imposed, and the single factor that results from combining these factors. Failure to make the required disclosure is a simple misdemeanor.

[81 Acts, ch 180, §17]

C83, §542.20

C93, §203.20

**203.21** Reserved.

### **203.22 Prioritization of inspections of grain dealers.**

The department shall develop a system to prioritize the inspections of grain dealers provided in section 203.9. The system of prioritization shall be computed each year based on the risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer. The department shall compute the risk by utilizing an available statistical model to measure the financial condition of grain dealers, and especially grain dealers who execute credit-sale contracts. Procedures for utilizing the statistical model shall be adopted by department rules. The statistical model shall be used to provide risk ratings. A risk rating shall be used as a factor by the department to prioritize its inspection schedule. The department may use a risk rating produced by the statistical model as justification to inspect the grain dealer at any time. A substantial risk of loss to the grain

depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on the statistical model shall be good cause.

92 Acts, ch 1239, §65  
 Referred to in §203.1, 203.9

CHAPTER 203A

GRAIN BARGAINING AGENTS

Repealed by 2003 Acts, ch 69, §50

CHAPTER 203B

RESERVED

CHAPTER 203C

WAREHOUSES FOR AGRICULTURAL PRODUCTS

Referred to in §22.7, 159.6, 189.16, 190.1, 203.5, 203.11B, 203.12A, 203.15, 203.16, 203D.4, 203D.5A, 554.7204, 579B.4, 669.14

This chapter not enacted as a part of this title;  
 transferred from chapter 543 in Code 1993

203C.1	Definitions.	203C.18	Warehouse receipts — issuance, printing, and electronic filing.
203C.2	Duties and powers of the department — operator recordkeeping.	203C.19	Rights and obligations with respect to warehouse receipts — lost receipts.
203C.3	Appointment of department as receiver.	203C.20	Receipt by warehouse operator to self.
203C.4	Powers and duties of receiver.	203C.21	and 203C.22 Reserved.
203C.5	Rules — documents and forms.	203C.23	Warehouse operator's obligation.
203C.6	Issuance of license and financial responsibility.	203C.24	Confidentiality of records.
203C.7	Application for the issuance or renewal of a license.	203C.25	Shrinkage adjustments — disclosures — penalties.
203C.8	License to specify type and quantity of products which may be stored.	203C.26	Reserved.
203C.9	Amendment of license.	203C.27	Discrimination. Repealed by 2012 Acts, ch 1095, §117.
203C.10	Action affecting a license.	203C.28	Tariff rates.
203C.11	Suspension or revocation for insufficient evidence of financial responsibility — notice.	203C.29	Reserved.
203C.12	Participation in fund required.	203C.30	Inspecting and grading.
203C.12A	Lien on warehouse operator assets.	203C.31	and 203C.32 Reserved.
203C.13	Form and amount of evidence of financial responsibility.	203C.33	Fees.
203C.14	Suit — claims — notice of revocation.	203C.34	Display of license.
203C.15	Insurance required — exception.	203C.35	Licensed warehouse operator to keep records. Repealed by 2003 Acts, ch 69, §22.
203C.16	License required for the storage of bulk grain.	203C.36	Penalties — injunction.
203C.17	Receiving bulk grain at licensed and unlicensed warehouses.	203C.36A	Civil penalties.
		203C.37	Issuance of a license and payment of fees.
		203C.38	No obligation of state.
		203C.39	Grain stored in another warehouse.
		203C.40	Prioritization of inspections of warehouse operators.

**203C.1 Definitions.**

As used in this chapter:

1. “*Agricultural product*” shall mean any product of agricultural activity suitable for storage in quantity, including refined or unrefined sugar and canned agricultural products and shall also mean any product intended for consumption in the production of other agricultural products, such as stock salt, binding twine, bran, cracked corn, soybean meal, commercial feeds, and cottonseed meal.

2. “*Bond*” means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution.

3. “*Bulk grain*” shall mean grain which is not contained in sacks.

4. “*Check*” means the same as defined in section 203.1.

5. “*Credit-sale contract*” means the same as defined in section 203.1.

6. “*Department*” means the department of agriculture and land stewardship.

7. “*Depositor*” means any person who deposits an agricultural product in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural product.

8. “*Electronic funds transfer*” means the same as defined in section 203.1.

9. “*Financial institution*” means the same as defined in section 203.1.

10. “*Good cause*” means that the department has cause to believe that the net worth or current asset to current liability ratio of a warehouse operator presents a danger to depositors with whom the warehouse operator does business, based on evidence of any of the following:

a. The making of a payment by use of a check or electronic funds transfer, and a financial institution refuses payment because of insufficient funds in the warehouse operator’s account.

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A quality or quantity shortage in the warehouse facility.

d. A high risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the warehouse operator based on a statistical model provided in section 203C.40.

11. “*Grain*” means the same as defined in section 203.1.

12. “*Grain bank*” means grain owned by a depositor and held temporarily by the warehouse operator for use in the formulation of feed or to be processed and returned to the depositor on demand.

13. “*Grain Standards Act*” means the United States Grain Standards Act, 7 U.S.C. ch. 3.

14. “*Incidental warehouse operator*” means a person regulated under chapter 198 whose grain storage capacity does not exceed twenty-five thousand bushels which is used exclusively for grain owned or grain which will be returned to the depositor for use in a feeding operation or as an ingredient in a feed.

15. “*Incidental warehouse operator’s obligation*” means a sufficient quantity and quality of grain to cover company owned grain and deposits of grain for which actual payment has not been made.

16. “*License*” means a license issued under this chapter.

17. “*Licensed warehouse*” shall mean a warehouse for the operation of which the department has issued a license in accordance with the provisions of section 203C.6.

18. “*Licensed warehouse operator*” shall mean a warehouse operator who has obtained a license for the operation of a warehouse under the provisions of section 203C.6.

19. “*Official grain standards*” means the standards of quality and condition of grain which establishes the grade, fixed and established by the secretary of agriculture under the Grain Standards Act.

20. “*Open storage*” means grain or agricultural products which are received by a warehouse operator from a depositor for which warehouse receipts have not been issued or a purchase made and the records documented accordingly.

21. “*Person*” means the same as defined in section 4.1 and includes a business association as defined in section 202B.102 or a joint or common venture regardless of whether it is organized under a chapter of the Code.

22. “*Receiving and loadout charge*” shall mean the charge made by the warehouse operator for receiving grain into and loading grain from the warehouse, exclusive of the warehouse operator’s other charges.

23. “*Scale weight ticket*” means a load slip or other evidence, other than a receipt, given to a depositor by a warehouse operator licensed under this chapter upon initial delivery of the agricultural product to the warehouse.

24. “*Station*” means a warehouse located more than three miles from the central office of the warehouse.

25. “*Storage*” means any grain or other agricultural products that have been received and have come under care, custody or control of a warehouse operator either for the depositor for which a contract of purchase has not been negotiated or for the warehouse operator operating the facility.

26. “*United States Warehouse Act*” means the same as defined in section 203.1.

27. “*Unlicensed warehouse operator*” means a warehouse operator who retains grain in the warehouse not to exceed thirty days and is not licensed under the provisions of this chapter or the United States Warehouse Act.

28. “*Warehouse*” shall mean any building, structure, or other protected enclosure in this state used or usable for the storage of agricultural products. Buildings used in connection with the operation of the warehouse shall be deemed to be a part of the warehouse.

29. “*Warehouse operator*” means a person engaged in the business of operating or controlling a warehouse for the storing, shipping, handling or processing of agricultural products, but does not include an incidental warehouse operator.

30. “*Warehouse operator’s obligation*” means a sufficient quantity and quality of grain or other products for which a warehouse operator is licensed including company owned grain and grain of depositors as the warehouse operator’s records indicate. For an unlicensed warehouse operator it means a sufficient quantity and quality of grain to cover company owned grain and all deposits of grain for which actual payment has not been made.

[C24, 27, 31, §9719; C35, §9751-g1; C39, §9751.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.1; 81 Acts, ch 180, §18]

86 Acts, ch 1006, §3; 86 Acts, ch 1152, §12, 13; 86 Acts, ch 1245, §671; 89 Acts, ch 143, §1002, 1101; 92 Acts, ch 1239, §66

C93, §203C.1

95 Acts, ch 28, §2; 99 Acts, ch 106, §9 – 11; 2003 Acts, ch 69, §13 – 16; 2008 Acts, ch 1083, §9; 2010 Acts, ch 1061, §180; 2010 Acts, ch 1082, §2; 2012 Acts, ch 1095, §99 – 101

Referred to in §203.1, 203D.1

### **203C.2 Duties and powers of the department — operator recordkeeping.**

1. The department shall administer this chapter and may exercise general supervision over the storage, warehousing, classifying according to grade or otherwise, weighing, and certification of agricultural products.

2. The department may inspect or cause to be inspected any warehouse including warehouse records as provided in this section. Inspections may be made at times and for purposes as the department determines. Except as provided in section 203C.6, the department shall inspect every licensed warehouse and its contents once every twelve months. The department shall prioritize inspections based on the system provided in section 203C.40. The department may require the filing of reports relating to a warehouse or its operation.

a. A licensed warehouse operator operating a licensed warehouse shall provide for complete and correct recordkeeping. The records shall account for the storage and withdrawal of all agricultural products handled in each warehouse which the warehouse operator is licensed to operate. The records shall include all original and duplicate receipts issued by, returned to, and canceled by the warehouse operator. A licensed warehouse operator shall keep records for the previous six years. If the licensed warehouse operator’s records are incomplete or inaccurate, the department may reconstruct the warehouse operator’s records in order to determine whether the warehouse operator is in compliance

with the provisions of this chapter. The department may charge the licensed warehouse operator the actual cost for reconstructing the warehouse operator's records.

b. If upon inspection of a warehouse a deficiency is found to exist as to the quantity or quality of agricultural products stored, as indicated on the warehouse operator's books and records according to official grain standards, the department may require an employee of the department to remain at the licensed warehouse and supervise all operations involving agricultural products stored there under this chapter until the deficiency is corrected. The charge for the cost of maintaining an employee of the department at a warehouse to supervise the correction of a deficiency is one hundred fifty dollars per day.

3. The department may make available to the United States government, or any of its agencies, including the commodity credit corporation, the results of inspections made and inspection reports submitted to it by employees of the department, upon payment to it of charges as determined by the department, but the charges shall not be less than the actual cost of services rendered, as determined by the department. The department may enter into contracts and agreements for such purpose and shall keep a record of all money thus received.

4. The department may classify any warehouse in accordance with its suitability for the storage of agricultural products and shall specify in any license issued for the operation of a warehouse the only type or types and the quantity of agricultural products which may be stored in the warehouse. The department may prescribe, within the limitations of this chapter, the duties of licensed warehouse operators with respect to the care of and responsibility for the contents of licensed warehouses. Grain grades shall be determined under the official grain standards. The department may from time to time publish data in connection with the administration of this chapter as may be of public interest.

5. Moneys received by the department in administering this section shall be considered repayment receipts as defined in section 8.2.

[C24, 27, 31, §9739, 9744, 9750; C35, §9751-g22, -g27, -g32; C39, §9751.22, 9751.27, 9751.32; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.2; 81 Acts, ch 180, §19]

84 Acts, ch 1100, §3; 86 Acts, ch 1152, §14; 92 Acts, ch 1239, §67

C93, §203C.2

2003 Acts, ch 69, §17

Referred to in §203C.36, 203C.40

### **203C.3 Appointment of department as receiver.**

1. The department in its discretion may, following summary suspension of a license under section 203C.10, or following a suspension or revocation of a license as otherwise provided in section 203C.10 or 203C.11, file a verified petition in the district court requesting that the department be appointed as a receiver to take custody of commodities stored in the licensee's warehouse and to provide for the disposition of those assets in the manner provided in this chapter and under the supervision of the court. The petition shall be filed in the county in which the warehouse is located. The district court shall appoint the department as receiver. Upon the filing of the petition the court shall issue ex parte such temporary orders as may be necessary to preserve or protect the assets in receivership, or the value thereof, and the rights of depositors, until a plan of disposition is approved.

2. A petition filed by the department under subsection 1 shall be accompanied by the department's plan for disposition of stored commodities. The plan may provide for the pro rata delivery of part or all of the stored commodities to depositors holding warehouse receipts or unpriced scale weight tickets, or may provide for the sale under the supervision of the department of part or all of the stored commodities for the benefit of those depositors, or may provide for any combination thereof, as the department in its discretion determines to be necessary to minimize losses.

3. When a petition is filed by the department under subsection 1 the clerk of court shall set a date for hearing on the department's proposed plan of disposition at a time not less than ten nor more than fifteen days after the date the petition is filed. Copies of the petition, the notice of hearing, and the department's plan of disposition shall be served upon the licensee and upon the issuer of a deficiency bond or of an irrevocable letter of credit pursuant to section 203C.6 in the manner required for service of an original notice. A delay in effecting service

upon the licensee or issuer is not cause for denying the appointment of a receiver and is not grounds for invalidating any action or proceeding in connection with the appointment.

4. The department shall cause a copy of each of the documents served upon the licensee under subsection 3 to be mailed by ordinary mail to every person holding a warehouse receipt or unpriced scale weight ticket issued by the licensee, as determined by the records of the licensee or the records of the department. The failure of any person referred to in this subsection to receive the required notification shall not invalidate the proceedings on the petition for the appointment of a receiver or any portion thereof. Persons referred to in this subsection are not parties to the action unless admitted by the court upon application therefor.

5. When appointed as a receiver under this chapter, the department shall cause notification of the appointment to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location, and in a newspaper of general circulation in this state.

6. The department may designate an employee of the department to appear on behalf of the department in any proceedings before the court with respect to the receivership, and to exercise the functions of the department as receiver under this section and section 203C.4, except that the department shall determine whether or not to petition for appointment as receiver, shall approve the proposed plan for disposition of stored commodities, shall approve the proposed plan for distribution of any cash proceeds, and shall approve the proposed final report.

7. The actions of the department in connection with petitioning for appointment as a receiver, and all actions pursuant to such appointment shall not be subject to the provisions of the administrative procedure Act.

8. A person employed or appointed by the department and carrying out the duties of the department acting as receiver under this chapter shall be deemed to be an employee of the state as defined in section 669.2. Chapter 669 is applicable to any claim as defined in section 669.2 against the person carrying out the duties of the department acting as receiver.

[C79, 81, §543.3]

86 Acts, ch 1152, §15; 89 Acts, ch 143, §501

C93, §203C.3

Referred to in §203.12A, 203.12B, 203C.12A, 602.8102(76)

#### **203C.4 Powers and duties of receiver.**

1. When the department is appointed as receiver under this chapter the issuer of a deficiency bond or of an irrevocable letter of credit pursuant to section 203C.6 shall be joined as a party defendant by the department. If required by the court, the issuer shall pay the indemnification proceeds or so much thereof as the court finds necessary into the court, and when so paid the issuer shall be absolutely discharged from any further liability under the bond or irrevocable letter of credit to the extent of the payment.

2. When appointed as receiver under this chapter the department is authorized to give notice in the manner specified by the court to persons holding warehouse receipts or other evidence of deposit issued by the licensee to file their claims within one hundred twenty days after the date of appointment. Failure to timely file a claim shall defeat the claim with respect to the issuer of a deficiency bond or of an irrevocable letter of credit, grain depositors and sellers indemnity fund created in chapter 203D, and any commodities or proceeds from the sale of commodities, except to the extent of any excess commodities or proceeds of sale remaining after all timely claims are paid in full.

3. When the court approves the sale of commodities, the department shall employ a merchandiser to effect the sale of those commodities. A person employed or appointed as a merchandiser is deemed to be an employee of the state as defined in section 669.2 and chapter 669 is applicable to any claim as defined in section 669.2 against the person acting as a merchandiser. A person employed as a merchandiser must meet the following requirements:

a. The person shall be experienced or knowledgeable in the operation of warehouses

licensed under this chapter; and if the person has ever held a license issued under this chapter, the person shall never have had that license suspended or revoked.

b. The person shall be experienced or knowledgeable in the marketing of agricultural products.

c. The person shall not be the holder of a warehouse receipt or scale weight ticket issued by the licensee, and shall not have a claim against the licensee whether as a secured or unsecured creditor, and otherwise shall not have any pecuniary interest in the licensee or the licensee's business. The merchandiser shall be entitled to reasonable compensation as determined by the department, payable out of funds appropriated for operating expenses of the department. A sale of commodities shall be made in a commercially reasonable manner and under the supervision of the warehouse bureau of the department. The department shall provide for the payment out of appropriations to the department of all expenses incurred in handling and disposing of commodities. The department shall have authority to sell the commodities, any provision of chapter 554 to the contrary notwithstanding, and any commodities so sold shall be free of all liens and other encumbrances.

4. The plan of disposition, as approved by the court, shall provide for the distribution of the stored commodities, or the proceeds from the sale of commodities, or the proceeds from any insurance policy, deficiency bond, or irrevocable letter of credit, less expenses incurred by the department in connection with the receivership, to depositors as their interests are determined. Distribution shall be without regard to any setoff, counterclaim, or storage lien or charge.

5. The department may, with the approval of the court, continue the operation of all or any part of the business of the licensee on a temporary basis and take any other course of action or procedure which will serve the interests of the depositors.

6. The department is entitled to reimbursement out of commodities or proceeds held in receivership for all expenses incurred as court costs or in handling and disposing of stored commodities, and for all other costs directly attributable to the receivership. The right of reimbursement of the department is prior to any claims against the commodities or proceeds of sales of commodities, and constitutes a claim against a deficiency bond or irrevocable letter of credit.

7. If the approved plan of disposition requires a distribution of cash proceeds, the department shall submit to the court a proposed plan of distribution of those proceeds. Upon notice and hearing as required by the court, the court shall accept or modify the proposed plan. When the plan is approved by the court and executed by the department, the department shall be discharged and the receivership terminated.

8. At the termination of the receivership the department shall file a final report containing the details of its actions, together with such additional information as the court may require.

[C79, 81, §543.4]

86 Acts, ch 1152, §16; 87 Acts, ch 147, §5; 89 Acts, ch 143, §101, 502

C93, §203C.4

Referred to in §203.12B, 203C.3

#### **203C.5 Rules — documents and forms.**

1. The department shall adopt rules as it deems necessary for the efficient administration of this chapter, and may designate an employee or officer of the department to act for the department in any details connected with administration, including the issuance of licenses and approval of deficiency bonds or irrevocable letters of credit in the name of the department, but not including matters requiring a public hearing or suspension or revocation of licenses.

2. a. The department may adopt rules specifying the form, content, and use of documents issued by a warehouse operator under this chapter including but not limited to scale tickets, warehouse receipts, settlement sheets, and daily position records. The department may adopt rules for both printed and electronic documents, including rules for the transmission, receipt, authentication, and archiving of electronically generated or stored documents.

b. All scale ticket forms and warehouse receipt forms in the possession of a warehouse operator shall have been permanently and consecutively numbered at the time of printing. A

warehouse operator shall maintain an accurate record of the numbers of these documents. The record shall include the disposition of each form, whether issued, destroyed, or otherwise disposed of. The department may by rule require this use of prenumbered forms and recording for documents other than scale tickets and warehouse receipts.

[C24, 27, 31, §9721; C35, §9751-g3; C39, §9751.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §543.3; C79, 81, §543.5; 81 Acts, ch 180, §20]

86 Acts, ch 1152, §17

C93, §203C.5

2008 Acts, ch 1083, §10

Referred to in §203C.6

### **203C.6 Issuance of license and financial responsibility.**

1. The department, upon application to it, may issue to a warehouse operator or to a person about to become a warehouse operator a license for the operation of a warehouse in accordance with this chapter and the rules adopted by the department under section 203C.5. A single license to operate two or more warehouses located anywhere within the state may be issued.

2. The type of license required shall be determined as follows:

a. A class 1 license is required if the storage capacity of a warehouse is more than one hundred thousand bushels.

b. A class 2 license is required for a warehouse that is not required to have a class 1 license.

3. An application for a warehouse license shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and net worth of the applicant. The financial statement must be prepared according to generally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon written request, the department may allow asset valuations in accordance with a competent appraisal. Unpriced contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared.

4. In order to receive and retain a class 1 license, the following conditions must be satisfied:

a. The warehouse operator shall have and maintain a net worth of at least twenty-five cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 warehouse operator if the person has a net worth of less than twenty-five thousand dollars.

b. The warehouse operator shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause. A warehouse operator shall submit financial statements to the department in addition to those required in this paragraph if the department determines that it is necessary to verify the warehouse operator's financial status or compliance with this subsection.

5. In order to receive and maintain a class 2 license, the following conditions must be satisfied:

a. The warehouse operator shall have and maintain a net worth of at least twenty-five cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter

of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 2 warehouse operator if the person has a net worth of less than ten thousand dollars.

b. The warehouse operator shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause. A warehouse operator shall submit financial statements to the department in addition to those required in this paragraph if the department determines that it is necessary to verify the warehouse operator's financial status or compliance with this subsection.

6. The department may adopt rules governing the timing and form of financial statements to be submitted to it. The department may require additional information or verification with respect to the financial resources of the applicant or licensee and the applicant's or licensee's ability to maintain the quantity and quality of stored grain.

7. The department may deny a license to an applicant if the applicant has had a license issued under chapter 203 or this chapter revoked within the past three years, the applicant has been convicted of a felony involving violations of chapter 203 or this chapter, or the applicant is owned or controlled by a person who has had a license so revoked or who has been so convicted.

8. The department may deny a license to an applicant if any of the following apply:

a. The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund through operations under a license issued under this chapter or chapter 203, and the liability has not been discharged, settled, or satisfied.

b. The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 203, and the liability has not been discharged, settled, or satisfied.

9. A deficiency bond or irrevocable letter of credit filed with the department pursuant to this section shall not be canceled by the issuer on less than one hundred twenty days' notice by certified mail to the department and the principal.

[C24, 27, 31, §9722; C35, §9751-g4; C39, §9751.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §543.4; C79, 81, §543.6; 81 Acts, ch 180, §21]

86 Acts, ch 1152, §18, 19; 87 Acts, ch 147, §6, 7; 88 Acts, ch 1134, §98; 89 Acts, ch 143, §303, 304, 702, 801, 802; 92 Acts, ch 1239, §69, 70

C93, §203C.6

2003 Acts, ch 69, §48; 2007 Acts, ch 22, §49; 2008 Acts, ch 1083, §11, 12; 2012 Acts, ch 1095, §102

Referred to in §203.11B, 203C.1, 203C.2, 203C.3, 203C.4, 203C.7, 203C.11, 203C.36, 203C.39

### **203C.7 Application for the issuance or renewal of a license.**

1. Each application for the issuance of a license shall be in writing on a form prescribed by the department, subscribed and sworn to by the applicant or a duly authorized representative of the applicant. In addition to any other information required by rule of the department the application shall include all of the following:

a. The name of the person making the application, the names of all partners if the applicant is a partnership, and the names and titles of the principal officers or managers

if the applicant is a legal entity including but not limited to a limited partnership, limited liability partnership, limited liability company, corporation, or cooperative association.

- b. The principal office or place of business of the applicant.
- c. A general description of each warehouse as to storage capacity, type of construction, mechanical equipment, if any, and condition.
- d. The approximate location of each warehouse.
- e. The type and quantity of agricultural product, or products intended to be stored in each warehouse.
- f. A complete financial statement for use of the department in the administration of this chapter, as required by section 203C.6.
- g. A tariff on a form to be prescribed by the department for storage, receiving, and loadout charges.

2. Each application for the renewal of a license shall be in writing and include information required by the department, including changes to information required in subsection 1.

[C24, 27, 31, §9722; C35, §9751-g4; C39, §9751.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §543.5; C79, 81, §543.7]

89 Acts, ch 143, §803

C93, §203C.7

2010 Acts, ch 1082, §3

Referred to in §203C.9, 203C.37, 203D.3A, 203D.5

### **203C.8 License to specify type and quantity of products which may be stored.**

The department shall determine with respect to each application for a license whether the warehouse or warehouses described in the application is or are suitable for the proper and safe storage of the particular agricultural product or products intended to be stored therein in the quantities specified in the application, provided that no warehouse shall be found to be suitable and safe for the storage of bulk grain unless such warehouse is equipped with a fixed or portable mechanical device of a type in common use as an adjunct to the movement of bulk grain. Each license issued for the operation of a single warehouse shall specify the type or types and quantities of agricultural products which may be stored in such warehouse. Each license issued to a warehouse operator for the operation of two or more warehouses shall specify with respect to each warehouse the type or types and quantities of agricultural product which may be stored in such warehouse. It shall be unlawful for any licensed warehouse operator to accept for storage or to store in any licensed warehouse any agricultural product or products other than the type or types and quantities specified in the license for the operation of such warehouse.

[C24, 27, 31, §9722; C35, §9751-g4; C39, §9751.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §543.6; C79, 81, §543.8; 81 Acts, ch 180, §22]

C93, §203C.8

Referred to in §203D.5

### **203C.9 Amendment of license.**

The department is authorized, upon its own motion, or upon receipt of written application, to amend any license previously issued by it, to change or modify the provisions as to the type and quantity of agricultural products which may be stored in the warehouse or warehouses in respect to which the license was originally issued. Application for amendments to licenses shall include the same information, except as to the financial condition of the applicant, as required by section 203C.7 to be included in an original application. Applications for amendments of licenses shall be considered by the department on the same basis as applications for original licenses, and except as otherwise provided in this chapter, a license when amended shall have the same status, as of the date of the amendment, as though originally issued as amended.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §543.8; C79, 81, §543.9]

C93, §203C.9

### **203C.10 Action affecting a license.**

1. The cessation of a warehouse operator's license occurs from any of the following:

- a. The revocation of the license by the department as provided in subsection 2.
  - b. The cancellation of the license as provided in section 203C.37.
  - c. The expiration of the license according to the terms of the license as provided in this chapter, including a rule adopted in accordance with this chapter pursuant to chapter 17A.
2. The department may issue an order to suspend or revoke the license of a warehouse operator who violates a provision of this chapter, including a rule adopted in accordance with this chapter, pursuant to chapter 17A.
  3. The department may suspend or revoke the license of a warehouse operator for failing to consent to a departmental inspection or cooperate with the department during an inspection as provided by this chapter.

[C24, 27, 31, §9747; C35, §9751-g29; C39, §9751.29; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.10]

89 Acts, ch 143, §101

C93, §203C.10

98 Acts, ch 1202, §34, 46; 2003 Acts, ch 69, §18; 2012 Acts, ch 1095, §103; 2013 Acts, ch 90, §34

Referred to in §203C.3, 203D.6

Subsection 1, paragraph c amended

### **203C.11 Suspension or revocation for insufficient evidence of financial responsibility — notice.**

1. The department shall proceed under section 203C.15 if it has cause to believe that a licensed warehouse operator does not provide for and carry an insurance policy as required in that section.

2. If the department determines that the net worth of a licensed warehouse operator is not in compliance with the requirements of section 203C.6, the department shall issue a notice to the warehouse operator and shall suspend the warehouse operator's license if the warehouse operator does not provide evidence of compliance within thirty days of the issuance of the notice. The department shall inspect the warehouse at the end of the thirty-day period. If evidence of compliance is not provided within sixty days of the issuance of the notice, the department shall revoke the warehouse operator's license, and shall again inspect the warehouse. If a license is revoked, the department shall give notice of the revocation to each holder of an outstanding warehouse receipt and to all known persons who have grain retained in open storage. The revocation notice shall state that the grain must be removed from the warehouse not later than the thirtieth day after the issuance of the revocation notice. The revocation notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection. The department shall conduct a final inspection of the warehouse at the end of the thirty-day period following the issuance of the revocation notice.

3. When the department receives notice that a deficiency bond or irrevocable letter of credit is being canceled by the issuer, and determines that upon the cancellation the warehouse operation will not be in compliance with section 203C.6, the department shall suspend the warehouse operator's license if a new deficiency bond or irrevocable letter of credit is not received by the department within sixty days of receipt by the department of the notice of cancellation. If a new deficiency bond or irrevocable letter of credit is not received by the department within thirty days following suspension, the warehouse operator's license shall be revoked. When a license is revoked, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation, and shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following revocation. The notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection.

[C24, 27, 31, §9748; C35, §9751-g30; C39, §9751.30; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.11; 81 Acts, ch 180, §23; 82 Acts, ch 1093, §2]

86 Acts, ch 1006, §4; 86 Acts, ch 1152, §20, 21

C93, §203C.11

2012 Acts, ch 1095, §104

Referred to in §203C.3

### **203C.12 Participation in fund required.**

A person licensed to operate a warehouse under this chapter shall participate in and comply with the grain depositors and sellers indemnity fund provided in chapter 203D.

[C24, 27, 31, §9723; C35, §9751-g5; C39, §9751.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.12]

86 Acts, ch 1152, §22

C93, §203C.12

### **203C.12A Lien on warehouse operator assets.**

1. A statutory lien is imposed on all warehouse operator assets in favor of depositors possessing warehouse receipts covering grain stored by the warehouse operator and depositors with written evidence of ownership other than warehouse receipts disclosing a storage obligation of a warehouse operator.

2. “*Warehouse operator assets*” includes proceeds received or due a warehouse operator upon the sale, including exchange, collection, or other disposition, of grain sold by the warehouse operator. As used in this section, “*proceeds*” means noncash and cash proceeds as defined in section 554.9102. “*Warehouse operator assets*” also includes storage payments received or due to a warehouse operator, grain owned by the warehouse operator, and any other funds or property of the warehouse operator which can be directly traced as being from the sale of grain by the warehouse operator, or which were utilized in the business operation of the warehouse operator. A court, upon petition by an affected party, may order that claimed warehouse operator assets are not warehouse operator assets as defined in this section. The burden of proof shall be upon the petitioner to establish that the assets are not warehouse operator assets as defined in this section.

3. The lien shall arise at the commencement of the storage obligation, and shall terminate when the liability of the warehouse operator to the depositor has been discharged. The lien of all depositors is hereby assigned to the Iowa grain indemnity fund board, on behalf of the grain depositors and sellers indemnity fund.

4. To perfect the lien, the Iowa grain indemnity fund board must file a lien statement with the office of the secretary of state. The lien statement is valid only if filed on or after the date of suspension but not later than sixty days after the incurrence date as provided in section 203D.6. The lien statement shall disclose the name of the warehouse operator, the address of the warehouse operator’s principal place of business, a description of identifiable warehouse operator assets, and the amount of the lien. The lien amount shall be the board’s estimate of the final cost of reimbursing the grain depositors and sellers indemnity fund for the payment of claims made against the fund resulting from the breach of the warehouse operator’s obligations. The board shall correct the amount not later than one hundred eighty days following the incurrence date. A court, upon petition by an affected person, may correct the amount. The board shall have the burden of proving that the amount is an accurate estimate.

5. The Iowa grain indemnity fund board shall upon written demand of the warehouse operator file a termination statement with the secretary of state, if after one hundred eighty days from the date that the lien is perfected the warehouse operator’s license has not ceased by revocation, cancellation, or expiration. Upon filing the termination statement, the lien becomes unperfected. The board shall also deliver a copy of the termination statement to the warehouse operator.

6. The secretary of state shall note the filing of a lien statement under this section in a manner provided by chapter 554, the uniform commercial code. The secretary shall note the filing of a termination statement with the lien statement.

7. A lien statement filed under this section shall be a security interest perfected under chapter 554 and subject to the same priority as provided under section 554.9322.

8. In the event the department is appointed as a receiver under section 203C.3, assets

under the authority of the receiver are free from this statutory lien. However, if there are receivership assets in excess of those necessary to fully reimburse depositors, the perfected lien will attach to those excess assets.

9. *a.* The Iowa grain indemnity fund board may enforce the lien in the manner provided in chapter 554, article 9, part 6, for the enforcement of security interests. If, upon enforcement of the lien, the lien amount is satisfied in full without exhaustion of the warehouse operator assets, the remaining assets shall be returned to the warehouse operator or, if there are competing claims to those remaining assets by other creditors, those assets shall be placed in the custody of the district court and the known creditors impleaded.

*b.* For purposes of enforcement of the lien, the board is deemed to be the secured party and the warehouse operator is deemed to be the debtor, and each has the respective rights and duties of a secured party and a debtor as provided in chapter 554, article 9, part 6. If a right or duty under chapter 554, article 9, part 6, is contingent upon the existence of express language in a security agreement, or may be waived by express language in a security agreement, the requisite language is deemed not to exist for purposes of enforcement of the lien created by this section.

10. Actions relating to this section shall be brought in the district court in the county in which the warehouse operator's primary place of business is located or in Polk county.

92 Acts, ch 1239, §71; 2000 Acts, ch 1149, §164, 187; 2009 Acts, ch 41, §263; 2012 Acts, ch 1095, §105

Referred to in §203D.5A

### **203C.13 Form and amount of evidence of financial responsibility.**

1. A warehouse operator who stores only agricultural products other than bulk grain shall have and maintain a net worth of at least ten percent of the value of the warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be eligible for a license to store only agricultural products other than bulk grain if the person has a net worth of less than ten thousand dollars.

2. If the agricultural product or products intended to be stored by the warehouse operator, as specified in the application for a license or amended license, are other than bulk grain, the quantity of such product intended to be stored shall be valued at the fair market price on the date of filing the application, and the minimum amount of bond shall be determined with reference to such value as follows:

*a.* For intended storage of such products of a value less than twenty thousand dollars the minimum amount of the bond shall be three thousand dollars, plus one thousand dollars for each two thousand dollars, or fraction thereof, of value in excess of six thousand dollars up to twenty thousand dollars.

*b.* For intended storage of such products of a value not less than twenty thousand dollars and not more than fifty thousand dollars the minimum amount of the bond shall be ten thousand dollars plus one thousand dollars for each three thousand dollars, or fraction thereof, of value in excess of twenty thousand dollars up to fifty thousand dollars.

*c.* For intended storage of such products of a value not less than fifty thousand dollars the minimum amount of the bond shall be twenty thousand dollars plus one thousand dollars for each five thousand dollars, or fraction thereof, of value in excess of fifty thousand dollars.

3. A bond, deficiency bond, or irrevocable letter of credit on agricultural products other than bulk grain shall not be canceled by the issuer on less than one hundred twenty days' notice by certified mail to the department and the principal. When the department receives notice from an issuer that it has canceled the bond, deficiency bond, or irrevocable letter of credit on agricultural products other than bulk grain of a warehouse operator, the department shall suspend the warehouse operator's authorization to store or accept for storage agricultural products other than bulk grain if a new bond, deficiency bond, or irrevocable letter of credit is not received by the department within sixty days of the issuance of the notice of cancellation. The department shall conduct an inspection of the licensee's warehouse immediately at the end of the sixty-day period. If a new bond, deficiency bond, or irrevocable letter of credit is not provided within ninety days of the issuance of the notice

of cancellation, the department shall revoke the warehouse operator's authorization to store or accept for storage agricultural products other than bulk grain. The department shall conduct a further inspection of the licensee's warehouse after the ninety-day period. When an authorization to store or accept for storage agricultural products other than bulk grain is revoked, the department shall give notice of the revocation to all known persons who have agricultural products other than bulk grain in storage, and shall notify them that the agricultural products other than bulk grain must be removed from the warehouse not later than one hundred twenty days after the issuance of the notice of cancellation. The revocation notice shall be sent by ordinary mail to the last known address of each person having agricultural products other than bulk grain in storage. The department shall cause a final inspection of the licensee's warehouse after the end of the one hundred twenty-day period.

[C24, 27, 31, §9725; C35, §9751-g6; C39, §9751.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.13]

86 Acts, ch 1006, §5; 86 Acts, ch 1152, §23, 24

C93, §203C.13

2012 Acts, ch 1095, §106

#### **203C.14 Suit — claims — notice of revocation.**

1. A person injured by the breach of an obligation of a warehouse operator, for the performance of which a bond on agricultural products other than bulk grain, a deficiency bond, or an irrevocable letter of credit has been given under any of the provisions of this chapter, may sue on the bond on agricultural products other than bulk grain, deficiency bond, or irrevocable letter of credit in the person's own name in a court of competent jurisdiction to recover any damages the person has sustained by reason of the breach.

2. a. Upon the cessation of a warehouse operator's license due to revocation, cancellation, or expiration, a claim against the warehouse operator arising under this chapter shall be made in writing with the warehouse operator, with the issuer of a bond on agricultural products other than bulk grain, a deficiency bond, or an irrevocable letter of credit, and, if the claim relates to bulk grain, with the department. The claim must be made within one hundred twenty days after the cessation of the license. The failure to make a timely claim relieves the issuer and, if the claim relates to bulk grain, the grain depositors and sellers indemnity fund provided in chapter 203D of all obligations to the claimant.

b. Upon revocation of a warehouse license, the department shall cause notice of the revocation to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location and in a newspaper of general circulation within the state. The notice shall state the name and address of the warehouse operator and the effective date of revocation. The notice shall also state that any claims against the warehouse operator shall be made in writing and sent by ordinary mail to the warehouse operator, to the issuer of a bond on agricultural products other than bulk grain, deficiency bond, or an irrevocable letter of credit, and to the department within one hundred twenty days after revocation, and the notice shall state that the failure to make a timely claim does not relieve the warehouse operator from liability to the claimant.

c. This subsection does not apply if a receiver is appointed as provided in this chapter pursuant to a petition which is filed by the department prior to the expiration of one hundred twenty days after cessation of warehouse operator's license.

[C24, 27, 31, §9749; C35, §9751-g31; C39, §9751.31; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.14]

86 Acts, ch 1152, §25

C93, §203C.14

2012 Acts, ch 1095, §107; 2012 Acts, ch 1138, §56

Referred to in §203D.6

#### **203C.15 Insurance required — exception.**

1. A warehouse operator shall maintain insurance coverage as provided in this section.

In order to maintain insurance coverage, all agricultural products in storage in a licensed warehouse and all agricultural products which have been deposited temporarily in a licensed warehouse pending storage or for purposes other than storage, shall be kept fully insured by the warehouse operator as provided in this section for the current value of the agricultural products against loss by fire, inherent explosion, windstorm, or any other similar catastrophe designated by rules which may be adopted by the department.

2. The insurance coverage required in subsection 1 shall be carried by one or more insurance companies. Such an insurance company must be all of the following:

a. Organized or operating under the laws of this state or authorized by the laws of this state to do business in this state.

b. An insurer of agricultural products in this state as provided in subsection 1.

3. Insurance coverage may be terminated by its expiration without renewal, or canceled by the insurance company on its own volition or as a result of an action or inaction by the insured licensed warehouse operator.

4. A licensed warehouse operator shall be responsible for providing the department with all of the following:

a. Evidence of insurance coverage as required in subsection 2 that is an insurance policy or other document approved by the department which evidences property and casualty insurance.

b. Proof of insurance which verifies that evidence of insurance coverage submitted by a licensed warehouse operator complies with subsection 1.

5. A warehouse operator must submit evidence of insurance coverage with the department as required by the department. The department must approve the evidence of insurance coverage before the department files it. A warehouse operator shall not be issued a license or retain a license unless evidence of insurance coverage is on file with the department.

6. The department may demand proof of insurance coverage by the licensed warehouse operator, regardless of whether the department has previously approved proof of insurance or approved or filed evidence of insurance coverage. The demand must be in writing and must explain the department's enforcement action resulting from the warehouse operator's noncompliance.

a. The licensed warehouse operator may comply with the demand by doing any of the following:

(1) Assuring the department that existing evidence of insurance coverage filed with the department complies with the requirements of this section.

(2) Obtaining additional or new insurance coverage. The licensed warehouse operator must submit and the department must approve and file the supplemental or new evidence of insurance coverage necessary to comply with the requirements of this section.

b. If the licensed warehouse operator fails to comply with the requirements of the demand letter as set out in paragraph "a", the department shall take enforcement action as follows:

(1) Thirty days after delivering the demand letter to the licensed warehouse operator, the department shall suspend the warehouse license.

(2) Forty days after delivering the demand letter to the licensed warehouse operator, the department shall revoke the warehouse license.

c. The department may inspect a licensed warehouse at any time.

d. The department shall terminate an enforcement action as provided in paragraph "b", if the licensed warehouse operator submits any proof of insurance or supplemental or new evidence of insurance which the department approves. However, this paragraph "d" applies only if the licensed warehouse operator submits the proof of insurance or evidence of insurance prior to the effective date of the revocation.

7. An insurance company shall not cancel insurance coverage unless any of the following applies:

a. The insurance company provides the department and the licensed warehouse operator with at least ninety days' notice of cancellation by mail.

b. The insurance coverage is renewed or replaced by the licensed warehouse operator, and the department has approved and filed the evidence of insurance coverage at the time that the department would have received the mailed notice of cancellation.

8. The department shall take enforcement action against a licensed warehouse whose insurance coverage has been terminated by cancellation or expiration.

a. The department shall suspend the warehouse license. The suspension shall take effect on the date that the insurance coverage terminates. However, the department shall terminate the suspension if the licensed warehouse operator submits proof of insurance or any renewed or new evidence of insurance coverage to the department. In addition, all of the following requirements apply:

(1) The department must receive the proof of insurance or evidence of insurance coverage within ten days after the effective date of the suspension.

(2) The department must approve the proof of insurance or evidence of insurance coverage.

b. The department shall revoke the warehouse license. The revocation shall take effect eleven days after the effective date of the suspension, unless the suspension is terminated as provided in paragraph "a".

9. When a license is revoked, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation. The department shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last known address of each person having grain in storage as provided in this subsection.

10. Claimants against the insurance have precedence in the following order:

a. Holders of warehouse receipts other than the warehouse operator and owners of bulk grain other than the warehouse operator.

b. Owners of all other agricultural products as their interests appear.

c. Warehouse operators who have warehouse receipts.

d. Warehouse operators owners of bulk grain.

11. However, notwithstanding the insurance requirements set forth in this section, a licensed warehouse may exclude from the insurance coverage stored grain to which title is fully vested in the United States government or any of its subdivisions or agencies, provided that the licensed warehouse has on file with the United States government or any of its subdivisions or agencies a current and accepted uninsured storage rate under the provisions of their uniform grain storage agreement. The licensed warehouse shall file a copy of the current uninsured tariff rate with the department immediately upon acceptance of the uninsured rate by the United States government or any of its subdivisions or agencies.

[C24, 27, 31, §9725; C35, §9751-g7; C39, §9751.07; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.15]

86 Acts, ch 1006, §6; 86 Acts, ch 1103, §1; 86 Acts, ch 1152, §26; 89 Acts, ch 143, §804

C93, §203C.15

2009 Acts, ch 41, §217; 2012 Acts, ch 1095, §108 – 110; 2013 Acts, ch 30, §42

Referred to in §203C.11

Subsection 6, paragraph a, unnumbered paragraph 1 amended

### **203C.16 License required for the storage of bulk grain.**

A person other than a licensed warehouse operator shall not place in storage or accept for storage any bulk grain. A person shall not place bulk grain in storage in a warehouse other than a licensed warehouse. This section shall not apply to any of the following:

1. The acceptance and storage of bulk grain by a person bonded and licensed under the United States Warehouse Act.

2. The storage of bulk grain by a person who owns all the stored bulk grain.

3. a. The storage of bulk grain by more than one person, if all of the following apply:

(1) The bulk grain was jointly produced by all persons storing the grain.

(2) The bulk grain is stored on the property owned or leased by one of the persons jointly producing the grain.

(3) No person other than persons jointly producing the grain owns the stored bulk grain.

b. As used in this subsection, “jointly produced” includes but is not limited to grain owned by a landlord who receives a share of agricultural products as rent.

[C24, 27, 31, §9722, 9724; C35, §9751-g2; C39, §9751.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.16]

C93, §203C.16

94 Acts, ch 1113, §1; 2012 Acts, ch 1095, §111; 2013 Acts, ch 90, §35

Subsection 3 amended

### 203C.17 Receiving bulk grain at licensed and unlicensed warehouses.

1. Any grain which has been received at any licensed warehouse for which the actual sale price is not fixed and proper documentation made or payment made shall be construed to be grain held for storage within the meaning of this chapter. Grain may be held in open storage or placed on warehouse receipt. A warehouse receipt shall be issued for all grain held in open storage within one year from the date of delivery to the warehouse, unless the depositor has signed a statement that the depositor does not desire a warehouse receipt. A warehouse receipt shall be issued upon request by the depositor. The warehouse operator’s tariff shall apply for any grain that is retained in open storage or under warehouse receipt.

2. Bulk grain deposited with a licensed warehouse operator for processing, cleaning, drying, shipping for the account of the depositor or any other purpose shall be removed within thirty days or such grain shall be determined as stored grain and the warehouse operator’s tariff charges shall apply.

3. Grain received on a scale ticket which fails to have the price fixed and properly documented on the records of the warehouse operator shall be construed to be in open storage.

4. All bulk grain whether open storage or having been placed on warehouse receipt is covered by the grain depositors and sellers indemnity fund created in chapter 203D.

5. Any grain which has been received at any unlicensed warehouse and for which the actual sale price has not been fixed and payment made within thirty days from receipt of the grain, unless covered by a credit-sale contract, shall be construed to be unlawful storage within the meaning of this chapter. Bulk grain received at any unlicensed warehouse for any other purpose must either be returned to the depositor or disposed of by order of the depositor within thirty days from date of actual deposit of the bulk grain.

6. If the depositor of bulk grain in an unlicensed warehouse fails to sell the grain or orders other disposition of the grain, the warehouse operator may purchase the grain, if otherwise allowed by law, on the thirtieth day after deposit at not less than the local market price at the close of business on the thirtieth day or return the grain to the depositor by the thirtieth day.

7. A licensed warehouse operator who does not have a sufficient quantity or quality of grain to satisfy the warehouse operator’s obligations based on an examination by the department shall not purchase grain on credit-sale contract to correct the shortage of grain. A licensed warehouse operator shall not issue a warehouse receipt for purposes of providing collateral, if the grain which is the subject of the warehouse receipt was purchased by credit-sale contract and is unpaid for by the warehouse operator.

8. a. At least once each year, a licensed warehouse operator shall send a statement to each holder of a warehouse receipt covering grain stored at the licensed warehouse operator’s licensed warehouse for more than one year. The statement shall be delivered in person or mailed to the holder’s last known address. The statement shall show the amount of all grain stored pursuant to a warehouse receipt for such warehouse receipt holder and the amount of any storage charges held by the licensed warehouse operator against that grain.

b. The failure to prepare a statement required by this subsection is a simple misdemeanor.

c. A violation of this section shall not constitute grounds for the suspension or revocation of a warehouse operator’s license.

[C24, 27, 31, §9730; C35, §9751- g12; C39, §9751.12; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.17; 81 Acts, ch 180, §24]

86 Acts, ch 1152, §27; 92 Acts, ch 1239, §72, 73

C93, §203C.17

99 Acts, ch 106, §12; 2007 Acts, ch 30, §45, 46, 80; 2009 Acts, ch 41, §218; 2012 Acts, ch 1095, §112

See §203.15

**203C.18 Warehouse receipts — issuance, printing, and electronic filing.**

1. For all agricultural products that become storage in a licensed warehouse, warehouse receipts signed by the licensed warehouse operator or the operator's authorized agent shall be issued by the licensed warehouse operator. Such warehouse receipts shall be in the form required or permitted by uniform commercial code, sections 554.7202 and 554.7204, provided, however, that each receipt issued for agricultural products, in addition to the matters specified in uniform commercial code, section 554.7202, shall embody in its written or printed terms:

a. The receiving and loadout charges which will be made by the warehouse operator.

b. The grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made; provided that such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated; provided, further, that until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the secretary of agriculture of the United States.

c. A statement that the receipt is issued subject to this chapter.

d. Such other terms and conditions as may be required by rules of the department.

2. Warehouses that are not licensed pursuant to this chapter or by the United States government shall not issue warehouse receipts for agricultural products.

3. A form for a warehouse receipt shall only be printed by a person approved by the department. A form for a warehouse receipt shall be printed in accordance with specifications set forth by the department. A warehouse operator shall surrender to the department all forms for warehouse receipts that are unused at the time that the warehouse operator's license is suspended or ceases due to revocation, cancellation, or expiration. The warehouse operator shall surrender the warehouse receipts in a manner required by the department.

4. The department may adopt rules to allow for the issuance of electronic warehouse receipts by a provider who is a person approved by the department to maintain a secure electronic central filing system of electronic records including warehouse receipts and who is independent of an outside influence or bias in action or appearance.

[C24, 27, 31, §9736, 9737; C35, §9751-g17, 9751-g18; C39, §9751.17, 9751.18; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.18; 81 Acts, ch 180, §25]

86 Acts, ch 1152, §28

C93, §203C.18

2007 Acts, ch 30, §45, 46, 81; 2009 Acts, ch 133, §77; 2012 Acts, ch 1095, §113, 114

Referred to in §203C.20

**203C.19 Rights and obligations with respect to warehouse receipts — lost receipts.**

1. Insofar as not inconsistent with the provisions of this chapter, original or duplicate receipts issued by licensed warehouse operators shall be deemed to have been issued under the provisions of uniform commercial code, chapter 554, article 7.

2. Duplicates and releases for lost, destroyed, or stolen warehouse receipts may be issued only in accordance with the provisions of sections 554.7601 and 554.7601A.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.19]

C93, §203C.19

2007 Acts, ch 30, §45, 46, 82

Referred to in §203C.20

**203C.20 Receipt by warehouse operator to self.**

A licensed warehouse operator may issue a warehouse receipt for agricultural products owned by the warehouse operator and dispose of the title to or interest in such products through the medium of such receipt. Such receipt shall be of the same standing as though it had been issued to a person other than the licensed warehouse operator upon a rightful deposit of the products by such other person. Sections 203C.18 and 203C.19 shall be applicable to any such receipt.

[C71, 73, 75, 77, 79, 81, §543.20]  
C93, §203C.20

**203C.21 and 203C.22 Reserved.****203C.23 Warehouse operator's obligation.**

1. A warehouse operator shall maintain at all times sufficient quantity and quality of grain or other agricultural products to cover the warehouse operator's obligation. A warehouse operator shall not at any time have less grain or other agricultural products in the warehouse than the obligations to depositors, as determined by an investigation of the warehouse operator's records.

2. An incidental warehouse operator shall maintain at all times sufficient quantity and quality of grain to cover the incidental warehouse operator's obligation. An incidental warehouse operator shall not at any time have less grain in a warehouse than the obligations to depositors, as determined by an investigation of the incidental warehouse operator's records.

[81 Acts, ch 180, §29]  
C83, §543.23  
C93, §203C.23  
99 Acts, ch 106, §13

**203C.24 Confidentiality of records.**

Notwithstanding the provisions of chapter 22, all financial statements of warehouse operators under this chapter shall be kept confidential by the department and its agents and employees and are not subject to disclosure except as follows:

1. Upon waiver by the licensee.
2. In actions or administrative proceedings commenced under this chapter or chapter 203.
3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.
4. When required by subpoena or other court orders.
5. Disclosure to law enforcement agencies in regards to the detection and prosecution of public offenses.
6. Where released to a bonding company approved by the department or to the United States department of agriculture or any of their divisions.

7. Where released at the request of the Iowa accountancy examining board for licensee review and discipline in accordance with chapters 272C and 542 and subject to the confidentiality requirements of section 272C.6.

8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

[81 Acts, ch 180, §30]  
C83, §543.24  
83 Acts, ch 104, §2; 89 Acts, ch 143, §602  
C93, §203C.24  
99 Acts, ch 106, §14; 2001 Acts, ch 55, §24, 38  
Referred to in §203.11B, 203D.4

**203C.25 Shrinkage adjustments — disclosures — penalties.**

1. A person who, in connection with the receipt of corn or soybeans for storage, processing, or sale, adjusts the scale weight of the grain to compensate for the moisture content of the grain shall compute the amount of the adjustment by multiplying the scale

weight of the grain by that factor which results in a rate of adjustment of one and eighteen hundredths percent of weight per one percent of moisture content. The use of any rate of weight adjustment for moisture content other than the one prescribed by this subsection is a fraudulent practice. The person shall post on the business premises in a conspicuous place notice of the rate of adjustment for moisture content that is prescribed by this subsection. Failure to make this disclosure is a simple misdemeanor.

2. A person who, in connection with the receipt of grain for storage, processing or sale, adjusts the quantity of the grain received to compensate for losses to be incurred during the handling, processing, or storage of the grain shall post on the business premises in a conspicuous place notice of the rate of adjustment to be made for this shrinkage. Failure to make the required disclosure is a simple misdemeanor.

3. A person who adjusts the scale weight of corn or soybeans both for moisture content and for handling, processing, or storage losses may combine the two adjustment factors into a single factor and may use this resulting factor to compute the amount of weight adjustment in connection with storage, processing, or sale transactions, provided that the person shall post on the business premises in a conspicuous place a notice that discloses the moisture shrinkage factor prescribed by subsection 1, the handling shrinkage factor to be imposed, and the single factor that results from combining these factors. Failure to make the required disclosure is a simple misdemeanor.

[81 Acts, ch 180, §31]

C83, §543.25

C93, §203C.25

**203C.26** Reserved.

**203C.27 Discrimination.** Repealed by 2012 Acts, ch 1095, § 117.

**203C.28 Tariff rates.**

A warehouse operator shall, at the time of application for a license, file a tariff with the department which shall contain rates to be charged for receiving, storage, and load-out of grain. The tariff shall be posted in a conspicuous place at the place of business of the licensee in a form prescribed by the department and shall become effective at the time the license becomes effective.

Storage charges shall commence on the date of delivery to the warehouse. Storage, receiving, or load-out charges other than those specified in the tariff may be made if the charge is required by the terms of a written contract with the United States government or any of its subdivisions or agencies.

Grain deposited with the warehouse for the sole purpose of processing and redelivery to the depositor is subject only to the charges listed under the grain bank section of the tariff. Drying and cleaning of grain shall not be construed as processing.

A tariff may be amended at any time and is effective immediately, except that grain in store on the effective date of a storage charge increase does not assume the increased rate until the subsequent anniversary date of deposit. Any decrease in storage rates shall be effective immediately and shall be applicable to all grain in store on the effective date of the decrease.

A warehouse operator may file with the department and publish the supplemental tariff applicable only to grain meeting special descriptive standards or characteristics as set forth in the supplemental tariff. A supplemental tariff shall be in a form prescribed by the department and be posted adjacent to the warehouse tariff.

All tariff charges shall be nondiscriminatory within classes.

[C24, 27, 31, §9737; C35, §9751-g18; C39, §9751.18; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.28]

86 Acts, ch 1103, §2

C93, §203C.28

**203C.29** Reserved.

**203C.30 Inspecting and grading.**

Grain or any other fungible agricultural product stored in a warehouse licensed under this chapter for which no separate compartment is provided, and its identity preserved, shall be inspected and graded.

[C24, 27, 31, §9733; C35, §9751-g14; C39, §9751.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.30]

C93, §203C.30

2012 Acts, ch 1095, §115

**203C.31 and 203C.32** Reserved.**203C.33 Fees.**

1. The department shall charge the following fees for deposit in the general fund:

a. For the issuance or renewal of a warehouse license, the fee shall be determined on the basis of the storage capacity in bushels of grain as follows:

(1) If the total storage capacity is one hundred thousand bushels or less, the fee is fifty-eight dollars.

(2) If the total storage capacity is more than one hundred thousand bushels, but not more than seven hundred fifty thousand bushels, the fee is one hundred twenty-five dollars.

(3) If the total storage capacity is more than seven hundred fifty thousand bushels, but not more than one million five hundred thousand bushels, the fee is one hundred ninety-one dollars.

(4) If the total storage capacity is more than one million five hundred thousand bushels, but not more than three million bushels, the fee is two hundred forty-nine dollars.

(5) If the total storage capacity is more than three million bushels, but not more than four million seven hundred fifty thousand bushels, the fee is three hundred seven dollars.

(6) If the total storage capacity is more than four million seven hundred fifty thousand bushels, but not more than nine million five hundred thousand bushels, the fee is three hundred seventy-four dollars.

(7) If the total storage capacity is more than nine million five hundred thousand bushels, the fee is four hundred forty dollars.

b. For the issuance or renewal of a warehouse license for the storage of products other than bulk grain, the fee shall be determined as follows:

(1) For intended storage of products of a value of one hundred thousand dollars or less, a fee of sixty dollars.

(2) For intended storage of products of a value greater than one hundred thousand dollars but not greater than three hundred thousand dollars, a fee of one hundred dollars.

(3) For intended storage of products of a value in excess of three hundred thousand dollars, a fee of two hundred dollars.

c. For each inspection of a warehouse or station for the purpose of licensing, a fee of twenty-five dollars, and for each additional warehouse or station under the same license, a fee of ten dollars.

d. For each amendment of a license, a fee of ten dollars.

e. For each amendment of a tariff, a fee of ten dollars.

f. For a duplicate license, a fee of five dollars.

g. For the reinstatement of a license, a fee of fifty dollars.

2. Fees for new licenses issued for less than a year shall be prorated from the date of application.

[C24, 27, 31, §9726; C35, §9751-g9; C39, §9751.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.33; 81 Acts, ch 180, §26, 32]

83 Acts, ch 175, §3, 4; 84 Acts, ch 1100, §4; 92 Acts, ch 1239, §74

C93, §203C.33

2009 Acts, ch 133, §213

Referred to in §203C.37, 203D.3A

**203C.34 Display of license.**

Every warehouse operator's license issued under this chapter shall be conspicuously displayed in the office of the warehouse for the operation of which the license has been issued.

[C24, 27, 31, §9728; C35, §9751-g10; C39, §9751.10; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.34]

86 Acts, ch 1152, §29

C93, §203C.34

**203C.35 Licensed warehouse operator to keep records.** Repealed by 2003 Acts, ch 69, § 22.

**203C.36 Penalties — injunction.**

1. A person who knowingly withholds information from or knowingly submits false information to the department or any of its employees in a record required to be maintained or submitted to the department under this chapter commits a fraudulent practice as provided in chapter 714.

2. *a.* Except as provided in paragraph "b", a person commits a serious misdemeanor if the person does any of the following:

(1) Engages in business as a warehouse operator without a license as required in section 203C.6.

(2) Obstructs the inspection of the person's business premises or records required to be kept by a licensed warehouse operator pursuant to section 203C.2.

(3) Uses a scale ticket, warehouse receipt, or other document in violation of this chapter or requirements established by the department under this chapter.

*b.* A person who commits an offense specified in paragraph "a" after having been found guilty of the same offense commits an aggravated misdemeanor.

3. Except as provided in subsections 1 and 2, a person who violates any provision of this chapter commits a simple misdemeanor. With respect to a continuing violation, each day that the violation continues is a separate offense.

4. A person in violation of this chapter, or in violation of chapter 714 or 715A, which violation involves the business of a warehouse operator, is subject to prosecution by the county attorney in the county where the business is located. However, if the county attorney fails to initiate prosecution within thirty days, and upon request by the department, the attorney general may initiate and carry out the prosecution in cooperation, if possible, with the county attorney. The person in violation may be restrained by injunction in an action brought by the department or the attorney general upon request by the department.

[C24, 27, 31, §9751; C35, §9751-g33; C39, §9751.33; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §543.36; 81 Acts, ch 180, §27]

92 Acts, ch 1239, §75

C93, §203C.36

2003 Acts, ch 69, §19

**203C.36A Civil penalties.**

1. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed against a warehouse operator for a violation of this chapter.

2. The amount of a civil penalty shall not exceed one thousand five hundred dollars. Each day that a violation continues shall constitute a separate violation. The amount of the civil penalty that may be assessed in an administrative case shall not exceed the amount recommended by the grain industry peer review panel established pursuant to section 203.11B. Moneys collected in civil penalties by the department or the attorney general shall be deposited in the general fund of the state.

3. A civil penalty may be administratively assessed only after an opportunity for a contested case hearing under chapter 17A. The department may be represented in an administrative hearing or judicial proceeding by the attorney general. A civil penalty shall be paid within thirty days from the date that an order or judgment for the penalty becomes

final. When a person against whom a civil penalty is administratively assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final until all judicial review processes are completed. When a person against whom a civil penalty is judicially assessed under this section seeks a timely appeal of judgment, the judgment is not final until the right of appeal is exhausted.

4. A person who fails to timely pay a civil penalty as provided in this section shall pay, in addition to the penalty, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

99 Acts, ch 106, §15

Referred to in §203.11B

### **203C.37 Issuance of a license and payment of fees.**

1. a. Upon the filing of an application pursuant to section 203C.7 and compliance with the terms and conditions of this chapter including rules of the department, the department shall issue the applicant a warehouse operator's license. The license expires at the end of the third calendar month following the close of the warehouse operator's fiscal year. A warehouse operator's license may be renewed annually by the filing of a renewal application on a form prescribed by the department pursuant to section 203C.7. An application for renewal must be received by the department on or before the end of the third calendar month following the close of the warehouse operator's fiscal year.

b. The department shall not approve an application for the issuance or renewal of a warehouse operator's license unless the applicant pays all of the following fees:

(1) For the issuance of a license, all of the following:

(a) A license fee imposed under section 203C.33.

(b) A participation fee imposed under section 203D.3A, and any delinquent participation fee imposed under a previous license as provided in that section.

(2) For the renewal of a license, all of the following:

(a) A renewal fee imposed under section 203C.33.

(b) A participation fee imposed under section 203D.3A, and any delinquent participation fee as provided in that section.

2. The failure of a warehouse operator to file a renewal application and to pay a renewal fee as provided for in section 203C.33 and any delinquent participation fee as provided in section 203D.3A, on or before the end of the third calendar month following the close of the licensee's fiscal year shall cause a license to expire.

3. A warehouse license that has expired may be reinstated by the department upon receipt of a proper renewal application, the renewal fee and the reinstatement fee as provided for in section 203C.33, and any delinquent participation fee as provided in section 203D.3A. The applicant must file the renewal application and pay the fees to the department within thirty days from the date that the warehouse license expires.

4. The department may cancel the license upon request of the licensee unless a complaint or information is filed against the licensee alleging a violation of a provision of this chapter.

5. a. The department shall refund a fee paid by a person to the department under this section if the department does not issue the person a license or renew the person's license.

b. The department shall prorate a fee paid by a person to the department under this section for the issuance or renewal of a license for less than a full year.

[C71, 73, 75, 77, 79, 81, §543.37; 81 Acts, ch 180, §28]

84 Acts, ch 1100, §5; 92 Acts, ch 1239, §76

C93, §203C.37

2010 Acts, ch 1082, §4; 2011 Acts, ch 34, §159, 170

Referred to in §203C.10, 203D.3A, 203D.5

**203C.38 No obligation of state.**

Nothing in this chapter shall be construed to imply any guarantee or obligation on the part of the state of Iowa, or any of its agencies, employees or officials, either elective or appointive, in respect of any agreement or undertaking to which the provisions of this chapter relate.

[C71, 73, 75, 77, 79, 81, §543.38]

C93, §203C.38

**203C.39 Grain stored in another warehouse.**

A licensed warehouse operator may store grain in an alternative warehouse located in Iowa or another state as provided in this section.

1. *a.* The alternative warehouse located in Iowa must be another licensed warehouse or a warehouse licensed pursuant to the United States Warehouse Act.

*b.* The alternative warehouse located in another state must be licensed pursuant to the applicable laws of the state in which the alternative warehouse is located or the United States Warehouse Act. A warehouse operator shall not store grain in an alternative warehouse located in another state, unless approved in writing by the department in a manner required by the department.

2. In storing grain in an alternative warehouse under subsection 1, all of the following requirements apply:

*a.* The warehouse operator must obtain from such warehouse operator a nonnegotiable warehouse receipt and such receipt must show clearly the following notation:

Held in trust for depositors of (name of original receiving warehouse).

*b.* When the licensed warehouse operator begins to use the alternative warehouse, the licensed warehouse operator must have sufficient net worth under section 203C.6 or provide a deficiency bond or an irrevocable letter of credit to cover the increase in the licensed warehouse operator's gross capacity.

3. A licensed warehouse operator may transfer grain for storage to another licensed warehouse operator while the warehouse operator receiving such grain has grain stored elsewhere under the provisions of this section.

[C71, 73, 75, 77, 79, 81, §543.39]

86 Acts, ch 1152, §30; 89 Acts, ch 143, §1102

C93, §203C.39

2003 Acts, ch 69, §20; 2012 Acts, ch 1095, §116

**203C.40 Prioritization of inspections of warehouse operators.**

The department shall develop a system to prioritize the inspections of warehouse operators provided in section 203C.2. The system of prioritization shall be computed each year based on the risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the warehouse operator. The department shall compute the risk by utilizing an available statistical model to measure the financial condition of warehouse operators. Procedures for utilizing the statistical model shall be adopted by department rules. The statistical model shall be used to provide risk ratings. A risk rating shall be used as a factor by the department to prioritize its inspection schedule. The department may inspect a warehouse operator at any time based on a risk of loss to the fund according to the risk rating. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the warehouse operator based on the statistical model shall be good cause.

92 Acts, ch 1239, §77

Referred to in §203C.1, 203C.2

## CHAPTER 203D

## GRAIN DEPOSITORS AND SELLERS INDEMNIFICATION

Referred to in §159.6, 189.16, 190.1, 203.4, 203.12, 203C.4, 203C.12, 203C.14, 203C.17, 554.7204, 669.14

This chapter not enacted as a part of this title;  
transferred from chapter 543A in Code 1993

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**203D.1 Definitions.**

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

1. “*Board*” means the Iowa grain indemnity fund board created in section 203D.4.
  2. “*Credit-sale contract*” means the same as defined in section 203.1.
  3. “*Department*” means the department of agriculture and land stewardship.
  4. “*Depositor*” means a person who deposits grain in a licensed warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt issued by a licensed warehouse, or who is lawfully entitled to possession of the grain.
  5. “*First point of sale*” means the initial transfer of title to grain from a person who has produced the grain or caused the grain to be produced to the first purchaser of the grain for consideration, conditional or otherwise, in any manner or by any means.
  6. “*Fund*” means the grain depositors and sellers indemnity fund created in section 203D.3.
  7. “*Grain*” means the same as defined in section 203.1.
  8. “*Grain dealer*” means the same as defined in section 203.1.
  9. “*Licensed grain dealer*” means a person who has obtained a license to engage in the business of a grain dealer pursuant to section 203.3.
  10. “*Licensed warehouse*” means the same as defined in section 203C.1.
  11. “*Licensed warehouse operator*” means the same as in section 203C.1.
  12. “*Licensee*” means a licensed grain dealer or licensed warehouse operator.
  13. “*Loss*” means the amount of a claim held by a seller or depositor against a grain dealer or warehouse operator which has not been recovered through other legal and equitable remedies including the liquidation of assets.
  14. “*Purchased grain*” means grain which is entered in the company-owned paid position as evidenced on the grain dealer’s daily position record.
  15. “*Seller*” means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, but excludes a person who executes a credit-sale contract as a seller as provided in section 203.15. However, “*seller*” does not include any of the following:
    - a. A person licensed as a grain dealer in any jurisdiction who sells grain to a licensed grain dealer.
    - b. A person who sells grain that is not produced in this state unless such grain is delivered to a licensed grain dealer at a location in this state as the first point of sale.
  16. “*Warehouse operator*” means the same as defined in section 203C.1.
- 86 Acts, ch 1152, §31  
C87, §543A.1  
87 Acts, ch 147, §8 – 10; 89 Acts, ch 143, §901, 902  
C93, §203D.1  
2008 Acts, ch 1083, §13, 14; 2009 Acts, ch 41, §81; 2009 Acts, ch 133, §78; 2010 Acts, ch 1082, §5; 2011 Acts, ch 34, §39; 2012 Acts, ch 1095, §118

**203D.2 Persons participating in fund.**

All licensed grain dealers and licensed warehouse operators shall participate in the fund.  
 86 Acts, ch 1152, §32  
 C87, §543A.2  
 87 Acts, ch 147, §11  
 C93, §203D.2

**203D.3 Grain depositors and sellers indemnity fund.**

1. The grain depositors and sellers indemnity fund is created in the state treasury as a separate account. The general fund of the state is not liable for claims presented against the fund under section 203D.6.

2. The fund consists of all of the following:

- a. Participation fees paid to the department by licensed grain dealers and persons applying to be issued a grain dealer's license as provided in section 203D.3A.
- b. Participation fees paid to the department by licensed warehouse operators and persons applying to be issued a warehouse operator's license as provided in section 203D.3A.
- c. Per-bushel fees paid to the department by licensed grain dealers as provided in section 203D.3A.
- d. Delinquency penalties.
- e. Amounts collected by the state pursuant to legal action on behalf of the fund.
- f. Interest, earnings on investments, property, or securities acquired through the use of moneys in the fund.

3. The fiscal year of the fund begins July 1 and ends on June 30. Fiscal quarters of the fund begin July 1, October 1, January 1, and April 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles.

4. The moneys collected under this section and deposited in the fund shall be used exclusively to indemnify depositors and sellers as provided in section 203D.6 and to pay the administrative costs of this chapter.

5. All disbursements from the fund shall be paid by the treasurer of state pursuant to vouchers authorized by the department.

6. The administrative costs of this chapter shall be paid from the fund after approval of the costs by the board.

86 Acts, ch 1152, §33

C87, §543A.3

87 Acts, ch 147, §12 – 15; 88 Acts, ch 1148, §3; 89 Acts, ch 143, §903 – 905

C93, §203D.3

2008 Acts, ch 1083, §15; 2009 Acts, ch 133, §79; 2010 Acts, ch 1082, §6, 7

Referred to in §203.2A, 203D.1, 203D.3A, 203D.5

**203D.3A Fees.**

The department shall collect fees as provided in this section, if established by the board pursuant to section 203D.5, at rates determined by the board as provided in that section. A person required to pay a fee shall use forms and deliver the payment to the department as required by the department.

1. a. A person who applies for the issuance of a new license as a grain dealer pursuant to section 203.5 or a warehouse operator pursuant to sections 203C.7 and 203C.33 shall pay the department an initial participation fee as part of the application.

(1) In calculating the amount of the initial participation fee, an applicant for a license shall be deemed a licensee paying the full amount of the participation fee owing on the licensee's first anniversary date as provided in paragraph "b". The department must be satisfied that the applicant is calculating the amount due in good faith and using the best information available.

(2) If the department issues the license, the licensee shall recalculate the participation fee when making a payment on the licensee's first installment date as provided in paragraph "b". The licensee may notify the department of any overpayment and shall notify the department of any underpayment by the licensee's first installment date in a manner and according to

procedures required by the department. The department shall refund any overpayment to the licensee and the licensee shall pay any additional amount resulting from an underpayment.

b. A licensee shall pay a participation fee on four successive installment dates, with each installment date occurring on the last date of the fund's fiscal quarter as provided in section 203D.3. The licensee shall pay twenty-five percent of the total participation fee assessed on each installment date. However, nothing in this subsection prevents a licensee from paying the participation fee on an accelerated basis. A licensee shall pay the first installment on the last date of the fund's fiscal quarter immediately following the licensee's anniversary date.

(1) For a licensed grain dealer, the anniversary date is the last date to apply for the renewal of the grain dealer's license before the license expires as provided in section 203.5.

(2) For a licensed warehouse operator, the anniversary date is the last date to apply for the renewal of the warehouse operator's license before the license expires as provided in section 203C.37.

c. A licensee is delinquent if the licensee fails to submit the payment when due or if, upon examination, an underpayment of the fee is found by the department.

d. A licensee shall not pass on the cost of a participation fee to sellers. The department may suspend or revoke the license of a grain dealer for passing on the cost, as provided in chapter 203.

2. a. A per-bushel fee shall be assessed on all purchased grain. However, if the grain dealer provides documentation regarding the transaction satisfactory to the department, the following transactions shall be excluded from the per-bushel fee:

(1) Grain purchased from the United States government or any of its subdivisions or agencies.

(2) Grain purchased from a person licensed as a grain dealer in any jurisdiction.

(3) Grain purchased under a credit-sale contract.

b. The grain dealer shall forward the per-bushel fee to the department on a quarterly basis in the manner and using the forms prescribed by the department. A licensee is delinquent if the licensee fails to submit the full fee or quarterly forms when due or if, upon examination, an underpayment of the fee is found by the department. The grain dealer is subject to a penalty of ten dollars for each day the grain dealer is delinquent or an amount equal to the amount of the deficiency, whichever is less. However, a licensee who fails to submit the full fee or quarterly forms when due, is subject to a minimum payment of ten dollars. The department may establish and apply a margin of error in determining whether a grain dealer is delinquent. The per-bushel fee shall be collected only once on each bushel of grain.

c. A grain dealer may choose to pass on the cost of a per-bushel fee to the sellers by an itemized discount noted on the settlement sheet. However, if the per-bushel fee is not in effect, no grain dealer shall make such a discount on the purchase of grain. A discount made nominally for the per-bushel fee while the fee is not in effect is grounds for license suspension or revocation under chapter 203.

2010 Acts, ch 1082, §8

Referred to in §203.5, 203C.37, 203D.3, 203D.5

#### **203D.4 Indemnity fund board.**

1. The Iowa grain indemnity fund board is established to advise the department on matters relating to the fund and to perform the duties provided it in this chapter. The board is composed of the secretary of agriculture or a designee who shall serve as president; the state treasurer or a designee who shall serve as treasurer; a representative of the banking industry appointed by the governor, who shall be selected from a list of three nominations made by the secretary of agriculture; and four representatives of the grain industry appointed by the governor, subject to confirmation by the senate, two of whom shall be representatives of producers and who shall be actively participating producers, and two of whom shall be representatives of licensed grain dealers and licensed warehouse operators and who shall be actively participating licensed grain dealers and licensed warehouse operators, each of whom shall be selected from a list of three nominations made by the secretary of agriculture. The term of membership of the banking industry representative and the grain industry representatives is three years, and the representatives are eligible for reappointment.

However, of the grain industry representatives, only actively participating producers, and grain dealers and warehouse operators are eligible for reappointment. The banking industry representative and the grain industry representatives are entitled to a per diem as specified in section 7E.6 for each day spent in the performance of the duties of the board, plus actual expenses incurred in the performance of those duties. Four members of the board constitute a quorum, and the affirmative vote of four members is necessary for any action taken by the board, except that a lesser number may adjourn a meeting. A vacancy in the membership of the board does not impair the rights of a quorum to exercise all the rights and perform all the duties of the board.

2. The duties of the board include the review and determination of claims, and the review and approval of administrative costs of the fund. To carry out these duties, the board has the power to adopt rules regarding its organization and procedures for determining claims. Further, the board shall approve rules proposed by the department for the administration of the per-bushel fee prior to their adoption by the department. The board may provide comment and advice to the department in regard to the department's administration of chapters 203 and 203C where the department's policies and rules may affect the exposure of the fund to liability. However, the board shall not become actively involved in a determination by the department as to whether disciplinary action is to be taken against a particular licensee. The board is not a forum for review or appeal in regard to any particular action taken by the department against a licensee.

3. The department through the grain warehouse bureau shall perform the administrative functions necessary for the operation of the board and the fund. Administrative costs approved by the board shall be paid from the fund. The rules of the department shall contain the rules of the board adopted for its organization and its procedures. The department shall adopt rules for the administration of the per-bushel fee upon the board's approval of the rules proposed by the department. The secretary of agriculture, as president of the board as well as head of the department of agriculture and land stewardship, shall administer the department so as to minimize the risk of loss to the fund while protecting interests of depositors and sellers of grain. Policies and rules for the administration of chapters 203 and 203C which, as determined by the secretary of agriculture, may affect the exposure of the fund, shall be presented to the board for comment prior to their adoption by the department. The department shall make reports to the board in regard to licensee investigations which may result in disciplinary action against a licensee and exposure of the fund. The reports may be discussed by the board in closed session pursuant to section 21.5, and are confidential. In making the report, the department shall make available to the board records of licensees which are otherwise confidential under section 22.7, 203.16, or 203C.24. However, a determination to take disciplinary action against a particular licensee shall be made exclusively by the department. A report to the board is not a prerequisite to disciplinary action against a licensee. Review of any action against a licensee, whether or not relating to the fund, shall be made exclusively through the department.

86 Acts, ch 1152, §34

C87, §543A.4

87 Acts, ch 147, §16; 89 Acts, ch 143, §906; 90 Acts, ch 1256, §49

C93, §203D.4

2008 Acts, ch 1083, §16; 2010 Acts, ch 1121, §2

Referred to in §203D.1

Confirmation, see §2.32

### **203D.5 Fees — imposition, adjustment, or waiver.**

1. The board shall annually review the debits of and credits to the grain depositors and sellers indemnity fund created in section 203D.3 and shall determine whether to impose the participation fee and per-bushel fee as provided in section 203D.3A, make adjustments to the fees effective on the previous July 1, or waive the fees as necessary to comply with this section. The board shall make the determination not later than May 1 of each year. The board shall impose the fees or adjust the fees effective on the previous July 1 in accordance with chapter 17A. The imposition or adjustment of the fees shall become effective as follows:

a. For the participation fee, on the following July 1. However, the licensee shall continue to pay the participation fee at the rate in effect on the prior July 1, until the licensee has paid the amount owing.

b. For a per-bushel fee, on the following July 1.

2. a. Except as provided in paragraph “b”, the rate of a participation fee owed by a licensee shall be calculated as follows:

(1) For a licensed grain dealer, not more than fourteen thousandths of a cent per bushel assessed on all purchased grain entered in the company-owned paid position during the grain dealer’s last fiscal year at each location at which records are maintained for transactions of the grain dealer, as determined according to information submitted by the grain dealer to the department for the issuance or renewal of a license as provided in section 203.5.

(2) For a licensed warehouse operator, not more than fourteen thousandths of a cent per bushel of bulk grain storage capacity for each warehouse licensed pursuant to section 203C.8 or five hundred dollars, whichever is less. The participation fee shall be determined using information provided to the department by the warehouse operator applying for the issuance or renewal of a license as provided in sections 203C.7 and 203C.37.

b. A licensee shall pay a participation fee of at least fifty dollars.

3. The rate of the per-bushel fee shall not exceed one-quarter cent per bushel assessed on all purchased grain.

4. If, at the end of any three-month period, the assets of the fund exceed eight million dollars, less any encumbered balances or pending or unsettled claims, all of the following apply:

a. The participation fee shall be waived and shall not be assessable or owing for the following fiscal year of the fund. However, the licensee shall continue to pay any owing participation fee that was in effect on the prior July 1.

b. The per-bushel fee shall be waived and shall not be assessable or owing.

5. The board shall reinstate the fees as provided in this section if the assets of the fund, less any unencumbered balances or pending or unsettled claims, are three million dollars or less.

86 Acts, ch 1152, §35

C87, §543A.5

87 Acts, ch 147, §17; 88 Acts, ch 1148, §4; 89 Acts, ch 143, §907

C93, §203D.5

2009 Acts, ch 17, §1, 6; 2009 Acts, ch 133, §229; 2010 Acts, ch 1082, §9

Referred to in §203D.3A

#### **203D.5A Lien on licensee’s assets.**

The board may enforce a lien attached to assets held by a licensee under chapter 203 or 203C. The lien shall be perfected and enforced pursuant to section 203.12A or 203C.12A.

92 Acts, ch 1239, §78

#### **203D.6 Claims against fund.**

1. *Persons who may file claims.* A depositor or seller may file a claim with the department for indemnification of a loss from the grain depositors and sellers indemnity fund. A claim shall be filed in the manner prescribed by the board.

2. *Time of filing claim.*

a. As used in this subsection, an incurrence date is when either of the following occurs:

(1) The cessation of the license of the grain dealer as described in section 203.10 or warehouse operator as described in section 203C.10.

(2) The filing of a petition in bankruptcy by a licensed grain dealer or licensed warehouse operator.

b. To be timely, a claim must be filed within a claim period beginning on either incurrence date and ending one hundred twenty days after that incurrence date, regardless of whether a previous claim period has expired.

3. *Notice.* The department shall cause notice of the opening of the claim period to be published once each week for two consecutive weeks in a newspaper of general circulation in

each of the counties in which the licensee maintains a business location and in a newspaper of general circulation within the state. The notice shall state the name and address of the licensee and the claim incurrence date. The notice shall also state that any claims against the fund on account of the licensee shall be sent by ordinary mail to the department within one hundred twenty days after the incurrence date, and that the failure to make a timely claim relieves the fund from liability to the claimant. This notice may be incorporated by the department with a notice required by section 203.12 or 203C.14.

4. *Determination of eligible claims.* The board shall determine a claim to be eligible for payment from the fund if the board finds all of the following:

- a. That the claim was timely filed.
- b. That the incurrence date was on or after May 15, 1986.
- c. That the claimant qualifies as a depositor or seller.
- d. That the claim derives from a covered transaction. For purposes of this paragraph, a claim derives from a covered transaction if the claimant is a seller who transferred title to the grain to a licensed grain dealer other than by credit-sale contract within six months of the incurrence date for a claim period as provided in subsection 2, or if the claimant is a depositor who delivered the grain to a licensed warehouse operator.

e. That there is adequate documentation to establish the existence of a claim and to determine the amount of the loss.

f. A claim has not been paid for the same loss.

5. *Value of loss — warehouse claims.* The board shall determine the dollar value of a claim incurred by a depositor holding a warehouse receipt or a scale weight ticket for grain that the depositor delivered for storage to the licensed warehouse operator. If the department has been appointed by the court as receiver of the grain assets of the warehouse operator, the value shall be presumed to be as stated in the plan of disposition approved by the court. If the warehouse operator has filed a petition in bankruptcy, the value shall be presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse operator on the date the petition was filed. If there is neither a department receivership nor a bankruptcy filing, the value shall be presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse operator on the date of license revocation or cancellation. If more than one date applies to a claim, the board may choose between the two. However, the board may accept an alternative valuation of a claim upon a showing of just cause by the depositor or department. All depositors filing claims under this section shall be bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at time of payment from the fund.

6. *Value of loss — grain dealer claims.* The dollar value of a claim incurred by a seller who has sold grain or delivered grain for sale or exchange and who is a creditor of the licensed grain dealer for all or part of the value of the grain shall be based on the amount stated on the obligation on the date of the sale. If the sold grain was unpriced, the value of a claim shall be presumed to be based upon the fair market price, free-on-board from the site of the grain dealer, being paid to producers for grain by the grain terminal operator nearest the grain dealer on the date of the license revocation or cancellation or the filing of a petition in bankruptcy. If more than one date applies to a claim, the board may choose between the two. However, the board may accept an alternative valuation of a claim upon a showing of just cause by the seller or department. All sellers filing claims under this section shall be bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at the time of payment from the fund.

7. *Procedure — appeal.* The board, through the department, shall provide for notice to each depositor and seller upon its determination of eligibility and value of loss. Within twenty days of the notice, the depositor or seller may request a hearing for the review of either determination. The request shall be made in the manner provided by the board. The hearing and any further appeal shall be conducted as a contested case subject to chapter 17A. A depositor or seller whose claim has been refused by the board may appeal the refusal to either

the district court of Polk county or the district court of the county in which the depositor or seller resides.

8. *Payment of claims.* Upon a determination that the claim is eligible for payment, the board shall provide for payment of ninety percent of the loss, as determined under subsection 5, but not more than three hundred thousand dollars per claimant. If at any time the board determines that there are insufficient funds to make payment of all claims, the board may order that payment be deferred on specified claims. The department, upon the board's instruction, shall hold those claims for payment until the board determines that the fund again contains sufficient assets.

9. *Subrogation of fund.* In the event of payment of a loss under this section, the fund is subrogated to the extent of the amount of any payments to all rights, powers, privileges, and remedies of the depositor or seller against any person regarding the loss. The depositor or seller shall render all necessary assistance to aid the department and the board in securing the rights granted in this section. No action or claim initiated by a depositor or seller and pending at the time of payment from the fund shall be compromised or settled without the consent of the board.

10. *Time limitation on claims.*

a. A claim shall expire if five years after the board determines that the claim is eligible, the claimant has failed to do any of the following:

(1) Provide for the fund's subrogation or has failed to render all necessary assistance to aid the department and the board in securing the department's rights of subrogation as required in this section.

(2) Failed to provide necessary documentation or information required by the board in order to process the claim.

b. The fund shall not be liable for the payment of an expired claim.

86 Acts, ch 1152, §36

C87, §543A.6

87 Acts, ch 147, §18, 19; 89 Acts, ch 143, §908

C93, §203D.6

2008 Acts, ch 1083, §17 – 19; 2009 Acts, ch 17, §2 – 6; 2012 Acts, ch 1095, §119

Referred to in §203.12A, 203C.12A, 203D.3

For conditions and time limitation on payment of claims determined to be eligible on or before July 1, 2008, see 2008 Acts, ch 1083, §20  
2009 amendments to this section take effect March 19, 2009, and apply retroactively to October 1, 2008; 2009 Acts, ch 17, §6

**203D.7 No obligation of state.**

This chapter does not imply any guarantee or obligation on the part of the state of Iowa, or any of its agencies, employees, or officials, either elective or appointive, in respect of any agreement or undertaking to which this chapter relates.

86 Acts, ch 1152, §37

C87, §543A.7

C93, §203D.7

**CHAPTERS 204 to 204B**

RESERVED

## CHAPTER 205

## SALE AND DISTRIBUTION OF POISONS

Referred to in §155A.6, 155A.6A, 155A.6B, 155A.13A, 155A.17, 155A.26, 155A.42, 159.6

205.1	Sale of abortifacients.	205.7	Labeling poisons.
205.2	Exception.	205.8	Certain sales excepted.
205.3	Prescriptions.	205.9	Prohibited sales.
205.4	Wood or denatured alcohol.	205.10	False representations.
205.5	Regulations as to sales of certain poisons.	205.11	Enforcement.
205.6	Poison register.	205.12	Chemical analysis of drugs.
		205.13	Applicability of other statutes.

**205.1 Sale of abortifacients.**

No person shall sell, offer or expose for sale, deliver, give away, or have in the person's possession with intent to sell, except upon the original written prescription of a licensed physician, dentist, or veterinarian, any cotton root, ergot, oil of tansy, oil of savin, or derivatives of any of said drugs.

[C51, §2728; R60, §4374; C73, §4038; C97, §2593; S13, §2593, 2596-a; C24, 27, 31, 35, 39, §3170; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.1]

Referred to in §205.2

**205.2 Exception.**

The requirements of section 205.1 that certain drugs shall be furnished only upon written prescription, shall not apply to the sale of such drugs to persons who wholesale or retail the same, nor to any licensed physician, dentist, or veterinarian for use in the practice of that person's profession.

[S13, §2596-a; C24, 27, 31, 35, 39, §3171; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.2]

**205.3 Prescriptions.**

A person shall not fill a prescription for a drug required by chapter 124 or this chapter to be furnished only upon written prescription unless the prescription is ordered for a medical, dental, or veterinary purpose only.

[S13, §2596-a; C24, 27, 31, 35, 39, §3172; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.3]

85 Acts, ch 73, §1

**205.4 Wood or denatured alcohol.**

No person shall have in the person's possession or dispose of in any manner any article intended for use of humans or domestic animals, for internal or external use, for cosmetic purposes, for inhalation, or for perfumes, which contains methyl (wood) alcohol, crude or refined, or completely denatured alcohol. Nothing in this section shall be construed to apply to specially denatured alcohols the formula of which has been approved and the manufacture and use regulated by the federal government.

[S13, §4999-a36; C24, 27, 31, 35, 39, §3173; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.4]

**205.5 Regulations as to sales of certain poisons.**

It shall be unlawful for any person except a licensed pharmacist to sell at retail any of the poisons enumerated in this section: Ammoniated mercury, mercury bichloride, red mercuric iodide, and other poisonous salts and compounds of mercury; salts and compounds of arsenic; salts of antimony; salts of barium except the sulphate; salts of thallium; hydrocyanic acid and its salts; chromic, glacial acetic, and picric acids; chloral hydrate, croton oil, creosol, chloroform, dinitrophenol, ether, oil of bitter almonds, phenol, phosphorus and sodium fluoride; aconitine, arecoline, atropine, brucine, homatropine,

hyoscyamine, nicotine, strychnine, and the salts of these alkaloids; aconite, belladonna, cantharides, digitalis, nux vomica, veratrum, and the preparations of these poisonous drugs.

[C51, §2728; R60, §4374; C73, §4038; C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §3174; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.5]

2001 Acts, ch 24, §37

Referred to in §205.6, 205.7, 205.8, 205.9, 205.10

#### **205.6 Poison register.**

It shall be unlawful for any pharmacist to sell at retail any of the poisons enumerated in section 205.5 unless the pharmacist ascertains that the purchaser is aware of the character of the drug and the purchaser represents that it is to be used for a proper purpose and every sale of any poison enumerated in section 205.5 shall be entered in a book kept for that purpose, to be known as a "Poison Register" and the same shall show the date of the sale, the name and address of the purchaser, the name of the poison, the purpose for which it was represented to be purchased, and the name of the natural person making the sale, which book or books shall be open for inspection by the board of pharmacy, or any magistrate or peace officer of this state, and preserved for at least five years after the date of the last sale therein recorded.

[C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §3175; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.6]

2007 Acts, ch 10, §160

Referred to in §205.8, 205.9

#### **205.7 Labeling poisons.**

Except as otherwise provided, it shall be unlawful to vend, sell, dispense, or give away any poison enumerated in section 205.5, or sodium chlorate or crude carbolic acid, or any other potent poisons, without affixing to the bottle, box, vessel, or package containing the same, a label containing the name of the poison either printed or plainly written, and the word "Poison" printed in red ink, and the name and place of business of the distributor, manufacturer, wholesaler or dealer; and every package or container which contains ammonia water, concentrated lye, denatured alcohol, formaldehyde, benzol, carbon tetrachloride, commercial hydrochloric, nitric, sulphuric or oxalic acids, shall be labeled with the name of the poison, which label shall bear the name and place of business of the distributor, manufacturer, wholesaler, or dealer, the most available antidote and the word "Poison" printed in red ink in a conspicuous place thereon.

[C51, §2728; R60, §4374; C73, §4038; C97, §2588, 2593, 4976; S13, §2593; SS15, §2588; C24, 27, 31, 35, 39, §3176; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.7]

Referred to in §205.8

#### **205.8 Certain sales excepted.**

Nothing in sections 205.5 to 205.7 shall apply:

1. To proprietary medicines, provided they are not in themselves poisonous and are sold in original unbroken packages.

2. To the filling of prescriptions from or the sale to licensed physicians, dentists, or veterinarians or sales to another pharmacist or to hospitals; or to drugs dispensed by licensed physicians, dentists, or veterinarians, as an incident to the practice of their professions.

3. To insecticides and fungicides as defined in chapter 206 and commercial feeds as defined in section 198.3, provided same be labeled in accordance with said section and sold in original unbroken packages, provided, however, that stock dips and fly sprays may be sold in bulk or otherwise and the vessel or container need not have printed on the label the most available antidote.

4. To any proprietary preparation intended for use in destroying mice, rats, gophers or other lower animals, provided same is sold in original unbroken packages and bears the word "Poison", the most available antidote, and the name of the manufacturer.

[C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §3177; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.8]

**205.9 Prohibited sales.**

It shall be unlawful for any person in this state to sell or deliver any poison to any person known to be of unsound mind or under the influence of intoxicants, and it shall likewise be unlawful for any person in this state to sell or deliver any poison enumerated in section 205.5 to any minor under sixteen years of age except upon a written order signed by some responsible person known to the person selling or delivering the same, which said written order shall contain all of the information required to be entered in the poison register under the provisions of section 205.6.

[C27, 31, 35, §3177-b1; C39, §3177.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.9]

**205.10 False representations.**

Any person who obtains any poison enumerated in section 205.5 under a false name or statement shall be guilty of a fraudulent practice.

[C51, §2728; R60, §4374; C73, §4038; C97, §2593; S13, §2593; C24, 27, 31, 35, 39, §3178; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.10]

**205.11 Enforcement.**

The provisions of this chapter and chapters 124 and 126 shall be administered and enforced by the board of pharmacy. In discharging any duty or exercising any power under those chapters, the board of pharmacy shall be governed by all the provisions of chapter 189, which govern the department of agriculture and land stewardship when discharging a similar duty or exercising a similar power with reference to any of the articles dealt with in this subtitle, to the extent that chapter 189 is not inconsistent with this chapter and chapters 124 and 126.

[C24, 27, 31, 35, 39, §3179; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.11]  
89 Acts, ch 197, §27; 2007 Acts, ch 10, §161

**205.12 Chemical analysis of drugs.**

Any chemical analysis deemed necessary by the board of pharmacy in the enforcement of this chapter and chapters 124 and 126 shall be made by the department of agriculture and land stewardship when requested by the board of pharmacy.

[C24, 27, 31, 35, 39, §3180; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.12]  
89 Acts, ch 197, §28; 2007 Acts, ch 10, §162

**205.13 Applicability of other statutes.**

Insofar as applicable, the provisions of chapter 189 shall apply to the articles dealt with in this chapter and chapters 124 and 126. The powers vested in the department of agriculture and land stewardship by chapter 189 shall be deemed for the purpose of this chapter and chapters 124 and 126 to be vested in the board of pharmacy.

[C24, 27, 31, 35, 39, §3181; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §205.13]  
89 Acts, ch 197, §29; 2007 Acts, ch 10, §163

## CHAPTER 206

## PESTICIDES

Referred to in §200.7, 205.8, 455B.390, 455B.491

See also reference in §200.7

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**206.1 Title of Act.**

This chapter shall be known and may be cited as the “*Pesticide Act of Iowa*”.  
[C66, 71, 73, 75, 77, 79, 81, §206.1]

**206.2 Definitions.**

When used in this chapter:

1. The term “*active ingredient*” means:
  - a. In the case of a pesticide other than a plant growth regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.
  - b. In the case of a plant growth regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof.
  - c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.
  - d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.
2. The term “*adulterated*” shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.
3. The term “*antidote*” means the most practical immediate treatment in case of poisoning and includes first aid treatment.
4. “*Certified applicator*” means any individual who is certified under this chapter as authorized to use any pesticide.
5. “*Certified commercial applicator*” means a pesticide applicator or individual who applies or uses a pesticide or device on any property of another for compensation.
6. “*Certified private applicator*” means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use on property owned or rented by the applicator or the applicator’s employer or, if applied without compensation other than

trading of personal services between producers of agricultural commodities, on the property of another person.

7. “*Chlordane*” means 1,2,4,5,6,7,8,8-octachloro-4,7-methano-3a,4,7,7a-tetrahydroindane; Octa klor: 1068; Velsicol 1068; Dowklor.

8. “*Commercial applicator*” means a person, corporation, or employee of a person or corporation who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying a pesticide but does not include a farmer trading work with another, a person employed by a farmer not solely as a pesticide applicator who applies pesticide as an incidental part of the person’s general duties, or a person who applies pesticide as an incidental part of a custom farming operation.

9. “*Department*” means the department of agriculture and land stewardship.

10. The term “*device*” means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects, birds, or rodents or destroying, repelling, or mitigating fungi, nematodes, weeds or such other pests as may be designated by the secretary, but not including equipment used for the application of pesticides when sold separately therefrom.

11. The term “*distribute*” means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

12. “*Financial institution*” means a bank or savings association authorized by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation.

13. The term “*hazard*” means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

14. The term “*inert ingredient*” means an ingredient which is not an active ingredient.

15. The term “*ingredient statement*” means either:

a. A statement of the name and percentage by weight of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide.

b. When the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

16. The term “*label*” means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device.

17. The term “*labeling*” means all labels and other written, printed or graphic matter:

a. Upon the pesticide or device or any of its containers or wrappers.

b. Accompanying the pesticide or device at any time.

c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States department of agriculture or interior, the United States public health service, the state agricultural experiment stations, the Iowa state university, the Iowa department of public health, the department of natural resources, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

18. The term “*misbranded*” shall apply:

a. To any pesticide or device if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

b. To any pesticide:

(1) If it is an imitation of or is offered for sale under the name of another pesticide.

(2) If its labeling bears any reference to registration under this chapter, when not so registered.

(3) If the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public.

(4) If the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living persons and other vertebrate animals.

(5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there is to be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase.

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or graphic matter in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living persons or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

(8) If in the case of a plant growth regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant growth regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

19. The term “*permit*” means a written certificate, issued by the secretary or the secretary’s agent under rules adopted by the department authorizing the use of certain state restricted use pesticides.

20. The term “*person*” means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

21. The term “*pesticide*” shall mean (a) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating directly or indirectly any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living persons, which the secretary shall declare to be a pest, and (b) any substances intended for use as a plant growth regulator, defoliant, or desiccant.

22. The term “*pesticide dealer*” means any person who distributes restricted use pesticides; pesticide for use by commercial or public pesticide applicators; or general use pesticides labeled for agricultural or lawn and garden use with the exception of dealers whose gross annual pesticide sales are less than ten thousand dollars for each business location owned or operated by the dealer.

23. The term “*plant growth regulator*” means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

24. “*Poison control center*” means an entity existing as part of a hospital licensed under chapter 135B which is an institutional member of the American association of poison control centers.

25. a. “*Public applicator*” means an individual who applies pesticides as an employee of a state agency, county, municipal corporation, or other governmental agency.

b. “*Public applicator*” does not include an employee who works only under the direct supervision of a public applicator.

26. The term “*registrant*” means the person registering any pesticide or device or who has obtained a certificate of license from the department pursuant to the provisions of this chapter.

27. The term “*restricted use pesticide*” means any pesticide restricted as to use by rule of the secretary as adopted under section 206.20.

28. “*State restricted use pesticide*” means a pesticide which is restricted for sale, use, or distribution under section 206.20.

29. “*Toxic to humans*” means not generally recognized as safe as provided by the United States food and drug administration pursuant to 21 C.F.R. pt. 182.

30. The term “*under the direct supervision of*” means the act or process whereby the

application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator or a state licensed commercial applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

31. The term “*unreasonable adverse effects on the environment*” means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

[C24, 27, 31, 35, 39, §3182; C46, 50, 54, 58, 62, §206.1; C66, 71, 73, 75, 77, 79, 81, §206.2]

83 Acts, ch 101, §34; 86 Acts, ch 1245, §643; 87 Acts, ch 225, §209 – 213; 87 Acts, ch 177, §1; 88 Acts, ch 1197, §1; 91 Acts, ch 124, §2; 92 Acts, ch 1020, §1; 92 Acts, ch 1112, §1; 95 Acts, ch 172, §1; 2003 Acts, ch 86, §1, 3; 2012 Acts, ch 1017, §56; 2012 Acts, ch 1095, §120, 131

Referred to in §202.1, 206.31, 455B.491, 570A.1, 579B.1

Further definitions, see §189.1

### 206.3 Examination and orders.

The examination of pesticides and those products to which pesticides have been applied for the content of pesticide residues shall be made under the direction of the secretary, or the secretary’s authorized representative, for the purpose of determining whether they comply with the requirements of this chapter and rules adopted under this chapter. If it shall appear from such examination that a pesticide fails to comply with the provisions of this chapter, and the secretary, or the secretary’s authorized representative, contemplates instituting criminal proceedings against any person, the secretary or representative shall cause notice to be given to such person. Any person so notified shall be given an opportunity to present the person’s views, either orally or in writing, with regard to such contemplated proceedings and if thereafter in the opinion of the secretary, or authorized representative, it shall appear that the provisions of the chapter have been violated by such person, then the secretary or authorized representative may refer the facts to the county attorney for the county in which the violation shall have occurred with a copy of the results of the analysis or the examination of such article; provided, however, that nothing in this chapter shall be construed as requiring the secretary or representative to report for prosecution or for the institution of proceedings in minor violations of the chapter whenever the secretary or representative believes that the public interests will be best served by a suitable notice of warning in writing.

[C66, 71, 73, §206.7; C75, 77, 79, 81, §206.3]

### 206.4 Classification of licenses.

1. The secretary may classify or subclassify certifications or licenses to be issued under this chapter. Each classification shall be subject to separate testing procedures and requirements. However, no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for by the secretary under the authority of this section.

2. The secretary in promulgating rules under this chapter shall prescribe standards for the certification of applicators of pesticides. In determining these standards the secretary shall take into consideration standards of the United States environmental protection agency and is authorized to adopt by rule these standards.

[C75, 77, 79, 81, §206.4]

### 206.5 Certification requirements — rules.

1. A commercial or public applicator shall not apply any pesticide and a person shall not apply any restricted use pesticide without first complying with the certification requirements of this chapter and such other restrictions as determined by the secretary.

2. a. A commercial applicator shall pay a seventy-five dollar fee for a three-year certification. A public applicator or a private applicator shall pay a fifteen dollar fee for a three-year certification.

b. To be initially certified as a commercial, public, or private applicator, a person must complete an educational program which shall consist of an examination required to be passed by the person. After initial certification the commercial, public, or private applicator

must renew the certification by completing the educational program which shall consist of either an examination or continuing instructional courses. The commercial, public, or private applicator must pass the examination each third year following initial certification or may elect to attend two hours of continuing instructional courses each year.

3. A commercial, public, or private applicator is not required to be certified to apply pesticides for a period of twenty-one days from the date of initial employment if the commercial, public, or private applicator is under the direct supervision of a certified applicator. For the purposes of this section, “*under the direct supervision of*” means that the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is physically present, by being in sight or hearing distance of the supervised person.

4. A commercial applicator who applies pesticides to agricultural land may, in lieu of the requirement of direct supervision, elect to be exempt from the certification requirements for a commercial applicator for a period of twenty-one days, if the applicator meets the requirements of a private applicator.

5. A person employed by a farmer not solely as a pesticide applicator who applies restricted use pesticides as an incidental part of the person’s general duties or a person who applies restricted use pesticides as an incidental part of a custom farming operation is required to meet the certification requirements of a private applicator.

6. An employee of a food processing and distribution establishment is exempt from the certification requirements of this section provided that at least one person holding a supervisory position is certified and provided that the employer provides a program, approved by the department, for training, testing, and certification of personnel who apply, as an incidental part of their duties, any pesticide on property owned or rented by the employer. The secretary shall adopt rules to administer the provisions of this paragraph.

7. a. The secretary shall adopt, by rule, requirements for the examination, reexamination, and certification of applicants.

b. The department shall adopt rules providing for the program requirements which may include the safe handling, application, and storage of pesticides, the correct calibration of equipment used for the application of pesticides, and the effects of pesticides upon the groundwater.

(1) The department shall adopt by rule criteria for allowing a person required to be certified to complete either a written or oral examination.

(2) The department shall administer the instructional courses, by either teaching the courses or selecting persons to teach the courses, according to criteria as provided by rules adopted by the department. The department shall, to the extent possible, select persons to teach the courses in each county. The department is not required to compensate persons selected to teach the courses. In selecting persons, the department shall rely upon organizations interested in the application of pesticides, including associations representing pesticide applicators and associations representing agricultural producers.

(3) The Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology shall cooperate with the department in administering the instructional courses. The Iowa cooperative extension service may teach courses, train persons selected to teach courses, or distribute informational materials to persons teaching the courses.

c. The secretary shall also adopt rules which allow for an exemption from certification for a person who uses certain services and is not solely a pesticide applicator, but who uses the services as an incidental part of the person’s duties.

[C75, 77, 79, 81, §206.5]

87 Acts, ch 225, §214; 88 Acts, ch 1169, §2; 88 Acts, ch 1197, §2; 89 Acts, ch 296, §20; 92 Acts, ch 1112, §2; 93 Acts, ch 176, §35, 36; 95 Acts, ch 172, §2; 2009 Acts, ch 41, §83; 2012 Acts, ch 1095, §121 – 123

Referred to in §206.6, 206.10, 206.23A

Certification issued to a commercial or public applicator prior to July 1, 2012, shall expire according to text of this section existing immediately prior to that date; 2012 Acts, ch 1095, §125

**206.6 License for commercial applicators.**

1. *Commercial applicator.* No person shall engage in the business of applying pesticides to the lands or property of another at any time without being licensed by the secretary. The secretary shall require an annual license fee of not more than twenty-five dollars for each license. Application for a license shall be made in writing to the department on a designated form obtained from the department. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations, license classification or classifications for which the applicant is applying.

2. *Nonresident applicator.* Any nonresident applying for a license under this chapter to operate in the state shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of this state over such nonresident applicants. A nonresident who has a duly appointed resident agent upon whom process may be served as provided by law shall not be required to designate the secretary of state as such agent. The secretary of state shall be allowed such fees as provided by law for designating resident agents. The secretary shall be furnished with a copy of such designation of the secretary of state or of a resident agent, such copy to be certified by the secretary of state.

3. *Examination for commercial applicator license.* The secretary of agriculture shall not issue a commercial applicator license until the individual engaged in or managing the pesticide application business and employed by the business to apply pesticides is certified by passing an examination to demonstrate to the secretary the individual's knowledge of how to apply pesticides under the classifications the individual has applied for, and the individual's knowledge of the nature and effect of pesticides the individual may apply under such classifications. The applicant successfully completing the certification requirement shall be a licensed commercial applicator.

4. *Renewal of applicant's license.* The secretary of agriculture shall renew any applicant's license under the classifications for which such applicant is licensed, provided that all of the applicant's personnel who apply pesticides are certified commercial applicators.

5. *Issue commercial applicator license.*

a. The secretary shall approve an application and issue a commercial applicator license to the applicant as follows:

(1) The applicant is qualified as found by the secretary to apply pesticides in the classifications for which the applicant has applied.

(2) The applicant must furnish to the department evidence of financial responsibility as required under section 206.13.

(3) An applicant applying for a license to engage in aerial application of pesticides must demonstrate compliance with the requirements of the federal aviation administration, the United States department of transportation, and any other applicable federal or state laws or regulations to operate the equipment described in the application.

b. The secretary shall adopt by rule, additional requirements for issuing a license to a person who is a nonresident of this state engaged in the aerial application of pesticides, which may include but is not limited to conditions for the operation of the aircraft and the application of the pesticides under the supervision of a person who is a resident of this state and licensed as a commercial applicator under this section or as a pesticide dealer under section 206.8. The secretary shall not adopt rules concerning the operation of aircraft when a nonresident person is not engaged in the commercial application of pesticides.

c. The secretary shall issue a commercial applicator license limited to the classifications for which the applicant is qualified, which shall expire as provided in section 206.5, unless it has been revoked or suspended by the secretary for cause. The secretary may limit the license of the applicant to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant is only so qualified. If a license is not issued as applied for, the secretary shall inform the applicant in writing of the reasons.

6. *Public applicator.*

a. All state agencies, counties, municipal corporations, and any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application of pesticides.

b. Public applicators for agencies listed in this subsection shall be subject to certification requirements as provided for in this section. The public applicator license shall be valid only when such applicator is acting as an applicator applying pesticides used by such entities. Government research personnel shall be exempt from this licensing requirement when applying pesticides only to experimental plots. Public agencies or municipal corporations licensed pursuant to this section shall be licensed public applicators.

c. Such agencies and municipal corporations shall be subject to legal recourse by any person damaged by such application of any pesticide, and such action may be brought in the county where the damage or some part thereof occurred.

[C66, 71, 73, §206.5; C75, 77, 79, 81, §206.6]

83 Acts, ch 101, §35, 36; 87 Acts, ch 225, §215 – 217; 2008 Acts, ch 1045, §1 – 3; 2009 Acts, ch 133, §80; 2012 Acts, ch 1095, §124, 126

Referred to in §206.13, 206.17, 206.18, 206.23A, 558A.4

### **206.7 Certified applicators.**

1. *Requirement for certification.* A commercial or public applicator shall not apply any pesticide without first complying with the certification standards.

2. *Certification standards.* Certification standards shall be adopted by the secretary to determine the individual's competence with respect to the application and handling of the restricted use pesticides. In determining these standards, the secretary shall take into consideration the standards of the United States environmental protection agency.

3. *Reasons for not qualifying.* If the secretary does not qualify the applicator under this section the secretary shall inform the applicant in writing of the reasons therefor.

[C75, 77, 79, 81, §206.7]

87 Acts, ch 225, §218

Referred to in §206.17

### **206.8 Pesticide dealer license.**

1. It shall be unlawful for any person to act in the capacity of a pesticide dealer, or advertise as, or assume to act as a pesticide dealer at any time without first having obtained a license from the secretary which shall expire at the end of the calendar year of issue. A license shall be required for each location or outlet located within this state from which such pesticides are distributed. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for the manufacturer's, registrant's, or distributor's principal out-of-state location or outlet.

2. The annual license fee for a pesticide dealer is due and payable by June 30 of each year to the department. The annual license fee is based on the gross retail sales of all pesticides sold for use in this state by the dealer in the previous year. The license fee shall be set as follows:

a. (1) A pesticide dealer with less than one hundred thousand dollars in gross retail pesticide sales shall have the option to pay a license fee based on one-tenth of one percent of the gross retail pesticide sales in the previous year or to pay a license fee according to the following:

(a) Twenty-five dollars, if the annual gross retail pesticide sales are less than twenty-five thousand dollars.

(b) Fifty dollars, if the annual gross retail pesticide sales are twenty-five thousand dollars or more but less than fifty thousand dollars.

(c) Seventy-five dollars, if the annual gross retail pesticide sales are fifty thousand dollars or more but less than seventy-five thousand dollars.

(d) One hundred dollars, if the annual gross retail pesticide sales are seventy-five thousand dollars or more but less than one hundred thousand dollars.

(2) The secretary shall provide for a three-month grace period for licensure and shall

impose a late fee of ten dollars upon the licensure of a dealer applying for licensure during the month of October, a late fee of fifteen dollars upon the licensure of a dealer applying for licensure during the month of November, a late fee of twenty-five dollars upon the licensure of a dealer applying for licensure during the month of December, and a late fee of twenty-five dollars upon the licensure of a dealer applying for licensure for each month after the month of December.

b. (1) A pesticide dealer with one hundred thousand dollars or more in gross retail pesticide sales shall pay a license fee based on one-tenth of one percent of the gross retail pesticide sales in the previous year.

(2) The secretary shall provide for a three-month grace period for licensure and shall impose a late fee of two percent of the license fee upon the licensure of a dealer applying for licensure during the month of October, a late fee of four percent of the license fee upon the licensure of a dealer applying for licensure during the month of November, a late fee of five percent of the license fee upon the licensure of a dealer applying for licensure during the month of December, and a late fee of five percent upon the licensure of a dealer applying for licensure for each month after the month of December.

3. Up to twenty-five dollars of each annual license fee shall be retained by the department for administration of the program, and the remaining moneys collected shall be deposited in the agriculture management account of the groundwater protection fund.

4. Application for a license required for manufacturers and distributors who are not engaged in the retail sale of pesticides shall be accompanied by a twenty-five dollar fee for each business location within the state required to be licensed, and shall be on a form prescribed by the secretary.

5. This section does not apply to either of the following:

a. A pesticide applicator who applies pesticides which are owned and furnished to the pesticide applicator by another person, if the pesticide applicator does not charge for the sale of the pesticides.

b. A federal, state, county, or municipal governmental entity which provides pesticides only for its own programs.

[C75, 77, 79, 81, §206.8]

87 Acts, ch 225, §219, 220; 88 Acts, ch 1156, §1; 91 Acts, ch 89, §1; 93 Acts, ch 176, §37; 2009 Acts, ch 41, §84; 2012 Acts, ch 1095, §127

Referred to in §206.6, 206.10, 206.12, 455E.11

### **206.9 Cooperative agreements.**

The secretary may cooperate, receive grants-in-aid, and enter into agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state, or trade associations to obtain assistance in the implementation of this chapter and to do all of the following:

1. Secure uniformity of regulations.
2. Cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs.
3. Contract for monitoring pesticides for the national plan.
4. Prepare and submit state plans to meet federal certification standards.
5. Regulate certified applicators.
6. Develop, in conjunction with the Iowa cooperative extension service in agriculture and home economics, courses available to the public regarding pesticide best management practices.

[C66, 71, 73, §206.11; C75, 77, 79, 81, §206.9]

87 Acts, ch 225, §221

### **206.10 License renewals — delinquent fee.**

1. If the application for renewal of a license provided for in this chapter is not filed prior to the first of January in any year, a delinquent fee of twenty-five percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license is issued. A delinquent fee does not apply if the applicant furnishes an affidavit certifying that

the applicant has not applied pesticides after the expiration of the applicant's license. All licenses issued under this chapter expire December 31 each year.

2. Subsection 1 does not apply to any of the following:

- a. A license issued to a pesticide dealer that expires as provided in section 206.8.
- b. A certificate issued to a certified applicator that expires as provided in section 206.5.

[C75, 77, 79, 81, §206.10]

91 Acts, ch 89, §2; 2012 Acts, ch 1095, §128

#### **206.11 Distribution or sale of pesticides.**

1. It shall be unlawful for any person to distribute, give, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

a. Any pesticide which has not been registered pursuant to the provisions of section 206.12.

b. Any pesticide, if any of the claims made for it, or if any of the directions for its use, differ in substance from the representations made in connection with its registration.

c. Any pesticide if the composition thereof differs from its composition as represented in connection with its registration, unless within the discretion of the secretary, or the secretary's authorized representative, a change in the labeling or formula of a pesticide within a registration period, has been authorized, without requiring a reregistration of the product.

d. Any pesticide, unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing the following:

(1) The name and address of the manufacturer, registrant, or person for whom manufactured.

(2) The name, brand, or trademark of said article.

(3) The net weight or measure of the contents subject, however, to such reasonable variations as the secretary may permit.

(4) An ingredient statement as required in section 206.12.

(5) The date of manufacture of products found by the secretary to be subject to deterioration because of age.

e. Any pesticide which contains any substance or substances in quantities highly toxic to humans; determined as provided in section 206.12, unless the label shall bear, in addition to any other matter required by this chapter:

(1) The skull and cross-bones.

(2) The word "poison" prominently, in red, on a background of distinctly contrasting color.

(3) A statement of an antidote for the pesticide.

(4) Instructions for safe disposal of the container when the used container is found by the secretary after public hearing to be hazardous to humans or other vertebrate animals.

f. Any standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate and barium fluosilicate unless such pesticides have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder which the secretary, or the secretary's authorized representatives, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the secretary, or authorized representative, may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the secretary or representative determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health or safety.

g. Any pesticide which is adulterated or misbranded.

2. It shall be unlawful:

a. For any person to detach, alter, deface, or destroy in whole or in part, any label or

labeling provided for in this chapter or the rules promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this chapter.

b. For any person to use for the person's own advantage or to reveal, other than to the secretary, or officials or employees of the state or officials or employees of the United States department of agriculture, or other federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, in accordance with such directions as the secretary may prescribe, any information relative to formulae of products acquired by authority of section 206.12.

c. For any person to interfere in any way with the secretary or the secretary's duly authorized agents in carrying out the duties imposed by this chapter.

3. It shall be unlawful:

a. To distribute any restricted use pesticide to any person who is required by law or rules promulgated under such law to be certified to use or purchase such restricted pesticides unless such person or the person's agent, to whom distribution is made, is certified to use or purchase such restricted pesticide. Subject to conditions established by the secretary such certification may be obtained immediately prior to distribution from any person designated by the secretary.

b. For any person to use or cause to be used any pesticide contrary to its labeling or to rules of the state of Iowa if those rules differ from or further restrict the usage.

c. For any person to handle, transport, store, display, or distribute pesticides in such a manner as to endanger human beings and their environment or to endanger food, feed, or any other products that may be transported, stored, displayed or distributed with such pesticides.

d. For any person to dispose of, discard, or store any pesticides or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or to pollute any water supply or waterway.

4. The secretary may suspend an applicator's license pending inquiry, and, after opportunity for a hearing, to be held within ten days, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under this chapter, if the secretary finds that the applicant or the holder of a license, permit or certification has committed any of the following acts, each of which is declared to be a violation of this chapter. However, any licensed or unlicensed person shall be subject to the penalties provided for by section 206.22.

a. Made a pesticide recommendation or application inconsistent with the labeling.

b. Applied known ineffective or improper materials.

c. Operated faulty or unsafe equipment.

d. Operated in a faulty, careless or negligent manner.

e. Neglected or, after notice, refused to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the secretary.

f. Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required.

g. Made false or fraudulent records, invoice or reports.

h. Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit or certification.

i. Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license, permit or certification to be used by another person.

j. Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land.

k. Impersonated any federal, state, county or city inspector or official.

[C97, §2588; SS15, §2588; C24, 27, 31, 35, 39, §3183, 3184; C46, 50, 54, 58, 62, §206.2, 206.3; C66, 71, 73, §206.3; C75, 77, 79, 81, §206.11]

2012 Acts, ch 1095, §132

Referred to in §206.18, 206.22

**206.12 Registration.**

1. Every pesticide which is distributed, sold, or offered for sale for use within this state or delivered for transportation or transported in intrastate commerce between points within the state through any point outside this state shall be registered with the department of agriculture and land stewardship. All registration of products shall expire on the thirty-first day of December following date of issuance, unless such registration shall be renewed annually, in which event expiration date shall be extended for each year of renewal registration, or until otherwise terminated; provided that:

a. For the purpose of this chapter, fertilizers in mixed fertilizer-pesticide formulations shall be considered as inert ingredients.

b. Within the discretion of the secretary, or the secretary's authorized representative, a change in the labeling or formulae of a pesticide may be made within the current period of registration, without requiring a reregistration of the product, provided the name of the item is not changed.

c. The secretary shall provide for a three-month grace period for registration.

2. The registrant shall file with the department a statement containing:

a. The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant.

b. The name of the pesticide.

c. A complete copy of the labeling accompanying the pesticide and a statement of all claims made and to be made for it including directions for use.

d. A full description of the tests made and results thereof upon which the claims are based, if requested by the secretary. In the case of renewal or reregistration, a statement may be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

3. The registrant, before selling or offering for sale any pesticide for use in this state, shall register each brand and grade of such pesticide with the secretary upon forms furnished by the secretary, and the secretary shall set the registration fee annually at one-fifth of one percent of gross sales within this state with a minimum fee of two hundred fifty dollars and a maximum fee of three thousand dollars for each and every brand and grade to be offered for sale in this state except as otherwise provided. The annual registration fee for products with gross annual sales in this state of less than one million five hundred thousand dollars shall be the greater of two hundred fifty dollars or one-fifth of one percent of the gross annual sales as established by affidavit of the registrant. The secretary shall adopt by rule exemptions to the minimum fee. Fifty dollars of each fee collected shall be deposited in the general fund of the state, shall be subject to the requirements of section 8.60, and shall be used only for the purpose of enforcing the provisions of this chapter and the remainder of each fee collected shall be placed in the agriculture management account of the groundwater protection fund.

4. The secretary, whenever the secretary deems it necessary in the administration of this chapter, may require the submission of the complete formula of any pesticide. If it appears to the secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of this chapter, the secretary shall register the article.

5. If it does not appear to the secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, the secretary shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections.

6. Notwithstanding any other provisions of this chapter, registration is not required in the case of a pesticide shipped from one plant within this state to another plant within this state operated by the same person.

7. a. Each licensee under section 206.8 shall file an annual report at the time of application for licensure with the secretary of agriculture in a form specified by the secretary of agriculture and which includes the following information:

(1) The gross retail sales of all pesticides sold at retail for use in this state by a licensee

with one hundred thousand dollars or more in gross retail sales of the pesticides sold for use in this state.

(2) The individual label name and dollar amount of each pesticide sold at retail for which gross retail sales of the individual pesticide are three thousand dollars or more.

b. A person who is subject to the household hazardous materials permit requirements, and whose gross annual retail sales of pesticides are less than ten thousand dollars for each business location owned or operated by the person, shall report annually, the individual label name of an individual pesticide for which annual gross retail sales are three thousand dollars or more. The information shall be submitted on a form provided to household hazardous materials permittees by the department of natural resources, and the department of natural resources shall remit the forms to the department of agriculture and land stewardship.

c. Notwithstanding the reporting requirements of this section, the secretary of agriculture may, upon recommendation of the advisory committee created pursuant to section 206.23, and if the committee declares a pesticide to be a pesticide of special concern, require the reporting of annual gross retail sales of a pesticide.

d. A person who sells feed which contains a pesticide as an integral part of the feed mixture shall not be subject to the reporting requirements of this section. However, a person who manufactures feed which contains a pesticide as an integral part of the feed mixture shall be subject to the licensing requirements of section 206.8.

e. The information collected and included in the report required under this section shall remain confidential. Public reporting concerning the information collected shall be performed in a manner which does not identify a specific brand name in the report.

[C66, 71, 73, §206.4; C75, 77, 79, 81, §206.12]

87 Acts, ch 225, §222, 223; 88 Acts, ch 1156, §2 – 4; 90 Acts, ch 1133, §1; 91 Acts, ch 89, §3; 91 Acts, ch 124, §3; 91 Acts, ch 260, §1218; 93 Acts, ch 131, §9; 94 Acts, ch 1107, §49; 2000 Acts, ch 1066, §41; 2009 Acts, ch 41, §85; 2012 Acts, ch 1095, §133 – 135

Referred to in §206.11, 206.16, 206.22, 455E.11

### **206.13 Evidence of financial responsibility required by commercial applicator.**

1. The department shall not issue a commercial applicator's license as required in section 206.6 until the applicant has furnished evidence of financial responsibility with the department. The evidence of financial responsibility shall consist of a surety bond, a liability insurance policy, or an irrevocable letter of credit issued by a financial institution. The department may accept a certification of the evidence of financial responsibility. The evidence of financial responsibility shall pay the amount that the beneficiary is legally obligated to pay as damages caused by the pesticide operations of the applicant. However, the evidence of financial responsibility does not apply to damages or an injury which is expected or intended from the standpoint of the beneficiary. A liability insurance policy shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance. The evidence of financial responsibility need not apply to damages or injury to agricultural crops, plants, or land being worked upon by the applicant.

2. The amount of the evidence of financial responsibility as provided for in this section shall be not less than one hundred thousand dollars for property damage and public liability insurance, each separately, or liability insurance with limits of one hundred thousand dollars per occurrence and three hundred thousand dollars annual aggregate. The evidence of financial responsibility shall be maintained at not less than that amount at all times during the licensed period. The department shall be notified ten days prior to any reduction in the surety bond or liability insurance made at the request of the applicant or cancellation of the surety bond by the surety or the liability insurance by the insurer. The department shall be notified ninety days prior to any reduction of the amount of the irrevocable letter of credit at the request of the applicant or the cancellation of the irrevocable letter of credit by the financial institution. The total and aggregate liability of the surety, insurer, or financial

institution for all claims shall be limited to the face of the surety bond, liability insurance policy, or irrevocable letter of credit.

[C75, 77, 79, 81, §206.13]

2003 Acts, ch 86, §2, 3; 2012 Acts, ch 1095, §129; 2013 Acts, ch 15, §10, 11

Referred to in §206.6  
Subsection 2 amended

#### **206.14 Reports of pesticide accidents, incidents or loss.**

1. The secretary may by rule require the reporting of significant pesticide accidents or incidents to a designated state agency.

2. Any person claiming damages from a pesticide application shall have filed with the secretary on a form prescribed by the secretary a written statement claiming that the person has been damaged.

a. This report shall have been filed within sixty days after the alleged date that damages occurred. If a growing crop is alleged to have been damaged, the report must be filed prior to the time that twenty-five percent of the crop has been harvested. Such statement shall contain, but shall not be limited to the name of the person allegedly responsible for the application of said pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred, and the date on which the alleged damage occurred.

b. The secretary shall prepare a form to be furnished to persons to be used in such cases and such form shall contain such other requirements as the secretary may deem proper. The secretary shall, upon receipt of such statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed, and furnish copies of such statements as may be requested. The secretary shall inspect damages whenever possible and when the secretary determines that the complaint has sufficient merit the secretary shall make such information available to the person claiming damage and to the person who is alleged to have caused the damage.

3. The filing of such a report or failure to give notice shall not preclude recovery in an action for damages and shall not affect the limitations of actions set forth in chapter 614. Nothing herein shall prohibit an action for damages for bodily injury or death to any person.

a. The filing of such report or the failure to file such a report shall not be a violation of this chapter. However, if the person failing to file such report is the only one injured from such use or application of a pesticide by others, the secretary may, when in the public interest, refuse to hold a hearing for the denial, suspension or revocation of a license or permit issued under this chapter until such report is filed.

b. Where damage is alleged to have occurred, the claimant shall permit the secretary, the licensee and the licensee's representatives, such as surety or insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands shall automatically bar the claim against the licensee.

4. The secretary shall require, by rule, that veterinarians licensed and practicing veterinary medicine in the state promptly report to the department a case of domestic livestock poisoning or suspected poisoning by agricultural chemicals.

[C73, §206.13, 455B.102; C75, 77, §206.14, 455B.102; C79, §206.14, 455B.132; C81, §206.14]

Referred to in §139A.21

#### **206.15 Licensee to keep records.**

The secretary shall require commercial applicators and certified commercial applicators to maintain records with respect to application of pesticides. Such relevant information as the secretary may deem necessary may be specified by regulation. Such records shall be kept for a period of three years from the date of the application of the pesticide to which such records refer, and the secretary shall, upon request in writing, be furnished with a copy of such records forthwith.

[C75, 77, 79, 81, §206.15]

**206.16 Confiscation.**

1. Any pesticide or device that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any district court in any county of the state where it may be found and seized for confiscation by condemnation.

a. In the case of a pesticide:

- (1) If it is adulterated or misbranded.
- (2) If it has not been registered under the provisions of section 206.12.
- (3) If it fails to bear on its label the information required by this chapter.
- (4) If it is a white powder pesticide and is not colored as required under this chapter.

b. In the case of a device, if it is misbranded.

2. If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds if such article is sold, less legal costs, shall be paid to the state treasurer; provided, that the article shall not be sold contrary to the provisions of this chapter; and, provided further, that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

3. When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

4. When the secretary has reasonable cause to believe a pesticide or device is being distributed, stored, transported, or used in violation of any of the provisions of this chapter, or of any of the prescribed rules under this chapter, the secretary may issue and serve a written "stop sale, use, or removal" order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order, the secretary may attach the order to the pesticide or device and notify the registrant. The pesticide or device shall not be sold, used, or removed until the provisions of this chapter have been complied with and the pesticide or device has been released in writing under conditions specified by the secretary or the violation has been otherwise disposed of as provided in this chapter by a court of competent jurisdiction.

[C66, 71, 73, §206.10; C75, 77, 79, 81, §206.16]

Referred to in §206.23A

**206.17 Reciprocal agreement.**

The secretary may waive all or part of the examination requirements provided for in sections 206.6 and 206.7 on a reciprocal basis with any other state which has substantially the same standards.

[C75, 77, 79, 81, §206.17]

**206.18 Exception to penalties.**

1. The penalties provided for violations of section 206.11, subsection 1, shall not apply to:

a. Any carrier while lawfully engaged in transporting a pesticide within this state, if such carrier shall, upon request, permit the secretary or the secretary's designated agent to copy all records showing the transactions in and movement of the articles.

b. Public officials of this state and the federal government engaged in the performance of their official duties.

c. The manufacturer or shipper of a pesticide for experimental use only:

(1) By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides.

(2) By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only — not to be sold", together with the manufacturer's name and address; provided, however, that if a written permit has been obtained from the secretary, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

2. No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter shall apply.

3. The provisions of section 206.6 relating to licenses and requirements for their issuance shall not apply to any farmer applying pesticides for the farmer or with ground equipment or manually for the farmer's neighbors; provided, that:

a. The farmer operates farm property and operates and maintains pesticide application equipment primarily for the farmer's own use;

b. The farmer is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and that the farmer shall not publicly claim to be a pesticide applicator;

c. The farmer operates the pesticide application equipment only in the vicinity of the farmer's own property and for the accommodation of the farmer's neighbors.

4. The licensing requirements of section 206.6 shall not apply to persons using hand-powered or self-propelled equipment not exceeding seven and one-half horsepower as determined by rules promulgated by the department to apply pesticides to lawns, or to ornamental shrubs and trees not in excess of twelve feet high, as an incidental part of taking care of household lawns and yards provided, that such persons shall not publicly hold themselves out as being in the business of applying pesticides, and that such persons do not apply restricted use pesticides or state restricted use pesticides, restricted to use only by certified applicators.

5. The provisions of section 206.6 relating to licenses and requirements for their issuance shall not apply to a doctor of veterinary medicine applying pesticides to animals during the normal course of veterinary practice; provided that the veterinarian is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation or does not publicly claim to be a pesticide applicator; and that the veterinarian does not apply restricted use pesticides, or state restricted use pesticides, restricted to use by certified applicators only.

[C66, 71, 73, §206.8; C75, 77, 79, 81, §206.18]

#### **206.19 Rules.**

The department shall, by rule, after public hearing following due notice:

1. Declare as a pest any form of plant or animal life or virus which is unduly injurious to plants, humans, domestic animals, articles, or substances.

2. Determine the proper use of pesticides including but not limited to their formulations, times and methods of application, and other conditions of use.

3. Determine in cooperation with municipalities, the proper notice to be given by a commercial or public applicator to occupants of adjoining properties in urban areas prior to or after the exterior application of pesticides, and establish a schedule to determine the periods of application least harmful to living beings. The rules shall provide that a commercial or public applicator must provide notice only if an occupant requests that the commercial or public applicator provide the occupant notice in a timely manner prior to the application. The request shall include the name and address of the occupant, a telephone number of a location where the occupant may be contacted during normal business hours and evening hours, and the address of each property that adjoins the occupant's property. The notification shall expire on December 31 of each year, or the date when the occupant no longer occupies the property, whichever is earlier. Municipalities shall cooperate with the department by reporting infractions and in implementing this subsection.

4. Adopt rules providing guidelines for public bodies to notify adjacent property occupants regarding the application of herbicides to noxious weeds or other undesirable vegetation within highway rights-of-way.

5. a. Establish, assess, and collect civil penalties for violations by commercial applicators. In determining the amount of the civil penalty, the department shall consider all of the following factors:

(1) The willfulness of the violation.

(2) The actual or potential danger of injury to the public health or safety, or damage to the environment caused by the violation.

(3) The actual or potential cost of the injury or damage caused by the violation to the public health or safety, or to the environment.

(4) The actual or potential cost incurred by the department in enforcing this chapter and rules adopted pursuant to this chapter against the violator.

(5) The remedial action required of the violator.

(6) The violator's previous history of complying with orders or decisions of the department.

b. The amount of the civil penalty shall not exceed five hundred dollars for each offense.

[C66, §206.6; C71, §206.6, 206.12; C73, §206.12, 455B.102; C75, 77, §206.19, 455B.102; C79, §206.19, 455B.132; C81, §206.19]

87 Acts, ch 177, §2; 87 Acts, ch 225, §224; 88 Acts, ch 1118, §2; 93 Acts, ch 130, §1; 95 Acts, ch 172, §3; 2009 Acts, ch 41, §263

Referred to in §206.23A

### **206.20 Restricted use pesticides classified.**

The secretary shall determine, by rule, the pesticides to be classified as restricted use pesticides. In determining these rules the secretary shall take into consideration the pesticides classified as restricted use by the United States environmental protection agency and is authorized to adopt by reference these classifications.

[C75, 77, 79, 81, §206.20]

87 Acts, ch 177, §3; 88 Acts, ch 1118, §3

Referred to in §206.2

### **206.21 Secretary of agriculture — duties.**

1. The secretary is authorized, after public hearing following due notice, to make appropriate rules for carrying out the provisions of this chapter, including rules providing for the collection and chemical examination of samples of pesticides or devices.

2. a. The secretary, including the secretary's authorized agents, inspectors, or employees, may enter into or upon any place during reasonable business hours in order to do any of the following:

(1) Take periodic random samples for chemical examinations of pesticides and devices.

(2) Open any bundle, package or other container containing or believed to contain a pesticide in order to determine whether the pesticide or device complies with the requirements of this chapter.

(3) Monitor the use of or review the pesticide application.

b. Methods of analysis shall be those currently used by the association of official agricultural chemists.

3. The secretary of agriculture, in cooperation with the advisory committee created pursuant to section 206.23, shall designate areas with a history of concerns regarding nearby pesticide applications as pesticide management areas. The secretary shall adopt rules for designating pesticide management areas.

[C66, 71, 73, §206.6; C75, 77, 79, 81, §206.21]

87 Acts, ch 225, §225; 2012 Acts, ch 1095, §136

### **206.22 Penalties.**

1. Any person violating section 206.11, subsection 1, paragraph "a", shall be guilty of a simple misdemeanor.

2. Any person violating any provision of this chapter other than section 206.11, subsection 1, paragraph "a", shall be guilty of a serious misdemeanor; provided, that any offense committed more than five years after a previous conviction shall be considered a first offense; and provided, further, that in any case where a registrant was issued a warning by the secretary pursuant to the provisions of this chapter, such registrant shall upon conviction of a violation of any provision of this chapter other than section 206.11, subsection 1, paragraph "a", be guilty of a serious misdemeanor; and the registration of the article with reference to which the violation occurred shall terminate automatically. An

article, the registration of which has been terminated, may not again be registered unless the article, its labeling, and other material required to be submitted appear to the secretary to comply with all the requirements of this chapter.

3. Notwithstanding any other provisions of the section, in case any person, with intent to defraud, uses or reveals information relative to formulae of products acquired under authority of section 206.12, the person shall be guilty of a serious misdemeanor.

[C66, 71, 73, §206.9; C75, 77, 79, 81, §206.22]

92 Acts, ch 1112, §3; 95 Acts, ch 172, §4

Referred to in §206.11

### **206.23 Advisory committee created — duties.**

1. An advisory committee to the secretary is created. The advisory committee shall have the following members:

a. The dean, college of veterinary medicine, Iowa state university of science and technology, or the dean's designee;

b. The dean, university of Iowa college of medicine, or the dean's designee;

c. An entomologist, botanist, geneticist, horticulturist, agronomist and two persons representing the general public appointed by the secretary. Appointive members of the advisory committee shall serve terms of four years.

2. The advisory committee shall assist the secretary in obtaining scientific data and coordinating agricultural chemical regulatory, enforcement, research, and educational functions of the state. The advisory committee shall recommend rules regarding the sale, use, or disuse of agricultural chemicals to the secretary.

3. The advisory committee shall adopt rules relating to its procedures, and meetings under the general supervision of the secretary.

4. The members of the advisory committee shall be reimbursed for actual and necessary expenses incurred by them in the discharge of their official duties.

[C81, §206.23]

2001 Acts, ch 74, §8

Referred to in §200.5, 200A.6, 206.12, 206.21, 455B.491

### **206.23A Commercial pesticide applicator peer review panel.**

1. The department shall establish a commercial pesticide applicator peer review panel to assist the department in assessing or collecting a civil penalty pursuant to section 206.19. The secretary shall appoint the following members:

a. A person actively engaged in the business of applying pesticides by use of an aircraft and who is licensed as an aerial commercial applicator in this state pursuant to section 206.6.

b. A person actively engaged in the business of applying pesticides in urban areas on lawns and gardens, and who is licensed as a commercial applicator pursuant to section 206.6.

c. A person actively engaged in the business of applying pesticides within structures used for residential or commercial purposes, and who is licensed as a commercial applicator pursuant to section 206.6.

d. A person actively engaged in the business of applying pesticides on agricultural land used for farming and who is licensed as a commercial applicator pursuant to section 206.6.

e. A person certified as a public applicator pursuant to section 206.5.

2. a. The members appointed pursuant to this section shall serve four-year terms beginning and ending as provided in section 69.19. However, the secretary shall appoint initial members to serve for less than four years to ensure that members serve staggered terms. A member is eligible for reappointment. A vacancy on the panel shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

b. The panel shall elect a chairperson who shall serve for a term of one year. The panel shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more members. Three voting members constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the panel. The majority shall not include any member who has a conflict of

interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the panel.

c. Notwithstanding section 7E.6, the members shall only receive reimbursement for actual expenses for performance of their official duties, as provided by the department.

d. The panel shall be staffed by the department.

3. The panel shall make recommendations to the department regarding the establishment of civil penalties and procedures to assess and collect penalties, as provided in section 206.19. The panel may propose a schedule of penalties for minor and serious violations. The department may adopt rules based on the recommendations of the panel as approved by the secretary.

4. The panel shall review cases of persons required to be licensed as commercial applicators who are subject to civil penalties as provided in section 206.19 according to rules adopted by the department. A review shall be performed upon request by the secretary or the person subject to the civil penalty. The panel may establish procedures for the review and establish a system of prioritizing cases for review, consistent with rules adopted by the department. The rules may exclude review of minor violations. The review may also include the manner of assessing and collecting the civil penalty. The findings and recommendations of the panel shall be included in a response delivered to the department and the person subject to the penalty. The response may include a recommendation that a proposed civil penalty be modified or suspended, that an alternative method of collection be instituted, or that conditions be placed upon the license of a commercial applicator.

5. The department shall adopt rules establishing a period for the review and response by the panel which must be completed prior to a contested case hearing under chapter 17A. A hearing shall not be delayed after the required period for review and response, except as provided in chapter 17A.

6. This section does not apply to a license revocation proceeding. This section does not require the department to delay the prosecution of a case if immediate action is necessary to reduce the risk of harm to the environment or public health or safety. This section also does not require a review or response if the department refers a violation of this chapter for criminal prosecution, or for an action involving a stop order issued pursuant to section 206.16. The department shall consider any available response by the panel, but is not required to change findings of an investigation, a penalty sought to be assessed, or a manner of collection.

7. An available response by the panel may be used as evidence in an administrative hearing, or a civil or criminal case, except to the extent that information is considered confidential pursuant to section 22.7.

93 Acts, ch 130, §2

#### **206.24 Agricultural initiative.**

A program of education and demonstration in the area of the agricultural use of fertilizers and pesticides shall be initiated by the secretary of agriculture on July 1, 1987. The secretary shall coordinate the activities of the state regarding this program.

Education and demonstration programs shall promote the widespread adoption of management practices which protect groundwater. The programs may include but are not limited to programs targeted toward the individual farm owner or operator, high school and college students, and groundwater users, in the areas of best management practices, current research findings, and health impacts. Emphasis shall be given to programs which enable these persons to demonstrate best management practices to their peers.

87 Acts, ch 225, §226

#### **206.25 Pesticide containers disposal.**

The department of agriculture and land stewardship, in cooperation with the department of natural resources, shall develop a program for handling used pesticide containers which reflects the state solid waste management policy.

87 Acts, ch 225, §227; 2002 Acts, ch 1162, §37

**206.26 through 206.30** Reserved.

**206.31 Application of pesticides for structural pest control.**

1. *Definitions.* Notwithstanding section 206.2, as used in this chapter with regard to the application of pesticides used for structural pest control:

a. “*Commercial applicator*” means a person, or employee of a person, who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying a pesticide or servicing a device but shall not include a farmer trading work with another.

b. “*Public applicator*” means an individual who applies pesticides as an employee of a state agency, county, municipal corporation, or other governmental agency.

c. “*Structural pest control*” means controlling any pests in, on, or around food handling establishments; human dwellings; institutions such as schools and hospitals; industrial establishments, including warehouses and grain elevators; and any other structures in adjacent areas.

2. *Additional certification requirements.*

a. A person shall not apply a restricted use pesticide used for structural pest control without first complying with the certification requirements of this chapter and other restrictions as determined by the secretary.

b. The secretary shall require applicants for certification as commercial or public applicators of pesticides applied for structural pest control to take and pass a written test.

3. *Examination for commercial applicator license.* The secretary of agriculture shall not issue a commercial applicator license for applying pesticides for structural pest control until the individual engaged in or managing the pesticide application business or employed by the business is certified by passing an examination to demonstrate to the secretary the individual’s knowledge of how to apply pesticides under the classifications the individual has applied for, and the individual’s knowledge of the nature and effect of pesticides the individual may apply under such classifications.

4. *Renewal of applicant’s license.* The secretary of agriculture shall renew an applicant’s license for applying pesticides for structural pest control under the classifications for which the applicant is licensed, provided that all of the applicant’s personnel who apply pesticides for structural pest control have also been certified.

5. *Rules and fee.* The secretary shall adopt by rule, pursuant to chapter 17A, requirements for the examination and certification of the applicants and set a fee of not more than five dollars for certification.

87 Acts, ch 177, §4; 88 Acts, ch 1118, §4; 88 Acts, ch 1197, §3; 2009 Acts, ch 41, §263

**206.32 Chlordane — prohibition.**

1. A person shall not offer for sale, sell, purchase, apply, or use chlordane in this state, on or after January 1, 1989.

2. The department, working in conjunction with the department of natural resources, shall identify existing stocks of chlordane, shall formulate recommendations for the safe disposal of existing stocks of chlordane, and shall make those recommendations available to the owners of existing stocks of chlordane.

88 Acts, ch 1118, §1

**206.33 Daminozide — prohibition.**

A person shall not offer for sale, sell, purchase, apply, or use a pesticide containing daminozide in this state if the pesticide is sold, purchased, applied, or used for purposes of enhancing or improving a product produced to be consumed.

89 Acts, ch 127, §1; 90 Acts, ch 1260, §24

**206.34 Local legislation — prohibition.**

1. As used in this section:

a. “*Local governmental entity*” means any political subdivision, or any state authority which is not the general assembly or under the direction of a principal central department as enumerated in section 7E.5, including a city as defined in section 362.2, a county as provided in chapter 331, or any special purpose district.

b. "Local legislation" means any ordinance, motion, resolution, amendment, regulation, or rule adopted by a local governmental entity.

2. The provisions of this chapter and rules adopted by the department pursuant to this chapter shall preempt local legislation adopted by a local governmental entity relating to the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufacture of a pesticide. A local governmental entity shall not adopt or continue in effect local legislation relating to the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufacture of a pesticide, regardless of whether a statute or rule adopted by the department applies to preempt the local legislation. Local legislation in violation of this section is void and unenforceable.

3. This section does not apply to local legislation of general applicability to commercial activity.

94 Acts, ch 1002, §2; 94 Acts, ch 1198, §42

## CHAPTER 206A

RESERVED

## CHAPTER 207

### COAL MINING

Referred to in §159.6, 161A.4, 189.16, 190.1, 557C.2

This chapter not enacted as a part of this title;  
transferred from chapter 83 in Code 1993

207.1	Policy.	207.17	Citizen suits.
207.2	Definitions.	207.18	Coal exploration permits.
207.3	Mining license.	207.19	Surface effects of underground coal mining operations.
207.4	Mine site permit.	207.20	Authority to enter into cooperative agreements.
207.5	Public notice and hearing.	207.21	Abandoned mine reclamation program.
207.6	Blasting plan required.	207.22	Acquisition and reclamation of land.
207.7	Environmental protection performance standards.	207.23	Liens.
207.8	Determining if land is unsuitable for mining.	207.24	Water rights and replacement.
207.9	Permit approval or denial.	207.25	Additional duties and powers of the division.
207.10	Performance bond requirement.	207.26	Mining operations not subject to this chapter.
207.11	Political subdivision engaged in mining.	207.27	Experimental practices.
207.12	Revision of permits.	207.28	Employee protection.
207.13	Inspections and monitoring.	207.29	Powers and authority of division.
207.14	Enforcement.		
207.15	Penalties.		
207.16	Release of performance bonds or deposits.		

#### 207.1 Policy.

1. It is the policy of this state to provide for the rehabilitation and conservation of land affected by coal mining and preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety, and general welfare of the people of this state.

2. The general assembly finds and declares that because the federal Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, codified at 30 U.S.C. ch. 25, subch. IV, provides for a permit system to regulate the mining of coal and reclamation of the mining sites and provides that permits may be issued by states which are authorized to implement

the provisions of that Act, it is in the interest of the people of Iowa to enact the provisions of this chapter in order to authorize the state to implement the provisions of the federal Surface Mining Control and Reclamation Act of 1977 and federal regulations and guidelines issued pursuant to that Act.

[C79, §83A.12(2); C81, §83.1]

C93, §207.1

2006 Acts, ch 1010, §61; 2011 Acts, ch 34, §40

### 207.2 Definitions.

As used in this chapter, unless context otherwise requires:

1. “*Administrator*” means the division administrator of the division of soil conservation or a designee.

2. “*Committee*” means the state soil conservation committee.

3. “*Division*” means the division of soil conservation within the department of agriculture and land stewardship.

4. “*Fund*” means the abandoned mine reclamation fund established pursuant to this chapter.

5. “*Imminent danger to the health and safety of the public*” means the existence of a condition or practice, or a violation of a permit or other requirement of this chapter in a coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before it can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person’s self to the danger during the time necessary for abatement.

6. “*Mine*” means an underground mine operation or surface mine operation developed and operated for the purpose of extracting coal.

7. “*Operator*” means a person engaged in coal mining who removes or intends to remove more than fifty tons of coal from the earth by coal mining within twelve consecutive calendar months in one location.

8. “*Permit*” means a permit to conduct surface coal mining and reclamation operations issued by the division.

9. “*Permit area*” means the area of land indicated on the approved map submitted with the operator’s application.

10. “*Prime farmland*” means the same as prescribed by the United States department of agriculture pursuant to 7 C.F.R. § 657.5(a).

11. “*Secretary*” means the United States secretary of the interior or a designee.

12. “*State program*” means the procedures for regulating coal mining and reclamation operations established by this chapter.

13. “*Surface coal mining and reclamation operations*” means surface coal mining operations and all activities necessary and incident to the reclamation of such operations after the effective date of this chapter.

14. “*Surface coal mining operations*” means both:

a. Activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground coal mine subject to the requirements of this chapter. However, these activities do not include the extraction of coal incidental to the extraction of other minerals if coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale or include coal explorations subject to this chapter.

b. The areas upon which such activities occur or where such activities disturb the natural land surface.

15. “*Unwarranted failure to comply*” means the failure of an operator to prevent the occurrence of or abate a violation of a permit or a requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care.

[C81, §83.2]

86 Acts, ch 1245, §601

C93, §207.2

2012 Acts, ch 1095, §137; 2013 Acts, ch 90, §36

Subsection 10 amended

### **207.3 Mining license.**

1. A person shall not engage in a surface coal mining operation without first obtaining a license from the division. Licenses shall be issued upon application submitted on a form provided by the division and accompanied by a fee of fifty dollars. An applicant shall furnish on the form information necessary to identify the applicant. Licenses expire on December 31 following the date of issuance and shall be renewed by the division upon application submitted within thirty days prior to the expiration date and accompanied by a fee of ten dollars.

2. The division may, after notification to the committee, commence proceedings to suspend, revoke, or refuse to renew a license of a licensee for repeated or willful violation of any of the provisions of this chapter or of the federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 801 et seq.

3. The hearing shall be held pursuant to chapter 17A not less than fifteen nor more than thirty days after the mailing or service of the notice. If the licensee is found to have willfully or repeatedly violated any of the provisions of this chapter or of the federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 801 et seq., the committee may affirm or modify the proposed suspension, revocation, or refusal to renew the license.

4. Suspension or revocation of a license shall become effective thirty days after the mailing or service of the decision to the licensee. If the committee finds the license should not be renewed, the renewal fee shall be refunded and the license shall expire on the expiration date or thirty days after mailing or service of the decision to the licensee, whichever is later.

[C79, §83A.12(1); C81, §83.3]

C93, §207.3

2011 Acts, ch 34, §41

### **207.4 Mine site permit.**

1. Prior to beginning mining or removal of overburden at mining site, an operator shall obtain a permit from the division for the site. Application for a permit shall be made upon a form provided by the division. The permit fee shall be established by the division in an amount not to exceed the cost of administering the permit provisions of this chapter.

The application shall include, but not be limited to:

a. A legal description of the land where the site is located and the estimated number of acres affected.

b. A statement explaining the authority of the applicant's legal right to operate a mine on the land.

c. A reclamation plan meeting the requirements of this chapter.

d. A determination by an appropriate state or federal agency of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity, and quality of water in surface and groundwater systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the division of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. If the division finds that the probable total annual production at all locations of a coal mining operator will not exceed one hundred thousand tons, the determination of probable hydrologic consequences and a statement of the result of test borings on core samplings which the division may require shall upon the written request of the operator be performed by a qualified public or private laboratory designated by the division and the cost of the preparation of the determination and statement shall be assumed by the division.

2. All permits issued pursuant to the requirements of this chapter shall be issued for a term not to exceed five years. If the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and

the opening of the operation and if the application is full and complete for the longer term, the division may grant a permit for the longer term. A successor in interest to a permittee who applies for a new permit within thirty days of succeeding to the interest and is able to continue the bond coverage may continue coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor's application is granted or denied.

3. A permit terminates if the permittee has not commenced the coal mining operations covered by the permit within three years of its issuance. However, the division may grant reasonable extensions of time upon a showing that the extensions are necessary because of litigation precluding the commencement or threatening substantial economic loss to the permittee or because of conditions beyond the control and without the fault or negligence of the permittee. If a coal lease is issued under the federal Mineral Leasing Act, as amended, extensions of time may not extend beyond the period allowed for diligent development in accordance with section 7 of that Act. If coal is to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is deemed to have commenced mining operations when the construction of the synthetic fuel or generating facility is initiated.

4. A valid permit carries the right of successive renewal upon expiration within the boundaries of the existing permit. On application for renewal the burden shall be on the opponents of approval. Upon application the renewal shall be issued unless the division establishes any of the following:

a. The terms and conditions of the existing permit are not being satisfactorily met.

b. The present coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter.

c. The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas.

d. The operator has not shown that the performance bond for the operation and any additional bond the division may require will continue in full force and effect for the renewal requested.

e. Additional revised or updated information required by the division has not been provided.

5. A permit renewal shall be for a term not to exceed the period of the original permit.

Application for renewal shall be made at least one hundred twenty days prior to the expiration of the permit. Prior to the approval of a renewal of permit the division shall provide notice to the appropriate public authorities.

[C81, §83.4]

C93, §207.4

Mine site permit fee set at fifteen dollars per site acre; 88 Acts, ch 1272, §4

### **207.5 Public notice and hearing.**

1. An applicant for a coal mining and reclamation permit or its renewal shall file a copy of the application for public inspection with the county recorder of each county where the mining is proposed to occur.

2. An applicant for a coal mining and reclamation permit or its renewal shall submit to the division a copy of the applicant's advertisement of the ownership, precise location, and boundaries of the land to be affected. At the time of submission the advertisement shall be placed by the applicant in a local newspaper of general circulation in the locality of the proposed mine weekly for four consecutive weeks. The division shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies where the proposed mining will take place, informing them of the operator's intention to mine a particularly described tract of land, indicating the application number and where a copy of the proposed mining and reclamation plan may be inspected. They may submit written comments within a reasonable period established by the division on the effect of the proposed operation on the environment within their area of responsibility. The comments shall immediately be transmitted to the applicant and shall be made available to the public at the same locations as the mining permit application.

3. A person having an interest which is or may be adversely affected or a federal, state,

or local governmental agency may file written objections to the proposed initial or revised application for a permit for coal mining and reclamation operation with the division within sixty days after the last publication of the advertisement. The objections shall immediately be transmitted to the applicant and shall be made available to the public. If objections are filed and an informal conference requested within a reasonable time, the division shall hold an informal conference in the locality of the proposed mining operations and shall publish the date, time and location in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. Upon request by an interested party, the division may arrange with the applicant access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all parties. The record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. If all parties requesting the informal conference stipulate agreement prior to the conference and withdraw their request, the conference need not be held.

4. An application for a permit shall show a certificate issued by an insurance company authorized to do business in this state certifying that the applicant has a public liability insurance policy in force for that mining and reclamation operation or evidence satisfactory to the division that the applicant has an adequate self-insurance plan. The policy or self-insurance plan shall provide for personal injury and property damage protection adequate to compensate persons entitled to compensation because of damage as a result of coal mining and reclamation operations including use of explosives. The policy or self-insurance plan shall be maintained in full force and effect during the terms of the permit, any renewal and all reclamation operations.

[C81, §83.5]

C93, §207.5

#### **207.6 Blasting plan required.**

1. An application for a permit shall contain a blasting plan which outlines the procedures and standards by which the operator will meet the requirements of the division.

2. The division may promulgate rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in coal mining operations.

[C81, §83.6]

C93, §207.6

#### **207.7 Environmental protection performance standards.**

The division shall adopt rules for environmental protection performance standards that are consistent with federal regulations authorized under the federal Surface Mining Control and Reclamation Act and amendments to that Act.

[C77, 79, §83A.31; C81, §83.7]

87 Acts, ch 47, §1

C93, §207.7

Referred to in §207.9, 207.10, 207.16, 207.18, 207.27

#### **207.8 Determining if land is unsuitable for mining.**

1. The division by rule shall designate a site unsuitable for coal mining if the division determines on the basis of an application or petition that reclamation as required by this chapter is not technologically and economically feasible and may designate a site unsuitable for coal mining if such operations will:

- a. Be incompatible with existing state or local land use plans or programs.
- b. Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems.
- c. Affect renewable resource lands in which such operations could result in a substantial loss or reduction of long range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas.
- d. Affect natural hazards lands in which such operations could substantially endanger life

and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

2. The requirements of this section do not apply to lands on which coal mining operations are being conducted as of August 3, 1977, or under a permit issued pursuant to this chapter or pursuant to section 83A.12, Code 1979, or where substantial legal and financial commitments in an operation were in existence prior to January 4, 1977.

3. Prior to designating a land area as unsuitable for coal mining operations, the division shall prepare a detailed statement on the potential coal resources of the area, the demand for coal resources, and the impact of the designation on the environment, the economy, and the supply of coal.

4. A person having an interest which is or may be adversely affected may petition the division to have an area designated or to have the designation terminated. The petition shall contain allegations of facts with supporting evidence tending to establish the allegations. Within ten months after receipt of the petition the division shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of the hearing. After a person has filed a petition and before the hearing, any person may intervene by filing allegations. Within sixty days after the hearing, the division shall issue and furnish to the petitioner and any other party to the hearing a written decision regarding the petition and the reasons. If all the petitioners stipulate agreement prior to the hearing and withdraw their request, the hearing need not be held.

5. Subject to valid existing rights, coal mining operations, except those which exist on the effective date of this chapter, shall not be permitted on any of the following:

a. Lands within the boundaries of units of the national park systems, the national system of trails, the national wilderness preservation system, the national wildlife refuge systems, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and national recreation areas designated by Act of Congress.

b. Lands which will adversely affect any publicly owned park or places included in the national register of historic sites unless approved jointly by the division and the federal, state, or local agency with jurisdiction over the park or the historic site.

c. Within one hundred feet of the outside right-of-way line of a public road, except where mine access roads or haulage roads join the right-of-way line and except that the division may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected.

d. Within three hundred feet of an occupied dwelling or a privately owned building, unless waived by the owner, or within three hundred feet of a public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery.

[C77, 79, §83A.13; C81, §83.8]

C93, §207.8

2006 Acts, ch 1010, §62

#### **207.9 Permit approval or denial.**

1. Upon the basis of a complete mining application and reclamation plan or a revision or renewal, the division shall grant, require modification of, or deny the application for a permit in a reasonable time set by the division and notify the applicant in writing. The applicant shall have the burden of establishing that the application is in compliance with all the requirements of this chapter. Within ten days after granting of a permit, the division shall notify the political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

2. A permit or revision application shall not be approved unless the application affirmatively demonstrates and the division finds in writing on the basis of the application or other information documented in the approval, and made available to the applicant, the following:

a. The permit application is accurate, complete and in compliance with all the requirements of this chapter.

b. The applicant has demonstrated that reclamation as required by this chapter and the state program can be accomplished under the reclamation plan contained in the permit application.

c. The division has assessed the probable cumulative impact of all anticipated mining in the area on the hydrologic balance and the proposed operation has been designed to prevent material damage to hydrologic balance outside permit area.

d. The area proposed to be mined is not included within an area designated unsuitable for coal mining or is not within an area proposed for such designation.

e. If the private mineral estate has been severed from the private surface estate, the applicant has submitted any of the following:

(1) The written consent of the surface owner to the extraction of coal.

(2) A conveyance that expressly grants or reserves the right to extract the coal by surface mining.

(3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship as determined in accordance with state law. This chapter does not authorize the division to adjudicate property rights disputes.

3. The applicant shall file with the permit application a schedule listing any and all notices of violations of this chapter and any law or rule of the federal or a state government pertaining to air or water environmental protection incurred by the applicant in connection with a coal mining operation during the three previous years. The schedule shall also indicate the final resolution of the notice of violation. If any information available to the division indicates that a coal mining operation owned or controlled by the applicant is currently in violation of this chapter or the other laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the regulatory authority which has jurisdiction over the violation and the permit shall not be issued to an applicant after a finding by the division after an opportunity for a hearing that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter.

4. If the area proposed to be mined contains prime farmland, the division shall, after consultation with the United States secretary of agriculture, and pursuant to regulations issued by the secretary with the concurrence of the secretary of agriculture, grant a permit to mine on prime farmland if the division finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards established by section 207.7. Any operator who mines coal on agricultural land shall restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined agricultural land of similar quality in the surrounding area under equivalent levels of management.

5. Within sixty days a person having an interest which is or may be adversely affected may appeal to the committee the decision of the division granting or denying a permit as a contested case under chapter 17A.

[C81, §83.9]

C93, §207.9

#### **207.10 Performance bond requirement.**

1. After a permit application has been approved but before issuance, the applicant shall file with the division, on a form furnished by the division, a bond for performance payable to the state and conditioned upon faithful performance by the operator of all requirements of this chapter and all rules adopted by the division pursuant to this chapter.

2. The bond shall be signed by the operator as principal and by a corporate surety licensed to do business in Iowa as surety. In lieu of a bond, the operator may deposit cash, or government securities, or certificates of deposit or letters of credit with the division on the same conditions as for filing of bonds.

3. The amount of the bond or other security required to be filed with the division shall be equal to the estimated cost of reclamation of the site if performed by the division. The

estimated cost of reclamation of each individual site shall be determined by the division on the basis of relevant factors. The division may require each applicant to furnish information necessary to estimate the cost of reclamation. The amount of the bond or other security may be increased or reduced as the permitted operation changes, or when the cost of future reclamation changes. However, the bond amount shall not be less than ten thousand dollars.

4. Liability under the bond shall be for the duration of the coal mining and reclamation operation and for a period coincident with operator's responsibility for revegetation requirements in the rules promulgated under section 207.7.

5. If the license to do business in Iowa of a surety of a bond filed with the division is suspended or revoked, the operator, within thirty days after receiving notice from the division, shall substitute another surety. If the operator fails to make substitution, the division may suspend the operator's authorization to conduct mining on the site covered by the bond until substitution has been made. The commissioner of insurance shall notify the division whenever the license of any surety providing bond for an operator is suspended or revoked.

6. Notwithstanding sections 12C.7, subsection 2, and 666.3, the interest or earnings on investments or time deposits of the proceeds of a performance bond forfeited to the division, cash deposited under subsection 2, any funds provided for the abandoned mine reclamation program under section 207.21 and any civil penalties collected pursuant to sections 207.14 and 207.15 shall be credited to the payment of costs and administrative expenses associated with the reclamation, restoration or abatement activities of the division. The division may expend funds credited to it under this subsection to conduct reclamation activities on any areas disturbed by coal mining not subject to a presently valid permit to conduct surface mining.

[C81, §83.10]  
85 Acts, ch 140, §1  
C93, §207.10  
Referred to in §207.14

#### **207.11 Political subdivision engaged in mining.**

An agency or political subdivision of the state or a publicly owned utility or corporation of a political subdivision which engages or intends to engage in coal mining shall meet all requirements of this chapter.

[C81, §83.11]  
C93, §207.11

#### **207.12 Revision of permits.**

1. *a.* An operator may apply for a revision or cancellation of a permit. The application shall be submitted by the operator on a form provided by the division, and shall contain information as required by the division.

*b.* The division shall establish rules for determining the scale or extent of a revision request to which all permit application information requirements and procedures including notice and hearings, shall apply. Revisions which propose significant alterations in the reclamation plan shall be subject to notice and hearing requirements.

2. An application for a revision of a permit shall not be approved unless the division finds that reclamation as required by this chapter can be accomplished under the revised reclamation plan.

3. Extensions to the area covered by the permit except incidental boundary revisions must be made subject to the requirements for an application for new permit.

4. If the application is to cancel the permit as it pertains to any or all of the unmined part of a site, the division shall, after ascertaining that overburden has not been disturbed or deposited on the land, order release of the bond or the security posted on that portion of the land being removed from the permit and cancel or amend the operator's permit to conduct mining on the site. Land where overburden has been disturbed or deposited shall not be removed from a permit or released from bond or security under this section.

5. A transfer, assignment, or sale of the rights granted under a permit shall not be made without the written approval of the division.

6. Fees for revision or cancellation shall be determined by the division but shall not exceed the cost of administering revisions or cancellations of permits as authorized under this section.

7. The division shall review outstanding permits within a time limit prescribed by rule and may require reasonable revision or modification of the permit provisions during the term of the permit. However, the revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by the division.

[C81, §83.12]

C93, §207.12

2009 Acts, ch 41, §263

### **207.13 Inspections and monitoring.**

1. a. The division shall make inspections of any mining and reclamation operations as are necessary to evaluate the administration of this chapter and authorized representatives of the division shall have a right to entry at any mining and reclamation operation. If the operator refuses to consent to the inspection, the division shall request the attorney general to immediately obtain a warrant for the inspection.

b. The division shall determine what records and other information shall be maintained and furnished to the division by the operators for the effective administration of this chapter.

2. The inspections by the division shall:

a. Occur at a frequency of one complete inspection per calendar quarter and at least one partial inspection on an irregular basis in those months where a complete inspection is not performed.

b. Occur without prior notice to the permittee, agents or employees except for necessary on-site meetings with the permittee.

c. Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

3. If the division has reason to believe that an operator is in violation of a requirement of this chapter or a permit condition, the division shall immediately order an inspection of the coal mining operation within ten days of receiving notice of the alleged violation.

4. An operator shall conspicuously maintain a clearly visible sign at the entrances to the mining and reclamation operation which sets forth the name, business address, permit number and phone number of the operator.

5. Each inspector shall immediately inform the operator in writing of each violation, and shall report in writing any violation to the division.

6. Copies of any record, reports, inspection materials, or information obtained under this section by the division shall be made immediately available to the public at central and sufficient locations in the area of mining so that they are conveniently available to residents in the areas of mining.

7. An employee of the division performing any function or duty under this chapter shall not have a direct or indirect financial interest in any mining operation.

[C81, §83.13]

C93, §207.13

2002 Acts, ch 1050, §20; 2009 Acts, ch 41, §263

### **207.14 Enforcement.**

1. a. When on the basis of an inspection, the administrator determines that a condition or practice exists which creates an imminent danger to the health or safety of the public or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the administrator shall immediately order a cessation of coal mining and reclamation operations to the extent necessary until the administrator determines that the condition, practice, or violation has been abated, or until the order is modified, vacated, or terminated by the division pursuant to procedures set out in this section.

b. If the administrator finds that the ordered cessation will not completely abate the

imminent danger to health or safety of the public or the significant imminent environmental harm, the administrator shall require the operator to take whatever steps the administrator deems necessary to abate the imminent danger or the significant environmental harm.

2. *a.* When on the basis of an inspection, the administrator determines that any operator is in violation of any requirement of this chapter or permit condition, but the violation does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant, imminent environmental harm, the administrator shall issue a notice to the operator fixing a reasonable time but not more than ninety days for the abatement of the violation and providing opportunity for public hearing.

*b.* If upon expiration of the time as fixed the administrator finds in writing that the violation has not been abated, the administrator, notwithstanding sections 17A.18 and 17A.18A, shall immediately order a cessation of coal mining and reclamation operations relating to the violation until the order is modified, vacated, or terminated by the administrator pursuant to procedures outlined in this section. In the order of cessation issued by the administrator under this subsection, the administrator shall include the steps necessary to abate the violation in the most expeditious manner possible.

3. When on the basis of an inspection the administrator determines that a pattern of violations of the requirements of this chapter or any permit conditions exists or has existed, and if the administrator also finds that the violations are willful or caused by the unwarranted failure of the operator to comply with any requirements of this chapter or any permit conditions, the administrator shall immediately issue an order to the operator to show cause as to why the permit should not be suspended or revoked and the bond or security forfeited, and shall provide opportunity for a hearing as a contested case pursuant to chapter 17A. Upon the operator's failure to show cause, the administrator shall immediately suspend or revoke the permit.

4. *a.* A permittee may request in writing an appeal to the committee of a decision made in a hearing under subsection 3 within thirty days of the decision. The committee shall review the record made in the contested case hearing, and may hear additional evidence upon a showing of good cause for failure to present the evidence in the hearing, or if evidence concerning events occurring after the hearing is deemed relevant to the proceeding. However, the committee shall not review a decision in a proceeding if the division seeks to collect a civil penalty pursuant to section 207.15, and those decisions are final agency actions subject to direct judicial review as provided in chapter 17A.

*b.* The contested case hearing shall be scheduled within thirty days of receipt of the request by the division. If the decision in the contested case is to revoke the permit, the permittee shall be given a specific period to complete reclamation, or the attorney general shall be requested to institute bond forfeiture proceedings.

5. In any administrative proceeding under this chapter or judicial review, the amount of all reasonable costs and expenses, including reasonable attorney fees incurred by a person in connection with the person's participation in the proceedings or judicial review, may be assessed against either party as the court in judicial review or the committee in administrative proceedings deems proper.

6. Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the operator or an agent and all notices and orders shall be in writing and signed. A notice or order issued pursuant to this section may be modified, vacated, or terminated by the administrator. Any notice or order issued pursuant to this section which requires cessation of mining by the operator expires within thirty days of actual notice to the operator unless a public hearing is held at or near the site so that any viewings of the site can be conducted during the course of the hearing.

7. *a.* A permittee issued a notice or order under this section or any person having an interest which is or may be adversely affected by the notice or order or by its modification, vacation, or termination may apply to the committee for review within thirty days of receipt

of the notice or order or within thirty days of its modification, vacation, or termination. The review shall be treated as a contested case under chapter 17A.

b. Pending completion of any investigation or hearings required by this section, the applicant may file with the division a written request that the administrator grant temporary relief from any notice or order issued under this section together with a detailed statement giving reasons for granting such relief.

c. The administrator shall issue an order or decision granting or denying the request for relief within five days of its receipt. The administrator may grant such relief under such conditions as the administrator may prescribe if all of the following occur:

(1) A hearing has been held in the locality of the permit area in which all parties were given an opportunity to be heard. The hearing need not be held as a contested case under chapter 17A.

(2) The applicant shows that there is substantial likelihood that the findings of the committee will be favorable to the applicant.

(3) Such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

8. At the request of the division, the attorney general shall institute any legal proceedings, including an action for an injunction or a temporary injunction necessary to enforce the penalty provisions of this chapter or to obtain compliance with this chapter. Injunctive relief may be requested to enforce a cessation order issued by the administrator pending a hearing pursuant to subsection 4.

9. When on the basis of an inspection, or other information available to the division, the administrator has reasonable cause to believe that the operator is unable to complete reclamation of all or a portion of the permit area as required by law, the administrator shall issue an order to the operator to show cause as to why all or a portion of the performance bond required by section 207.10 should not be revoked.

[C81, §83.14; 82 Acts, ch 1119, §1, 2]

85 Acts, ch 140, §2 - 4

C93, §207.14

98 Acts, ch 1202, §35, 46; 2009 Acts, ch 41, §219

Referred to in §207.10, 207.15

### **207.15 Penalties.**

1. a. (1) A person who violates a permit condition, a provision of this chapter, or a rule or order issued under this chapter is subject to a civil penalty not to exceed five thousand dollars per day for each day of violation.

(2) If a violation results in the issuance of a cessation order, a civil penalty shall be imposed. The penalty shall not exceed five thousand dollars for each day of violation.

b. In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

c. An operator who fails to correct a violation for which a notice or order has been issued within the period permitted for its correction shall be required to pay a civil penalty of not less than seven hundred fifty dollars for each day during which the failure or violations continue.

2. a. If a notice or order has been issued, the division may assess a recommended penalty in accordance with a schedule established by rule. The person to whom the notice or order was issued may submit written information within fifteen days of the notice or order to be considered by the division. The division shall serve the assessment by certified mail, return receipt requested, within thirty days of issuance of the notice or order. The division may reassess any penalty if necessary to account for facts not reasonably available on the date of issuance of the assessment. A person may consent to a penalty assessment by paying the penalty without resort to judicial proceedings.

b. If a violation results in the issuance of a cessation order pursuant to section 207.14 the division shall assess a penalty.

3. A contested case hearing may be requested pursuant to section 207.14, subsection 4, to review a notice, order, or penalty assessment. A person to whom a penalty assessment has been issued may request a contested case hearing solely for review of the amount of the penalty. A penalty assessment is final if a request for review is not made in a timely manner.

4. Judicial review of any action of the division shall be in accordance with chapter 17A. Judicial review of a penalty assessment shall not be permitted unless the petitioner has posted a bond equal to the amount of the assessed penalty in the district court or has placed the proposed amount in an interest-bearing escrow fund approved by the division.

5. If a violation results in a cessation order pursuant to section 207.14, the attorney general, at the request of the division, shall institute a civil action in district court for injunctive relief.

6. Notwithstanding section 17A.20, an appeal bond shall be required for an appeal of a judgment assessing a civil penalty.

7. A person who willfully and knowingly violates a condition of a permit or any other provision of this chapter, or makes a false statement, representation, or certification, or knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter or any order or decision of this chapter, shall be guilty of a serious misdemeanor and notwithstanding section 903.1 the maximum fine shall be ten thousand dollars.

8. Whenever a corporate operator violates a condition of a permit or any other provision of this chapter or fails or refuses to comply with any provision of this chapter, a director, officer, or agent of that corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties or criminal fines and imprisonment that may be imposed upon a person under this section.

9. An employee of the division performing any function or duty under this chapter who knowingly and willfully has a direct or indirect financial interest in any coal mining operation shall be guilty of a serious misdemeanor and notwithstanding section 903.1 the maximum fine shall be two thousand five hundred dollars.

[C81, §83.15]

84 Acts, ch 1153, §1, 2; 85 Acts, ch 140, §5

C93, §207.15

2009 Acts, ch 133, §81

Referred to in §207.10, 207.14, 207.18

### **207.16 Release of performance bonds or deposits.**

1. Each operator upon completion of any reclamation work required by this chapter shall apply to the division in writing for approval of the work. The division shall promulgate rules consistent with Pub. L. No. 95-87, § 519, codified at 30 U.S.C. § 1269, regarding procedures and requirements to release performance bonds or deposits.

2. The division may release in whole or part the bonds or deposits if the division is satisfied the reclamation covered by the bonds or deposits or portions thereof has been accomplished as required by this chapter according to stages determined by the division by rule. When the operator has completed successfully all surface coal mining and reclamation activities, the remaining portion of the bond shall be released upon the expiration of the period specified for operator responsibility in the rules promulgated pursuant to section 207.7. A bond shall not be fully released until all reclamation requirements of this chapter are fully met.

3. A person with a valid legal interest which might be adversely affected by release of the bond or a federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or which is authorized to develop and enforce environmental standards with respect to such operations may file written objections to the proposed release from bond to the division within sixty days after the last publication as required by rule of a notice of a request for bond release by the operator. If written objections are filed and a hearing is requested, the division shall inform all the interested parties of the time and place of the hearing, and

hold a public hearing as a contested case in the locality of the coal mining operation or at the state capital, at the request of the objectors, within thirty days of the request. The date, time, and location shall be advertised by the division in a newspaper of general circulation in the locality for two consecutive weeks.

[C81, §83.16]

C93, §207.16

2006 Acts, ch 1010, §63; 2011 Acts, ch 34, §42

#### **207.17 Citizen suits.**

1. A person having an interest which is or may be adversely affected may commence a civil action on the person's own behalf to compel compliance with this chapter as follows:

a. Against the division or any other governmental agency or subdivision which is alleged to be in violation of the provisions of this chapter or of any rule, order or permit issued or against any other person who is alleged to be in violation of any rule, order or permit issued pursuant to this chapter.

b. Against the division where there is alleged a failure of the division to perform any act or duty required under this chapter. The suit shall be filed in the county where the mining operation is or, if against the division, in the district court for Polk county or the county of the petitioner's residence.

2. An action shall not be commenced:

a. Under subsection 1, paragraph "a" of this section until sixty days after the plaintiff has given notice in writing of the violation to the division and to any alleged violator, or if the state has commenced and is diligently prosecuting a civil action against that operator for compliance with the provisions of this chapter; however, the person may intervene in the action as a matter of right.

b. Under subsection 1, paragraph "b" of this section until sixty days after the plaintiff has given notice in writing to the division in the manner provided by rule; however, if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff, the action may be brought immediately after giving notice.

3. The division may intervene in any action under this section.

4. The court, in issuing a final order in an action brought pursuant to subsection 1 of this section, may award costs of litigation including attorney and expert witness fees to any party.

5. This section does not restrict a right which any person or class may have under a statute or common law to seek enforcement of any of the provisions of this chapter or to seek any other relief. The availability of judicial review of the actions of the division shall not restrict any rights established by this section.

6. A person whose person or property is injured through the violation by any operator of a rule, order, or permit issued pursuant to this chapter may bring an action for damages including reasonable attorney and expert witness fees only in the county in which the coal mining operation complained of is located. This subsection shall not affect the rights or limits under workers' compensation as provided in chapter 85.

[C81, §83.17]

C93, §207.17

#### **207.18 Coal exploration permits.**

1. A coal exploration operation in this state which substantially disturbs the natural land surface shall be conducted in accordance with exploration rules issued by the division. The rules shall include at a minimum the following:

a. The requirement that prior to conducting an exploration the person must file with the division a notice of intention to explore describing the exploration area and the period of exploration.

b. Provisions for reclamation of the lands disturbed by the exploration in accordance with the environmental performance standards mandated by section 207.7.

2. Information submitted to the division pursuant to this section and determined by the division, following consultation with the person submitting the information, to be confidential

concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person intending to explore the described area shall not be available for public examination.

3. A person who conducts coal exploration activities which substantially disturb the natural land surface in violation of this section shall be subject to the provisions of section 207.15.

4. An operator shall not remove more than fifty tons of coal pursuant to an exploration permit without the specific written approval of the division.

[C81, §83.18]

C93, §207.18

#### **207.19 Surface effects of underground coal mining operations.**

1. The provisions of this chapter shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The division shall promulgate such modifications in its rules to allow for such distinct differences and still fulfill the purposes of this chapter and be consistent with the requirements of Pub. L. No. 95-87, § 516, codified at 30 U.S.C. § 1266, and the permanent regulations issued pursuant to that Act.

2. In order to protect the stability of the land, the division shall suspend underground coal mining under urbanized areas, cities, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the administrator finds imminent danger to inhabitants of the urbanized areas, cities, and communities.

[C81, §83.19]

C93, §207.19

2006 Acts, ch 1010, §64; 2011 Acts, ch 34, §43

#### **207.20 Authority to enter into cooperative agreements.**

The division may enter into a cooperative agreement with the secretary to provide for the division to regulate mining and reclamation operations on federal lands within the state. If the division enters into a cooperative agreement with the secretary under this section, such agreement shall be conducted according to the provisions of chapter 28E.

[C81, §83.20]

C93, §207.20

Referred to in §207.27

#### **207.21 Abandoned mine reclamation program.**

1. The division shall participate in the abandoned mine reclamation program under Pub. L. No. 95-87, Tit. IV, codified at 30 U.S.C. ch. 25, subch. IV. There is established an abandoned mine reclamation fund under the control of the division.

2. *a.* Lands and water eligible for reclamation or drainage abatement expenditures under this section include the following:

(1) Lands which were mined for coal or affected by such mining, waste banks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or federal laws.

(2) Coal lands and water damaged by coal mining processes and abandoned after August 3, 1977, if they were mined for coal or affected by coal mining processes and if either of the following occurred:

(a) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and April 10, 1981, and any moneys for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

(b) The mining occurred and the site was left in either an unreclaimed or inadequately

reclaimed condition between August 4, 1977, and November 5, 1990, and the surety of the mining operator became insolvent during that period and, as of November 5, 1990, moneys immediately available from proceedings relating to the insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

b. If requested by the governor, the division may fill voids and seal tunnels, shafts, and entryways resulting from any previous noncoal mining operation, and may reclaim surface impacts of any such noncoal underground or surface mines that were mined prior to August 3, 1977, and which constitute an extreme danger to the public health, safety, general welfare, or property. Sites and areas designated for remedial action pursuant to the federal Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 7901 et seq., or which have been listed for remedial action pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., are not eligible for expenditures under this section.

3. Expenditure of moneys from the abandoned mine reclamation fund on eligible lands and water for the purpose of this program shall reflect the following priorities in the order stated:

a. The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.

b. The protection of public health, safety, and general welfare from adverse effects of coal mining practices.

c. The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water, excluding channelization, woodland, fish and wildlife, recreation resources, and agricultural productivity.

d. The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices.

e. The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this section for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

4. a. The division shall submit to the secretary a state reclamation plan and annual projects to carry out the purposes of this program. The plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of Pub. L. No. 95-87, Tit. IV, codified at 30 U.S.C. ch. 25, subch. IV.

b. The division may annually submit to the secretary an application with such information as determined by the secretary for the support of the state program and implementation of specific reclamation projects.

c. The costs for each proposed project under this program shall include actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction and inspection costs, and other necessary administrative expenses.

d. The division shall prepare and submit annual and other reports as required by the secretary.

5. The division in participating in the abandoned mine reclamation program under Pub. L. No. 95-87, Tit. IV, codified at 30 U.S.C. ch. 25, subch. IV, shall have the following additional powers:

a. To engage in any work and to do all things necessary or expedient, including promulgation of rules, to implement and administer the provisions of this program.

b. To engage in cooperative projects with any other governmental unit provided that such cooperative projects shall be under a cooperative agreement conducted according to the provisions of chapter 28E.

c. To request the attorney general to seek injunctive relief to restrain any interference with the exercise of the right to enter or to conduct work under this program.

d. To construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

[C81, §83.21]

C93, §207.21

97 Acts, ch 115, §1, 2; 2010 Acts, ch 1061, §180; 2011 Acts, ch 34, §44 – 46

Referred to in §207.10

### **207.22 Acquisition and reclamation of land.**

1. a. The division, pursuant to a state program approved by the secretary, may take action as provided in paragraph “b” of this subsection if it finds all of the following:

(1) Land or water resources have been adversely affected by past coal mining practices.

(2) The adverse effects are at a stage where in the public interest action to restore, reclaim, abate, control, or prevent should be taken.

(3) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available, or will not give permission for the United States, this state, political subdivisions, their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

b. Upon giving notice by mail to the owners if known or by posting notice upon the premises and advertising once in a local newspaper of general circulation if not known, the division may enter upon the property adversely affected by past coal mining practices and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and not as an act of condemnation of property or trespass. The moneys expended for the work and the benefits accruing to the property shall be chargeable against such property and shall mitigate or offset any claim on or any action brought by an owner of any interest in the property for any alleged damages because of the entry. This provision does not create new rights of action or eliminate existing immunities.

2. The division may enter upon a property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. The entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and not as an act of condemnation of property or trespass.

3. The division pursuant to an approved state program may acquire any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the secretary determines that acquisition of the land is necessary to successful reclamation and that:

a. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open spaces benefits and that permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

b. Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of Pub. L. No. 95-87, Tit. IV, codified at 30 U.S.C. ch. 25, subch. IV, or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effect of past coal mining practices.

4. Title to all lands acquired pursuant to this section shall be in the name of this state. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

5. If land acquired pursuant to this section is deemed to be suitable for industrial, commercial, agricultural, residential, or recreational development, the division with authorization from the secretary may sell the land by public sale under a system of competitive bidding, at not less than fair market value and under rules promulgated to insure that the lands are put to proper use consistent with local land use plans.

6. The division if requested after appropriate public notice shall hold a public hearing with the appropriate notice, in the county of the lands acquired pursuant to this section. The hearings shall be held at a time that affords local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands.

7. The division may cooperate with the secretary in acquiring land by purchase, donation, or condemnation to assist the housing of people disabled as the result of employment in the mines or incidental work, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as determined by the secretary. The fund provided under this section shall not be used to pay the actual construction costs of housing.

[C81, §83.22]

C93, §207.22

2002 Acts, ch 1119, §145; 2010 Acts, ch 1061, §180; 2011 Acts, ch 34, §47; 2011 Acts, ch 131, §56, 158

### **207.23 Liens.**

1. Within six months after the completion of a project to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the division shall itemize the money expended on the project and may file a lien statement in the office of the district court clerk of each county in which a portion of the property affected by the project is located, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past mining practices if the money so expended results in a significant increase in property value. A copy of the lien statement and the appraisal, if required, shall be served upon affected property owners in the manner provided for service of an original notice. The lien shall not exceed the amount determined by the appraiser to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices. A lien shall not be filed in accordance with this subsection against the property of a person who owned the surface prior to May 2, 1977, and who neither consented to, participated in, nor exercised control over the mining operation which necessitated the reclamation performed.

2. The owner of property to which the lien attaches may petition the court within sixty days after receipt of service of the lien statement, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount found to be the increase in value of the property shall constitute the amount of the lien and shall be recorded in the office of the district court in each county in which the owner's property is located. A party aggrieved by the decision may appeal as provided by law.

3. The lien provided in this section has priority over all other liens or security interests which have attached to the property, whenever those liens may have arisen, except liens of real estate taxes imposed upon the property.

[C81, §83.23]

C93, §207.23

97 Acts, ch 115, §3, 4; 2012 Acts, ch 1105, §1, 27, 28; 2012 Acts, ch 1138, §13

2012 amendment to subsection 1 takes effect January 1, 2013; mechanics' liens filed prior to that date shall remain with the clerk of district court of the county in which the building, land, or improvement charged with the lien is situated; notice provisions contained in 2012 Acts, ch 1105, relating to residential construction apply only to material furnished or labor performed after January 1, 2013; 2012 Acts, ch 1105, §27, 28; 2012 Acts, ch 1138, §13

### **207.24 Water rights and replacement.**

This chapter shall not be construed as affecting the right of any person's interest in water resources affected by a mining operation.

The operator of a mine shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for any legitimate use from an underground or surface source if the supply has been affected by contamination, diminution, or interruption proximately resulting from the mine operation.

[C81, §83.24]

C93, §207.24

**207.25 Additional duties and powers of the division.**

In addition to the duties and powers conferred upon the division, it shall have the power to prescribe by rule the necessary procedures and requirements of operators to carry out the purpose and provisions of this chapter.

[C81, §83.25]

C93, §207.25

**207.26 Mining operations not subject to this chapter.**

The provisions of this chapter shall not apply to any of the following activities:

1. The extraction of coal by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner.

2. The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction under rules promulgated by the division.

[C81, §83.26]

88 Acts, ch 1022, §1

C93, §207.26

**207.27 Experimental practices.**

In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, agricultural, residential, or public use including recreational facilities, the division with approval by the secretary may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 207.7 and 207.20 if the experimental practices are potentially as environmentally protective, during and after mining operations, as those required by promulgated standards, the mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices, and the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

[C81, §83.27]

C93, §207.27

**207.28 Employee protection.**

1. A person shall not discharge, or in any other way discriminate against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

2. Any employee or a representative of employees who believes that the employee or representative has been fired or discriminated against by a person in violation of subsection 1 of this section may, within thirty days after the alleged violation occurs, apply to the administrator for a review as provided by rule of the firing or alleged discrimination.

[C81, §83.28]

C93, §207.28

**207.29 Powers and authority of division.**

The division may engage in any work and do all things necessary or expedient, including adoption of rules, to implement and administer the provisions of an abandoned mine reclamation program.

97 Acts, ch 115, §5

**CHAPTER 208****MINES**

Referred to in §159.6, 161A.4, 189.16, 190.1

This chapter not enacted as a part of this title;  
transferred from chapter 83A in Code 1993

208.1	Policy.	208.18	Periodic reports.
208.2	Definitions.	208.19	Reclamation schedule.
208.3	through 208.6 Reserved.	208.20	Extension of time.
208.7	Mining license.	208.21	Political subdivision engaged in mining.
208.8	Suspension, revocation, or refusal to issue license.	208.22	Repealed by 96 Acts, ch 1043, §20.
208.9	Registering mine site.	208.23	Form of bond.
208.10	Violation — enforcement.	208.24	Single bond for multiple sites.
208.10A	Penalties.	208.25	Cancellation of bond.
208.11	Judicial review.	208.26	Rules — inspection of site.
208.12	Reserved.	208.27	Repealed by 96 Acts, ch 1043, §20.
208.13	Repealed by 96 Acts, ch 1043, §20.	208.28	Forfeiture of bond — licensure restrictions.
208.14	Bond.	208.29	and 208.30 Repealed by 96 Acts, ch 1043, §20.
208.15	Amendment or cancellation.		
208.16	Transfer to new operator.		
208.17	Reclamation requirements.		

**208.1 Policy.**

It is the policy of this state to provide for the reclamation and conservation of land affected by the mining of gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal, and thereby to preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety and general welfare of the people of this state.

[C71, 73, 75, 77, 79, 81, §83A.1]

85 Acts, ch 137, §1

C93, §208.1

96 Acts, ch 1043, §1

**208.2 Definitions.**

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

1. “*Administrator*” means the administrator of the division of soil conservation or a designee.

2. “*Affected land*” means the area of land from which overburden has been removed or upon which overburden has been deposited or land which has otherwise been disturbed, changed, influenced, or altered in any way in the course of mining, including processing and stockpile areas but not including roads.

3. “*Committee*” means the state soil conservation committee.

4. “*Division*” means the division of soil conservation within the department of agriculture and land stewardship.

5. “*Exploration*” means the mining of limited amounts of any mineral to determine the location, quantity, or quality of the mineral deposit.

6. “*Highwall*” means the unexcavated face of exposed overburden and mineral in a surface mine.

7. “*Mine*” or “*mine site*” means a site where mining is being conducted or has been conducted in the past.

8. “*Mineral*” means gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal.

9. “*Mining*” means the excavation of gypsum, clay, stone, sand, gravel, or other ores or mineral solids, except coal, for sale or for processing or consumption in the regular operation of a business and shall include surface mining and underground mining.

10. “*Mining operation*” means activities conducted by an operator on a mine site relative to the excavation of minerals and shall include disturbing overburden, excavation, and processing of minerals, stockpiling and removal of minerals from a site, and all reclamation activities conducted on a mine site.

11. “*Operator*” means any person, firm, partnership, corporation, or political subdivision engaged in and controlling a mining operation.

12. “*Overburden*” means all of the earth and other materials which lie above natural mineral deposits and includes all earth and other materials disturbed from their natural state in the process of mining.

13. “*Pit floor*” or “*quarry floor*” means the lower limit of a surface excavation to extract minerals.

14. “*Political subdivision*” means any county, district, city, or other public agency within the state of Iowa.

15. “*Reclamation*” means the process of restoring disturbed lands to the premined uses of the lands or other productive uses.

16. “*Surface mining*” means mining by removing the overburden lying above the natural deposits and excavating directly from the natural deposits exposed, or by excavating directly from deposits lying exposed in their natural state and shall include dredge operations conducted in or on natural waterways or artificially created waterways within the state.

17. “*Topsoil*” means the natural medium located at the land surface with favorable characteristics for the growth of vegetation.

18. “*Underground mining*” means mining by digging or constructing access tunnels, adits, ramps, or shafts and excavating directly from the natural mineral deposits exposed.

[C24, 27, 31, 35, 39, §1244; C46, 50, 54, 58, 62, 66, §82.27; C71, 73, §82.27, 83A.2; C75, 77, 79, 81, §83A.2]

85 Acts, ch 137, §2 – 5; 86 Acts, ch 1245, §602, 2050

C93, §208.2

96 Acts, ch 1043, §2

Referred to in §208.7

**208.3 through 208.6** Reserved.

**208.7 Mining license.**

An operator shall not engage in mining as defined by section 208.2 without first obtaining a license from the division. Licenses shall be issued upon approval by the division following application by the operator. Applications shall be submitted on a form provided by the division and shall be accompanied by a fee of fifty dollars. Each applicant shall be required to furnish on the form information necessary to identify the applicant. Licenses shall expire on December 31 of each year and shall be renewed by the division upon application submitted within thirty days prior to the expiration date and accompanied by a fee of ten dollars. However, a political subdivision shall not be required to pay a license application or renewal fee.

[C39, §1242.5; C46, 50, 54, 58, 62, 66, §82.22; C71, 73, §82.22, 83A.7; C75, 77, 79, 81, §83A.7]

C93, §208.7

96 Acts, ch 1043, §3

Referred to in §208.14

**208.8 Suspension, revocation, or refusal to issue license.**

1. The division may, for repeated or willful violation of any of the provisions of this chapter, initiate an action to suspend, revoke, or refuse to issue a mining license.

2. The division shall, by certified mail or personal service, serve on the operator notice in writing of the charges and grounds upon which the license is to be suspended, revoked, or will not be issued. The notice shall include the time and the place at which a hearing shall be held before the committee, a subcommittee appointed by the committee, or the committee's designee, to determine whether to suspend, revoke, or refuse to issue the license. The hearing shall be not less than fifteen nor more than thirty days after the mailing or service of the notice.

3. An operator whose license the division proposes to suspend, revoke, or refuse to issue has the right to counsel and may produce witnesses and present statements, documents, and other information in the operator's behalf at the hearing.

4. If after full investigation and hearing the operator is found to have willfully or repeatedly violated any of the provisions of this chapter, the committee or subcommittee may affirm or modify the proposed suspension, revocation, or refusal to issue the license.

5. When the committee or subcommittee finds that a license should be suspended or revoked or should not be issued, the division shall so notify the operator in writing by certified mail or by personal service.

a. The suspension or revocation of a license shall become effective thirty days after notice to the operator.

b. If the license or renewal fee has been paid and the committee or subcommittee finds that the license should not be issued, then the license shall expire thirty days after notice to the operator.

6. An action by the committee or subcommittee to affirm or modify the proposed suspension, revocation, or refusal to issue a license constitutes a final agency action for purposes of judicial review pursuant to section 208.11 and chapter 17A.

[C71, 73, 75, 77, 79, 81, §83A.8]

85 Acts, ch 137, §8

C93, §208.8

96 Acts, ch 1043, §4

**208.9 Registering mine site.**

1. At least seven days before beginning mining or removal of overburden at a mine site not previously registered, an operator engaging, or preparing to engage, in mining in this state shall register the mine site with the division. Application for registration shall be made upon a form provided by the division and shall be accompanied by a bond or security as provided by section 208.14. A registration renewal shall be filed annually. Application for renewal of registration shall be on a form provided by the division. The registration and registration cancellation fees shall be established by the division in an amount not to exceed the cost of administering the provisions of this chapter. The application shall include a description of the tract or tracts of land where the site is located and the estimated number of acres at the site to be affected by the mine. The description shall include the section, township, range, and county in which the land is located and shall otherwise describe the land with sufficient certainty to determine the location and to distinguish the land to be registered from other lands. The application shall include a statement explaining the authority of the applicant's legal right to operate a mine on the land.

2. A mine site registered pursuant to this chapter shall have a clearly visible sign which identifies the mining operation. Failure to post and maintain a sign as required by this subsection, within thirty days after notice from the division, invalidates the registration.

3. The division shall automatically invalidate all registrations of an operator who fails to renew the operator's mining license within a time period set by the division, who has been denied license renewal by the committee or subcommittee, or whose license has been suspended or revoked by the committee or subcommittee.

[C71, 73, 75, 77, 79, 81, §83A.9]

85 Acts, ch 137, §9

C93, §208.9

96 Acts, ch 1043, §5

Referred to in §208.15, 208.16

#### **208.10 Violation — enforcement.**

1. The administrator may issue an order directing the operator to desist in an activity or practice which constitutes a violation of any provision of this chapter or any rules adopted by the division, or to take such corrective action as may be necessary to ensure that the violation will cease. If corrective measures sought by the division are not commenced within the time period designated in the order, the division may refer the violation to the attorney general for further action.

2. The operator may contest an order issued under this section through contested case proceedings pursuant to chapter 17A by filing with the administrator a notice of appeal within thirty days of receipt of the order for review by the division.

3. At the request of the division, the attorney general shall institute any legal proceedings, including an action for a civil penalty, injunction, or temporary injunction, necessary to enforce the provisions of this chapter or to obtain compliance with this chapter. Action by the attorney general may be taken in lieu of or in conjunction with any administrative action by the division.

4. Falsification of information required to be submitted under this chapter is a violation of this chapter.

[C71, 73, 75, 77, 79, 81, §83A.10]

C93, §208.10

96 Acts, ch 1043, §6

Referred to in §208.10A

#### **208.10A Penalties.**

1. Any person who violates an order issued pursuant to section 208.10 shall be subject to an administrative penalty determined by the division not to exceed five thousand dollars per violation.

a. The division shall establish, by rule, a schedule or range of administrative penalties. The schedule shall provide procedures and criteria for the assessment of these penalties.

b. Administrative penalties may be assessed in lieu of or in conjunction with any action initiated by the attorney general on behalf of the division.

c. All penalties shall be paid within thirty days of the date that the order assessing the penalty becomes final. An operator who fails to pay an administrative penalty assessed by a final order of the division shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

d. The attorney general shall, at the request of the division, institute proceedings to recover all penalties assessed.

2. If any person violates a provision of this chapter, or any rule or order adopted by the division pursuant to this chapter, the division may notify the attorney general who shall institute a civil action in district court for injunctive relief and for the assessment of a civil penalty not to exceed ten thousand dollars per violation.

3. Penalties, bond reversions, and bond forfeitures collected under the provisions of this chapter or any rule adopted by the division pursuant to this chapter shall be deposited in an interest-bearing account and may be used for the cost and administrative expenses of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.

96 Acts, ch 1043, §7

**208.11 Judicial review.**

Judicial review of the action of the committee or division may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, 77, 79, 81, §83A.11]

C93, §208.11

2003 Acts, ch 44, §114

Referred to in §208.8

**208.12 Reserved.****208.13 Repealed by 96 Acts, ch 1043, § 20.****208.14 Bond.**

The application for registration shall be accompanied by a bond or security as required under section 208.23 or 208.24. After ascertaining that the applicant is licensed under section 208.7 and is not in violation of this chapter with respect to any mine site previously registered with the division, the division shall register the mine site and shall issue the applicant written authorization to operate a mine.

[C71, 73, 75, 77, 79, 81, §83A.14]

85 Acts, ch 137, §13

C93, §208.14

Referred to in §208.9, 208.16, 208.24

**208.15 Amendment or cancellation.**

An operator may at any time apply for amendment or cancellation of registration of any site. The application for amendment or cancellation of registration shall be submitted by the operator on a form provided by the division and shall identify as required under section 208.9 the tract or tracts of land to be added to or removed from registration. If the application is for an increase in the area of a registered site, the application shall be processed in the same manner as an application for original registration. If the application is to cancel registration of any or all of the unmined part of a site, the division shall after ascertaining that no overburden has been disturbed or deposited on the land order release of the bond or the security posted on the land being removed from registration and cancel or amend the operator's written authorization to conduct mining on the site. Fees for amendment or cancellation of registration shall be determined as provided in section 208.9. No land where overburden has been disturbed or deposited shall be removed from registration or released from bond or security under this section.

[C71, 73, 75, 77, 79, 81, §83A.15]

C93, §208.15

96 Acts, ch 1043, §8

Referred to in §208.23, 208.24

**208.16 Transfer to new operator.**

1. If control of a mine site registered pursuant to section 208.9 is acquired by an operator other than the operator holding authorization to conduct mining on the site, the new operator shall within thirty days apply for registration of the site. The application shall be made and processed as provided under sections 208.9 and 208.14. The former operator's bond or security shall not be released until the new operator's bond or security has been accepted by the division.

2. The division may establish procedures for transferring the responsibility for reclamation of a mine site to a state agency or political subdivision, or to a private entity, which intends to use the site for other purposes. The division, with agreement from the receiving agency or subdivision, or from a private entity, to complete adequate reclamation,

may approve the transfer of responsibility, release the bond or security, and terminate or amend the operator's authorization to conduct mining on the site.

[C71, 73, 75, 77, 79, 81, §83A.16]

C93, §208.16

96 Acts, ch 1043, §9; 2004 Acts, ch 1175, §228

Referred to in §208.17

### **208.17 Reclamation requirements.**

1. An operator authorized under this chapter to operate a mine, after completion of mining operations and within the time specified in section 208.19, shall:

a. Grade affected lands to slopes having a maximum of one foot vertical rise for each four feet of horizontal distance. Where the original topography of the affected land was steeper than one foot of vertical rise for each four feet of horizontal distance, the affected lands may be graded to blend with the surrounding terrain. However, water impoundments, pit or quarry floors, and highwalls are not subject to the requirements of this paragraph.

b. Stabilize and revegetate affected lands, except for water impoundments and pit or quarry floors as approved by the division before the release of the bond as provided in section 208.19.

c. Properly dispose of all mine-related debris, junk, waste materials, old equipment, and other materials of similar or like nature, within the registration boundaries of the site.

2. Notwithstanding subsection 1, overburden piles where deposition has not occurred for a period of twelve months shall be stabilized and revegetated.

3. Topsoil that is a part of overburden shall not be destroyed or buried in the process of mining.

4. The division may grant a variance from the requirements of subsections 1 and 2.

5. A bond or security posted under this chapter to assure reclamation of affected lands shall not be released until all of the reclamation work required by this section has been performed in accordance with this chapter and division rules, except when a replacement bond or security is posted by a new operator or responsibility is transferred under section 208.16.

[C71, 73, 75, 77, 79, 81, §83A.17]

85 Acts, ch 137, §14

C93, §208.17

96 Acts, ch 1043, §10

Referred to in §208.19, 208.23, 208.28

### **208.18 Periodic reports.**

An operator shall file with the division a periodic report for each mine site under registration.

1. The report shall make reference to the most recent registration of the mine site and shall show:

a. The location and extent of all surface land area on the mine site affected by mining during the period covered by the report.

b. The extent to which removal of mineral products from all or any part of the affected lands has been completed.

2. The report shall be filed not later than twelve months after original registration of the site and prior to the expiration of each subsequent twelve-month period. A report shall also be filed within thirty days after completion of all mining operations at the site regardless of the date of the last preceding report. Forms for the filing of periodic reports required by this section shall be provided by the division.

[C71, 73, 75, 77, 79, 81, §83A.18]

85 Acts, ch 137, §15

C93, §208.18

96 Acts, ch 1043, §11

Referred to in §208.19

**208.19 Reclamation schedule.**

An operator of a mine shall reclaim affected lands according to a schedule established by the division, but within a period not to exceed three years, after the filing of a report required under section 208.18 indicating the mining of any part of a site has been completed.

For certain postmining land uses, such as a sanitary landfill, the division may allow an extended reclamation period.

An operator, upon completion of any reclamation work required by section 208.17, shall apply to the division in writing for approval of the work. The division shall within a reasonable time determined by divisional rule inspect the completed reclamation work. Upon determination by the division that the operator has satisfactorily completed all required reclamation work on the land included in the application, the division shall release the bond or security on the reclaimed land, shall remove the land from registration, and shall terminate or amend as necessary the operator's authorization to conduct mining on the site.

[C71, 73, 75, 77, 79, 81, §83A.19]

85 Acts, ch 137, §16; 87 Acts, ch 115, §11

C93, §208.19

96 Acts, ch 1043, §12

Referred to in §208.17, 208.20, 208.24

**208.20 Extension of time.**

The time for completion of reclamation work may be extended upon presentation by the operator of evidence satisfactory to the division that reclamation of affected land cannot be completed within the time specified by section 208.19.

[C71, 73, 75, 77, 79, 81, §83A.20]

85 Acts, ch 137, §17

C93, §208.20

96 Acts, ch 1043, §13

**208.21 Political subdivision engaged in mining.**

Any political subdivision of the state of Iowa which engages or intends to engage in mining shall meet all requirements of this chapter except the subdivision shall not be required to post bond or security on registered land and shall not be required to pay licensing fees.

[C71, 73, 75, 77, 79, 81, §83A.21]

C93, §208.21

96 Acts, ch 1043, §14

**208.22 Repealed by 96 Acts, ch 1043, § 20.****208.23 Form of bond.**

1. A bond filed with the division by an operator pursuant to this chapter shall be in a form prescribed by the division, payable to the state of Iowa, and conditioned upon faithful performance by the operator of all requirements of this chapter and all rules adopted by the division pursuant to this chapter. The bond shall be signed by the operator as principal and by a corporate surety licensed to do business in Iowa as surety. In lieu of a bond, the operator may deposit cash or certificates of deposit with the division on the same conditions as prescribed by this section for filing of bonds. The amount of the bond required to be filed with an application for registration of a mining site, or to increase the area of a site previously registered, shall be equal to the cost of reclaiming the site as required under section 208.17 and estimated by the division.

2. The estimated cost of reclamation of each individual site shall be determined by the division on the basis of the requirements of this chapter and other relevant factors including, but not limited to, topography of the site, mining methods being employed, depth and composition of overburden, depth of the mineral deposit being mined, and cost of administration. The division may require an operator to furnish information necessary to estimate the cost of reclaiming the site. The amount of the bond may be increased or

reduced from time to time as determined necessary and appropriate by the division or in accordance with section 208.15.

[C71, 73, 75, 77, 79, 81, §83A.23]

85 Acts, ch 137, §18

C93, §208.23

96 Acts, ch 1043, §15

Referred to in §208.14, 208.24

#### **208.24 Single bond for multiple sites.**

An operator who registers with the division two or more mine sites may elect, at the time the second or a subsequent site is registered, to post a single bond in lieu of separate bonds on each site. A single bond so posted shall be in an amount equal to the estimated cost of reclaiming all sites the operator has registered, determined as provided in section 208.23. The penalty of a single bond on two or more mine sites may be increased or decreased from time to time in accordance with sections 208.14, 208.15, and 208.19. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds shall not be released until the new bond has been accepted by the division.

[C71, 73, 75, 77, 79, 81, §83A.24]

85 Acts, ch 137, §19

C93, §208.24

96 Acts, ch 1043, §16

Referred to in §208.14

#### **208.25 Cancellation of bond.**

No bond filed with the division by an operator pursuant to this chapter may be canceled by the surety without at least ninety days' notice to the division. If the license to do business in Iowa of any surety of a bond filed with the division is suspended or revoked, the operator, within thirty days after receiving notice thereof from the division, shall substitute for the surety a corporate surety licensed to do business in Iowa. Upon failure of the operator to make substitution of surety as herein provided, the division shall have the right to suspend the operator's authorization to conduct mining on the site covered by the bond until substitution has been made. The commissioner of insurance shall notify the division whenever the license of any surety to do business in Iowa is suspended or revoked.

[C71, 73, 75, 77, 79, 81, §83A.25]

C93, §208.25

96 Acts, ch 1043, §17

#### **208.26 Rules — inspection of site.**

The division may adopt rules to implement the provisions of this chapter. The administrator or the administrator's designee may enter at all times upon any mine site or suspected mine site for the purpose of determining whether the operator is or has been complying with the provisions of this chapter. All operators shall cooperate with the division in seeking methods of operation which will cause minimum disruption to the land and property adjoining a mining operation.

[C71, 73, 75, 77, 79, 81, §83A.26]

C93, §208.26

96 Acts, ch 1043, §18

**208.27** Repealed by 96 Acts, ch 1043, § 20.

#### **208.28 Forfeiture of bond — licensure restrictions.**

1. The attorney general, upon request of the division, shall institute proceedings for forfeiture of the bond posted by an operator to guarantee reclamation of a site where the operator is in violation of any of the provisions of this chapter or any rule adopted by the division pursuant to this chapter. The division shall have the power to reclaim as required by section 208.17 any mined land with respect to which a bond has been forfeited, using

the proceeds of the forfeiture to pay for the necessary reclamation work and associated administrative costs.

2. If the proceeds from bond forfeiture proceedings are insufficient to fully satisfy the estimated cost of reclaiming disturbed lands as required under section 208.17 and division rules, the operator shall be liable for remaining costs. The division may complete, or authorize completion of, the necessary reclamation and may authorize the attorney general to bring a civil action to recover from the operator all actual or estimated costs of reclamation in excess of the amount forfeited or require the operator to complete reclamation.

3. If the amount of bond forfeited exceeds the amount necessary to complete reclamation, the unused funds shall be returned to the operator or the surety, as appropriate.

[C71, 73, 75, 77, 79, 81, §83A.28]

85 Acts, ch 137, §20

C93, §208.28

96 Acts, ch 1043, §19

**208.29 and 208.30** Repealed by 96 Acts, ch 1043, § 20.

## CHAPTER 208A

### MOTOR VEHICLE ANTIFREEZE

208A.1	Definitions.	208A.7	List of approved brands.
208A.2	What deemed adulterated.	208A.8	Advertising restricted.
208A.3	What deemed misbranded.	208A.9	Prosecution.
208A.4	Inspection by department.	208A.10	Fees remitted.
208A.5	Samples — analysis.	208A.11	Penalty.
208A.6	Rules.	208A.12	Citation of chapter.

#### **208A.1 Definitions.**

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

1. “*Antifreeze*” shall include all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point.

2. “*Person*” shall include individuals, partnerships, corporations, companies, and associations.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.1]

2013 Acts, ch 90, §37

Section amended

#### **208A.2 What deemed adulterated.**

An antifreeze shall be deemed to be adulterated if either of the following apply:

1. It consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user.

2. Its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.2]

2013 Acts, ch 90, §38

Section amended

#### **208A.3 What deemed misbranded.**

An antifreeze shall be deemed to be misbranded if either of the following apply:

1. Its labeling is false or misleading in any particular.

2. In package form it does not bear a label containing the name and place of business of

the manufacturer, packer, seller, or distributor and an accurate statement of the quantity of the contents in terms of weight or measure on the outside of the package.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.3]

2013 Acts, ch 90, §39

Section amended

#### **208A.4 Inspection by department.**

Before any antifreeze shall be sold, exposed for sale, or held with intent to sell within this state, a sample thereof must be inspected by the department of agriculture and land stewardship. Upon application of the manufacturer, packer, seller or distributor and the payment of a fee of twenty dollars for each brand of antifreeze submitted, the department shall inspect the antifreeze submitted. If the antifreeze is not adulterated or misbranded, if it meets the standards of the department, and is not in violation of this chapter, the department shall give the applicant a written permit authorizing the sale of such antifreeze in this state until the formula or labeling of the antifreeze is changed in any manner.

If the department shall at a later date find that the product to be sold, exposed for sale or held with intent to sell has been materially altered or adulterated, a change has been made in the name, brand or trademark under which the antifreeze is sold, or it violates the provisions of this chapter, the department shall notify the applicant and the permit shall be canceled forthwith.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.4]

#### **208A.5 Samples — analysis.**

The department shall enforce the provisions of this chapter by inspections, chemical analysis, or any other appropriate methods. All samples for inspection or analysis shall be taken from stocks in the state or intended for sale in the state or the department through its agents may call upon the manufacturer or distributor applying for an inspection of an antifreeze to supply such samples thereof for analysis. The department, through its agents, shall have free access by legal means during business hours to all places of business, buildings, vehicles, cars and vessels used in the manufacture, transportation, sale or storage of any antifreeze, and it may open by legal means any box, carton, parcel, or package, containing or supposed to contain any antifreeze and may take therefrom samples for analysis.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.5]

#### **208A.6 Rules.**

The department shall have authority to promulgate such rules as are necessary to promptly and effectively enforce the provisions of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.6]

#### **208A.7 List of approved brands.**

The department may furnish upon request a list of the brands and trademarks of antifreeze inspected by the department during the calendar year which have been found to be in accord with this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.7]

#### **208A.8 Advertising restricted.**

No advertising literature relating to any antifreeze sold or to be sold in this state shall contain any statement that the antifreeze advertised for sale has met the requirements of the department until such antifreeze has been given the laboratory test and inspection of the department, and found to meet all the standard requirements and not to be in violation of this chapter. Then such statement may be contained in any advertising literature where such brand or trademark of antifreeze is being advertised for sale, and such statement may be used on all regular containers of such antifreeze.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.8]

**208A.9 Prosecution.**

Whenever the department shall discover any antifreeze is being sold or has been sold in violation of this chapter, the facts shall be furnished to the attorney general who shall institute proper proceedings.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.9]

**208A.10 Fees remitted.**

All fees provided for in this chapter shall be collected by the secretary of agriculture and shall be deposited in the general fund of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.10]

91 Acts, ch 260, §1219

**208A.11 Penalty.**

If any person, partnership, corporation, or association shall violate the provisions of this chapter, such person, partnership, corporation or association shall be deemed guilty of a simple misdemeanor and, upon conviction thereof, the department may after due hearing cancel registration.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.11]

**208A.12 Citation of chapter.**

This chapter may be cited as the "Iowa Antifreeze Act".

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §208A.12]

## CHAPTER 209

RESERVED

## CHAPTER 210

## STANDARD WEIGHTS AND MEASURES

210.1	Standard established.	210.14	Hop boxes.
210.2	Length and surface measure.	210.15	Milk and cream bottles or containers.
210.3	Land measure.	210.16	Flour.
210.4	Weight.	210.17	Mason work or stone.
210.5	Liquids.	210.18	Sales to be by standard weight or measure — labeling.
210.6	Dry measure.	210.19	Standard weight of bread.
210.7	Bottomless measure.	210.20	Wrapper.
210.8	Sales of dry commodities.	210.21	Violations.
210.9	Drugs and section comb honey exempted.	210.22	"Person" defined.
210.10	Bushel measure.	210.23	Exception.
210.11	Sale of fruits and vegetables by dry measure.	210.24	Enforcement — rules and regulations.
210.12	Sale of fruits and vegetables in baskets.	210.25	Weighing bread.
210.13	Berry boxes and climax baskets.	210.26	Measuring saw logs.

**210.1 Standard established.**

The weights and measures which have been presented by the department to the United States national institute of standards and technology and approved, standardized, and

certified by the institute in accordance with the laws of the Congress of the United States shall be the standard weights and measures throughout the state.

[C51, §937; R60, §1775; C73, §2037; C97, §3009; S13, §3009-c; C24, 27, 31, 35, 39, §3227; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.1]

90 Acts, ch 1045, §3

Referred to in §210.2, 210.4, 210.5, 210.6

### **210.2 Length and surface measure.**

The unit or standard measure of length and surface from which all other measures of extension shall be derived and ascertained, whether they be lineal, superficial, or solid, shall be the standard yard secured in accordance with the provisions of section 210.1. It shall be divided into three equal parts called feet, and each foot into twelve equal parts called inches, and for the measure of cloth and other commodities commonly sold by the yard it may be divided into halves, quarters, eighths, and sixteenths. The rod, pole, or perch shall contain five and one-half such yards, and the mile, one thousand seven hundred sixty such yards.

[C51, §937; R60, §1775; C73, §2038 – 2040; C97, §3010; S13, §3009-d; C24, 27, 31, 35, 39, §3228; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.2]

### **210.3 Land measure.**

The acre for land measure shall be measured horizontally and contain ten square chains and be equivalent in area to a rectangle sixteen rods in length and ten rods in breadth, six hundred and forty such acres being contained in a square mile. The chain for measuring land shall be twenty-two yards long, and be divided into one hundred equal parts, called links.

[C73, §2041; C97, §3011; S13, §3009-d; C24, 27, 31, 35, 39, §3229; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.3]

### **210.4 Weight.**

The units or standards of weight from which all other weights shall be derived and ascertained shall be the standard avoirdupois and troy weights secured in accordance with the provisions of section 210.1. The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred sixty, shall be divided into sixteen equal parts called ounces; the hundred-weight shall consist of one hundred avoirdupois pounds, and twenty hundred-weight shall constitute a ton. The troy ounce shall be equal to the twelfth part of a troy pound.

[C51, §938; R60, §1776; C73, §2042, 2043; C97, §3012; S13, §3009-e; C24, 27, 31, 35, 39, §3230; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.4]

### **210.5 Liquids.**

The unit or standard measure of capacity for liquids from which all other measures of liquids shall be derived and ascertained shall be the standard gallon secured in accordance with the provisions of section 210.1. The gallon shall be divided by continual division by the number two so as to make half-gallons, quarts, pints, half-pints, and gills. The barrel shall consist of thirty-one and one-half gallons, and two barrels shall constitute a hogshead.

[C73, §2044, 2045; C97, §3013; S13, §3009-g; C24, 27, 31, 35, 39, §3231; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.5]

### **210.6 Dry measure.**

The unit or standard measure of capacity for substances not liquids from which all other measures of such substances shall be derived and ascertained shall be the standard half-bushel secured in accordance with the provisions of section 210.1. The peck, half-peck, quarter-peck, quart, pint, and half-pint measures for measuring commodities which are not liquids, shall be derived from the half-bushel by successively dividing the cubic inch capacity of that measure by two.

[C73, §2046, 2047; C97, §3014; S13, §3009-f; C24, 27, 31, 35, 39, §3232; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.6]

**210.7 Bottomless measure.**

Bottomless dry measures shall not be used unless they conform in shape to the United States standard dry measures.

[SS15, §3009-j; C24, 27, 31, 35, 39, §3233; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.7]

**210.8 Sales of dry commodities.**

All dry commodities unless bought or sold in package or wrapped form shall be bought or sold only by the standard weight or measure herein established, or by numerical count, unless the parties otherwise agree in writing, except as provided in sections 210.9 to 210.12.

[SS15, §3009-j; C24, 27, 31, 35, 39, §3234; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.8]

Referred to in §210.9

**210.9 Drugs and section comb honey exempted.**

The requirements of section 210.8 shall not apply to drugs or section comb honey.

[SS15, §3009-j; C24, 27, 31, 35, 39, §3235; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.9]

Referred to in §210.8

**210.10 Bushel measure.**

When any of the commodities enumerated in this section shall be sold by the bushel or fractional part thereof, except when sold in a United States standard container or as provided in sections 210.11 and 210.12, the measure shall be determined by avoirdupois weight and shall be computed as follows:

<i>Commodities</i>	<i>Pounds</i>
Apples .....	48
Apples, dried .....	24
Alfalfa seed .....	60
Barley .....	48
Beans, green, unshelled .....	56
Beans, dried .....	60
Beans, lima .....	56
Beets .....	56
Blue grass seed .....	14
Bran .....	20
Bromus inermis .....	14
Broom corn seed .....	50
Buckwheat .....	48
Carrots .....	50
Castor beans, shelled .....	50
Charcoal .....	20
Cherries .....	40
Clover seed .....	60
Coal .....	80
Coke .....	40
Corn on the cob (field) .....	70
Corn in the ear, unhusked (field) .....	75
Corn, shelled (field) .....	56
Corn meal .....	48
Cucumbers .....	48
Emmer .....	40
Flaxseed .....	56
Grapefruit .....	48
Grapes, with stems .....	40

Hempseed .....	44
Hickory nuts, hulled .....	50
Hungarian grass seed .....	50
Kaffir corn .....	56
Lemons .....	48
Lime .....	80
Millet seed .....	50
Oats .....	32
Onions .....	52
Onion top sets .....	28
Onion bottom sets .....	32
Oranges .....	48
Orchard grass seed .....	14
Osage orange seed .....	32
Parsnips .....	45
Peaches .....	48
Peaches, dried .....	33
Peanuts .....	22
Pears .....	45
Peas, green, unshelled .....	50
Peas, dried .....	60
Plums .....	48
Popcorn, on the cob .....	70
Popcorn, shelled .....	56
Potatoes .....	60
Quinces .....	48
Rape seed .....	50
Redtop seed .....	14
Rutabagas .....	60
Rye .....	56
Salt .....	80
Sand .....	130
Shorts .....	20
Sorghum saccharatum seed .....	50
Soybeans .....	60
Spelt .....	40
Sweet corn .....	50
Sweet potatoes .....	50
Timothy seed .....	45
Tomatoes .....	50
Turnips .....	55
Walnuts, hulled .....	50
Wheat .....	60
All root crops not specified above .....	50

[C51, §940; R60, §1778, 1781 – 1784; C73, §2049; C97, §3016; S13, §3009-h; C24, 27, 31, 35, 39, §3236; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.10]  
 Referred to in §210.8, 717A.1

**210.11 Sale of fruits and vegetables by dry measure.**

Blackberries, blueberries, cranberries, currants, gooseberries, raspberries, cherries, strawberries, and similar berries, also onion sets in quantities of one peck or less, may be sold by the quart, pint, or half-pint, dry measure.

[SS15, §3009-i; C24, 27, 31, 35, 39, §3237; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.11]  
 Referred to in §210.8, 210.10

**210.12 Sale of fruits and vegetables in baskets.**

Grapes, other fruits, and vegetables may be sold in climax baskets; but when said commodities are sold in such manner and the containers are labeled with the net weight of the contents in accordance with the provisions of section 189.9, all the provisions of chapter 191 shall be deemed to have been complied with.

[C24, 27, 31, 35, 39, §3238; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.12]

2007 Acts, ch 126, §41

Referred to in §210.8, 210.10

**210.13 Berry boxes and climax baskets.**

Berry boxes sold, used, or offered or exposed for sale shall have an interior capacity of one quart, pint, or half-pint dry measure. Climax baskets sold, used, or offered or exposed for sale shall be of the standard size fixed below:

1. Two-quart basket: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches, and width five inches, outside measurement; basket to have a cover five by eleven inches, when a cover is used.

2. Four-quart basket: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches, width six and one-fourth inches, outside measurement; basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

3. Twelve-quart basket: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch, outside measurement; top of basket, length nineteen inches, height of basket, seven and one-sixteenth inches, width nine inches, outside measurement; basket to have cover nine inches by nineteen inches, when cover is used.

[SS15, §3009-i; C24, 27, 31, 35, 39, §3239; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.13]

**210.14 Hop boxes.**

The standard box used in packing hops shall be thirty-six inches long, eighteen inches wide, and twenty-three and one-fourth inches deep, inside measurement.

[C73, §2051; C97, §3018; C24, 27, 31, 35, 39, §3240; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.14]

**210.15 Milk and cream bottles or containers.**

The standard bottle or container used for the sale of milk and cream shall be of a capacity of one gallon, one-half gallon, three pints, one quart, one pint, one-half pint, one-third quart, one gill, filled full to the bottom of the lip.

[S13, §3009-k; C24, 27, 31, 35, 39, §3241; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.15]

**210.16 Flour.**

The standard weights of flour when sold in package form shall be as follows: Two, five, ten, twenty-five, fifty, or one hundred pounds.

[C24, 27, 31, 35, 39, §3242; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.16]

**210.17 Mason work or stone.**

The perch of mason work or stone shall consist of twenty-five feet, cubic measure.

[C51, §939; R60, §1777; C73, §2050; C97, §3017; C24, 27, 31, 35, 39, §3243; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.17]

**210.18 Sales to be by standard weight or measure — labeling.**

All commodities bought or sold by weight or measure shall be bought or sold only by the standards established by this chapter, unless the vendor and vendee otherwise agree. Sales by weight shall be by avoirdupois weight unless troy weight is agreed upon by the vendor and vendee.

All commodities bought or sold in package form shall be labeled in compliance with the general provisions for labeling provided for in sections 189.9 to 189.16, unless otherwise provided for in this chapter.

[SS15, §3009-j; C24, 27, 31, 35, 39, §3244; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.18]

**210.19 Standard weight of bread.**

The standard loaf of bread shall weigh one pound, avoirdupois weight. All bread manufactured, procured, made or kept for the purpose of sale, offered or exposed for sale, or sold in the form of loaves, shall be one of the following standard weights and no other, namely: Three-quarters pound, one pound, one and one-quarter pound, one and one-half pound, or multiples of one pound, avoirdupois weight; and provided further, that the provisions of this section shall not apply to biscuits, buns, crackers, rolls or to what is commonly known as “stale” bread and sold as such, in case the seller shall, at the time of sale, expressly state to the buyer that the bread so sold is “stale” bread. In case of twin or multiple loaves, the weight specified in this section shall apply to the combined weight of the two units.

[C27, 31, 35, §3244-b1; C39, §3244.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.19]  
Referred to in §210.21, 210.23, 210.24

**210.20 Wrapper.**

There shall be printed upon the wrapper of each loaf of bread in plain conspicuous type, the name and address of the manufacturer and the weight of the loaf in terms of one of the standard weights herein specified.

[C27, 31, 35, §3244-b2; C39, §3244.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.20]  
Referred to in §210.21, 210.23, 210.24

**210.21 Violations.**

It shall be unlawful for any person to manufacture, procure, or keep for the purpose of sale, offer or expose for sale, or sell bread in the form of loaves which are not of one of the weights specified in section 210.19 or violate the rules of the secretary of agriculture pertaining thereto. Any person who, in person or by a servant, or agent, or as the servant or agent of another, shall violate any of the provisions of sections 210.19 to 210.25, shall be guilty of a simple misdemeanor.

[C27, 31, 35, §3244-b3; C39, §3244.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.21]  
Referred to in §210.22, 210.23, 210.24

**210.22 “Person” defined.**

The word “person” as used in section 210.21 shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations.

[C27, 31, 35, §3244-b4; C39, §3244.04; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.22]  
Referred to in §210.21, 210.23, 210.24

**210.23 Exception.**

Any person engaged in home baking is exempt from the provisions of sections 210.19 to 210.22.

[C27, 31, 35, §3244-b5; C39, §3244.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.23]  
Referred to in §210.21, 210.24

**210.24 Enforcement — rules and regulations.**

The secretary of agriculture shall enforce the provisions of sections 210.19 to 210.25. The secretary shall make rules for the enforcement of the provisions of said sections not

inconsistent therewith, and such rules and regulations shall include reasonable variations and tolerances.

[C27, 31, 35, §3244-b6; C39, §3244.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.24]  
Referred to in §210.21

### **210.25 Weighing bread.**

Bread when weighed for inspection shall be weighed in the manufacturer's plant when said bread is wrapped ready for delivery, and bread coming into the state from an adjoining state when weighed for inspection shall be weighed in the packages, containers, vehicles, or trucks of the manufacturer at the time when said bread crosses the state line, or at the first point of stop for sale or delivery of said bread after crossing the Iowa state line, and the weight shall be determined by averaging the weight of not less than fifteen loaves picked at random from any given lot.

[C35, §3244-f1; C39, §3244.07; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §210.25]  
Referred to in §210.21, 210.24

### **210.26 Measuring saw logs.**

The Scribner decimal "C" log rule is hereby adopted as the standard log rule for determining the board-foot content of saw logs; and all contracts hereafter entered into for the cutting, purchase and sale of saw logs shall be deemed to be made on the basis of such standard rule unless some other method is specifically agreed upon.

[C62, 66, 71, 73, 75, 77, 79, 81, §210.26]

## CHAPTER 211

RESERVED

## CHAPTER 212

### SALES OF CERTAIN COMMODITIES FROM BULK

212.1	Coal, charcoal, and coke.	212.4	Sales without delivery.
212.2	Delivery tickets required.	212.5	Repealed by 67 Acts, ch 190, §1.
212.3	Disposition of delivery tickets.	212.6	Inspection of vehicles.

### **212.1 Coal, charcoal, and coke.**

No person shall sell, offer or expose for sale any coal, charcoal, or coke in any other manner than by weight, or represent any of said commodities as being the product of any county, state, or territory, except that in which mined or produced, or represent that said commodities contain more British thermal units than are present therein.

[S13, §3009-l; C24, 27, 31, 35, 39, §3245; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §212.1]

### **212.2 Delivery tickets required.**

No person shall deliver any bulk commodities, other than liquids, by vehicle unless otherwise provided for without each such delivery being accompanied by duplicate delivery tickets, on each of which shall be written in ink or other indelible substance the actual weight distinctly expressed in pounds or kilograms of the gross weight of the load, the tare of the delivery vehicle, and the net amount in weight of the commodity or, if the commodity is weighed by hopper scale or belt conveyor, the net weight of the commodity expressed in pounds or kilograms without expression of the tare of the delivery vehicle or the gross weight of the load. The delivery ticket shall display the names of the purchaser and the dealer from whom purchased.

[S13, §3009-l; C24, 27, 31, 35, 39, §3246; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §212.2]

**212.3 Disposition of delivery tickets.**

One of said duplicate tickets shall be delivered to the vendee and the other one shall be returned to the vendor. Upon demand of the department the person in charge of the load shall surrender one of said duplicate tickets to the person making such demand. If said ticket is retained an official weight slip shall be delivered by said department to the vendee or the vendee's agent.

[S13, §3009-l; C24, 27, 31, 35, 39, §3247; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §212.3]

**212.4 Sales without delivery.**

When the vendee carries away the commodity purchased, a delivery ticket, showing the actual number of pounds received by the vendee, shall be issued to the vendee by the vendor.

[S13, §3009-l; C24, 27, 31, 35, 39, §3248; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §212.4]

**212.5 Repealed by 67 Acts, ch 190, § 1.**

**212.6 Inspection of vehicles.**

The department may stop any wagon, auto truck, or other vehicle loaded with any commodity being bought, offered or exposed for sale, or sold, and compel the person having charge of the same to bring the load to a scale designated by said department and weighed for the purpose of determining the true net weight of the commodity.

[S13, §3009-l; SS15, §3009-n; C24, 27, 31, 35, 39, §3250; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §212.6]

## CHAPTER 213

### STATE METROLOGIST

213.1	State metrologist.	213.4	through 213.6 Repealed by 98
213.2	Physical standards.		Acts, ch 1032, §10.
213.3	Testing weights and measures.	213.7	Expenses.

**213.1 State metrologist.**

The department may designate one of its assistants to act as state metrologist of weights and measures. All weights and measures sealed by the state metrologist shall be impressed with the word "Iowa."

[C73, §2053 – 2055; C97, §3020; S13, §3009-b; C24, 27, 31, 35, 39, §3251; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §213.1]

2013 Acts, ch 15, §2

Section amended

**213.2 Physical standards.**

Weights and measures, which conform to the standards of the United States national institute of standards and technology existing as of January 1, 1979, that are traceable to the United States standards supplied by the federal government or approved as being in compliance with its standards by the national bureau of standards shall be the state primary standard of weights and measures. Such weights and measures shall be verified upon initial receipt of same and as often as deemed necessary by the secretary of agriculture. The secretary may provide for the alteration in the state primary standard of weights and measures in order to maintain traceability with the standard of the United States national institute of standards and technology. All such alterations shall be made pursuant to rules promulgated by the secretary in accordance with chapter 17A.

[C73, §2053, 2054; C97, §3020; S13, §3009-b; C24, 27, 31, 35, 39, §3252; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §213.2]

90 Acts, ch 1045, §3; 2012 Acts, ch 1095, §145

II-1149 COMMERCIAL WEIGHING AND MEASURING DEVICES — MOTOR FUEL PUMPS, §214.1

**213.3 Testing weights and measures.**

Upon written request of any citizen, firm, or corporation, city or county, or educational institution of the state made to the department, a test or calibration of any weights, measures, weighing or measuring devices, and instruments or apparatus to be used as standards shall be made.

[S13, §3009-b; C24, 27, 31, 35, 39, §3253; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §213.3]

**213.4 through 213.6** Repealed by 98 Acts, ch 1032, § 10.

**213.7 Expenses.**

All expenses directly incurred in furnishing the several cities with standards, or in comparing those that may be in their possession, shall be borne by said cities.

[C73, §2061; C97, §3024; C24, 27, 31, 35, 39, §3257; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §213.7]

CHAPTER 214

COMMERCIAL WEIGHING AND MEASURING DEVICES —  
MOTOR FUEL PUMPS

Referred to in §323.1, 323.3

214.1	Definitions.	214.8	Penalty.
214.2	License.	214.9	Self-service motor fuel pumps.
214.3	Fee.	214.10	Rules.
214.4	Tagging of equipment.	214.11	Inspections — recalibrations — penalty.
214.5	Inspection stickers.		
214.6	Oath of weighmasters.	214.12	Repealed by 80 Acts, ch 1054, §20.
214.7	Registers.		

**214.1 Definitions.**

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

1. “*Biodiesel*”, “*biodiesel fuel*”, “*biofuel*”, “*ethanol*”, “*motor fuel*”, “*retail dealer*”, “*retail motor fuel site*”, and “*wholesale dealer*” mean the same as defined in section 214A.1.

2. “*Commercial weighing and measuring device*” or “*device*” means the same as defined in section 215.26.

3. “*Motor fuel blender pump*” or “*blender pump*” means a motor fuel meter that dispenses a type of motor fuel that is blended from two or more different types of motor fuels and which may dispense more than one type of blended motor fuel.

4. “*Motor fuel pump*” means a meter or similar commercial weighing and measuring device used to measure and dispense motor fuel originating from a motor fuel storage tank, on a retail basis.

5. “*Motor fuel storage tank*” or “*storage tank*” means an aboveground or belowground container that is a fixture used to store an accumulation of motor fuel.

[C73, §2065; C97, §3027; SS15, §3009-m; C24, 27, 31, 35, 39, §3258; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.1]

80 Acts, ch 1054, §20; 87 Acts, ch 93, §1, 2; 90 Acts, ch 1084, §1; 2006 Acts, ch 1142, §2, 26; 2008 Acts, ch 1169, §12, 30; 2012 Acts, ch 1095, §146, 147

Referred to in §159A.11, 214A.1, 323.1, 422.11N, 422.11O, 422.11P, 422.11Y, 452A.2, 455G.31  
Further definitions, see §189.1

**214.2 License.**

A person who uses or displays for use any commercial weighing and measuring device, as defined in section 215.26, shall secure a license from the department.

[SS15, §3009-m; C24, 27, 31, 35, 39, §3259; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.2]

87 Acts, ch 93, §3; 90 Acts, ch 1084, §2

**214.3 Fee.**

1. The license for inspection of a commercial weighing and measuring device shall expire on December 31 of each year, and for a motor fuel pump on June 30 of each year. The amount of the fee due for each license shall be as provided in subsection 3, except that the fee for a motor fuel pump shall be four dollars and fifty cents if paid within one month from the date the license is due.

2. The license inspection fee on a commercial weighing and measuring device is due the day the device is placed into service. A license inspection fee shall be charged to the person owning or operating a commercial weighing and measuring device inspected in accordance with the class or section for devices as established by handbook 44 of the United States national institute of standards and technology.

3. The fee due under this section for a commercial weighing and measuring device shall be as follows:

a. Class S-III.

(1) Railroad track scales, one hundred six dollars and fifty cents.

(2) Other scales.

(a) 500 to 1,000 pounds capacity, sixteen dollars and fifty cents.

(b) 1,001 to 30,000 pounds capacity, thirty-one dollars and fifty cents.

(c) 30,001 to 50,000 pounds capacity, sixty-one dollars and fifty cents.

(d) 50,001 pounds capacity or more, eighty-four dollars.

(3) A minimum fee of forty-six dollars and fifty cents shall be charged for each vehicle or livestock scale.

b. Class S-II and S-III, nine dollars.

(1) Bench scale, nine dollars.

(2) Counter scale, nine dollars.

(3) Portable platform scale, nine dollars.

(4) Livestock monorail scale, nine dollars.

(5) Single animal scale, nine dollars.

(6) Grain test scale, nine dollars.

(7) Precious metal and gems scale, nine dollars.

(8) Postal scale, nine dollars.

c. (1) Grain moisture meters, twenty-four dollars.

(2) Additional meters at the same location, sixteen dollars and fifty cents.

d. Class M-I. One hundred-gallon prover.

(1) Bulk meters, nine dollars.

(2) Bulk liquid petroleum gas meters, fifty-two dollars and fifty cents.

(3) Bulk refined fuel meters, nine dollars.

(4) Mass flow meters, nine dollars.

e. Class M-II. Five-gallon prover.

(1) Slow flow meters, nine dollars.

(2) Retail motor fuel pump, nine dollars.

[SS15, §3009-m; C24, 27, 31, 35, 39, §3260; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.3]

87 Acts, ch 93, §4; 88 Acts, ch 1272, §21; 90 Acts, ch 1084, §3; 92 Acts, ch 1239, §36, 37; 2006 Acts, ch 1142, §83

Referred to in §214.4, 215A.9

**214.4 Tagging of equipment.**

1. If the department does not receive payment of the license fee required pursuant to

## II-1151 COMMERCIAL WEIGHING AND MEASURING DEVICES — MOTOR FUEL PUMPS, §214.9

section 214.3 within one month from the due date, the department shall send a notice to the owner or operator of the device. The notice shall be delivered by certified mail. The notice shall state all of the following:

- a. The owner or operator is delinquent in the payment of the required fee.
  - b. The owner or operator has fifteen days after receipt of the notice to pay the license fee required pursuant to section 214.3.
  - c. If the department does not receive payment of the license fee as required, the department may summarily tag and remove from service the commercial weighing and measuring device.
2. If the license fee is not received by the department within fifteen days after receipt of the notice by the owner or operator of the commercial weighing and measuring device, the department may tag and remove from service the device for which the license fee has not been paid.

94 Acts, ch 1198, §43

### **214.5 Inspection stickers.**

For each commercial weighing and measuring device licensed, the department shall issue an inspection sticker, which shall not exceed two inches by two inches in size. The inspection sticker shall be displayed prominently on the front of the commercial weighing and measuring device and the defacing or wrongful removal of the sticker shall be punished as provided in chapter 189. Absence of an inspection sticker is prima facie evidence that the commercial weighing and measuring device is being operated contrary to law.

[SS15, §3009-m; C24, 27, 31, 35, 39, §3262; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.5]

87 Acts, ch 93, §5; 90 Acts, ch 1084, §4

### **214.6 Oath of weighmasters.**

All persons keeping a commercial weighing and measuring device, before entering upon their duties as weighmasters, shall be sworn before some person having authority to administer oaths, to keep their device correctly balanced, to make true weights, and to render a correct account to the person having weighing done.

[C73, §2065; C97, §3027; C24, 27, 31, 35, 39, §3263; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.6]

2007 Acts, ch 126, §42

Referred to in §214.8

### **214.7 Registers.**

Weighmasters are required to make true weights and keep a correct register of all weighing done by them, giving the amount of each weight, date thereof, and the name of the person or persons for whom done, and give, upon demand, to any person having weighing done, a certificate showing the weight, date, and for whom weighed.

[C73, §2066, 2067; C97, §3028; C24, 27, 31, 35, 39, §3264; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.7]

Referred to in §214.8

### **214.8 Penalty.**

Any weighmaster violating any of the provisions of sections 214.6 and 214.7, shall be guilty of a simple misdemeanor, and be liable to the person injured for all damages sustained.

[C73, §2068; C97, §3029; C24, 27, 31, 35, 39, §3265; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §214.8]

### **214.9 Self-service motor fuel pumps.**

A self-service motor fuel pump located at a retail motor fuel site may be equipped with an automatic latch-open device on the fuel dispensing hose nozzle only if the nozzle valve is the automatic closing type.

[C81, §214.9]

87 Acts, ch 93, §6; 2006 Acts, ch 1142, §83; 2008 Acts, ch 1169, §13, 30

**214.10 Rules.**

The department of agriculture and land stewardship may promulgate rules pursuant to chapter 17A as necessary to promptly and effectively enforce the provisions of this chapter. [C81, §214.10]

**214.11 Inspections — recalibrations — penalty.**

1. The department shall provide for annual inspections of all motor fuel pumps, including but not limited to motor fuel blender pumps, licensed under this chapter. Inspections shall be for the purpose of determining the accuracy of the pumps’ measuring mechanisms, and for such purpose the department’s inspectors may enter upon the premises of any wholesale dealer or retail dealer, as they are defined in section 214A.1, of motor fuel or fuel oil within this state. Upon completion of an inspection, the inspector shall affix the department’s seal to the measuring mechanism of the motor fuel pump. The seal shall be appropriately marked, dated, and recorded by the inspector. If the owner of an inspected and sealed motor fuel pump is registered with the department as a servicer in accordance with section 215.23, or employs a person so registered as a servicer, the owner or other servicer may open the motor fuel pump, break the department’s seal, recalibrate the measuring mechanism if necessary, and reseal the motor fuel pump as long as the department is notified of the recalibration within forty-eight hours, on a form provided by the department.

2. A person violating a provision of this section is, upon conviction, guilty of a simple misdemeanor.

87 Acts, ch 93, §7; 2006 Acts, ch 1142, §83; 2012 Acts, ch 1095, §148

**214.12** Repealed by 80 Acts, ch 1054, § 20.

**CHAPTER 214A**

**MOTOR FUEL**

Referred to in §323.1, 323.4A

Department of agriculture and land stewardship to establish and administer programs for auditing motor fuel production and processing, motor fuel screening and testing, and inspection of motor fuel sold by dealers; 2006 Acts, ch 1175, §22; 2008 Acts, ch 1189, §16; 2009 Acts, ch 175, §3; 2010 Acts, ch 1191, §3; 2011 Acts, ch 128, §3, 48, 60; 2012 Acts, ch 1135, §3; 2013 Acts, ch 132, §3, 29

214A.1	Definitions.	214A.9	Poster showing analysis.
214A.2	Tests and standards.		Repealed by 2013 Acts, ch 15, §9.
214A.2A	Kerosene.		
214A.2B	Laboratory for motor fuel and biofuels.	214A.10	Transfer pipes.
214A.3	Advertising.	214A.11	Penalties.
214A.4	Intrastate shipments.	214A.12	Industrial petroleum — permits.
214A.5	Documentation.	214A.13	Chemists — employment of.
214A.6	Department tests — fee. Repealed by 2005 Acts, ch 159, §2.	214A.14	Appropriation.
214A.7	Department inspection — samples tested.	214A.15	Gasoline receptacles.
214A.8	Prohibition.	214A.16	Notice of renewable fuel — decal.
		214A.17	Documentation in transactions.
		214A.18	MTBE prohibition.
		214A.19	Demonstration grants authorized.
		214A.20	Limitation on liability.

**214A.1 Definitions.**

The following definitions shall apply to the various terms used in this chapter:

1. “*Advertise*” means to present a commercial message in any medium, including but not limited to print, radio, television, sign, display, label, tag, or articulation.

2. “*A.S.T.M. international*” means the American society for testing and materials international.

3. “*Biodiesel*” means a renewable fuel comprised of mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats, which meets the standards provided in section 214A.2.

4. “*Biodiesel blended fuel*” means a blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component, provided in section 214A.2.

5. “*Biodiesel fuel*” means biodiesel or biodiesel blended fuel.

6. “*Biofuel*” means ethanol or biodiesel.

7. “*Dealer*” means a wholesale dealer or retail dealer.

8. “*Diesel fuel*” means any liquid, other than gasoline, which is suitable for use as a fuel in a diesel fuel powered engine, including but not limited to a motor vehicle, equipment as defined in section 322F.1, or a train. Diesel fuel includes a liquid product prepared, advertised, offered for sale, or sold for use as, or commonly and commercially used as, motor fuel for use in an internal combustion engine and ignited by pressure without the presence of an electric spark. Diesel fuel must meet the standards provided in section 214A.2.

9. “*Distributor*” means the same as defined in section 452A.2.

10. “*E-85 gasoline*” or “*E-85*” means ethanol blended gasoline formulated with a percentage of between seventy and eighty-five percent by volume of ethanol, if the formulation meets the standards provided in section 214A.2.

11. “*Ethanol*” means ethyl alcohol that is to be blended with gasoline if it meets the standards provided in section 214A.2.

12. “*Ethanol blended gasoline*” means a formulation of gasoline which is a liquid petroleum product blended with ethanol, if the formulation meets the standards provided in section 214A.2.

13. “*Gasoline*” means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in section 214A.2.

14. “*Marketer*” means a dealer, distributor, nonrefiner biofuel manufacturer, or supplier.

15. “*Motor fuel*” means a substance or combination of substances which is intended to be or is capable of being used for the purpose of operating an internal combustion engine, including but not limited to a motor vehicle, and is kept for sale or sold for that purpose.

16. “*Motor fuel pump*” and “*motor fuel blender pump*” or “*blender pump*” means the same as defined in section 214.1.

17. “*Motor fuel storage tank*” means the same as defined in section 214.1.

18. “*MTBE*” means methyl tertiary butyl ether.

19. “*Nonrefiner biofuel manufacturer*” means the same as defined in section 452A.2.

20. “*Oxygenate*” means oxygen-containing compounds, including but not limited to alcohols, ethers, or ethanol.

21. “*Pipeline company*” means the same as defined in section 479B.2.

22. “*Refiner*” means a person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person.

23. “*Renewable fuel*” means a combustible liquid derived from grain starch, oilseed, animal fat, or other biomass; or produced from a biogas source, including any nonfossilized decaying organic matter which is capable of powering machinery, including but not limited to an engine or power plant. Renewable fuel includes but is not limited to biofuel, ethanol blended gasoline, or biodiesel blended fuel meeting the standards provided in section 214A.2.

24. “*Retail dealer*” means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis, regardless of whether the motor fuel pump is located at a retail motor fuel site including a permanent or mobile location.

25. “*Retail motor fuel site*” means a geographic location in this state where a retail dealer sells and dispenses motor fuel on a retail basis.

26. “*Sell*” means to sell or to offer for sale.

27. “*Standard ethanol blended gasoline*” means ethanol blended gasoline for use in gasoline-powered vehicles not required to be flexible fuel vehicles, that meets the requirements of section 214A.2.

28. “Supplier” means the same as defined in section 452A.2.
  29. “Terminal” means the same as defined in section 452A.2.
  30. “Terminal operator” means the same as defined in section 452A.2.
  31. “Terminal owner” means the same as defined in section 452A.2.
  32. “Unleaded gasoline” means gasoline, including ethanol blended gasoline, if all of the following applies:
    - a. It has an octane number of not less than eighty-seven as provided in section 214A.2.
    - b. Lead or phosphorus compounds have not been intentionally added to it.
    - c. It does not contain more than thirteen thousandths grams of lead per liter and not more than thirteen ten-thousandths grams of phosphorus per liter.
  33. “Wholesale dealer” means a person, other than a retail dealer, who operates a place of business where motor fuel is stored and dispensed for sale in this state, including a permanent or mobile location.
- [C31, 35, §5093-d1; C39, §5095.01; C46, 50, 54, 58, 62, 66, 71, §323.1; C73, 75, 77, 79, 81, §214A.1]

85 Acts, ch 76, §1; 86 Acts, ch 1146, §1; 86 Acts, ch 1245, §644; 89 Acts, ch 75, §1; 2000 Acts, ch 1224, §27; 2004 Acts, ch 1086, §106; 2006 Acts, ch 1142, §3 – 5, 83; 2008 Acts, ch 1169, §14 – 16, 30; 2010 Acts, ch 1031, §245, 246; 2013 Acts, ch 15, §3; 2013 Acts, ch 90, §40; 2013 Acts, ch 127, §2

Referred to in §8A.362, 159A.2, 159A.3, 159A.11, 203.1, 214.1, 214.11, 216B.3, 260C.19A, 262.25A, 279.34, 307.20, 307.21, 323.1, 323A.1, 331.908, 364.20, 422.11N, 422.11O, 422.11P, 422.11Y, 423.3, 452A.2, 452A.3, 452A.6, 452A.32, 455G.31, 714.7D, 904.312A

Further definitions, see §189.1

NEW subsection 9 and former subsections 9 – 12 renumbered as 10 – 13

NEW subsection 14 and former subsections 13 and 14 renumbered as 15 and 16

Subsection 17 stricken and former subsections 15 and 16 renumbered as 17 and 18

NEW subsection 19 and former subsection 18 renumbered as 20

NEW subsections 21 and 22 and former subsections 19 – 22 renumbered as 23 – 26

Former subsection 23 amended and renumbered as 27

NEW subsections 28 - 31 and former subsections 24 and 25 renumbered as 32 and 33

### 214A.2 Tests and standards.

1. The department shall adopt rules pursuant to chapter 17A for carrying out this chapter. The rules may include but are not limited to specifications relating to motor fuel, including but not limited to renewable fuel such as ethanol blended gasoline, biodiesel, biodiesel blended fuel, and motor fuel components such as an oxygenate. In the interest of uniformity, the department shall adopt by reference other specifications relating to tests and standards for motor fuel, including renewable fuel and motor fuel components, established by the United States environmental protection agency and A.S.T.M. international.

2. Octane number shall conform to the average of values obtained from the A.S.T.M. international D2699 research method and the A.S.T.M. international D2700 motor method.

a. Octane number for regular grade unleaded gasoline shall follow the specifications of A.S.T.M. international but shall not be less than eighty-seven.

b. Octane number for premium grade unleaded gasoline shall follow the specifications of A.S.T.M. international but shall not be less than ninety.

3. a. For motor fuel advertised for sale or sold as gasoline by a dealer, the motor fuel must meet requirements for that type of motor fuel and its additives established by the United States environmental protection agency including as provided under 42 U.S.C. § 7545.

b. If the motor fuel is advertised for sale or sold as ethanol blended gasoline, the motor fuel must comply with departmental standards which shall meet all of the following requirements:

(1) Ethanol must be an agriculturally derived ethyl alcohol that meets A.S.T.M. international specification D4806 for denatured fuel ethanol for blending with gasoline for use as automotive spark-ignition engine fuel, or a successor A.S.T.M. international specification, as established by rules adopted by the department.

(2) Gasoline blended with ethanol must meet requirements established by rules adopted in part or in whole based on A.S.T.M. international specification D4814.

(3) For ethanol blended gasoline, at least nine percent by volume must be fuel grade ethanol. In addition, the following applies:

(a) For the period beginning on September 16 and ending on May 31 of each year, the

state grants a waiver of one pound per square inch from the A.S.T.M. international D4814 Reid vapor pressure requirement.

(b) For the period beginning on June 1 and ending on September 15 of each year the United States environmental protection agency must grant a one pound per square inch waiver for ethanol blended conventional gasoline with at least nine but not more than ten percent by volume of ethanol pursuant to 40 C.F.R. § 80.27.

(4) For standard ethanol blended gasoline, it must be ethanol blended gasoline classified as any of the following:

(a) From E-9 to E-15, if the ethanol blended gasoline meets the standards for that classification as otherwise provided in this paragraph “b”.

(b) Higher than E-15, if authorized by the department pursuant to approval for the use of that classification of ethanol blended gasoline in this state by the United States environmental protection agency, by granting a waiver or the adoption of regulations.

(5) E-85 gasoline must be an agriculturally derived ethyl alcohol that meets A.S.T.M. international specification D5798, described as a fuel blend for use in ground vehicles with automotive spark-ignition engines, or a successor A.S.T.M. international specification, as established by rules adopted by the department.

4. a. For motor fuel advertised for sale or sold as diesel fuel by a dealer, the motor fuel must meet requirements for that type of motor fuel and its additives established by the United States environmental protection agency including as provided under 42 U.S.C. § 7545.

b. If the motor fuel is advertised for sale or sold as biodiesel or biodiesel blended fuel, the motor fuel must comply with departmental standards which shall comply with specifications adopted by A.S.T.M. international for biodiesel or biodiesel blended fuel, to every extent applicable as determined by rules adopted by the department.

(1) Biodiesel must conform to A.S.T.M. international specification D6751 or a successor A.S.T.M. international specification as established by rules adopted by the department. The specification shall apply to biodiesel before it leaves its place of manufacture.

(2) At least one percent of biodiesel blended fuel by volume must be biodiesel.

(3) The biodiesel may be blended with diesel fuel whose sulfur, aromatic, lubricity, and cetane levels do not comply with A.S.T.M. international specification D975 grades 1-D or 2-D, low sulfur 1-D or 2-D, or ultra-low sulfur grades 1-D or 2-D, provided that the finished biodiesel blended fuel meets A.S.T.M. international specification D975 or a successor A.S.T.M. international specification as established by rules adopted by the department.

(4) Biodiesel blended fuel classified as B-6 or higher but not higher than B-20 must conform to A.S.T.M. international specification D7467 or a successor A.S.T.M. international specification as established by rules adopted by the department.

5. Ethanol blended gasoline shall be designated E-xx where “xx” is the volume percent of ethanol in the ethanol blended gasoline and biodiesel fuel shall be designated B-xx where “xx” is the volume percent of biodiesel.

6. Motor fuel shall not contain more than trace amounts of MTBE, as provided in section 214A.18.

[C31, 35, §5093-d2; C39, §5095.02; C46, 50, 54, 58, 62, 66, 71, §323.2; C73, 75, 77, 79, 81, §214A.2; 82 Acts, ch 1131, §1, ch 1170, §1]

84 Acts, ch 1083, §1; 85 Acts, ch 76, §2 – 5; 85 Acts, ch 195, §23; 89 Acts, ch 75, §2; 90 Acts, ch 1252, §14; 91 Acts, ch 87, §1; 2000 Acts, ch 1224, §28; 2003 Acts, ch 167, §1, 4; 2004 Acts, ch 1086, §106; 2006 Acts, ch 1142, §6 – 8, 83; 2006 Acts, ch 1175, §8, 23; 2008 Acts, ch 1169, §17, 18, 30; 2009 Acts, ch 41, §263; 2009 Acts, ch 179, §118; 2010 Acts, ch 1031, §247; 2011 Acts, ch 113, §1; 2013 Acts, ch 15, §4 – 6

Referred to in §159A.12, 214A.1, 214A.2B, 214A.3, 214A.4, 214A.5, 214A.7, 214A.8, 214A.16, 214A.20, 216B.3, 260C.19A, 262.25A, 307.21, 323.1, 422.11O, 422.11P, 422.11Y, 423.4, 452A.12, 455G.31, 904.312A

Subsection 2, paragraphs a and b stricken and paragraphs c and d redesignated as a and b

Subsection 3, paragraph b, subparagraphs (2) and (4) amended

### **214A.2A Kerosene.**

1. Fuel which is sold or is kept, offered, or exposed for sale as kerosene shall be labeled as kerosene. The label shall include the word “kerosene” and a designation as either “K1”

or “K2”, and shall indicate that the kerosene is in compliance with the standard specification adopted by A.S.T.M. international specification D3699 (1982).

2. A product commonly known as kerosene and a distillate or a petroleum product of lower gravity (Baume scale), when not used to propel a motor vehicle or for compounding or combining with a motor fuel, are exempt from this chapter except as provided in this section.

86 Acts, ch 1146, §2; 2006 Acts, ch 1142, §9

#### **214A.2B Laboratory for motor fuel and biofuels.**

A laboratory for motor fuel and biofuels is established at a community college which is engaged in biofuels testing on July 1, 2007, and which testing includes but is not limited to B-20 biodiesel fuel testing for motor trucks and the ability of biofuels to meet A.S.T.M. international standards. The laboratory shall conduct testing of motor fuel sold in this state and biofuel which is blended in motor fuel in this state to ensure that the motor fuel or biofuels meet the requirements in section 214A.2.

2007 Acts, ch 215, §97; 2008 Acts, ch 1032, §35, 108; 2008 Acts, ch 1169, §19, 30

#### **214A.3 Advertising.**

1. For all motor fuel, a person shall not knowingly do any of the following:

a. Advertise the sale of any motor fuel which does not meet the standards provided in section 214A.2.

b. Falsely advertise the quality or kind of any motor fuel or a component of motor fuel.

c. Add a coloring matter to the motor fuel which misleads a person who is purchasing the motor fuel about the quality of the motor fuel.

2. For a renewable fuel, all of the following apply:

a. A person shall not knowingly falsely advertise that a motor fuel is a renewable fuel or is not a renewable fuel.

b. (1) Ethanol blended gasoline sold by a dealer shall be designated according to its classification as provided in section 214A.2. However, a person advertising E-9 or E-10 gasoline may only designate it as ethanol blended gasoline. A person advertising ethanol blended gasoline formulated with a percentage of between seventy and eighty-five percent by volume of ethanol shall designate it as E-85. A person shall not knowingly falsely advertise ethanol blended gasoline by using an inaccurate designation in violation of this subparagraph.

(2) A person shall not knowingly falsely advertise biodiesel fuel by using an inaccurate designation as provided in section 214A.2.

[C31, 35, §5093-d3; C39, §5095.03; C46, 50, 54, 58, 62, 66, 71, §323.3; C73, 75, 77, 79, 81, §214A.3]

89 Acts, ch 75, §3; 2006 Acts, ch 1142, §10; 2008 Acts, ch 1169, §20, 30; 2009 Acts, ch 179, §119

#### **214A.4 Intrastate shipments.**

A wholesale dealer or retail dealer shall not receive or sell or hold for sale, within this state, any motor fuel or oxygenate for which specifications are prescribed in this chapter, unless the dealer first secures from the refiner or producer of the motor fuel or oxygenate, a statement, verified by the oath of a competent chemist employed by or representing the refiner or producer, showing the true standards and tests of the motor fuel or oxygenate, obtained by the methods referred to in section 214A.2. The verified tests are required and must accompany the bill of lading or shipping documents representing the shipment of the motor fuel or oxygenate into this state before the shipment can be received and unloaded.

[C31, 35, §5093-d4; C39, §5095.04; C46, 50, 54, 58, 62, 66, 71, §323.4; C73, 75, 77, 79, 81, §214A.4]

89 Acts, ch 75, §4; 2006 Acts, ch 1142, §83

#### **214A.5 Documentation.**

1. A wholesale dealer or retail dealer shall, when making a sale of motor fuel, give to a purchaser upon demand a sales slip.

2. A wholesale dealer selling ethanol blended gasoline or biodiesel blended fuel to a purchaser shall provide the purchaser with a statement indicating its designation as provided in section 214A.2. The statement may be on the sales slip provided in this section or a similar document, including but not limited to a bill of lading or invoice.

[C31, 35, §5093-d5; C39, §5095.05; C46, 50, 54, 58, 62, 66, 71, §323.5; C73, 75, 77, 79, 81, §214A.5]

89 Acts, ch 75, §5; 2006 Acts, ch 1142, §11, 83; 2006 Acts, ch 1175, §18, 23; 2009 Acts, ch 179, §120

**214A.6 Department tests — fee.** Repealed by 2005 Acts, ch 159, § 2.

**214A.7 Department inspection — samples tested.**

The department shall, from time to time, make or cause to be made tests of any motor fuel or biofuel which is being sold, or held or offered for sale within this state. A departmental inspector may enter upon the premises of a dealer and take from any container a sample of the motor fuel or biofuel, not to exceed one gallon. The sample shall be sealed and appropriately marked or labeled by the inspector and delivered to the department. The department shall make, or cause to be made, complete analyses or tests of the motor fuel or biofuel by the methods specified in section 214A.2.

[C31, 35, §5093-d7; C39, §5095.07; C46, 50, 54, 58, 62, 66, 71, §323.7; C73, 75, 77, 79, 81, §214A.7]

89 Acts, ch 75, §7; 2006 Acts, ch 1142, §12, 83; 2006 Acts, ch 1175, §9, 18, 23; 2013 Acts, ch 15, §7

Section amended

**214A.8 Prohibition.**

A dealer shall not knowingly sell motor fuel or biofuel in the state that fails to meet applicable standards as provided in section 214A.2.

[C31, 35, §5093-d8; C39, §5095.08; C46, 50, 54, 58, 62, 66, 71, §323.8; C73, 75, 77, 79, 81, §214A.8]

89 Acts, ch 75, §8; 2006 Acts, ch 1142, §13, 83

**214A.9 Poster showing analysis.** Repealed by 2013 Acts, ch 15, § 9.

**214A.10 Transfer pipes.**

A wholesale dealer, retail dealer, or other person shall not, within this state, use the same pipeline for transferring motor fuel, including gasoline, or oxygenate from one container to another, if the pipeline is used for transferring kerosene or other flammable product used for open flame illuminating or heating purposes.

[C31, 35, §5093-d10; C39, §5095.10; C46, 50, 54, 58, 62, 66, 71, §323.10; C73, 75, 77, 79, 81, §214A.10]

89 Acts, ch 75, §9; 92 Acts, ch 1163, §48; 2006 Acts, ch 1142, §83

**214A.11 Penalties.**

1. Except as provided in subsection 2, a person who violates a provision of this chapter is guilty of a serious misdemeanor. Each day that a continuing violation occurs shall be considered a separate offense.

2. The state may proceed against a person who violates this chapter by initiating an alternative civil enforcement action in lieu of a prosecution. The alternative civil enforcement action may be brought against the person as a contested case proceeding by the department under chapter 17A or as a civil judicial proceeding by the attorney general upon referral by the department. The department may impose, assess, and collect the civil penalty. The civil penalty shall be for at least one hundred dollars but not more than one thousand dollars for each violation. Each day that a continuing violation occurs shall be considered a separate offense.

a. Except as provided in paragraph "b", the state is precluded from prosecuting a violation

pursuant to subsection 1 if the state is a party in the alternative civil enforcement action, the department has made a final decision in the contested case proceeding, or a court has entered a final judgment.

b. If a party to an alternative civil enforcement action fails to pay the civil penalty to the department within thirty days after the party has exhausted the party's administrative remedies and the party has not sought judicial review in accordance with section 17A.19, the department may order that its final decision be vacated. When the department's final decision is vacated, the state may initiate a criminal prosecution, but shall be precluded from bringing an alternative civil enforcement action. If a party to an alternative civil enforcement action fails to pay the civil penalty within thirty days after a court has entered a final judgment, the department may request that the attorney general petition the court to vacate its final judgment. When the court's judgment has been vacated, the state may initiate a criminal prosecution, but shall be precluded from bringing an alternative civil enforcement action.

[C31, 35, §5093-d11; C39, §5095.11; C46, 50, 54, 58, 62, 66, 71, §323.11; C73, 75, 77, 79, 81, §214A.11]

2006 Acts, ch 1142, §14

#### **214A.12 Industrial petroleum — permits.**

Any wholesale dealer as herein defined may apply to the department for a permit to make importations of petroleum products for industrial use only and not intended to be used for internal combustion engines, on a form to be supplied by the department, and upon receiving such permission may make importations of petroleum products for industrial use only, exempt from the specifications of this chapter.

[C31, 35, §5093-d12; C39, §5095.12; C46, 50, 54, 58, 62, 66, 71, §323.12; C73, 75, 77, 79, 81, §214A.12]

#### **214A.13 Chemists — employment of.**

The secretary of agriculture shall employ one or more chemists and incur such other expense as shall be necessary for the purpose of carrying into effect the provisions of this chapter.

[C31, 35, §5093-d13; C39, §5095.13; C46, 50, 54, 58, 62, 66, 71, §323.13; C73, 75, 77, 79, 81, §214A.13]

#### **214A.14 Appropriation.**

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated funds sufficient to pay the expenses incurred as authorized by this chapter.

[C31, 35, §5093-d14; C39, §5095.14; C46, 50, 54, 58, 62, 66, 71, §323.14; C73, 75, 77, 79, 81, §214A.14]

#### **214A.15 Gasoline receptacles.**

A person shall not place gasoline or any other petroleum product for public use having a flash point below 100 degrees Fahrenheit into any can, cask, barrel or other similar receptacle having a capacity in excess of one pint unless the same is painted bright red and is plainly marked with the word "gasoline" or with the warning "flammable — keep fire away" in contrasting letters of a height equal to at least one-tenth of the smallest dimension of such container. Gasoline or other petroleum products having a flash point below 100 degrees Fahrenheit shall not be placed in bottles and plastic containers except those bottles and plastic containers which are approved by the state fire marshal and which are conspicuously posted with such approval. This section shall not apply to vehicle cargo or supply tanks nor to underground storage nor to storage tanks from which such liquids are withdrawn for manufacturing or agricultural purposes, or are loaded into vehicle cargo tanks, but all outlet faucets or valves from such excepted containers shall be suitably tagged to indicate the nature of the product to be withdrawn from such containers.

[C97, §2505; S13, §2510-1a, -2a, -j, -k; SS15, §2505; C24, 27, 31, 35, 39, §3194 – 3196; C46, §208.4 – 208.6; C50, 54, 58, 62, 66, 71, 73, 75, §208.6; C77, 79, 81, §214A.15]

**214A.16 Notice of renewable fuel — decal.**

1. *a.* If ethanol blended gasoline is sold from a motor fuel pump, the motor fuel pump shall have affixed a decal identifying the ethanol blended gasoline.

*b.* If the motor fuel pump dispenses ethanol blended gasoline classified as E-11 to E-15 for use in gasoline-powered vehicles not required to be flexible fuel vehicles, the motor fuel pump shall have affixed a decal as prescribed by the United States environmental protection agency.

*c.* If the motor fuel pump dispenses ethanol blended gasoline classified as higher than standard ethanol blended gasoline pursuant to section 214A.2, the decal shall contain the following notice:

FOR FLEXIBLE FUEL VEHICLES ONLY.

*d.* If biodiesel fuel is sold from a motor fuel pump, the motor fuel pump shall have affixed a decal identifying the biodiesel fuel as provided in 16 C.F.R. pt. 306.

2. The design and location of the decal shall be prescribed by rules adopted by the department. A decal identifying a renewable fuel shall be consistent with standards adopted pursuant to section 159A.6. The department may approve an application to place a decal in a special location on a pump or container or use a decal with special lettering or colors, if the decal appears clear and conspicuous to the consumer. The application shall be made in writing pursuant to procedures adopted by the department.

[82 Acts, ch 1170, §2]

85 Acts, ch 76, §6; 89 Acts, ch 296, §21; 91 Acts, ch 254, §14; 94 Acts, ch 1119, §23; 2000 Acts, ch 1224, §29; 2006 Acts, ch 1142, §83; 2008 Acts, ch 1169, §21, 30; 2009 Acts, ch 179, §121; 2013 Acts, ch 15, §8

Referred to in §159A.6  
Subsection 1 amended

**214A.17 Documentation in transactions.**

Upon any delivery of motor fuel to a retailer, the invoice, bill of lading, shipping or other documentation shall disclose the presence, type, and amount of oxygenates over one percent by weight contained in the fuel.

85 Acts, ch 76, §7; 2006 Acts, ch 1142, §83

**214A.18 MTBE prohibition.**

1. A person shall not do any of the following:

*a.* Sell motor fuel containing more than trace amounts of MTBE in this state.

*b.* Store motor fuel containing more than trace amounts of MTBE in a motor fuel storage tank located in this state.

2. As used in this section, “*trace amounts*” means not more than one-half of one percent by volume.

2000 Acts, ch 1224, §30; 2006 Acts, ch 1142, §83

Referred to in §214A.2

**214A.19 Demonstration grants authorized.**

1. The department of natural resources, conditioned upon the availability of funds, is authorized to award demonstration grants to persons who purchase vehicles which operate on alternative fuels, including but not limited to E-85 gasoline, biodiesel, compressed natural gas, electricity, solar energy, or hydrogen. A grant shall be for the purpose of conducting research connected with the fuel or the vehicle, and not for the purchase of the vehicle itself, except that the money may be used for the purchase of the vehicle if all of the following conditions are satisfied:

*a.* The department retains the title to the vehicle.

*b.* The vehicle is used for continuing research.

*c.* If the vehicle is sold or when the research related to the vehicle is completed, the proceeds of the sale of the vehicle shall be used for additional research.

2. The governor shall seek the cooperation of the governors of other states willing to

cooperate to establish an alternative fuels consortium. The purposes of the consortium may include, but are not limited to, coordinating the research, production, and marketing of alternative fuels within the participating states. The consortium may also coordinate presentation of consortium policy on alternative fuels to automakers and federal regulatory authorities.

90 Acts, ch 1252, §15; 2006 Acts, ch 1142, §77

**214A.20 Limitation on liability.**

1. A retail dealer or other marketer, pipeline company, refiner, terminal operator, or terminal owner is not liable for damages caused by the use of incompatible motor fuel dispensed at the retail dealer's retail motor fuel site, if all of the following apply:

- a. The incompatible motor fuel complies with the specifications for a type of motor fuel as provided in section 214A.2.
- b. The incompatible motor fuel is selected by the end consumer of the motor fuel.
- c. The incompatible motor fuel is dispensed from a motor fuel pump that correctly labels the type of fuel dispensed.

2. For purposes of this section, a motor fuel is incompatible with a motor according to the manufacturer of the motor.

2011 Acts, ch 113, §2; 2013 Acts, ch 127, §3

Subsection 1 amended

## CHAPTER 215

### INSPECTION OF WEIGHTS AND MEASURES

215.1	Inspections.	215.13	Graduations on beam.
215.2	Special inspection request — fees.	215.14	Approval by department.
215.3	Payment by party complaining.	215.15	Scale pit.
215.4	Tag for inaccurate or incorrect device — reinspection — fee.	215.16	Weighing beyond capacity.
215.5	Confiscation of scales.	215.17	Test weights to be used.
215.6	False weights or measures.	215.18	Specifications and tolerances.
215.7	Transactions by false weights or measures.	215.19	Automatic recorders on scales.
215.8	Reasonable variations.	215.20	Liquid petroleum gas measurement.
215.9	Power of political subdivision limited.	215.21	Individual carcass weights.
215.10	Installation of new scales.	215.22	Packer-monorail scale.
215.11	Dial visible to public.	215.23	Servicer's license.
215.12	Bond of scale repairers.	215.24	Rules.
		215.25	Railroad track scales.
		215.26	Definitions.

**215.1 Inspections.**

The department shall regularly inspect all commercial weighing and measuring devices, and when a complaint is made to the department that any false or incorrect weights or measures are being made, the department shall inspect the commercial weighing and measuring devices which caused the complaint. The department may inspect prepackaged goods to determine the accuracy of their recorded weights.

[S13, §3009-o; SS15, §3009-n; C24, 27, 31, 35, 39, §3266; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.1]

2012 Acts, ch 1095, §138

**215.2 Special inspection request — fees.**

The fee for special tests, including but not limited to, using state inspection equipment, for the calibration, testing, certification, or repair of a commercial weighing and measuring device shall be paid by the servicer or person requesting the special test in accordance with the following schedule:

1. Class S, scales, seventy-five dollars per hour.
2. Class M, meters, fifty-two dollars and fifty cents per hour.

[SS15, §3009-n; C24, 27, 31, 35, 39, §3267; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.2]

88 Acts, ch 1272, §22; 90 Acts, ch 1084, §5; 92 Acts, ch 1239, §38  
Annual license fees; §214.3

### **215.3 Payment by party complaining.**

If an inspection is made upon the complaint of a person other than the owner of the commercial weighing and measuring device, and upon examination the commercial weighing and measuring device is found by the department to be accurate for commercial weighing and measuring, the inspection fee for such inspection shall be paid by the person making the complaint.

[SS15, §3009-n; C24, 27, 31, 35, 39, §3268; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.3]

90 Acts, ch 1084, §6

### **215.4 Tag for inaccurate or incorrect device — reinspection — fee.**

A commercial weighing and measuring device found to be inaccurate or incorrect upon inspection by the department shall be rejected or tagged “condemned until repaired” and the “licensed for commercial use” inspection sticker shall be removed. If notice is received by the department that the device has been repaired and upon reinspection the device is found to be accurate or correct, the license fee shall not be charged for the reinspection. However, a second license fee shall be charged if upon reinspection the device is found to be inaccurate. The device shall be tagged “condemned” and removed from service if a third reinspection fails.

[SS15, §3009-n; C24, 27, 31, 35, 39, §3269; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.4]

90 Acts, ch 1084, §7; 2012 Acts, ch 1095, §139

### **215.5 Confiscation of scales.**

The department may seize without warrant and confiscate any incorrect scales, weights, or measures, or any weighing apparatus or part thereof which do not conform to the state standards or upon which the license fee has not been paid. If any weighing or measuring apparatus or part thereof be found out of order the same may be tagged by the department “condemned until repaired”, which tag shall not be altered or removed until said apparatus is properly repaired.

[S13, §3009-q; C24, 27, 31, 35, 39, §3270; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.5]

### **215.6 False weights or measures.**

If any person engaged in the purchase or sale of any commodity by weight or measurement, or in the employment of labor where the price thereof is to be determined by weight or measurement of the articles upon which such labor is bestowed, has in the person’s possession any inaccurate scales, weights, or measures, or other apparatus for determining the quantity of any commodity, which do not conform to the standard weights and measures, the person shall be punished as provided in chapter 189.

[SS15, §3009-p; C24, 27, 31, 35, 39, §3271; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.6]

### **215.7 Transactions by false weights or measures.**

A person shall be deemed to have violated the provisions of this chapter and shall be punished as provided in chapter 189, if any of the following apply:

1. The person sells, trades, delivers, charges for, or claims to have delivered to a purchaser an amount of any commodity which is less in weight or measure than that which is asked for, agreed upon, claimed to have been delivered, or noted on the delivery ticket.

2. The person makes a settlement for or enters a credit, based upon any false weight or measurement, for any commodity purchased.

3. The person makes a settlement for or enters a credit, based upon any false weight or measurement, for any labor where the price of producing or mining is determined by weight or measure.

4. The person records a false weight or measurement upon the weight ticket or book.

[SS15, §3009-j; C24, 27, 31, 35, 39, §3272; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.7]

2012 Acts, ch 1095, §140; 2013 Acts, ch 90, §41

Referred to in §215.8  
Subsection 2 amended

#### **215.8 Reasonable variations.**

In enforcing the provisions of section 215.7 reasonable variations shall be permitted and exemptions as to small packages shall be established by rules of the department.

[SS15, §3009-j; C24, 27, 31, 35, 39, §3273; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.8]

#### **215.9 Power of political subdivision limited.**

A commodity weighed upon any scale bearing a sticker issued by the department shall not be required to be reweighed as required by ordinance of any political subdivision including but not limited to a city, nor shall a commodity's sale, at the weights so ascertained, and because thereof, be, by such ordinance, prohibited or restricted.

[SS15, §3009-m; C24, 27, 31, 35, 39, §3274; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.9]

2012 Acts, ch 1095, §141

#### **215.10 Installation of new scales.**

It shall be unlawful to install a scale, used for commercial purposes in this state, unless the scale is so installed that it is easily accessible for inspection and testing by equipment of the department and with due regard to the scale's size and capacity. Every scale manufacturer or dealer shall, upon selling a scale of the above types in Iowa, submit to the department upon forms provided by the department, the make, capacity of the scale, the date of sale, and the date and location of its installation.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.10]

#### **215.11 Dial visible to public.**

The weight indicating dial or beams on counter scales used to weigh articles sold at retail shall be so located that the reading dial indicating the weight shall at all times be visible to the public.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.11]

#### **215.12 Bond of scale repairers.**

Any person, firm, or corporation engaging in any scale repair work for hire in this state shall first file with the department a bond of the form required by chapter 64 in the sum of one thousand dollars conditioned to guarantee the quality and faithful performance of the assumed task and providing for liquidated damages for failure to perform such conditions. Such person, firm, or corporation, on depositing with the department a bond in the amount of one thousand dollars shall be furnished a certificate authorizing them to do what is known as scale repair work, or installation of new scales in the state of Iowa. This certificate shall be valid until revoked by the secretary of agriculture.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.12]

#### **215.13 Graduations on beam.**

All new weigh beams or dials on what is known as livestock scales used for determining the weight in buying or selling livestock shall be in not over five-pound graduations.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.13]

**215.14 Approval by department.**

A commercial weighing and measuring device shall not be installed in this state unless approved by the department.

1. A pit type scale or any other scale installed in a pit, regardless of capacity, that is installed on or after July 1, 1990, shall have a clearance of not less than four feet from the finished floor line of the scale to the bottom of the "I" beam of the scale bridge. Livestock shall not be weighed on any scale other than a livestock scale or pit type scale.

2. An electronic pitless scale shall be placed on concrete footings with concrete floor. The concrete floor shall allow for adequate drainage away from the scale as required by the department. There shall be a clearance of not less than eight inches between the weigh bridge and the concrete floor to facilitate inspection and cleaning.

3. Before approval by the department, the specifications for a commercial weighing and measuring device shall be furnished to the purchaser of the device by the manufacturer. The approval shall be based upon the recommendation of the United States national institute of standards and technology.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.14]

90 Acts, ch 1045, §1; 2003 Acts, 1st Ex, ch 2, §16, 209; 2012 Acts, ch 1095, §142

**215.15 Scale pit.**

Scale pit shall have proper room for inspector or service person to repair or inspect scale. Scale pit shall remain dry at all times and adequate drainage shall be provided for the purpose of inspecting and cleaning.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.15]

**215.16 Weighing beyond capacity.**

It shall be unlawful for any person, firm, or corporation to use such a scale for weighing commodities the gross weight of which is greater than the factory rated scale capacity. The capacity of the scale shall be stamped by the manufacturer on each weigh beam or dial. The capacity of the scale shall be posted so as to be visible to the public.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.16]

**215.17 Test weights to be used.**

1. A person engaged in scale repair work for hire shall use only test weights sealed by the department in determining the effectiveness of repair work and the test weights shall be sealed as to their accuracy once each year. However, a person shall not claim to be an official scale inspector and shall not use the test weights except to determine the accuracy of scale repair work done by the person and the person shall not be entitled to a fee for their use. A fee shall be charged and collected at time of inspection for the inspection of such weights as follows:

All weights up to and including 25 pounds.....	\$	1.10 each
Over 25 pounds capacity, up to and including 50 pounds.....		2.25 each
Over 50 pounds capacity, up to and including 100 pounds.....		3.00 each
Over 100 pounds capacity, up to and including 500 pounds.....		4.50 each
Over 500 pounds capacity, up to and including 1,000 pounds.....		7.50 each

2. The fee for all tank calibrations shall be as follows:

100 gallons up to and including	
300 gallons.....	\$ 4.50
301 gallons up to and including	
500 gallons.....	7.50
501 gallons up to and including	
1,000 gallons.....	11.25
1,001 gallons up to and including	
2,000 gallons.....	15.00
2,001 gallons up to and including	
3,000 gallons.....	18.00
3,001 gallons up to and including	
4,000 gallons.....	21.00
4,001 gallons up to and including	
5,000 gallons.....	24.00
5,001 gallons up to and including	
6,000 gallons.....	27.00
6,001 gallons up to and including	
7,000 gallons.....	30.00
7,001 gallons and up.....	37.50

3. Calibration shall not be required of a tank which is not used for the purpose of measuring, or which is equipped with a meter, and vehicle tanks loaded from meters and carrying a printed ticket showing gallonage shall not be required to be calibrated.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.17]  
92 Acts, ch 1239, §39; 2010 Acts, ch 1061, §41

**215.18 Specifications and tolerances.**

The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices, as adopted by the national conference on weights and measures and published in the national institute of standards and technology handbook 44, specifications, tolerances, and other technical requirements for weighing and measuring devices, shall apply to weighing and measuring devices in this state, except insofar as modified or rejected by rule and shall be observed in all inspections and tests.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §215.18]  
90 Acts, ch 1084, §8  
Referred to in §215A.3

**215.19 Automatic recorders on scales.**

Except for scales used by packers slaughtering fewer than one hundred twenty head of livestock per day, all scales with a capacity over five hundred pounds, which are used for commercial purposes in the state of Iowa, and installed after January 1, 1981, shall be equipped with either a type-registering weigh beam, a dial with a mechanical ticket printer, an automatic weight recorder, or some similar device which shall be used for printing or stamping the weight values on scale tickets.

[C66, 71, 73, 75, 77, 79, 81, §215.19]  
Referred to in §327D.130

**215.20 Liquid petroleum gas measurement.**

1. All liquefied petroleum gas, including but not limited to propane, butane, and mixtures of them, shall be kept, offered, exposed for sale, or sold by the pound, metered cubic foot of vapor, defined as one cubic foot at sixty degrees Fahrenheit, or by the gallon, defined as two hundred thirty-one cubic inches at sixty degrees Fahrenheit.

2. All metered sales exceeding one hundred gallons shall be corrected to a temperature of sixty degrees Fahrenheit through use of an approved meter with a sealed automatic compensation mechanism. All sale tickets for sales exceeding one hundred gallons shall

show the stamped delivered gallons and shall state that the temperature correction was automatically made.

3. A reasonable tolerance within a maximum of plus or minus one percent shall be allowed on liquid petroleum gas meters licensed for commercial use in this state.

[C66, 71, 73, 75, 77, 79, 81, §215.20]

88 Acts, ch 1272, §23; 90 Acts, ch 1084, §9

#### **215.21 Individual carcass weights.**

With payment for each purchase of livestock except poultry bought on a carcass weight or grade and yield basis, each packer shall provide the seller with one statement displaying the individual carcass weights of all the animals sold.

[C81, §215.21]

#### **215.22 Packer-monorail scale.**

The speed of a monorail scale operation used by a packer shall not exceed the manufacturer's recommendation or specifications for accurate weighing under normal, in-use operating conditions. The operational speed shall be permanently marked on the indicating element. Adequate measures shall be provided whereby testing and inspections can be conducted under normal in-use conditions. Tare weights for trolleys or gambrels shall be registered with the department. The registered tare adjustment on the indicating element shall be sealed or pinned.

[C81, §215.22]

#### **215.23 Servicer's license.**

A servicer shall not install, service, or repair a commercial weighing or measuring device until the servicer has demonstrated that the servicer has available adequate testing equipment, and that the servicer possesses a working knowledge of all devices the servicer intends to install or repair and of all appropriate weights, measures, statutes, and rules, as evidenced by passing a qualifying examination to be conducted by the department and obtaining a license. The secretary of agriculture shall establish by rule pursuant to chapter 17A, requirements for and contents of the examination. In determining these qualifications, the secretary shall consider the specifications of the United States national institute of standards and technology, handbook forty-four, "Specifications, tolerances, and technical requirements for commercial weighing and measuring devices", or the current successor or equivalent specifications adopted by the United States national institute of standards and technology. The secretary shall require an annual license fee of not more than five dollars for each license. Each license shall expire one year from date of issuance.

[C81, §215.23]

90 Acts, ch 1045, §2

Referred to in §214.11

#### **215.24 Rules.**

The department of agriculture and land stewardship may promulgate rules pursuant to chapter 17A as necessary to promptly and effectively enforce the provisions of this chapter.

[C81, §215.24]

#### **215.25 Railroad track scales.**

The department shall inspect the railroad track scales referred to in section 327D.127. The department may adopt rules establishing standards for the scales. The rules may include but are not limited to safety standards, accuracy and the style and content of forms and certificates to be used for weighing.

[C81, §215.25]

#### **215.26 Definitions.**

As used in this chapter:

1. "Commercial weighing and measuring device" means a weight or measure or weighing

or measuring device used to establish size, quantity, area or other quantitative measurement of a commodity sold by weight or measurement, or where the price to be paid for producing the commodity is based upon the weight or measurement of the commodity. The term includes an accessory attached to or used in connection with a commercial weighing or measuring device when the accessory is so designed or installed that its operation may affect the accuracy of the device. “Commercial weighing and measuring device” includes a public scale or a commercial scanner.

2. “Department” means the department of agriculture and land stewardship.

3. “Liquefied petroleum gas” means liquids that do not remain in a liquid state at atmospheric pressures and temperatures composed predominantly of any of the following hydrocarbons, or mixtures of hydrocarbons: propane, propylene, butanes including normal butane or isobutane, and butylenes.

4. “Packer” means a person engaged in the business of any of the following:

a. Buying livestock in commerce for purposes of slaughter;

b. Manufacturing or preparing meats or meat food products for sale or shipment in commerce;

c. Marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.

5. “Service agency” means an individual, firm or corporation which holds itself out to the public as having servicers available to install, service or repair a weighing or measuring device for hire.

6. “Servicer” means an individual employed by a service agency who installs, services or repairs a commercial weighing or measuring device for hire, commission or salary.

[C81, §215.26]

90 Acts, ch 1084, §10, 11; 2007 Acts, ch 126, §43; 2012 Acts, ch 1095, §143, 144

Referred to in §214.1, 214.2

## CHAPTER 215A

### MOISTURE-MEASURING DEVICES

215A.1	Definitions.	215A.7	Located where visible to public.
215A.2	Inspection by department.	215A.8	Untested devices not to be used — exception.
215A.3	Rules adopted — hearing.		
215A.4	Officer assigned to act.	215A.9	Inspection fee.
215A.5	Marking with seal.	215A.10	Penalty.
215A.6	Procedure when device rejected.		

#### 215A.1 Definitions.

As used in this chapter:

1. “Agricultural products” means any product of agricultural activity which is tested for moisture content when offered for sale, processing, or storage.

2. “Department” means the Iowa department of agriculture and land stewardship.

3. “Moisture-measuring devices” means any device or instrument used by any person in proving or ascertaining the moisture content of agricultural products.

4. “Person” means an individual, corporation, partnership, cooperative association, or two or more persons having a joint or common interest in the same venture and shall include the United States, the state, or any subdivision of either.

5. “Secretary” means the secretary of agriculture.

[C71, 73, 75, 77, 79, 81, §215A.1]

2012 Acts, ch 1023, §157

Further definitions, see §189.1

**215A.2 Inspection by department.**

The department shall inspect or cause to be inspected at least annually every moisture-measuring device used in commerce in this state, except those belonging to the United States or the state, or any subdivision of either, except as herein provided. The department may inspect or cause to be inspected at the convenience of the department any moisture-measuring device upon a request in writing from the owner thereof.

[C71, 73, 75, 77, 79, 81, §215A.2]

**215A.3 Rules adopted — hearing.**

The department is charged with the enforcement of this chapter and, after due publicity and due public hearing, is empowered to establish rules, regulations, specifications, standards, and tests as necessary in order to secure the efficient administration of this chapter. Publicity concerning the public hearing shall be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard. In establishing such rules, regulations, specifications, standards, and tests the department may use the specifications and tolerances established in section 215.18, and shall use the specifications and tolerances established by the United States department of agriculture as of November 15, 1971, in chapter XII of GR instruction 916-6, equipment manual, used by the United States department of agriculture grain inspection, packers and stockyards administration. The department may from time to time publish such data in connection with the administration of this chapter as may be of public interest.

[C71, 73, 75, 77, 79, 81, §215A.3]

95 Acts, ch 216, §25

**215A.4 Officer assigned to act.**

The department may at its discretion designate an employee or officer of the department to act for the department in any details connected with the administration of this chapter.

[C71, 73, 75, 77, 79, 81, §215A.4]

**215A.5 Marking with seal.**

If an inspection or comparative test reveals that the moisture-measuring device being inspected or tested conforms to the standards and specifications established by the department, the department shall cause the same to be marked with an appropriate seal. Any moisture-measuring device which upon inspection is found not to conform with the specifications and standards established by the department shall be marked with an appropriate seal showing such device to be defective, which seal shall not be altered or removed until said moisture-measuring device is properly repaired and reinspected. The owner or user of such device shall be notified of such defective condition by the department or its properly designated employees on an inspection form prepared by the department.

[C71, 73, 75, 77, 79, 81, §215A.5]

Referred to in §215A.6, 215A.9

**215A.6 Procedure when device rejected.**

1. Any defective moisture-measuring device, while so marked, sealed, or tagged, as provided in section 215A.5, may be used to ascertain the moisture content of agricultural products offered for sale, processing, or storage, only under the following conditions:

a. The person shall keep a record, open to inspection, of every commercial sample of agricultural products inspected by the tagged device, showing that an adjustment was made on all such agricultural products tested.

b. The device shall be repaired to comply with section 215A.5 within a period of thirty days, and the department thereupon notified.

2. If, upon reinspection, the device is again rejected under the provisions of section 215A.5, such device shall be sealed and shall not be used until repaired and reinspected.

[C71, 73, 75, 77, 79, 81, §215A.6]

2009 Acts, ch 41, §263

**215A.7 Located where visible to public.**

Every device used to ascertain the moisture content of agricultural products offered for sale, processing, or storage shall be used in a location visible to the general public and the detailed procedure for operating a moisture-measuring device shall be displayed in a conspicuous place close to the moisture-measuring device.

[C71, 73, 75, 77, 79, 81, §215A.7]

**215A.8 Untested devices not to be used — exception.**

No person shall use or cause to be used any grain moisture-measuring device which has not been inspected and approved for use by the department; except, a newly purchased grain moisture-measuring device may be used prior to regular inspection and approval if the user of such device has given notice to the department of the purchase and before use of such new device.

[C71, 73, 75, 77, 79, 81, §215A.8]

**215A.9 Inspection fee.**

The department shall charge, assess, and cause to be collected at the time of inspection an inspection fee in accordance with the fee schedule established pursuant to section 214.3, subsection 3.

A fee of fifteen dollars shall be charged for each device subject to reinspection under section 215A.5. All moneys received by the department under the provisions of this chapter shall be handled in the same manner as “*repayment receipts*” as defined in chapter 8, and shall be used for the administration and enforcement of the provisions of this chapter.

[C71, 73, 75, 77, 79, 81, §215A.9]

90 Acts, ch 1084, §12; 92 Acts, ch 1239, §40

**215A.10 Penalty.**

Every person who uses or causes to be used a moisture-measuring device in commerce with knowledge that such device has not been inspected and approved by the department in accordance with the provisions of this chapter shall be guilty of a simple misdemeanor.

[C71, 73, 75, 77, 79, 81, §215A.10]

**TITLE VI**  
**HUMAN SERVICES**

**SUBTITLE 1**  
**SOCIAL JUSTICE AND HUMAN RIGHTS**

**CHAPTER 216**

**CIVIL RIGHTS COMMISSION**

Referred to in §2.11, 2.42, 19B.12, 22.7, 256F.4, 261E.9, 422.11S, 422.12, 602.1401, 614.8, 679C.115, 729A.5

This chapter not enacted as a part of this title;  
transferred from chapter 601A in Code 1993  
See also chapters 729 and 729A

216.1	Citation.	216.12	Exceptions.
216.2	Definitions.	216.12A	Additional housing exception.
216.3	Commission appointed.	216.13	Exceptions for retirement plans, abortion coverage, life, disability, and health benefits.
216.4	Compensation and expenses — rules.	216.14	Promotion or transfer.
216.5	Powers and duties.	216.15	Complaint — hearing.
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216.6A	Additional unfair or discriminatory practice — wage discrimination in employment.	216.15B	Formal mediation — confidentiality.
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216.8	Unfair or discriminatory practices — housing.	216.16A	Civil action elected — housing.
216.8A	Additional unfair or discriminatory practices — housing.	216.17	Judicial review — enforcement.
216.9	Unfair or discriminatory practices — education.	216.17A	Civil proceedings — housing.
216.10	Unfair credit practices.	216.18	Rules of construction.
216.11	Aiding, abetting, or retaliation.	216.18A	Construction of chapter — marriage. Transferred to §216.18, subsection 2; 2009 Acts, ch 133, §192.
216.11A	Interference, coercion, or intimidation.	216.19	Local laws implementing this chapter.
		216.20	Effect on other law.
		216.21	Documents to attorney or party.

**216.1 Citation.**

This chapter may be known and may be cited as the “*Iowa Civil Rights Act of 1965*”.  
[C66, 71, §105A.1; C73, 75, 77, 79, 81, §601A.1]  
C93, §216.1

**216.2 Definitions.**

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

1. “*Commission*” means the Iowa state civil rights commission created by this chapter.
2. “*Commissioner*” means a member of the commission.
3. “*Court*” means the district court in and for any judicial district of the state of Iowa or any judge of the court if the court is not in session at that time.
4. “*Covered multifamily dwelling*” means any of the following:
  - a. A building consisting of four or more dwelling units if the building has one or more elevators.
  - b. The ground floor units of a building consisting of four or more dwelling units.

5. “Disability” means the physical or mental condition of a person which constitutes a substantial disability, and the condition of a person with a positive human immunodeficiency virus test result, a diagnosis of acquired immune deficiency syndrome, a diagnosis of acquired immune deficiency syndrome-related complex, or any other condition related to acquired immune deficiency syndrome. The inclusion of a condition related to a positive human immunodeficiency virus test result in the meaning of “disability” under the provisions of this chapter does not preclude the application of the provisions of this chapter to conditions resulting from other contagious or infectious diseases.

6. “Employee” means any person employed by an employer.

7. “Employer” means the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and every other person employing employees within the state.

8. “Employment agency” means any person undertaking to procure employees or opportunities to work for any other person or any person holding itself to be equipped to do so.

9. a. “Familial status” means one or more individuals under the age of eighteen domiciled with one of the following:

(1) A parent or another person having legal custody of the individual or individuals.

(2) The designee of the parent or the other person having custody of the individual or individuals, with the written permission of the parent or other person.

(3) A person who is pregnant or is in the process of securing legal custody of the individual or individuals.

b. “Familial status” also means a person who is pregnant or who is in the process of securing legal custody of an individual who has not attained the age of eighteen years.

10. “Gender identity” means a gender-related identity of a person, regardless of the person’s assigned sex at birth.

11. “Labor organization” means any organization which exists for the purpose in whole or in part of collective bargaining, of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

12. “Person” means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.

13. a. “Public accommodation” means each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, establishment, or facility, provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the nonmembers gratuitously shall be deemed a public accommodation if the accommodation receives governmental support or subsidy. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the nonmembers for fee or charge or gratuitously, it shall be deemed a public accommodation during such period.

b. “Public accommodation” includes each state and local government unit or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants or goods to the public, gratuitously or otherwise. This paragraph shall not be construed by negative implication or otherwise to restrict any part or portion of the preexisting definition of the term “public accommodation”.

14. “Sexual orientation” means actual or perceived heterosexuality, homosexuality, or bisexuality.

15. “Unfair practice” or “discriminatory practice” means those practices specified as unfair or discriminatory in sections 216.6, 216.6A, 216.7, 216.8, 216.8A, 216.9, 216.10, 216.11, and 216.11A.

[C66, 71, §105A.2; C73, 75, 77, 79, 81, §601A.2]

84 Acts, ch 1096, §1; 88 Acts, ch 1236, §1; 89 Acts, ch 205, §1; 91 Acts, ch 184, §1; 92 Acts, ch 1129, §1 – 3

C93, §216.2

94 Acts, ch 1023, §42; 95 Acts, ch 129, §2; 96 Acts, ch 1129, §113; 2007 Acts, ch 191, §1; 2009 Acts, ch 96, §1

### **216.3 Commission appointed.**

The Iowa state civil rights commission shall consist of seven members appointed by the governor subject to confirmation by the senate. Appointments shall be made to provide geographical area representation insofar as practicable. No more than four members of the commission shall belong to the same political party. Members appointed to the commission shall serve for four-year staggered terms beginning and ending as provided by section 69.19.

Vacancies on the commission shall be filled by the governor by appointment for the unexpired part of the term of the vacancy. Any commissioner may be removed from office by the governor for cause.

The governor subject to confirmation by the senate shall appoint a director who shall serve as the executive officer of the commission.

[C66, 71, §105A.3; C73, 75, 77, 79, 81, §601A.3]

C93, §216.3

Confirmation, see §2.32

### **216.4 Compensation and expenses — rules.**

Commissioners shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses incurred while on official commission business. All per diem and expense moneys paid to commissioners shall be paid from funds appropriated to the commission. The commission shall adopt, amend or rescind rules as necessary for the conduct of its meetings. A quorum shall consist of four commissioners.

[C66, 71, §105A.4; C73, 75, 77, 79, 81, §601A.4]

90 Acts, ch 1256, §51

C93, §216.4

### **216.5 Powers and duties.**

The commission shall have the following powers and duties:

1. To prescribe the duties of a director and appoint and prescribe the duties of such investigators and other employees and agents as the commission shall deem necessary for the enforcement of this chapter.

2. To receive, investigate, mediate, and finally determine the merits of complaints alleging unfair or discriminatory practices.

3. To investigate and study the existence, character, causes, and extent of discrimination in public accommodations, employment, apprenticeship programs, on-the-job training programs, vocational schools, credit practices, and housing in this state and to attempt the elimination of such discrimination by education and conciliation.

4. To seek a temporary injunction against a respondent when it appears that a complainant may suffer irreparable injury as a result of an alleged violation of this chapter. A temporary injunction may only be issued ex parte, if the complaint filed with the commission alleges discrimination in housing. In all other cases a temporary injunction may be issued only after the respondent has been notified and afforded the opportunity to be heard.

5. To hold hearings upon any complaint made against a person, an employer, an employment agency, or a labor organization, or the employees or members thereof, to subpoena witnesses and compel their attendance at such hearings, to administer oaths and take the testimony of any person under oath, and to compel such person, employer, employment agency, or labor organization, or employees or members thereof to produce for examination any books and papers relating to any matter involved in such complaint. The commission shall issue subpoenas for witnesses in the same manner and for the same purposes on behalf of the respondent upon the respondent's request. Such hearings may be held by the commission, by any commissioner, or by any hearing examiner appointed by the commission. If a witness either fails or refuses to obey a subpoena issued by the commission, the commission may petition the district court having jurisdiction for issuance

of a subpoena and the court shall in a proper case issue the subpoena. Refusal to obey such subpoena shall be subject to punishment for contempt.

6. To issue such publications and reports of investigations and research as in the judgment of the commission shall tend to promote goodwill among the various racial, religious, and ethnic groups of the state and which shall tend to minimize or eliminate discrimination in public accommodations, employment, apprenticeship and on-the-job training programs, vocational schools, or housing because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, ancestry, or disability.

7. To prepare and transmit to the governor and to the general assembly from time to time, but not less often than once each year, reports describing its proceedings, investigations, hearings conducted and the outcome thereof, decisions rendered, and the other work performed by the commission.

8. To make recommendations to the general assembly for such further legislation concerning discrimination because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, ancestry, or disability as it may deem necessary and desirable.

9. To cooperate, within the limits of any appropriations made for its operation, with other agencies or organizations, both public and private, whose purposes are consistent with those of this chapter, and in the planning and conducting of programs designed to eliminate racial, religious, cultural, and intergroup tensions.

10. To adopt, publish, amend, and rescind regulations consistent with and necessary for the enforcement of this chapter.

11. To receive, administer, dispense and account for any funds that may be voluntarily contributed to the commission and any grants that may be awarded the commission for furthering the purposes of this chapter.

12. To defer a complaint to a local civil rights commission under commission rules promulgated pursuant to chapter 17A.

13. To issue subpoenas and order discovery as provided by this section in aid of investigations and hearings of alleged unfair or discriminatory housing or real property practices. The subpoenas and discovery may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in district court.

14. To defer proceedings and refer a complaint to a local commission that has been recognized by the United States department of housing and urban development as having adopted ordinances providing fair housing rights and remedies that are substantially equivalent to those granted under federal law.

15. To utilize volunteers to aid in the conduct of the commission's business including case processing functions such as intake, screening, investigation, and mediation.

[C66, 71, §105A.5; C73, 75, 77, 79, 81, §601A.5]

86 Acts, ch 1245, §1991; 91 Acts, ch 184, §2

C93, §216.5

95 Acts, ch 129, §3, 4; 2007 Acts, ch 191, §2

#### **216.6 Unfair employment practices.**

1. It shall be an unfair or discriminatory practice for any:

a. Person to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such applicant or employee, unless based upon the nature of the occupation. If a person with a disability is qualified to perform a particular occupation, by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

b. Labor organization or the employees, agents, or members thereof to refuse to admit to membership any applicant, to expel any member, or to otherwise discriminate against any applicant for membership or any member in the privileges, rights, or benefits of such

membership because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such applicant or member.

c. Employer, employment agency, labor organization, or the employees, agents, or members thereof to directly or indirectly advertise or in any other manner indicate or publicize that individuals of any particular age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability are unwelcome, objectionable, not acceptable, or not solicited for employment or membership unless based on the nature of the occupation.

(1) If a person with a disability is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

(2) An employer, employment agency, or their employees, servants, or agents may offer employment or advertise for employment to only persons with disabilities, when other applicants have available to them other employment compatible with their ability which would not be available to persons with disabilities because of their disabilities. Any such employment or offer of employment shall not discriminate among persons with disabilities on the basis of race, color, creed, sex, sexual orientation, gender identity, or national origin.

d. Person to solicit or require as a condition of employment of any employee or prospective employee a test for the presence of the antibody to the human immunodeficiency virus or to affect the terms, conditions, or privileges of employment or terminate the employment of any employee solely as a result of the employee obtaining a test for the presence of the antibody to the human immunodeficiency virus. An agreement between an employer, employment agency, labor organization, or their employees, agents, or members and an employee or prospective employee concerning employment, pay, or benefits to an employee or prospective employee in return for taking a test for the presence of the antibody to the human immunodeficiency virus, is prohibited. The prohibitions of this paragraph do not apply if the state epidemiologist determines and the director of public health declares through the utilization of guidelines established by the center for disease control of the United States department of health and human services, that a person with a condition related to acquired immune deficiency syndrome poses a significant risk of transmission of the human immunodeficiency virus to other persons in a specific occupation.

2. Employment policies relating to pregnancy and childbirth shall be governed by the following:

a. A written or unwritten employment policy or practice which excludes from employment applicants or employees because of the employee's pregnancy is a prima facie violation of this chapter.

b. Disabilities caused or contributed to by the employee's pregnancy, miscarriage, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority, and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to a disability due to the employee's pregnancy or giving birth, on the same terms and conditions as they are applied to other temporary disabilities.

c. Disabilities caused or contributed to by legal abortion and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any temporary disability or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority, and other benefits and privileges, reinstatement, and payment under any temporary disability insurance or sick leave plan, formal or informal, shall be applied to a disability due to legal abortion on the same terms and conditions as they are applied to other temporary disabilities. The employer may elect to exclude health insurance coverage for abortion from

a plan provided by the employer, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.

d. An employer shall not terminate the employment of a person disabled by pregnancy because of the employee's pregnancy.

e. Where a leave is not available or a sufficient leave is not available under any health or temporary disability insurance or sick leave plan available in connection with employment, the employer of the pregnant employee shall not refuse to grant to the employee who is disabled by the pregnancy a leave of absence if the leave of absence is for the period that the employee is disabled because of the employee's pregnancy, childbirth, or related medical conditions, or for eight weeks, whichever is less. However, the employee must provide timely notice of the period of leave requested and the employer must approve any change in the period requested before the change is effective. Before granting the leave of absence, the employer may require that the employee's disability resulting from pregnancy be verified by medical certification stating that the employee is not able to reasonably perform the duties of employment.

3. This section shall not prohibit discrimination on the basis of age if the person subject to the discrimination is under the age of eighteen years, unless that person is considered by law to be an adult.

4. Notwithstanding the provisions of this section, a state or federal program designed to benefit a specific age classification which serves a bona fide public purpose shall be permissible.

5. This section shall not apply to age discrimination in bona fide apprenticeship employment programs if the employee is over forty-five years of age.

6. This section shall not apply to:

a. Any employer who regularly employs less than four individuals. For purposes of this subsection, individuals who are members of the employer's family shall not be counted as employees.

b. The employment of individuals for work within the home of the employer if the employer or members of the employer's family reside therein during such employment.

c. The employment of individuals to render personal service to the person of the employer or members of the employer's family.

d. Any bona fide religious institution or its educational facility, association, corporation, or society with respect to any qualifications for employment based on religion, sexual orientation, or gender identity when such qualifications are related to a bona fide religious purpose. A religious qualification for instructional personnel or an administrative officer, serving in a supervisory capacity of a bona fide religious educational facility or religious institution, shall be presumed to be a bona fide occupational qualification.

[C66, 71, §105A.7; C73, §601A.7; C75, 77, 79, 81, §601A.6]

87 Acts, ch 201, §1; 88 Acts, ch 1236, §2

C93, §216.6

96 Acts, ch 1129, §27, 113; 2007 Acts, ch 191, §3, 4; 2009 Acts, ch 41, §220

Referred to in §216.2, 400.8

See also §139A.13A, 915.23

#### **216.6A Additional unfair or discriminatory practice — wage discrimination in employment.**

1. a. The general assembly finds that the practice of discriminating against any employee because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such employee by paying wages to such employee at a rate less than the rate paid to other employees does all of the following:

(1) Unjustly discriminates against the person receiving the lesser rate.

(2) Leads to low employee morale, high turnover, and frequent labor unrest.

(3) Discourages employees paid at lesser wage rates from training for higher level jobs.

(4) Curtails employment opportunities, decreases employees' mobility, and increases labor costs.

(5) Impairs purchasing power and threatens the maintenance of an adequate standard of living by such employees and their families.

(6) Prevents optimum utilization of the state's available labor resources.

(7) Threatens the well-being of citizens of this state and adversely affects the general welfare.

b. The general assembly declares that it is the policy of this state to correct and, as rapidly as possible, to eliminate, discriminatory wage practices based on age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, and disability.

2. a. It shall be an unfair or discriminatory practice for any employer or agent of any employer to discriminate against any employee because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such employee by paying wages to such employee at a rate less than the rate paid to other employees who are employed within the same establishment for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. An employer or agent of an employer who is paying wages to an employee at a rate less than the rate paid to other employees in violation of this section shall not remedy the violation by reducing the wage rate of any employee.

b. For purposes of this subsection, an unfair or discriminatory practice occurs when a discriminatory pay decision or other practice is adopted, when an individual becomes subject to a discriminatory pay decision or other practice, or when an individual is affected by application of a discriminatory pay decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

3. It shall be an affirmative defense to a claim arising under this section if any of the following applies:

a. Payment of wages is made pursuant to a seniority system.

b. Payment of wages is made pursuant to a merit system.

c. Payment of wages is made pursuant to a system which measures earnings by quantity or quality of production.

d. Pay differential is based on any other factor other than the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such employee.

4. This section shall not apply to any employer who regularly employs less than four individuals. For purposes of this subsection, individuals who are members of the employer's family shall not be counted as employees.

2009 Acts, ch 96, §2; 2010 Acts, ch 1069, §26

Referred to in §216.2, 216.15

### **216.7 Unfair practices — accommodations or services.**

1. It shall be an unfair or discriminatory practice for any owner, lessee, sublessee, proprietor, manager, or superintendent of any public accommodation or any agent or employee thereof:

a. To refuse or deny to any person because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability the accommodations, advantages, facilities, services, or privileges thereof, or otherwise to discriminate against any person because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability in the furnishing of such accommodations, advantages, facilities, services, or privileges.

b. To directly or indirectly advertise or in any other manner indicate or publicize that the patronage of persons of any particular race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability is unwelcome, objectionable, not acceptable, or not solicited.

2. This section shall not apply to:

a. Any bona fide religious institution with respect to any qualifications the institution may impose based on religion, sexual orientation, or gender identity when such qualifications are related to a bona fide religious purpose.

b. The rental or leasing to transient individuals of less than six rooms within a single

housing accommodation by the occupant or owner of such housing accommodation if the occupant or owner or members of that person's family reside therein.

[C97, §5008; C24, 27, 31, 35, 39, §13251; C46, 50, 54, 58, §735.1; C66, 71, §105A.6; C73, §601A.6; C75, 77, 79, 81, §601A.7]

C93, §216.7

2007 Acts, ch 191, §5, 6

Referred to in §123.32, 216.2

### **216.8 Unfair or discriminatory practices — housing.**

1. It shall be an unfair or discriminatory practice for any person, owner, or person acting for an owner, of rights to housing or real property, with or without compensation, including but not limited to persons licensed as real estate brokers or salespersons, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:

a. To refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status of such person.

b. To discriminate against any person because of the person's race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status, in the terms, conditions, or privileges of the sale, rental, lease assignment, or sublease of any real property or housing accommodation or any part, portion, or interest in the real property or housing accommodation or in the provision of services or facilities in connection with the real property or housing accommodation.

c. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion, or interest therein, by persons of any particular race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status is unwelcome, objectionable, not acceptable, or not solicited.

d. To discriminate against the lessee or purchaser of any real property or housing accommodation or part, portion, or interest of the real property or housing accommodation, or against any prospective lessee or purchaser of the property or accommodation, because of the race, color, creed, religion, sex, sexual orientation, gender identity, disability, age, or national origin of persons who may from time to time be present in or on the lessee's or owner's premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives, or in any similar capacity.

2. For purposes of this section, "person" means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Tit. 11 of the United States Code, receivers, and fiduciaries.

[C71, §105A.13; C73, §601A.13; C75, 77, 79, 81, §601A.8]

89 Acts, ch 205, §2; 92 Acts, ch 1129, §4

C93, §216.8

2007 Acts, ch 191, §7; 2009 Acts, ch 41, §86

Referred to in §216.2, 216.11A, 216.12, 216.12A, 216.15A, 216.16A

### **216.8A Additional unfair or discriminatory practices — housing.**

1. A person shall not induce or attempt to induce another person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status.

2. A person shall not represent to a person of a particular race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status that a dwelling is not available for inspection, sale, or rental when the dwelling is available for inspection, sale, or rental.

3. a. A person shall not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to a buyer or renter because of a disability of any of the following persons:

(1) That buyer or renter.

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available.

(3) A person associated with that buyer or renter.

b. A person shall not discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of any of the following persons:

(1) That person.

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available.

(3) A person associated with that person.

c. For the purposes of this subsection only, discrimination includes any of the following circumstances:

(1) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford the person full enjoyment of the premises. However, it is not discrimination for a landlord, in the case of a rental and where reasonable to do so, to condition permission for a modification on the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling.

(3) In connection with the design and construction of covered multifamily dwellings for first occupancy after January 1, 1992, a failure to design and construct those dwellings in a manner that meets the following requirements:

(a) The public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities.

(b) All doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs.

(c) All premises within the dwellings contain the following features of adaptive design:

(i) An accessible route into and through the dwelling.

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

(iii) Reinforcements in bathroom walls to allow later installation of grab bars.

(iv) Usable kitchens and bathrooms so that a person in a wheelchair can maneuver about the space.

d. Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for persons with disabilities, commonly cited as "ANSI A 117.1", satisfies the requirements of paragraph "c", subparagraph (3), subparagraph division (c).

e. Nothing in this subsection requires that a dwelling be made available to a person whose tenancy would constitute a direct threat to the health or safety of other persons or whose tenancy would result in substantial physical damage to the property of others.

4. a. A person whose business includes engaging in residential real estate related transactions shall not discriminate against a person in making a residential real estate related transaction available or in terms or conditions of a residential real estate related transaction because of race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status.

b. For the purpose of this subsection, "*residential real estate related transaction*" means any of the following:

(1) To make or purchase loans or provide other financial assistance to purchase, construct, improve, repair, or maintain a dwelling, or to secure residential real estate.

(2) To sell, broker, or appraise residential real estate.

5. A person shall not deny another person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in terms or conditions of access, membership, or participation in such organization because of race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status.

91 Acts, ch 184, §3

CS91, §601A.8A

C93, §216.8A

96 Acts, ch 1129, §28, 113; 2007 Acts, ch 191, §8 – 10; 2009 Acts, ch 41, §263; 2009 Acts, ch 133, §82

Referred to in §216.2, 216.11A, 216.12, 216.12A, 216.15A, 216.16A

### **216.9 Unfair or discriminatory practices — education.**

1. It is an unfair or discriminatory practice for any educational institution to discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability in any program or activity. Such discriminatory practices shall include but not be limited to the following practices:

a. Exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity except athletic programs;

b. Denial of comparable opportunity in intramural and interscholastic athletic programs;

c. Discrimination among persons in employment and the conditions of employment;

d. On the basis of sex, the application of any rule concerning the actual or potential parental, family or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions dependent upon the physician's diagnosis and certification.

2. For the purpose of this section, "educational institution" includes any preschool, elementary or secondary school, community college, area education agency, or postsecondary college or university and their governing boards. This section does not prohibit an educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes so long as comparable facilities are provided. Nothing in this section shall be construed as prohibiting any bona fide religious institution from imposing qualifications based on religion, sexual orientation, or gender identity when such qualifications are related to a bona fide religious purpose or any institution from admitting students of only one sex.

[C79, 81, §601A.9]

85 Acts, ch 214, §1; 86 Acts, ch 1245, §1496; 90 Acts, ch 1253, §121

C93, §216.9

2007 Acts, ch 191, §11, 12; 2008 Acts, ch 1032, §36

Referred to in §216.2, 260C.5

### **216.10 Unfair credit practices.**

1. It shall be an unfair or discriminatory practice for any:

a. Creditor to refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical disability, or familial status.

b. Person authorized or licensed to do business in this state pursuant to chapter 524, 533, 536, or 536A to refuse to loan or extend credit or to impose terms or conditions more onerous than those regularly extended to persons of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical disability, or familial status.

c. Creditor to refuse to offer credit life or health and accident insurance because of color, creed, national origin, race, religion, marital status, age, physical disability, sex, sexual

orientation, gender identity, or familial status. Refusal by a creditor to offer credit life or health and accident insurance based upon the age or physical disability of the consumer shall not be an unfair or discriminatory practice if such denial is based solely upon bona fide underwriting considerations not prohibited by Title XIII, subtitle 1.

2. The provisions of this section shall not be construed by negative implication or otherwise to narrow or restrict any other provisions of this chapter.

[C75, 77, §601A.9; C79, 81, §601A.10]

90 Acts, ch 1212, §1

C93, §216.10

2007 Acts, ch 191, §13; 2012 Acts, ch 1017, §57

Referred to in §216.2

See also §507B.4 and 537.3311

### **216.11 Aiding, abetting, or retaliation.**

It shall be an unfair or discriminatory practice for:

1. Any person to intentionally aid, abet, compel, or coerce another person to engage in any of the practices declared unfair or discriminatory by this chapter.

2. Any person to discriminate or retaliate against another person in any of the rights protected against discrimination by this chapter because such person has lawfully opposed any practice forbidden under this chapter, obeys the provisions of this chapter, or has filed a complaint, testified, or assisted in any proceeding under this chapter.

[C66, 71, §105A.8; C73, §601A.8; C75, 77, §601A.10; C79, 81, §601A.11]

91 Acts, ch 94, §1

C93, §216.11

Referred to in §216.2, 216.15A, 216.16A

### **216.11A Interference, coercion, or intimidation.**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, on account of the person having exercised or enjoyed, or on account of the person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 216.8, 216.8A, or 216.15A.

91 Acts, ch 184, §4

CS91, §601A.11A

92 Acts, ch 1129, §5

C93, §216.11A

Referred to in §216.2, 216.15A, 216.16A

### **216.12 Exceptions.**

1. The provisions of sections 216.8 and 216.8A shall not apply to:

a. Any bona fide religious institution with respect to any qualifications it may impose based on religion, sexual orientation, or gender identity, when the qualifications are related to a bona fide religious purpose unless the religious institution owns or operates property for a commercial purpose or membership in the religion is restricted on account of race, color, or national origin.

b. The rental or leasing of a dwelling in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of the housing accommodations.

c. The rental or leasing of less than four rooms within a single dwelling by the occupant or owner of the dwelling, if the occupant or owner resides in the dwelling.

d. Discrimination on the basis of familial status involving dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program that the commission determines to be consistent with determinations made by the United States secretary of housing and urban development, and housing for older persons. As used in this paragraph, "housing for older persons" means housing communities consisting of dwellings intended for either of the following:

(1) For eighty percent occupancy by at least one person fifty-five years of age or older per unit, and providing significant facilities and services specifically designed to meet the

physical or social needs of the persons and the housing facility must publish and adhere to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(2) For and occupied solely by persons sixty-two years of age or older.

e. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the owner resides in one of the housing accommodations for which the owner qualifies for the homestead tax credit under section 425.1.

f. Discrimination on the basis of sex involving the rental, leasing, or subleasing of a dwelling within which residents of both sexes would be forced to share a living area.

2. The exceptions to the requirements of sections 216.8 and 216.8A provided for dwellings specified in subsection 1, paragraphs “b”, “c”, and “e”, do not apply to advertising related to those dwellings.

[C71, §105A.14; C73, §601A.14; C75, 77, §601A.11; C79, 81, §601A.12]

89 Acts, ch 205, §3, 4; 91 Acts, ch 184, §5 – 7; 92 Acts, ch 1129, §6 – 9

C93, §216.12

95 Acts, ch 129, §5 – 7; 2007 Acts, ch 191, §14

#### **216.12A Additional housing exception.**

Sections 216.8 and 216.8A do not prohibit a person engaged in the business of furnishing appraisals of real estate from taking into consideration factors other than race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status in appraising real estate.

91 Acts, ch 184, §8

CS91, §601A.12A

92 Acts, ch 1129, §10

C93, §216.12A

2007 Acts, ch 191, §15

#### **216.13 Exceptions for retirement plans, abortion coverage, life, disability, and health benefits.**

The provisions of this chapter relating to discrimination because of age do not apply to a retirement plan or benefit system of an employer unless the plan or system is a mere subterfuge adopted for the purpose of evading this chapter.

1. However, a retirement plan or benefit system shall not require the involuntary retirement of a person under the age of seventy because of that person’s age. This paragraph does not prohibit the following:

a. The involuntary retirement of a person who has attained the age of sixty-five and has for the two prior years been employed in a bona fide executive or high policymaking position and who is entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan of the employer which equals twenty-seven thousand dollars. This retirement benefit test may be adjusted according to the regulations prescribed by the United States secretary of labor pursuant to Pub. L. No. 95-256, section 3.

b. The involuntary retirement of a person covered by a collective bargaining agreement which was entered into by a labor organization and was in effect on September 1, 1977. This exemption does not apply after the termination of that agreement or January 1, 1980, whichever first occurs.

2. A health insurance program provided by an employer may exclude coverage of abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.

3. An employee welfare plan may provide life, disability or health insurance benefits which vary by age based on actuarial differences if the employer contributes equally for all

the participating employees or may provide for employer contributions differing by age if the benefits for all the participating employees do not vary by age.

[C71, §105A.15; C73, §601A.15; C75, 77, §601A.12; C79, 81, §601A.13]

84 Acts, ch 1011, §1

C93, §216.13

2006 Acts, ch 1010, §65

#### **216.14 Promotion or transfer.**

After a person with a disability is employed, the employer shall not be required under this chapter to promote or transfer the person to another job or occupation, unless, prior to the transfer, the person with the disability, by training or experience, is qualified for the job or occupation. Any collective bargaining agreement between an employer and labor organization shall contain this section as part of the agreement.

[C73, §601A.16; C75, 77, §601A.13; C79, 81, §601A.14]

C93, §216.14

96 Acts, ch 1129, §29

#### **216.15 Complaint — hearing.**

1. Any person claiming to be aggrieved by a discriminatory or unfair practice may, in person or by an attorney, make, sign, and file with the commission a verified, written complaint which shall state the name and address of the person, employer, employment agency, or labor organization alleged to have committed the discriminatory or unfair practice of which complained, shall set forth the particulars thereof, and shall contain such other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file such complaint.

2. Any place of public accommodation, employer, labor organization, or other person who has any employees or members who refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a verified written complaint in triplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

3. a. After the filing of a verified complaint, a true copy shall be served within twenty days on the person against whom the complaint is filed, except as provided in subsection 4. An authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to an administrative law judge employed either by the commission or by the division of administrative hearings created by section 10A.801, who shall then issue a determination of probable cause or no probable cause.

b. For purposes of this chapter, an administrative law judge issuing a determination of probable cause or no probable cause under this section is exempt from section 17A.17.

c. If the administrative law judge concurs with the investigating official that probable cause exists regarding the allegations of the complaint, the staff of the commission shall promptly endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion. If the administrative law judge finds that no probable cause exists, the administrative law judge shall issue a final order dismissing the complaint and shall promptly mail a copy to the complainant and to the respondent. A finding of probable cause shall not be introduced into evidence in an action brought under section 216.16.

d. The commission staff must endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion for a period of thirty days following the initial conciliation meeting between the respondent and the commission staff after a finding of probable cause. After the expiration of thirty days, the director may order the conciliation conference and persuasion procedure provided in this section to be bypassed when the director determines the procedure is unworkable by reason of past patterns and practices of the respondent, or a statement by the respondent that the respondent is unwilling to continue with the conciliation. The director must have the approval of a commissioner before bypassing the conciliation, conference and persuasion procedure. Upon the bypassing of conciliation, the director shall state in writing the reasons for bypassing.

4. a. The commission may permit service of a complaint on a respondent by regular or

electronic mail. If the respondent does not respond to the service by regular or electronic mail after ninety days, the commission shall serve the complaint on the respondent by certified mail within twenty days after the expiration of the ninety-day response period to service by regular or electronic mail.

b. The commission may also permit a party to file a response to a complaint, a document, information, or other material, by electronic mail.

c. The commission may issue a notice, determination, order, subpoena, request, correspondence, or any other document issued by the commission, by electronic mail.

5. The members of the commission and its staff shall not disclose the filing of a complaint, the information gathered during the investigation, or the endeavors to eliminate such discriminatory or unfair practice by mediation, conference, conciliation, and persuasion, unless such disclosure is made in connection with the conduct of such investigation.

6. When the director is satisfied that further endeavor to settle a complaint by conference, conciliation, and persuasion is unworkable and should be bypassed, and the thirty-day period provided for in subsection 3 has expired without agreement, the director with the approval of a commissioner, shall issue and cause to be served a written notice specifying the charges in the complaint as they may have been amended and the reasons for bypassing conciliation, if the conciliation is bypassed, and requiring the respondent to answer the charges of the complaint at a hearing before the commission, a commissioner, or a person designated by the commission to conduct the hearing, hereafter referred to as the administrative law judge, and at a time and place to be specified in the notice.

7. The case in support of such complaint shall be presented at the hearing by one of the commission's attorneys or agents. The investigating official shall not participate in the hearing except as a witness nor participate in the deliberations of the commission in such case.

8. The hearing shall be conducted in accordance with the provisions of chapter 17A for contested cases. The burden of proof in such a hearing shall be on the commission.

9. If upon taking into consideration all of the evidence at a hearing, the commission determines that the respondent has engaged in a discriminatory or unfair practice, the commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take the necessary remedial action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, and to any other public officers and persons as the commission deems proper.

a. For the purposes of this subsection and pursuant to the provisions of this chapter "remedial action" includes but is not limited to the following:

(1) Hiring, reinstatement or upgrading of employees with or without pay. Interim earned income and unemployment compensation shall operate to reduce the pay otherwise allowable.

(2) Admission or restoration of individuals to a labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, with the utilization of objective criteria in the admission of individuals to such programs.

(3) Admission of individuals to a public accommodation or an educational institution.

(4) Sale, exchange, lease, rental, assignment or sublease of real property to an individual.

(5) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent denied to the complainant because of the discriminatory or unfair practice.

(6) Reporting as to the manner of compliance.

(7) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the commission and inclusion of notices in advertising material.

(8) Payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees.

(9) For an unfair or discriminatory practice relating to wage discrimination pursuant to section 216.6A, payment to the complainant of damages for an injury caused by the

discriminatory or unfair practice which damages shall include but are not limited to court costs, reasonable attorney fees, and either of the following:

(a) An amount equal to two times the wage differential paid to another employee compared to the complainant for the period of time for which the complainant has been discriminated against.

(b) In instances of willful violation, an amount equal to three times the wage differential paid to another employee as compared to the complainant for the period of time for which the complainant has been discriminated against.

b. In addition to the remedies provided in the preceding provisions of this subsection, the commission may issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter as follows:

(1) In the case of a respondent operating by virtue of a license issued by the state or a political subdivision or agency, if the commission, upon notice to the respondent with an opportunity to be heard, determines that the respondent has engaged in a discriminatory or unfair practice and that the practice was authorized, requested, commanded, performed or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the licensing agency. Unless the commission finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the licensing agency. If a certification is made pursuant to this subsection, the licensing agency may initiate licensee disciplinary procedures.

(2) In the case of a respondent who is found by the commission to have engaged in a discriminatory or unfair practice in the course of performing under a contract or subcontract with the state or political subdivision or agency, if the practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the contracting agency. Unless the commission's finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the contracting agency.

(3) Upon receiving a certification made under this subsection, a contracting agency may take appropriate action to terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with the provisions of this chapter; and assist the state and all political subdivisions and agencies thereof to refrain from entering into further contracts.

c. The election of an affirmative order under paragraph "b" of this subsection shall not bar the election of affirmative remedies provided in paragraph "a" of this subsection.

10. a. The terms of a conciliation or mediation agreement reached with the respondent may require the respondent to refrain in the future from committing discriminatory or unfair practices of the type stated in the agreement, to take remedial action as in the judgment of the commission will carry out the purposes of this chapter, and to consent to the entry in an appropriate district court of a consent decree embodying the terms of the conciliation or mediation agreement. Violation of such a consent decree may be punished as contempt by the court in which it is filed, upon a showing by the commission of the violation at any time within six months of its occurrence. At any time in its discretion, the commission may investigate whether the terms of the agreement are being complied with by the respondent.

b. Upon a finding that the terms of the conciliation or mediation agreement are not being complied with by the respondent, the commission shall take appropriate action to assure compliance.

11. If, upon taking into consideration all of the evidence at a hearing, the commission finds that a respondent has not engaged in any such discriminatory or unfair practice, the commission shall issue an order denying relief and stating the findings of fact and conclusions of the commission, and shall cause a copy of the order dismissing the complaint to be served on the complainant and the respondent.

12. The commission shall establish rules to govern, expedite, and effectuate the procedures established by this chapter and its own actions thereunder.

13. Except as provided in section 614.8, a claim under this chapter shall not be maintained unless a complaint is filed with the commission within three hundred days after the alleged discriminatory or unfair practice occurred.

14. The commission or a party to a complaint may request mediation of the complaint at any time during the commission's processing of the complaint. If the complainant and respondent participate in mediation, any mediation agreement may be enforced pursuant to this section. Mediation may be discontinued at the request of any party or the commission.

[C66, 71, §105A.9; C73, §601A.9; C75, 77, §601A.14; C79, 81, §601A.15]

88 Acts, ch 1109, §27, 28

C93, §216.15

95 Acts, ch 129, §8 – 11; 98 Acts, ch 1202, §36, 46; 2005 Acts, ch 23, §1 – 3; 2007 Acts, ch 110, §1; 2008 Acts, ch 1028, §1; 2009 Acts, ch 96, §3; 2009 Acts, ch 178, §25, 26

Referred to in §216.15A, 216.16, 216.16A, 216.17

### **216.15A Additional proceedings — housing discrimination.**

1. a. The commission may join a person not named in the complaint as an additional or substitute respondent if in the course of the investigation, the commission determines that the person should be alleged to have committed a discriminatory housing or real estate practice.

b. In addition to the information required in the notice, the commission shall include in a notice to a respondent joined under this subsection an explanation of the basis for the determination under this subsection that the person is properly joined as a respondent.

2. a. The commission shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, engage in mediation with respect to the complaint.

b. A mediation agreement is an agreement between a respondent and the complainant and is subject to commission approval.

c. A mediation agreement may provide for binding arbitration or other method of dispute resolution. Dispute resolution that results from a mediation agreement may authorize appropriate relief, including monetary relief.

d. A mediation agreement shall be made public unless the complainant and respondent agree otherwise, and the commission determines that disclosure is not necessary to further the purposes of this chapter relating to unfair or discriminatory practices in housing or real estate.

e. The proceedings or results of mediation shall not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons who are party to the mediation.

f. After the completion of the commission's investigation, the commission shall make available to the aggrieved person and the respondent information derived from the investigation and the final investigation report relating to that investigation.

g. When the commission has reasonable cause to believe that a respondent has breached a mediation agreement, the commission shall refer this matter to an assistant attorney general with a recommendation that a civil action be filed for the enforcement of the agreement. The assistant attorney general may commence a civil action in the appropriate district court not later than the expiration of ninety days after referral of the breach.

3. a. If the commission concludes, following the filing of a complaint, that prompt judicial action is necessary to carry out the purposes of this chapter relating to unfair or discriminatory housing or real estate practices, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint.

b. On receipt of the commission's authorization, the attorney general shall promptly file the action.

c. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable Iowa rules of civil procedure.

d. The filing of a civil action under this section does not affect the initiation or continuation of administrative proceedings in regard to an administrative hearing.

4. a. The commission shall prepare a final investigative report.

b. A final report under this section may be amended by the commission if additional evidence is discovered.

5. a. The commission shall determine based on the facts whether probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur.

b. The commission shall make its determination under paragraph "a" not later than one hundred days after a complaint is filed unless any of the following applies:

(1) It is impracticable to make the determination within that time period.

(2) The commission has approved a mediation agreement relating to the complaint.

c. If it is impracticable to make the determination within the time period provided by paragraph "b", the commission shall notify the complainant and respondent in writing of the reasons for the delay.

d. If the commission determines that probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur, the commission shall immediately issue a determination unless the commission determines that the legality of a zoning or land use law or ordinance is involved as provided in subsection 7.

6. a. A determination issued under subsection 5 must include all of the following:

(1) Must consist of a short and plain statement of the facts on which the commission has found probable cause to believe that a discriminatory housing or real estate practice has occurred or is about to occur.

(2) Must be based on the final investigative report.

(3) Need not be limited to the facts or grounds alleged in the complaint.

b. Not later than twenty days after the commission issues a determination, the commission shall send a copy of the determination with information concerning the election under section 216.16A to all of the following persons:

(1) Each respondent, together with a notice of the opportunity for a hearing as provided under subsection 10.

(2) Each aggrieved person on whose behalf the complaint was filed.

7. If the commission determines that the matter involves the legality of a state or local zoning or other land use ordinance, the commission shall not issue a determination and shall immediately refer the matter to the attorney general for appropriate action.

8. a. If the commission determines that no probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur, the commission shall promptly dismiss the complaint.

b. The commission shall make public disclosure of each dismissal under this section.

9. The commission shall not issue a determination under this section regarding an alleged discriminatory housing or real estate practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing or real estate practice.

10. a. If a timely election is not made under section 216.16A, the commission shall provide for a hearing on the charges in the complaint.

b. Except as provided by paragraph "c", the hearing shall be conducted in accordance with chapter 17A for contested cases.

c. A hearing under this section shall not be continued regarding an alleged discriminatory housing or real estate practice after the beginning of the trial of a civil action commenced by the aggrieved person under federal or state law seeking relief with respect to that discriminatory housing or real estate practice.

11. a. If the commission determines at a hearing under subsection 10 that a respondent has engaged or is about to engage in a discriminatory housing or real estate practice, the commission may order the appropriate relief, including actual damages, reasonable attorney fees, court costs, and other injunctive or equitable relief.

b. To vindicate the public interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed the following applicable amount:

(1) Ten thousand dollars if the respondent has not been adjudged by the order of the commission or a court to have committed a prior discriminatory housing or real estate practice.

(2) Except as provided by paragraph "c", twenty-five thousand dollars if the respondent

has been adjudged by order of the commission or a court to have committed one other discriminatory housing or real estate practice during the five-year period ending on the date of the filing of the complaint.

(3) Except as provided by paragraph “c”, fifty thousand dollars if the respondent has been adjudged by order of the commission or a court to have committed two or more discriminatory housing or real estate practices during the seven-year period ending on the date of the filing of the complaint.

c. If the acts constituting the discriminatory housing or real estate practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing or real estate practice, the civil penalties in paragraph “b”, subparagraphs (2) and (3) may be imposed without regard to the period of time within which any other discriminatory housing or real estate practice occurred.

d. At the request of the commission, the attorney general shall initiate legal proceedings to recover a civil penalty due under this section. Funds collected under this section shall be paid to the treasurer of state for deposit in the state treasury to the credit of the general fund.

12. This section applies only to the following:

a. Complaints which allege a violation of the prohibitions contained in section 216.8 or 216.8A.

b. Complaints which allege a violation of section 216.11 or 216.11A arising out of alleged violations of the prohibitions contained in section 216.8 or 216.8A.

13. If a provision of this section applies under the terms of subsection 12, and the provision of this section conflicts with a provision of section 216.15, then the provision contained within this section shall prevail. Similarly, if a provision of section 216.16A or 216.17A conflicts with a provision of section 216.16 or 216.17, then the provision contained in section 216.16A or 216.17A shall prevail.

91 Acts, ch 184, §9

CS91, §601A.15A

92 Acts, ch 1129, §11, 12; 92 Acts, ch 1163, §108

C93, §216.15A

2001 Acts, ch 24, §38

Referred to in §216.11A, 216.16A, 216.17, 216.17A

#### **216.15B Formal mediation — confidentiality.**

1. A mediator may be designated in writing by the commission to conduct formal mediation of a complaint filed under this chapter. The written designation must specifically refer to this section.

2. If formal mediation is conducted by a mediator pursuant to this section, the confidentiality of all mediation communications is protected as provided in section 679C.108.

95 Acts, ch 129, §12; 98 Acts, ch 1062, §10; 99 Acts, ch 114, §12; 2001 Acts, ch 71, §1; 2005 Acts, ch 68, §3

Referred to in §22.7

#### **216.16 Sixty-day administrative release.**

1. A person claiming to be aggrieved by an unfair or discriminatory practice must initially seek an administrative relief by filing a complaint with the commission in accordance with section 216.15. This provision also applies to persons claiming to be aggrieved by an unfair or discriminatory practice committed by the state or an agency or political subdivision of the state, notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A.

2. After the proper filing of a complaint with the commission, a complainant may subsequently commence an action for relief in the district court if all of the following conditions have been satisfied:

a. The complainant has timely filed the complaint with the commission as provided in section 216.15, subsection 13.

b. The complaint has been on file with the commission for at least sixty days and the commission has issued a release to the complainant pursuant to subsection 3.

3. *a.* Upon a request by the complainant, and after the expiration of sixty days from the timely filing of a complaint with the commission, the commission shall issue to the complainant a release stating that the complainant has a right to commence an action in the district court. A release under this subsection shall not be issued if any of the following apply:

(1) A finding of no probable cause has been made on the complaint by the administrative law judge charged with that duty under section 216.15, subsection 3.

(2) A conciliation agreement has been executed under section 216.15.

(3) The commission has served notice of hearing upon the respondent pursuant to section 216.15, subsection 6.

(4) The complaint is closed as an administrative closure and two years have elapsed since the issuance date of the closure.

*b.* Notwithstanding section 216.15, subsection 5, a party may obtain a copy of all documents contained in a case file where the commission has issued a release to the complainant pursuant to this subsection.

4. An action authorized under this section is barred unless commenced within ninety days after issuance by the commission of a release under subsection 3. If a complainant obtains a release from the commission under subsection 3, the commission is barred from further action on that complaint.

5. Venue for an action under this section shall be in the county in which the respondent resides or has its principal place of business, or in the county in which the alleged unfair or discriminatory practice occurred.

6. The district court may grant any relief in an action under this section which is authorized by section 216.15, subsection 9, to be issued by the commission. The district court may also award the respondent reasonable attorney fees and court costs when the court finds that the complainant's action was frivolous.

7. It is the legislative intent of this chapter that every complaint be at least preliminarily screened during the first one hundred twenty days.

8. This section does not authorize administrative closures if an investigation is warranted. [C79, 81, §601A.16]

84 Acts, ch 1096, §2; 85 Acts, ch 197, §10; 86 Acts, ch 1245, §263; 88 Acts, ch 1109, §29; 90 Acts, ch 1040, §1, 2

C93, §216.16

2003 Acts, ch 44, §114; 2009 Acts, ch 41, §221; 2009 Acts, ch 133, §83

Referred to in §216.15, 216.15A, 216.19

For provision governing conflicts between this section and section 216.16A, see §216.15A, subsection 13

### **216.16A Civil action elected — housing.**

1. *a.* A complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the charges asserted in the complaint decided in a civil action as provided by section 216.17A.

*b.* The election must be made not later than twenty days after the date of receipt by the electing person of service under section 216.15A, subsection 5, or in the case of the commission, not later than twenty days after the date the determination was issued.

*c.* The person making the election shall give notice to the commission and to all other complainants and respondents to whom the election relates.

*d.* The election to have the charges of a complaint decided in a civil action as provided in paragraph "a" is only available if one of the following is alleged:

(1) It is alleged that there has been a violation of section 216.8 or 216.8A.

(2) It is alleged that there has been a violation of section 216.11 or 216.11A arising out of an alleged violation of the prohibitions contained in section 216.8 or 216.8A.

2. *a.* An aggrieved person may file a civil action in district court not later than two years after the occurrence of the termination of an alleged discriminatory housing or real estate practice, or the breach of a mediation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing or real estate practice or breach.

b. The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge based on the discriminatory housing or real estate practice. This subsection does not apply to actions arising from a breach of a mediation agreement.

c. An aggrieved person may file an action under this subsection whether or not a discriminatory housing or real estate complaint has been filed under section 216.15, and without regard to the status of any discriminatory housing or real estate complaint filed under that section.

d. If the commission has obtained a mediation agreement with the consent of an aggrieved person, the aggrieved person shall not file an action under this subsection with respect to the alleged discriminatory practice that forms the basis for the complaint except to enforce the terms of the agreement.

e. An aggrieved person shall not file an action under this subsection with respect to an alleged discriminatory housing or real estate practice that forms the basis of a charge issued by the commission if the commission has begun a hearing on the record under this chapter with respect to the charge.

f. In an action filed in district court under this subsection, the court may, upon a finding of discrimination, order any of the remedies provided for in section 216.17A, subsection 6.

91 Acts, ch 184, §10

CS91, §601A.16A

92 Acts, ch 1129, §13, 14

C93, §216.16A

95 Acts, ch 129, §13, 14

Referred to in §216.15A, 216.17A

#### **216.17 Judicial review — enforcement.**

1. a. Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of said Act, petition for judicial review may be filed in the district court in which an enforcement proceeding under subsection 2 may be brought.

b. For purposes of the time limit for filing a petition for judicial review under the Iowa administrative procedure Act, chapter 17A, specified by section 17A.19, the issuance of a final decision of the commission under this chapter occurs on the date notice of the decision is mailed to the parties.

c. Notwithstanding the time limit provided in section 17A.19, subsection 3, a petition for judicial review of no-probable-cause decisions and other final agency actions which are not of general applicability must be filed within thirty days of the issuance of the final agency action.

2. The commission may obtain an order of court for the enforcement of commission orders in a proceeding as provided in this section. Such an enforcement proceeding shall be brought in the district court of the district in the county in which the alleged discriminatory or unfair practice which is the subject of the commission's order was committed, or in which any respondent required in the order to cease or desist from a discriminatory or unfair practice or to take other affirmative action, resides, or transacts business.

3. Such an enforcement proceeding shall be initiated by the filing of a petition in such court and the service of a copy thereof upon the respondent. Thereupon the commission shall file with the court a transcript of the record of the hearing before it. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified, or setting aside the order of the commission, in whole or in part.

4. An objection that has not been urged before the commission shall not be considered by the court in an enforcement proceeding, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

5. Any party to the enforcement proceeding may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and

material evidence and seeking findings thereof, providing such party shall show reasonable grounds for the failure to adduce such evidence before the commission.

6. In the enforcement proceeding the court shall determine its order on the same basis as it would in a proceeding reviewing commission action under section 17A.19.

7. The commission's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the commission's orders.

8. The commission may appear in court by its own attorney.

9. Petitions filed under this section shall be heard expeditiously and determined upon the transcript filed without requirement for printing.

10. If no proceeding to obtain judicial review is instituted within thirty days from the issuance of an order of the commission under section 216.15 or 216.15A, the commission may obtain an order of the court for the enforcement of the order upon showing that respondent is subject to the jurisdiction of the commission and resides or transacts business within the county in which the petition for enforcement is brought.

[C66, 71, §105A.10; C73, §601A.10; C75, 77, §601A.15; C79, 81, §601A.17]

83 Acts, ch 57, §1; 92 Acts, ch 1129, §15

C93, §216.17

98 Acts, ch 1202, §37, 46; 2003 Acts, ch 44, §114; 2005 Acts, ch 23, §4; 2009 Acts, ch 41, §263

Referred to in §216.15A, 216.19

For provision governing conflicts between this section and section 216.17A, see §216.15A, subsection 13

### **216.17A Civil proceedings — housing.**

1. *a.* If timely election is made under section 216.16A, subsection 1, the commission shall authorize, and not later than thirty days after the election is made, the attorney general shall file a civil action on behalf of the aggrieved person in a district court seeking relief.

*b.* Venue for an action under this section is in the county in which the respondent resides or has its principal place of business, or in the county in which the alleged discriminatory housing or real estate practice occurred.

*c.* An aggrieved person may intervene in the action.

*d.* If the district court finds that a discriminatory housing or real estate practice has occurred or is about to occur, the district court may grant as relief any relief that a court may grant in a civil action under subsection 6.

*e.* If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the district court shall not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the district court.

2. A commission order under section 216.15A, subsection 11, and a commission order that has been substantially affirmed by judicial review, do not affect a contract, sale, encumbrance, or lease that was consummated before the commission issued the order and involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge issued under this chapter.

3. If the commission issues an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the commission, not later than thirty days after the date of issuance of the order, shall do all of the following:

*a.* Send copies of the findings and the order to the governmental agency.

*b.* Recommend to the governmental agency appropriate disciplinary action.

4. If the commission issues an order against a respondent against whom another order was issued within the preceding five years under section 216.15A, subsection 11, the commission shall send a copy of each order issued under that section to the attorney general.

5. On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory practice is alleged, the district court may appoint an attorney for the person.

6. In an action under subsection 1 and section 216.16A, subsection 2, if the district court finds that a discriminatory housing or real estate practice has occurred or is about to occur, the district court may award or issue to the plaintiff one or more of the following:

a. Actual and punitive damages.  
 b. Reasonable attorney's fees.  
 c. Court costs.  
 d. Subject to subsection 7, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

7. Relief granted under this section does not affect a contract, sale, encumbrance, or lease that was consummated before the granting of the relief and involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint under this chapter or a civil action under this section.

8. a. On the request of the commission, the attorney general may intervene in an action under section 216.16A, subsection 2, if the commission certifies that the case is of general public importance.

b. The attorney general may obtain the same relief available to the attorney general under subsection 9.

9. a. On the request of the commission, the attorney general may file a civil action in district court for appropriate relief if the commission has reasonable cause to believe that any of the following applies:

(1) A person is engaged in a pattern or practice of resistance to the full enjoyment of any housing right granted by this chapter.

(2) A person has been denied any housing right granted by this chapter and that denial raises an issue of general public importance.

b. In an action under this subsection and subsection 8, the district court may do any of the following:

(1) Order preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of housing rights as necessary to assure the full enjoyment of the housing rights granted by this chapter.

(2) Order another appropriate relief, including the awarding of monetary damages, reasonable attorney's fees, and court costs.

(3) To vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed any of the following:

(a) Fifty thousand dollars for a first violation.

(b) One hundred thousand dollars for a second or subsequent violation.

c. A person may intervene in an action under this section if the person is any of the following:

(1) An aggrieved person to the discriminatory housing or real estate practice.

(2) A party to a mediation agreement concerning the discriminatory housing or real estate practice.

10. The attorney general, on behalf of the commission or other party at whose request a subpoena is issued, may enforce the subpoena in appropriate proceedings in district court.

11. A court in a civil action brought under this section or the commission in an administrative hearing under section 216.15A, subsection 11, may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party.

91 Acts, ch 184, §11

CS91, §601A.17A

92 Acts, ch 1129, §16, 17

C93, §216.17A

95 Acts, ch 129, §15 – 17

Referred to in §216.15A, 216.16A

### **216.18 Rules of construction.**

1. This chapter shall be construed broadly to effectuate its purposes.

2. This chapter shall not be construed to allow marriage between persons of the same sex, in accordance with chapter 595.

[C66, 71, §105A.11; C73, §601A.11; C75, 77, §601A.16; C79, 81, §601A.18]  
C93, §216.18  
2009 Acts, ch 133, §192

**216.18A Construction of chapter — marriage.** Transferred to § 216.18, subsection 2; 2009 Acts, ch 133, § 192.

**216.19 Local laws implementing this chapter.**

1. All cities shall, to the extent possible, protect the rights of the citizens of this state secured by the Iowa civil rights Act. Nothing in this chapter shall be construed as indicating any of the following:

a. An intent on the part of the general assembly to occupy the field in which this chapter operates to the exclusion of local laws not inconsistent with this chapter that deal with the same subject matter.

b. An intent to prohibit an agency or commission of local government having as its purpose the investigation and resolution of violations of this chapter from developing procedures and remedies necessary to insure the protection of rights secured by this chapter.

c. Limiting a city or local government from enacting any ordinance or other law which prohibits broader or different categories of unfair or discriminatory practices.

2. A city with a population of twenty-nine thousand, or greater, shall maintain an independent local civil rights agency or commission consistent with commission rules adopted pursuant to chapter 17A. An agency or commission for which a staff is provided shall have control over such staff. A city required to maintain a local civil rights agency or commission shall structure and adequately fund the agency or commission in order to effect cooperative undertakings with the Iowa civil rights commission and to aid in effectuating the purposes of this chapter.

3. An agency or commission of local government and the Iowa civil rights commission shall cooperate in the sharing of data and research, and coordinating investigations and conciliations in order to expedite claims of unlawful discrimination and eliminate needless duplication. The Iowa civil rights commission may enter into cooperative agreements with any local agency or commission to effectuate the purposes of this chapter. Such agreements may include technical and clerical assistance and reimbursement of expenses incurred by the local agency or commission in the performance of the agency's or commission's duties if funds for this purpose are appropriated by the general assembly.

4. The Iowa civil rights commission may designate an unfunded local agency or commission as a referral agency. A local agency or commission shall not be designated a referral agency unless the ordinance creating it provides the same rights and remedies as are provided in this chapter. The Iowa civil rights commission shall establish by rules the procedures for designating a referral agency and the qualifications to be met by a referral agency.

5. The Iowa civil rights commission may adopt rules establishing the procedures for referral of complaints. A referral agency may refuse to accept a case referred to it by the Iowa civil rights commission if the referral agency is unable to effect proper administration of the complaint. It shall be the burden of the referral agency to demonstrate that it is unable to properly administer that complaint.

6. A complainant who files a complaint with a referral agency having jurisdiction shall be prohibited from filing a complaint with the Iowa civil rights commission alleging violations based upon the same acts or practices cited in the original complaint; and a complainant who files a complaint with the commission shall be prohibited from filing a complaint with the referral agency alleging violations based upon the same acts or practices cited in the original complaint. However, the Iowa civil rights commission in its discretion may refer a complaint filed with the commission to a referral agency having jurisdiction over the parties for investigation and resolution; and a referral agency in its discretion may refer a complaint filed with that agency to the commission for investigation and resolution.

7. A final decision by a referral agency shall be subject to judicial review as provided in section 216.17 in the same manner and to the same extent as a final decision of the Iowa civil rights commission.

8. The referral of a complaint by the Iowa civil rights commission to a referral agency or by a referral agency to the Iowa civil rights commission shall not affect the right of a complainant to commence an action in the district court under section 216.16.

[C66, 71, §105A.12; C73, §601A.12; C75, 77, §601A.17; C79, 81, §601A.19]  
 90 Acts, ch 1166, §1  
 C93, §216.19  
 2009 Acts, ch 133, §214

**216.20 Effect on other law.**

1. This chapter does not affect:

a. A reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling.

b. Tenancy of an individual that would constitute a direct threat to the health or safety of other individuals or tenancy that would result in substantial physical damage to the property of others.

2. This chapter does not affect a requirement of nondiscrimination in other state or federal law.

91 Acts, ch 184, §12  
 CS91, §601A.20  
 92 Acts, ch 1129, §18  
 C93, §216.20

**216.21 Documents to attorney or party.**

If a party is represented by an attorney during the proceedings of the commission, with permission of the attorney for the party or of the party, the commission shall provide copies of all relevant documents including an order or decision to either the attorney for the party or the party, but not to both.

2009 Acts, ch 178, §27

**CHAPTER 216A**

**DEPARTMENT OF HUMAN RIGHTS**

Referred to in §11.6, 256F4, 261E.9

For transition provisions concerning the reorganization of the department of human rights, see 2010 Acts, ch 1031, §169, 170

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SUBCHAPTER 1  
ADMINISTRATION

**216A.1 Department of human rights — purpose.**

1. A department of human rights is created, with the following divisions and offices:
  - a. Division of community advocacy and services, with the following offices:
    - (1) Office of Latino affairs.
    - (2) Office on the status of women.
    - (3) Office of persons with disabilities.
    - (4) Office of deaf services.
    - (5) Office on the status of African Americans.
    - (6) Office of Asian and Pacific Islander affairs.
    - (7) Office of Native American affairs.
  - b. Division of community action agencies.
  - c. Division of criminal and juvenile justice planning.
2. The purpose of the department is to ensure basic rights, freedoms, and opportunities for all by empowering underrepresented Iowans and eliminating economic, social, and cultural barriers.
 

86 Acts, ch 1245, §1201  
C87, §601K.1  
87 Acts, ch 115, §70; 88 Acts, ch 1277, §27; 89 Acts, ch 83, §78; 90 Acts, ch 1180, §2; 91 Acts, ch 50, §2; 91 Acts, ch 109, §8  
C93, §216A.1  
2004 Acts, ch 1020, §2; 2008 Acts, ch 1184, §38; 2010 Acts, ch 1031, §101, 170  
Referred to in §7E.5  
See also §7E.5(1s), 7E.6  
Minority impact statements, see §2.56, 8.11

**216A.2 Appointment of department director, deputy director, and administrators — duties.**

1. The governor shall appoint a director of the department of human rights, subject to confirmation by the senate pursuant to section 2.32. The department director shall serve at the pleasure of the governor and is exempt from the merit system provisions of chapter 8A, subchapter IV. The governor shall set the salary of the department director within the ranges set by the general assembly.
2. The director is the chief administrative officer of the department and in that capacity administers the programs and services of the department in compliance with applicable federal and state laws and regulations. The duties of the director include preparing a budget, establishing an internal administrative structure, and employing personnel.
3. The department director shall appoint the administrators of the divisions within the department and all other personnel deemed necessary for the administration of this chapter. The department director shall establish the duties of the administrators of the divisions within the department.
4. The department director shall do all of the following:
  - a. Manage the internal operations of the department and establish guidelines and procedures to promote the orderly and efficient administration of the department.

- b. Prepare a budget for the department, subject to the budget requirements pursuant to chapter 8, for approval by the board.
- c. Coordinate and supervise personnel services and shared administrative support services to assure maximum support and assistance to the divisions.
- d. Serve as an ex officio member of all commissions or councils within the department.
- e. Serve as an ex officio, nonvoting member of the human rights board.
- f. Solicit and accept gifts and grants on behalf of the department and each commission or council and administer such gifts and grants in accordance with the terms thereof.
- g. Enter into contracts with public and private individuals and entities to conduct the business and achieve the objectives of the department and each commission or council.
- h. Issue an annual report to the governor and general assembly no later than November 1 of each year concerning the operations of the department. However, the division of criminal and juvenile justice planning and the division of community action agencies shall submit annual reports as specified in this chapter.
- i. Seek to implement the comprehensive strategic plan approved by the board under section 216A.3.

86 Acts, ch 1245, §1202

C87, §601K.2

88 Acts, ch 1158, §95; 90 Acts, ch 1180, §3

C93, §216A.2

95 Acts, ch 212, §9; 99 Acts, ch 201, §10, 11; 2003 Acts, ch 145, §205; 2010 Acts, ch 1031, §102, 170

Referred to in §216A.133

Employees other than the director shall not be appointed by the governor; previously appointed employees to be retained subject to the merit and state human resource management systems; 2010 Acts, ch 1031, § 169, 170

### **216A.3 Human rights board.**

1. A human rights board is created within the department of human rights.
2. The board shall consist of sixteen members, including eleven voting members and five nonvoting members and determined as follows:
  - a. The voting members shall consist of nine voting members selected by each of the permanent commissions within the department, and two voting members, appointed by the governor. For purposes of this paragraph “a”, “*permanent commissions*” means the commission of Latino affairs, commission on the status of women, commission of persons with disabilities, commission on community action agencies, commission of deaf services, criminal and juvenile justice planning advisory council, commission on the status of African Americans, commission of Asian and Pacific Islander affairs, and commission of Native American affairs. The term of office for voting members is four years.
  - b. The nonvoting members shall consist of the department director, two state representatives, one appointed by the speaker of the house of representatives and one by the minority leader of the house of representatives, and two state senators, one appointed by the majority leader of the senate and one by the minority leader of the senate.
3. A majority of the voting members of the board shall constitute a quorum, and the affirmative vote of two-thirds of the voting members present is necessary for any substantive action taken by the board. The board shall select a chairperson from the voting members of the board. The board shall meet not less than four times a year.
4. The board shall have the following duties:
  - a. Develop and monitor implementation of a comprehensive strategic plan to remove barriers for underrepresented populations and, in doing so, to increase Iowa’s productivity and inclusivity, including performance measures and benchmarks.
  - b. Approve, disapprove, amend, or modify the budget recommended by the department director for the operation of the department, subject to the budget requirements pursuant to chapter 8.
  - c. Adopt administrative rules pursuant to chapter 17A, upon the recommendation of the department director, for the operation of the department.

d. By November 1 of each year, approve the department report to the general assembly and the governor that covers activities during the preceding fiscal year.

86 Acts, ch 1245, §1203

C87, §601K.3

88 Acts, ch 1277, §28; 90 Acts, ch 1180, §4

C93, §216A.3

2010 Acts, ch 1031, §103, 170; 2010 Acts, ch 1189, §44; 2013 Acts, ch 140, §18

Referred to in §216A.2

Subsection 3 amended

#### **216A.4 Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. “*Board*” means the human rights board.
2. “*Department*” means the department of human rights.
3. “*Department director*” means the director of the department of human rights.
4. “*Underrepresented*” means the historical marginalization of populations or groups in the United States and Iowa, including but not limited to African Americans, Asian and Pacific Islanders, persons who are deaf or hard of hearing, persons with disabilities, Latinos, Native Americans, women, persons who have low socioeconomic status, at-risk youth, and adults or juveniles with a criminal history.

86 Acts, ch 1245, §1204

C87, §601K.4

90 Acts, ch 1180, §5

C93, §216A.4

2010 Acts, ch 1031, §104, 170

**216A.5** Repealed by 97 Acts, ch 52, § 1.

#### **216A.6 Confidentiality of individual client advocacy records.**

1. For purposes of this section, unless the context otherwise requires:
  - a. “*Advocacy services*” means services in which a department staff member writes or speaks in support of a client or a client’s cause or refers a person to another service to help alleviate or solve a problem.
  - b. “*Individual client advocacy records*” means those files or records which pertain to problems divulged by a client to the department or any related papers or records which are released to the department about a client for the purpose of assisting the client.
2. Information pertaining to clients receiving advocacy services shall be held confidential, including but not limited to the following:
  - a. Names and addresses of clients receiving advocacy services.
  - b. Information about a client reported on the initial advocacy intake form and all documents, information, or other material relating to the advocacy issues or to the client which could identify the client, or divulge information about the client.
  - c. Information concerning the social or economic conditions or circumstances of particular clients who are receiving or have received advocacy services.
  - d. Department, or division, or office evaluations of information about a person seeking or receiving advocacy services.
  - e. Medical or psychiatric data, including diagnoses and past histories of disease or disability, concerning a person seeking or receiving advocacy services.
  - f. Legal data, including records which represent or constitute the work product of an attorney, which are related to a person seeking or receiving advocacy services.
3. Information described in subsection 2 shall not be disclosed or used by any person or agency except for purposes of administration of advocacy services, and shall not be disclosed to or used by a person or agency outside the department except upon consent of the client as evidenced by a signed release.
4. This section does not restrict the disclosure or use of information regarding the cost, purpose, number of clients served or assisted, and results of an advocacy program

administered by the department, and other general and statistical information, so long as the information does not identify particular clients or persons provided with advocacy services.

88 Acts, ch 1106, §1

C89, §601K.6

C93, §216A.6

2011 Acts, ch 34, §48

#### **216A.7 Access to information.**

Upon request of the director or a commission, council, or administrator of a division of the department, all boards, agencies, departments, and offices of the state shall make available nonconfidential information, records, data, and statistics which are relevant to the populations served by the offices, councils, and commissions of the department.

2010 Acts, ch 1031, §105, 170

**216A.8 through 216A.10** Reserved.

## SUBCHAPTER 2

### LATINO AFFAIRS

#### **216A.11 Definitions.**

For purposes of this subchapter, unless the context otherwise requires:

1. “*Commission*” means the commission of Latino affairs.
2. “*Office*” means the office of Latino affairs of the department of human rights.

86 Acts, ch 1245, §1205

C87, §601K.11

90 Acts, ch 1180, §6

C93, §216A.11

2010 Acts, ch 1031, §106, 107, 170

#### **216A.12 Commission of Latino affairs established.**

1. The commission of Latino affairs consists of seven members, appointed by the governor, and subject to confirmation by the senate pursuant to section 2.32. Commission members shall be appointed in compliance with sections 69.16 and 69.16A. Commission members shall reside in the state.

2. The members of the commission shall be appointed during the month of June and shall serve for staggered four-year terms which shall begin and end pursuant to section 69.19. Members appointed shall continue to serve until their respective successors are appointed. Vacancies in the membership of the commission shall be filled by the original appointing authority and in the manner of the original appointments. Members shall receive actual expenses incurred while serving in their official capacity. Members may also be eligible to receive compensation as provided in section 7E.6.

3. The commission shall select from its membership a chairperson and other officers as it deems necessary and shall meet at least quarterly each fiscal year. A majority of the members currently appointed to the commission shall constitute a quorum, and the affirmative vote of a majority of the currently appointed members is necessary for any substantive action taken by the commission. A member shall not vote on any action if the member has a conflict of interest on the matter, and a statement by the member of a conflict of interest shall be conclusive for this purpose.

86 Acts, ch 1245, §1206

C87, §601K.12

87 Acts, ch 115, §71; 90 Acts, ch 1180, §7; 91 Acts, ch 50, §1

C93, §216A.12

2010 Acts, ch 1031, §108, 170; 2010 Acts, ch 1189, §45

**216A.13 Commission of Latino affairs — duties.**

The commission shall have the following duties:

1. Study the opportunities for and changing needs of the Latino population of this state.
2. Serve as liaison between the department of human rights and the public, sharing information and gathering constituency input.
3. Recommend to the board the adoption of rules pursuant to chapter 17A as it deems necessary.

4. Recommend legislative and executive action to the governor and general assembly.

5. Establish advisory committees, work groups, or other coalitions as appropriate.

86 Acts, ch 1245, §1207

C87, §601K.13

C93, §216A.13

2010 Acts, ch 1031, §109, 170

See also §216A.15

**216A.14 Office of Latino affairs — duties.**

The office of Latino affairs is established and shall do the following:

1. Serve as the central permanent agency to advocate for Latino persons.
2. Coordinate and cooperate with the efforts of state departments and agencies to serve the needs of Latino persons in participating fully in the economic, social, and cultural life of the state, and by providing direct assistance to those who request it.
3. Develop, coordinate, and assist other public organizations which serve Latino persons.
4. Serve as an information clearinghouse on programs and agencies operating to assist Latino persons.

86 Acts, ch 1245, §1208

C87, §601K.14

90 Acts, ch 1180, §8

C93, §216A.14

2010 Acts, ch 1031, §110, 170

**216A.15 Duties.**

The commission shall:

1. Study the opportunities for and changing needs of the Latino population of this state.
2. Serve as liaison between the office and the public, sharing information and gathering constituency input.

3. Recommend to the board for adoption rules pursuant to chapter 17A as it deems necessary for the commission and office.

4. Recommend to the department director policies and programs for the office.

5. Establish advisory committees, work groups, or other coalitions as appropriate.

86 Acts, ch 1245, §1209

C87, §601K.15

90 Acts, ch 1180, §9

C93, §216A.15

2004 Acts, ch 1062, §1; 2010 Acts, ch 1031, §111, 170

See also §216A.13

**216A.16 and 216A.17** Repealed by 2010 Acts, ch 1031, § 168, 170.

**216A.18 through 216A.30** Reserved.

## SUBCHAPTER 3

**216A.31 through 216A.50** Reserved.

SUBCHAPTER 4  
STATUS OF WOMEN

**216A.51 Definitions.**

For purposes of this subchapter, unless the context otherwise requires:

1. “*Commission*” means the commission on the status of women.
2. “*Office*” means the office on the status of women of the department of human rights.  
86 Acts, ch 1245, §1221  
C87, §601K.51  
87 Acts, ch 115, §2  
C93, §216A.51  
2010 Acts, ch 1031, §112, 113, 170

**216A.52 Office on the status of women.**

The office on the status of women is established, and shall do the following:

1. Serve as the central permanent agency to advocate for women and girls.
2. Coordinate and cooperate with the efforts of state departments and agencies to serve the needs of women and girls in participating fully in the economic, social, and cultural life of the state, and provide direct assistance to individuals who request it.
3. Serve as a clearinghouse on programs and agencies operating to assist women and girls.
4. Develop, coordinate, and assist other public or private organizations which serve women and girls.  
86 Acts, ch 1245, §1222  
C87, §601K.52  
88 Acts, ch 1150, §2; 90 Acts, ch 1223, §30  
C93, §216A.52  
2010 Acts, ch 1031, §114, 170

**216A.53 Commission on the status of women established.**

1. The commission on the status of women is established and shall consist of seven voting members who shall be appointed by the governor, subject to confirmation by the senate pursuant to section 2.32, and shall represent a cross section of the citizens of the state. All members shall reside in the state.

2. The term of office for voting members is four years. Terms shall be staggered. Members whose terms expire may be reappointed. Vacancies in voting membership positions on the commission shall be filled for the unexpired term in the same manner as the original appointment. Voting members of the commission may receive a per diem as specified in section 7E.6 and shall be reimbursed for actual expenses incurred while serving in their official capacity, subject to statutory limits.

3. Members of the commission shall appoint a chairperson and vice chairperson and any other officers as the commission deems necessary. The commission shall meet at least quarterly during each fiscal year. A majority of the voting members currently appointed to the commission shall constitute a quorum. A quorum of the members shall be required for the conduct of business of the commission, and the affirmative vote of a majority of the currently appointed voting members is necessary for any substantive action taken by the commission. A member shall not vote on any action if the member has a conflict of interest on the matter, and a statement by the member of a conflict of interest shall be conclusive for this purpose.

- 86 Acts, ch 1245, §1223  
C87, §601K.53  
88 Acts, ch 1150, §3  
C93, §216A.53  
2008 Acts, ch 1156, §27, 58; 2010 Acts, ch 1031, §115, 170

**216A.54 Commission powers and duties.**

The commission shall have the following powers and duties:

1. Study the opportunities for and changing needs of the women and girls of this state.
  2. Serve as liaison between the office and the public, sharing information and gathering constituency input.
  3. Recommend to the board the adoption of rules pursuant to chapter 17A as it deems necessary for the commission and office.
  4. Recommend legislative and executive action to the governor and general assembly.
  5. Establish advisory committees, work groups, or other coalitions as appropriate.
- 86 Acts, ch 1245, §1224  
 C87, §601K.54  
 88 Acts, ch 1150, §4; 90 Acts, ch 1256, §52  
 C93, §216A.54  
 2010 Acts, ch 1031, §116, 170

**216A.55 through 216A.60** Repealed by 2010 Acts, ch 1031, § 168, 170.

**216A.61 through 216A.70** Reserved.

## SUBCHAPTER 5

## PERSONS WITH DISABILITIES

**216A.71 Definitions.**

For purposes of this subchapter, unless the context otherwise requires:

1. “*Commission*” means the commission of persons with disabilities.
  2. “*Office*” means the office of persons with disabilities of the department of human rights.
- 86 Acts, ch 1245, §1231  
 C87, §601K.71  
 C93, §216A.71  
 95 Acts, ch 212, §10; 99 Acts, ch 201, §12; 2010 Acts, ch 1031, §117, 118, 170

**216A.72 Office of persons with disabilities.**

The office of persons with disabilities is established, and shall do all of the following:

1. Serve as the central permanent agency to advocate for persons with disabilities.
  2. Coordinate and cooperate with the efforts of state departments and agencies to serve the needs of persons with disabilities in participating fully in the economic, social, and cultural life of the state, and provide direct assistance to individuals who request it.
  3. Develop, coordinate, and assist other public or private organizations which serve persons with disabilities.
  4. Serve as an information clearinghouse on programs and agencies operating to assist persons with disabilities.
- 86 Acts, ch 1245, §1232  
 C87, §601K.72  
 C93, §216A.72  
 2010 Acts, ch 1031, §119, 170

**216A.73 Ex officio members.** Repealed by 2010 Acts, ch 1031, § 168, 170.

**216A.74 Commission of persons with disabilities established.**

1. The commission of persons with disabilities is established and shall consist of seven voting members appointed by the governor, subject to confirmation by the senate pursuant to section 2.32. A majority of the commission shall be persons with disabilities. All members shall reside in the state.
2. Members of the commission shall serve four-year staggered terms which shall begin

and end pursuant to section 69.19. Members whose terms expire may be reappointed. Vacancies on the commission shall be filled for the unexpired term in the same manner as the original appointment. Voting members shall receive actual expenses incurred while serving in their official capacity, subject to statutory limits. Voting members may also be eligible to receive compensation as provided in section 7E.6.

3. Members of the commission shall appoint a chairperson. The commission shall meet at least quarterly during each fiscal year. A majority of the voting members currently appointed to the commission shall constitute a quorum. A quorum shall be required for the conduct of business of the commission, and the affirmative vote of a majority of the currently appointed voting members is necessary for any substantive action taken by the commission. A member shall not vote on any action if the member has a conflict of interest on the matter, and a statement by the member of a conflict of interest shall be conclusive for this purpose.

86 Acts, ch 1245, §1234

C87, §601K.74

C93, §216A.74

2010 Acts, ch 1031, §120, 170

**216A.75 Commission powers and duties.**

The commission shall have the following powers and duties:

1. Study the opportunities for and changing needs of persons with disabilities in this state.  
2. Serve as liaisons between the office and the public, sharing information and gathering constituency input.

3. Recommend to the board the adoption of rules pursuant to chapter 17A as it deems necessary for the commission and office.

4. Recommend legislative and executive action to the governor and general assembly.

5. Establish advisory committees, work groups, or other coalitions as appropriate.

86 Acts, ch 1245, §1235

C87, §601K.75

C93, §216A.75

2010 Acts, ch 1031, §121, 170

**216A.76 through 216A.79** Repealed by 2010 Acts, ch 1031, § 168, 170.

**216A.80 through 216A.90** Reserved.

SUBCHAPTER 6

DIVISION OF COMMUNITY ACTION AGENCIES

**216A.91 Definitions.**

For purposes of this subchapter, unless the context otherwise requires:

1. “*Administrator*” means the administrator of the division of community action agencies of the department of human rights.

2. “*Commission*” means the commission on community action agencies.

3. “*Community action agency*” means a public agency or a private nonprofit agency which is authorized under its charter or bylaws to receive funds to administer community action programs and is designated by the governor to receive and administer the funds.

4. “*Community action program*” means a program conducted by a community action agency which includes projects to provide a range of services to improve the conditions of poverty in the area served by the community action agency.

5. “*Delegate agency*” means a subgrantee or contractor selected by the community action agency.

6. “*Division*” means the division of community action agencies of the department of human rights.

86 Acts, ch 1245, §1240

C87, §601K.91  
 90 Acts, ch 1242, §1  
 C93, §216A.91  
 Referred to in §23A.2, 256I.8

**216A.92 Division of community action agencies.**

1. The division of community action agencies is established. The purpose of the division of community action agencies is to strengthen, supplement, and coordinate efforts to develop the full potential of each citizen by recognizing certain community action agencies and supporting certain community-based programs delivered by community action agencies.

2. The division shall do all of the following:

a. Provide financial assistance for community action agencies to implement community action programs, as permitted by the community service block grant and subject to the funding made available for the program.

b. Administer the community services block grant, the low-income energy assistance block grants, department of energy funds for weatherization, and other possible funding sources. If a political subdivision is the community action agency, the financial assistance shall be allocated to the political subdivision.

c. Implement accountability measures for its programs and require regular reporting on the measures by the community action agencies.

d. Issue an annual report to the governor and general assembly by July 1 of each year.

86 Acts, ch 1245, §1241  
 C87, §601K.92  
 90 Acts, ch 1242, §2  
 C93, §216A.92  
 2010 Acts, ch 1031, §122, 170

**216A.92A Commission established.**

1. The commission on community action agencies is created, composed of nine members appointed by the governor, subject to confirmation by the senate. The membership of the commission shall reflect the composition of local community action agency boards as follows:

a. One-third of the members shall be elected officials.

b. One-third of the members shall be representatives of business, industry, labor, religious, welfare, and educational organizations, or other major interest groups.

c. One-third of the members shall be persons who, according to federal guidelines, have incomes at or below one hundred eighty-five percent of poverty level.

2. Commission members shall serve three-year terms which shall begin and end pursuant to section 69.19, and shall serve the entire term even if the member experiences a change in the status which resulted in their appointment under subsection 1. Vacancies on the commission shall be filled for the remainder of the term of the original appointment. Members whose terms expire may be reappointed. Members of the commission shall receive actual expenses for their services. Members may also be eligible to receive compensation as provided in section 7E.6. Members as specified under subsection 1, paragraph "c", however, shall receive per diem compensation as provided in section 7E.6 and actual expenses. The membership of the commission shall also comply with the political party affiliation and gender balance requirements of sections 69.16 and 69.16A.

3. The commission shall select from its membership a chairperson and other officers as it deems necessary. The commission shall meet no less than four times per year. A majority of the members of the commission shall constitute a quorum.

90 Acts, ch 1242, §3  
 C91, §601K.92A  
 92 Acts, ch 1237, §13  
 C93, §216A.92A  
 99 Acts, ch 201, §13; 2010 Acts, ch 1031, §123, 124, 170  
 Referred to in §541A.5  
 Confirmation, see §2.32

**216A.92B Commission powers and duties.**

The commission shall have the following powers and duties:

1. Recommend to the board the adoption of rules pursuant to chapter 17A as it deems necessary for the commission and division.
2. Supervise the collection of data regarding the scope of services provided by the community action agencies.
3. Serve as liaisons between the division and the public, sharing information and gathering constituency input.
4. Make recommendations to the governor and the general assembly for executive and legislative action designed to improve the status of low-income persons in the state.
5. Establish advisory committees, work groups, or other coalitions as appropriate.

90 Acts, ch 1242, §4

C91, §601K.92B

C93, §216A.92B

2010 Acts, ch 1031, §125, 170

**216A.93 Establishment of community action agencies.**

The division shall recognize and assist in the designation of certain community action agencies to assist in the delivery of community action programs. These programs shall include but not be limited to outreach, community services block grant, low-income energy assistance, and weatherization programs. If a community action agency is in effect and currently serving an area, that community action agency shall become the designated community action agency for that area. If any geographic area of the state ceases to be served by a designated community action agency, the division may solicit applications and assist the governor in designating a community action agency for that area in accordance with current community services block grant requirements.

86 Acts, ch 1245, §1242

C87, §601K.93

C93, §216A.93

2010 Acts, ch 1031, §126, 170

Referred to in §423.3

**216A.94 Community action agency board.**

1. A recognized community action agency shall be governed by a board of directors composed of at least nine members. The board membership shall be as follows:

a. One-third of the members of the board shall be elected public officials currently holding office or their representatives. However, if the number of elected officials available and willing to serve is less than one-third of the membership of the board, the membership of the board consisting of appointive public officials may be counted as fulfilling the requirement that one-third of the members of the board be elected public officials.

b. At least one-third of the members of the board shall be chosen in accordance with procedures established by the community action agency to assure representation of the poor in an area served by the agency.

c. The remainder of the members of the board shall be members of business, industry, labor, religious, welfare, education, or other major groups or interests in the community.

2. Notwithstanding subsection 1, a public agency shall establish an advisory board to assist the governing board in meeting the requirements of section 216A.95. The advisory board shall be composed of the same type of membership as a board of directors for community action agencies under subsection 1. In addition, the advisory board of the community action agency shall have the sole authority to determine annual program budget requests.

86 Acts, ch 1245, §1243

C87, §601K.94

87 Acts, ch 115, §73; 90 Acts, ch 1242, §5

C93, §216A.94

93 Acts, ch 56, §1; 2010 Acts, ch 1031, §127, 170

**216A.95 Duties of board.**

1. The governing board or advisory board shall fully participate in the development, planning, implementation, and evaluation of programs to serve low-income communities.

2. The governing board may:

a. Own, purchase, and dispose of property necessary for the operation of the community action agency.

b. Receive and administer funds and contributions from private or public sources which may be used to support community action programs.

c. Receive and administer funds from a federal or state assistance program pursuant to which a community action agency could serve as a grantee, a contractor, or a sponsor of a project appropriate for inclusion in a community action program.

86 Acts, ch 1245, §1244

C87, §601K.95

C93, §216A.95

2010 Acts, ch 1031, §128, 170

Referred to in §216A.94

**216A.96 Duties of community action agency.**

A community action agency shall:

1. Plan and implement strategies to alleviate the conditions of poverty and encourage self-sufficiency for citizens in its service area and in Iowa. In doing so, an agency shall plan for a community action program by establishing priorities among projects, activities, and areas to provide for the most efficient use of possible resources.

2. Obtain and administer assistance from available sources on a common or cooperative basis, in an attempt to provide additional opportunities to low-income persons.

3. Establish effective procedures by which the concerned low-income persons and area residents may influence the community action programs affecting them by providing for methods of participation in the implementation of the community action programs and by providing technical support to assist persons to secure assistance available from public and private sources.

4. Encourage and support self-help, volunteer, business, labor, and other groups and organizations to assist public officials and agencies in supporting a community action program by providing private resources, developing new employment opportunities, encouraging investments in areas of concentrated poverty, and providing methods by which low-income persons can work with private organizations, businesses, and institutions in seeking solutions to problems of common concern.

86 Acts, ch 1245, §1245

C87, §601K.96

C93, §216A.96

2010 Acts, ch 1031, §129, 130, 170; 2011 Acts, ch 34, §49

**216A.97 Administration.**

A community action agency may administer the components of a community action program when the program is consistent with plans and purposes and applicable law. The community action programs may be projects which are eligible for assistance from any source. The programs shall be developed to meet local needs and may be designed to meet eligibility standards of a federal or state program.

86 Acts, ch 1245, §1246

C87, §601K.97

C93, §216A.97

2010 Acts, ch 1031, §131, 170; 2011 Acts, ch 34, §50

**216A.98 Audit.**

Each community action agency shall be audited annually but shall not be required to obtain a duplicate audit to meet the requirements of this section. In lieu of an audit by the auditor of state, the community action agency may contract with or employ a certified public accountant

to conduct the audit, pursuant to the applicable terms and conditions prescribed by sections 11.6, 11.14, and 11.19 and an audit format prescribed by the auditor of state. Copies of each audit shall be furnished to the division in a manner prescribed by the division.

86 Acts, ch 1245, §1247

C87, §601K.98

89 Acts, ch 264, §9

C93, §216A.98

2010 Acts, ch 1031, §132, 170; 2011 Acts, ch 75, §36

**216A.99 Allocation of financial assistance.**

The administrator shall provide financial assistance for community action agencies to implement community action programs, as permitted by the community service block grant, administer the low-income energy assistance block grants, department of energy funds for weatherization received in Iowa, and other possible funding sources.

If a political subdivision is the agency, the financial assistance shall be allocated to the political subdivision.

86 Acts, ch 1245, §1248

C87, §601K.99

C93, §216A.99

**216A.100** Reserved.

**216A.101 Emergency weatherization fund.** Repealed by 2010 Acts, ch 1031, § 168, 170.

**216A.102 Energy crisis fund.**

1. An energy crisis fund is created in the state treasury. Moneys deposited in the fund shall be used to assist low-income families who qualify for the low-income home energy assistance program to avoid loss of essential heating.

2. The fund may receive moneys including, but not limited to, the following:

a. Moneys appropriated by the general assembly for the fund.

b. After July 1, 1988, unclaimed patronage dividends of electric cooperative corporations or associations shall be applied to the fund following the time specified in section 556.12 for claiming the dividend from the holder.

c. The fund may also receive contributions from customer contribution funds established under section 476.66.

3. Under rules developed by the division of community action agencies of the department of human rights and adopted by the board, the fund may be used to negotiate reconnection of essential utility services with the energy provider.

88 Acts, ch 1175, §6

C89, §601K.102

91 Acts, ch 270, §6

C93, §216A.102

2002 Acts, ch 1119, §146; 2008 Acts, ch 1126, §14, 33; 2010 Acts, ch 1031, §133, 170

**216A.103 Iowa affordable heating program established.** Repealed by 2010 Acts, ch 1031, § 168, 170.

**216A.104 Energy utility assessment and resolution program.**

1. The general assembly finds that provision of assistance to prevent utility disconnections will also prevent the development of public health risks due to such disconnections. The division shall establish an energy utility assessment and resolution program administered by each community action agency for persons with low incomes who have or need a deferred payment agreement or are in need of an emergency fuel delivery to address home energy utility costs.

2. A person must meet all of the following requirements to be eligible for the program:

a. The person is eligible for the federal low-income home energy assistance program.

- b. The person is a residential customer of an energy utility approved for the program by the division.
  - c. The person has or is in need of a deferred payment agreement to address the person's home energy utility costs.
  - d. The person is able to maintain or regain residential energy utility service in the person's own name.
  - e. The person provides the information necessary to determine the person's eligibility for the program.
  - f. The person complies with other eligibility requirements adopted in rules by the division.
3. The program components shall include but are not limited to all of the following:
- a. Analysis of a program participant's current financial situation.
  - b. Review of a program participant's resource and money management options.
  - c. Skills development and assistance for a program participant in negotiating a deferred payment agreement with the participant's energy utility.
  - d. Development of a written household energy affordability plan.
  - e. Provision of energy conservation training and assistance.
  - f. A requirement that a program participant must make uninterrupted, regular utility payments while participating in the program.
- 2007 Acts, ch 218, §136; 2010 Acts, ch 1031, §134, 170

**216A.105 and 216A.106** Reserved.

**216A.107 Family development and self-sufficiency — council and grant program.**

1. A family development and self-sufficiency council is established within the department of human rights. The council shall consist of the following persons:
- a. The director of the department of human services or the director's designee.
  - b. The director of the department of public health or the director's designee.
  - c. The administrator of the division of community action agencies of the department of human rights or the administrator's designee.
  - d. The director of the school of social work at the university of Iowa or the director's designee.
  - e. The dean of the college of human sciences at Iowa state university or the dean's designee.
  - f. Two recipients or former recipients of the family investment program, selected by the other members of the council.
  - g. One recipient or former recipient of the family investment program who is a member of a racial or ethnic minority, selected by the other members of the council.
  - h. One member representing providers of services to victims of domestic violence, selected by the other members of the council.
  - i. The head of the department of design, textiles, gerontology, and family studies at the university of northern Iowa or that person's designee.
  - j. The director of the department of education or the director's designee.
  - k. The director of the department of workforce development or the director's designee.
  - l. Two persons representing the business community, selected by the other members of the council.
  - m. Two members from each chamber of the general assembly serving as ex officio, nonvoting members. The two members of the senate shall be appointed one each by the majority leader and the minority leader of the senate. The two members of the house of representatives shall be appointed one each by the speaker and the minority leader of the house of representatives.
2. Unless otherwise provided by law, terms of members, election of officers, and other procedural matters shall be as determined by the council. A quorum shall be required for the conduct of business of the council, and the affirmative vote of a majority of the currently appointed voting members is necessary for any substantive action taken by the council. A member shall not vote on any action if the member has a conflict of interest on the matter, and a statement by the member of a conflict of interest shall be conclusive for this purpose.

3. The family development and self-sufficiency council shall do all of the following:

a. Identify the factors and conditions that place Iowa families at risk of dependency upon the family investment program. The council shall seek to use relevant research findings and national and Iowa-specific data on the family investment program.

b. Identify the factors and conditions that place Iowa families at risk of family instability. The council shall seek to use relevant research findings and national and Iowa-specific data on family stability issues.

c. Subject to the availability of funds for this purpose, award grants to public or private organizations for provision of family development services to families at risk of dependency on the family investment program or of family instability. Not more than five percent of any funds appropriated by the general assembly for the purposes of this lettered paragraph may be used for staffing and administration of the grants. Grant proposals for the family development and self-sufficiency grant program shall include the following elements:

(1) Designation of families to be served that meet one or more criteria for being at risk of dependency on the family investment program or of family instability, and agreement to serve clients that are referred by the department of human services from the family investment program which meet the criteria. The criteria may include but are not limited to factors such as educational level, work history, family structure, age of the youngest child in the family, previous length of stay on the family investment program, and participation in the family investment program or the foster care program while the head of a household was a child. Grant proposals shall also establish the number of families to be served under the grant.

(2) Designation of the services to be provided for the families served, including assistance regarding job-seeking skills, family budgeting, nutrition, self-esteem, methamphetamine education, health and hygiene, child rearing, child education preparation, and goal setting. Grant proposals shall indicate the support groups and support systems to be developed for the families served during the transition between the need for assistance and self-sufficiency.

(3) Designation of the manner in which other needs of the families will be provided for, including but not limited to child care assistance, transportation, substance abuse treatment, support group counseling, food, clothing, and housing.

(4) Designation of the process for training of the staff which provides services, and the appropriateness of the training for the purposes of meeting family development and self-sufficiency goals of the families being served.

(5) Designation of the support available within the community for the program and for meeting subsequent needs of the clients, and the manner in which community resources will be made available to the families being served.

(6) Designation of the manner in which the program will be subject to audit and to evaluation.

(7) Designation of agreement provisions for tracking and reporting performance measures developed pursuant to paragraph "d".

d. Develop appropriate performance measures for the grant program to demonstrate how the program helps families achieve self-sufficiency.

e. Seek to enlist research support from the Iowa research community in meeting the duties outlined in paragraphs "a" through "d".

f. Seek additional support for the funding of grants under the program, including but not limited to funds available through the federal government in serving families at risk of long-term welfare dependency, and private foundation grants.

g. Make recommendations to the governor and the general assembly on the effectiveness of programs in Iowa and throughout the country that provide family development services that lead to self-sufficiency for families at risk of welfare dependency.

4. a. The division shall administer the family development and self-sufficiency grant program. The department of human services shall disclose to the division confidential information pertaining to individuals receiving services under the grant program, as authorized under section 217.30. The division and the department of human services shall share information and data necessary for tracking performance measures of the family development and self-sufficiency grant program, for referring families participating in the promoting independence and self-sufficiency through employment job opportunities

and basic skills (PROMISE JOBS) program under section 239B.17 and related activities and programs to the grant program, and for meeting federal reporting requirements. The division and the department of human services may by mutual agreement, as specified in the memorandum of agreement entered into in accordance with paragraph “b”, add to or delete from the initial shared information items listed in this lettered paragraph. The initial shared information shall include but is not limited to all of the following:

- (1) Family enrollments and exits to and from each of the programs.
- (2) Monthly reports of individual participant activity in PROMISE JOBS components that are countable work activities according to federal guidelines applicable to those components.
- (3) Aggregate grant program participant activity in all PROMISE JOBS program components.
- (4) Work participation rates for grant program participants who were active family investment program participants.
- (5) The average hourly wage of grant program participants who left the family investment program.
- (6) The percentage of grant program participants who exited from the grant program at or after the time family investment program participation ended and did not reenroll in the family investment program for at least one year.

b. The division shall develop a memorandum of agreement with the department of human services to share outcome data and coordinate referrals and delivery of services to participants in the family investment program under chapter 239B and the grant program and other shared clients and shall provide the department of human services with information necessary for compliance with federal temporary assistance for needy families block grant state plan and reporting requirements, including but not limited to financial and data reports.

c. To the extent that the family development and self-sufficiency grant program is funded by the federal temporary assistance for needy families block grant and by the state maintenance of efforts funds appropriated in connection with the block grant, the division shall comply with all federal requirements for the block grant. The division is responsible for payment of any federal penalty imposed that is attributable to the grant program and shall receive any federal bonus payment attributable to the grant program.

d. The division shall ensure that expenditures of moneys appropriated to the department of human services from the general fund of the state for the family development and self-sufficiency grant program are eligible to be considered as state maintenance of effort expenditures under federal temporary assistance for needy families block grant requirements.

e. The commission shall consider the recommendations of the council in adopting rules pertaining to the grant program.

f. The division shall submit to the governor and general assembly on or before November 30 following the end of each state fiscal year, a report detailing performance measure and outcome data evaluating the family development and self-sufficiency grant program for the fiscal year that just ended.

2008 Acts, ch 1072, §1; 2010 Acts, ch 1031, §135, 170

Referred to in §232.69, 239B.8

Legislative appointments, see §69.16B

**216A.108 through 216A.110** Reserved.

## SUBCHAPTER 7

### DEAF SERVICES

#### **216A.111 Definitions.**

For purposes of this subchapter, unless the context otherwise requires:

1. “*Commission*” means the commission of deaf services.

2. “Office” means the office of deaf services of the department of human rights.  
86 Acts, ch 1245, §1250  
C87, §601K.111  
C93, §216A.111  
2010 Acts, ch 1031, §136, 137, 170

**216A.112 Office of deaf services.**

The office of deaf services is established, and shall do all of the following:

1. Serve as the central permanent agency to advocate for persons who are deaf or hard of hearing.
2. Coordinate and cooperate with the efforts of state departments and agencies to serve the needs of persons who are deaf or hard of hearing in participating fully in the economic, social, and cultural life of the state, and provide direct assistance to individuals who request it.
3. Develop, coordinate, and assist other public or private organizations which serve persons who are deaf or hard of hearing.
4. Serve as an information clearinghouse on programs and agencies operating to assist persons who are deaf or hard of hearing.  
86 Acts, ch 1245, §1251  
C87, §601K.112  
87 Acts, ch 58, §1; 87 Acts, ch 115, §74  
C93, §216A.112  
93 Acts, ch 75, §3; 95 Acts, ch 212, §11; 2010 Acts, ch 1031, §138, 170

**216A.113 Deaf services commission established.**

1. The commission of deaf services is established, and shall consist of seven voting members appointed by the governor, subject to confirmation by the senate pursuant to section 2.32. Membership of the commission shall include at least four members who are deaf and who cannot hear human speech with or without use of amplification and at least one member who is hard of hearing. All members shall reside in Iowa.
2. Members of the commission shall serve four-year staggered terms which shall begin and end pursuant to section 69.19. Members whose terms expire may be reappointed. Vacancies on the commission may be filled for the remainder of the term in the same manner as the original appointment. Members shall receive actual expenses incurred while serving in their official capacity, subject to statutory limits. Members may also be eligible to receive compensation as provided in section 7E.6.
3. Members of the commission shall appoint a chairperson and vice chairperson and other officers as the commission deems necessary. The commission shall meet at least quarterly during each fiscal year. A majority of the members currently appointed to the commission shall constitute a quorum. A quorum shall be required for the conduct of business of the commission, and the affirmative vote of a majority of the currently appointed members is necessary for any substantive action taken by the commission. A member shall not vote on any action if the member has a conflict of interest on the matter, and a statement by the member of a conflict of interest shall be conclusive for this purpose.  
86 Acts, ch 1245, §1252  
C87, §601K.113  
C93, §216A.113  
2010 Acts, ch 1031, §139, 170; 2010 Acts, ch 1193, §42, 80

**216A.114 Commission powers and duties.**

The commission shall have the following powers and duties:

1. Study the changing needs and opportunities for the deaf and hard-of-hearing people in this state.
2. Serve as a liaison between the office and the public, sharing information and gathering constituency input.

3. Recommend to the board for adoption rules pursuant to chapter 17A as it deems necessary for the commission and office.

4. Recommend legislative and executive action to the governor and general assembly.

5. Establish advisory committees, work groups, or other coalitions as appropriate.

86 Acts, ch 1245, §1253

C87, §601K.114

87 Acts, ch 115, §75; 89 Acts, ch 54, §1

C93, §216A.114

93 Acts, ch 75, §4; 2003 Acts, ch 145, §286; 2010 Acts, ch 1031, §140, 170

**216A.115 through 216A.117** Repealed by 2010 Acts, ch 1031, § 168, 170.

**216A.118 through 216A.120** Reserved.

## SUBCHAPTER 8

**216A.121 Iowa Abraham Lincoln bicentennial commission.** Repealed by its own terms; 2007 Acts, ch 99, § 1.

**216A.122 through 216A.130** Reserved.

## SUBCHAPTER 9

### DIVISION OF CRIMINAL AND JUVENILE JUSTICE PLANNING

#### **216A.131 Definitions.**

For the purpose of this subchapter, unless the context otherwise requires:

1. “*Administrator*” means the administrator of the division of criminal and juvenile justice planning.

2. “*Board*” means the public safety advisory board.

3. “*Council*” means the criminal and juvenile justice planning advisory council.

4. “*Division*” means the division of criminal and juvenile justice planning.

88 Acts, ch 1277, §14

C89, §601K.131

90 Acts, ch 1124, §1

C93, §216A.131

2010 Acts, ch 1193, §151

#### **216A.131A Division of criminal and juvenile justice planning.**

The division of criminal and juvenile justice planning is established to fulfill the responsibilities of this subchapter, including the duties specified in sections 216A.135, 216A.136, 216A.137, 216A.138, and 216A.139.

2010 Acts, ch 1031, §141, 170

#### **216A.132 Council established — terms — compensation.**

1. A criminal and juvenile justice planning advisory council is established consisting of twenty-three members who shall all reside in the state.

a. The governor shall appoint seven members each for a four-year term beginning and ending as provided in section 69.19 and subject to confirmation by the senate as follows:

(1) Three persons, each of whom is a county supervisor, county sheriff, mayor, nonsupervisory police officer, or a chief of police of a department with less than eleven police officers.

(2) Two persons who are knowledgeable about Iowa's juvenile justice system.

(3) One person who represents the general public and is not employed in any law enforcement, judicial, or corrections capacity.

(4) One person who is either a crime victim, or who represents a crime victim organization.

b. The departments of human services, corrections, and public safety, the office on the status of African Americans, the department of public health, the chairperson of the board of parole, the attorney general, the state public defender, and the governor's office of drug control policy shall each designate a person to serve on the council.

c. (1) The chief justice of the supreme court shall designate one member who is a district judge and one member who is either a district associate judge or associate juvenile judge. The members appointed pursuant to this subparagraph shall serve as ex officio, nonvoting members for four-year terms beginning and ending as provided in section 69.19, unless the member ceases to serve as a judge.

(2) The chairperson and ranking member of the senate committee on judiciary shall be ex officio, nonvoting members. In alternating two-year terms, beginning and ending as provided in section 69.16B, the chairperson and ranking member of the house committee on judiciary or of the house committee on public safety shall be ex officio, nonvoting members, with the chairperson and ranking member of the house committee on public safety serving during the term beginning in January 2011.

d. The Iowa county attorneys association shall designate a person to serve on the council.

2. Members of the council shall receive reimbursement from the state for actual and necessary expenses incurred in the performance of their official duties. Members may also be eligible to receive compensation as provided in section 7E.6.

3. Members of the council shall appoint a chairperson and vice chairperson and other officers as the council deems necessary. A majority of the voting members currently appointed to the council shall constitute a quorum. A quorum shall be required for the conduct of business of the council and the affirmative vote of a majority of the currently appointed members is necessary for any substantive action taken by the council. A member shall not vote on any action if the member has a conflict of interest on the matter, and a statement by the member of a conflict of interest shall be conclusive for this purpose.

88 Acts, ch 1277, §15

C89, §601K.132

90 Acts, ch 1124, §2

C93, §216A.132

2006 Acts, ch 1010, §66; 2007 Acts, ch 22, §51; 2008 Acts, ch 1085, §1, 2; 2008 Acts, ch 1156, §28, 58; 2010 Acts, ch 1031, §142 – 144, 170; 2010 Acts, ch 1193, §152; 2012 Acts, ch 1138, §110

Confirmation, see §2.32

### **216A.133 Duties.**

The council shall do all of the following:

1. Identify issues and analyze the operation and impact of present criminal and juvenile justice policy and make recommendations for policy changes.

2. Coordinate with data resource agencies to provide data and analytical information to federal, state, and local governments, and assist agencies in the use of criminal and juvenile justice data.

3. Report criminal and juvenile justice system needs to the governor, the general assembly, and other decision makers to improve the criminal and juvenile justice system.

4. Provide technical assistance upon request to state and local agencies.

5. Administer federal funds and funds appropriated by the state or that are otherwise available in compliance with applicable laws, regulations, and other requirements for purposes of study, research, investigation, planning, and implementation in the areas of criminal and juvenile justice.

6. Make grants to cities, counties, and other entities pursuant to applicable law.

7. Maintain an Iowa correctional policy project as provided in section 216A.137.

8. Determine members of the public safety advisory board pursuant to section 216A.133A.
  9. Provide input to the department director in the development of budget recommendations for the division.
  10. Coordinate with the administrator to develop and make recommendations to the department director pursuant to section 216A.2.
  11. Serve as liaison between the division and the public, sharing information and gathering constituency input.
  12. Recommend to the board for adoption rules pursuant to chapter 17A as it deems necessary for the council and division.
  13. Recommend legislative and executive action to the governor and general assembly.
  14. Establish advisory committees, work groups, or other coalitions as appropriate.
  15. Establish advisory committees to study special issues.
- 88 Acts, ch 1277, §16  
 C89, §601K.133  
 90 Acts, ch 1124, §3; 92 Acts, ch 1231, §47  
 C93, §216A.133  
 2010 Acts, ch 1031, §145, 146, 170; 2010 Acts, ch 1193, §153, 154

**216A.133A Public safety advisory board — duties.**

1. A public safety advisory board is established whose membership shall be determined by the criminal and juvenile justice planning advisory council and shall consist of current members of the council. Any actions taken by the board shall be considered separate and distinct from the council.
2. The purpose of the board is to provide the general assembly with an analysis of current and proposed criminal code provisions.
3. The duties of the board shall consist of the following:
  - a. Reviewing and making recommendations relating to current sentencing provisions. In reviewing such provisions the board shall consider the impact on all of the following:
    - (1) Potential disparity in sentencing.
    - (2) Truth in sentencing.
    - (3) Victims.
    - (4) The proportionality of specific sentences.
    - (5) Sentencing procedures.
    - (6) Costs associated with the implementation of criminal code provisions, including costs to the judicial branch, department of corrections, and judicial district departments of correctional services, costs for representing indigent defendants, and costs incurred by political subdivisions of the state.
    - (7) Best practices related to the department of corrections including recidivism rates, safety and efficient use of correctional staff, and compliance with correctional standards set by the federal government and other jurisdictions.
    - (8) Best practices related to the Iowa child death review team established in section 135.43 and the Iowa domestic abuse death review team established in section 135.109.
  - b. Reviewing and making recommendations relating to proposed legislation, in accordance with paragraph “a”, as set by rule by the general assembly or as requested by the executive or judicial branch proposing such legislation.
  - c. Providing expertise and advice to the legislative services agency, the department of corrections, the judicial branch, and others charged with formulating fiscal, correctional, or minority impact statements.
  - d. Reviewing data supplied by the division, the department of management, the legislative services agency, the Iowa supreme court, and other departments or agencies for the purpose of determining the effectiveness and efficiency of the collection of such data.
4. The board may call upon any department, agency, or office of the state, or any political subdivision of the state, for information or assistance as needed in the performance of its duties. The information or assistance shall be furnished to the extent that it is within the resources and authority of the department, agency, office, or political subdivision. This

section does not require the production or opening of any records which are required by law to be kept private or confidential.

5. The board shall report to the general assembly's standing committees on government oversight all sources of funding by December 1 of each year.

6. Membership on the board shall be bipartisan as provided in section 69.16 and gender balanced as provided in section 69.16A.

7. Meetings of the board shall be open to the public as provided in chapter 21.

8. Members of the board shall receive reimbursement from the state for actual and necessary expenses incurred in the performance of their official duties. Members may also be eligible to receive compensation as provided in section 7E.6.

2010 Acts, ch 1193, §155; 2011 Acts, ch 34, §51

Referred to in §216A.133

**216A.134 Administrator.** Repealed by 2010 Acts, ch 1031, § 168, 170.

**216A.135 Plan and report.**

Beginning in 1989, and every five years thereafter, the division shall develop a twenty-year criminal and juvenile justice plan for the state which shall include ten-year, fifteen-year, and twenty-year goals and a comprehensive five-year plan for criminal and juvenile justice programs. The five-year plan shall be updated annually and each twenty-year plan and annual updates of the five-year plan shall be submitted to the governor and the general assembly by December 1.

Beginning in 1992, the division shall include in the plans, updates, and reports required by this section an identification and evaluation of existing juvenile treatment programs based upon quantifiable goals established by the division, utilizing its existing computer capacity and access.

88 Acts, ch 1277, §18

C89, §601K.135

92 Acts, ch 1231, §48

C93, §216A.135

2010 Acts, ch 1193, §156

Referred to in §216A.131A, 216A.137

**216A.136 Statistical analysis center — access to records.**

The division shall maintain an Iowa statistical analysis center for the purpose of coordinating with data resource agencies to provide data and analytical information to federal, state, and local governments, and assist agencies in the use of criminal and juvenile justice data. Notwithstanding any other provision of state law, unless prohibited by federal law or regulation, the division shall be granted access, for purposes of research and evaluation, to criminal history records, official juvenile court records, juvenile court social records, and any other data collected or under control of the board of parole, department of corrections, department of workforce development, district departments of correctional services, department of human services, judicial branch, and department of public safety. However, intelligence data and peace officer investigative reports maintained by the department of public safety shall not be considered data for the purposes of this section. Any record, data, or information obtained by the division under this section and the division itself is subject to the federal and state confidentiality laws and regulations which are applicable to the original record, data, or information obtained by the division and to the original custodian of the record, data, or information. The access shall include but is not limited to all of the following:

1. Juvenile court records and all other information maintained under sections 232.147 through 232.153.

2. Child abuse information under sections 235A.15 through 235A.19.

3. Dependent adult abuse records maintained under chapter 235B.

4. Criminal history data maintained under chapter 692.

5. Sex offender registry information maintained under chapter 692A.

6. Presentence investigation reports maintained under section 901.4.

7. Corrections records maintained under sections 904.601 and 904.602.
  8. Community-based correctional program records maintained under chapter 905.
  9. Parole records maintained under chapter 906.
  10. Deferred judgment, deferred or suspended sentence, and probation records maintained under chapter 907.
  11. Violation of parole or probation records maintained under chapter 908.
  12. Fines and victim restitution records maintained under chapters 909 and 910.
  13. Employment records maintained under section 96.11.
- 88 Acts, ch 1277, §19  
 C89, §601K.136  
 90 Acts, ch 1124, §4  
 C93, §216A.136  
 96 Acts, ch 1150, §2; 96 Acts, ch 1193, §3, 4; 98 Acts, ch 1047, §18; 2008 Acts, ch 1085, §3, 4  
 Referred to in §216A.131A

### **216A.137 Correctional policy project.**

The division shall maintain an Iowa correctional policy project for the purpose of conducting analyses of major correctional issues affecting the criminal and juvenile justice system. The council shall identify and prioritize the issues and studies to be addressed by the division through this project and shall report project plans and findings annually along with the report required in section 216A.135. Issues and studies to be considered by the council shall include, but are not limited to a review of the information systems available to assess corrections trends and program effectiveness, the development of an evaluation plan for assessing the impact of corrections expenditures, a study of the desirability and feasibility of changing the state's sentencing practices, a public opinion survey to assess the public's view of possible changes in current corrections practices, and the development of parole guidelines.

The division may form subcommittees for the purpose of addressing major correctional issues affecting the criminal and juvenile justice system. The division shall establish a subcommittee to address issues specifically affecting the juvenile justice system.

90 Acts, ch 1124, §5  
 C91, §601K.137  
 C93, §216A.137  
 Referred to in §216A.131A, 216A.133

### **216A.138 Multiagency database concerning juveniles.**

1. The division shall coordinate the development of a multiagency database to track the progress of juveniles through various state and local agencies and programs. The division shall develop a plan which utilizes existing databases, including the Iowa court information system, the federally mandated national adoption and foster care information system, and the other state and local databases pertaining to juveniles, to the extent possible.

2. The department of human services, department of corrections, judicial branch, department of public safety, department of education, local school districts, and other state agencies and political subdivisions shall cooperate with the division in the development of the plan.

3. The database shall be designed to track the progress of juveniles in various programs, evaluate the experiences of juveniles, and evaluate the success of the services provided.

4. The division shall develop the plan within the context of existing federal privacy and confidentiality requirements. The plan shall build upon existing resources and facilities to the extent possible.

5. The plan shall include proposed guidelines for the sharing of information by case management teams, consisting of designated representatives of various state and local agencies and political subdivisions to coordinate the delivery of services to juveniles under the jurisdiction of the juvenile court. The guidelines shall be developed to structure and improve the information-sharing procedures of case management teams established pursuant to any applicable state or federal law or approved by the juvenile court with respect

to a juvenile who is the recipient of the case management team services. The plan shall also contain proposals for changes in state laws or rules to facilitate the exchange of information among members of case management teams.

6. The plan shall include development of a resource guide outlining successful programs and practices established within this state which are designed to promote positive youth development and that assist delinquent and other at-risk youth in overcoming personal and social problems. The guide shall be made publicly available.

7. If the division has insufficient funds and resources to implement this section, the division shall determine what, if any, portion of this section may be implemented, and the remainder of this section shall not apply.

92 Acts, ch 1231, §49; 97 Acts, ch 126, §9; 98 Acts, ch 1047, §19; 2010 Acts, ch 1031, §147, 170

Referred to in §216A.131A

### **216A.139 Sex offender research council.**

1. The division shall establish and maintain a council to study and make recommendations for treating and supervising adult and juvenile sex offenders in institutions, community-based programs, and in the community.

2. The voting members of the council shall include one representative of each of the following:

- a. The department of corrections.
- b. The department of human services.
- c. The department of public safety.
- d. The state public defender.
- e. The department of public health.
- f. The juvenile court appointed by the judicial branch.
- g. A judicial district department of correctional services.
- h. The board of parole.
- i. The department of justice.
- j. The Iowa county attorneys association.
- k. The American civil liberties union of Iowa.
- l. The Iowa state sheriffs' and deputies' association.
- m. The Iowa coalition against sexual assault.

3. In addition to the voting members, the council membership shall include four members of the general assembly with one member designated by each of the following: the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives. A legislative member serves for a term as provided in section 69.16B in an ex officio, nonvoting capacity.

4. The council shall study the following:

- a. The effectiveness of electronically monitoring sex offenders.
- b. The cost and effectiveness of special sentences pursuant to chapter 903B.
- c. Risk assessment models created for sex offenders.
- d. Determining the best treatment programs available for sex offenders and the efforts of Iowa and other states to implement treatment programs.

e. The efforts of Iowa and other states to prevent sex abuse-related crimes including child sex abuse.

f. Any other issues the council deems necessary, including but not limited to computer and internet sex-related crimes, sex offender case management, best practices for sex offender supervision, the sex offender registry, and the effectiveness of safety zones.

5. The council shall submit a report, beginning January 15, 2009, and every year thereafter by January 15, to the governor and general assembly regarding actions taken, issues studied, and council recommendations.

6. Members of the council shall receive actual and necessary expenses incurred while attending any meeting of the council and may also be eligible to receive compensation as provided in section 7E.6. All expense moneys paid to the nonlegislative members shall be paid

from funds appropriated to the division. Legislative members shall receive compensation as provided in sections 2.10 and 2.12.

7. Vacancies shall be filled by the original appointing authority in the manner of the original appointments.

2008 Acts, ch 1085, §5; 2009 Acts, ch 106, §5, 6, 14

Referred to in §216A.131A

2009 amendment to subsection 2 and new subsection 3 apply to legislative appointees named before, on, or after May 18, 2009, and to appointments subject to senate confirmation on or after May 18, 2009; 2009 Acts, ch 106, §14

**216A.140 Iowa collaboration for youth development council — state of Iowa youth advisory council.**

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

a. “*Youth*” means children and young persons who are ages six through twenty-one years.

b. “*Youth advisory council*” means the state of Iowa youth advisory council created by this section.

c. “*Youth development council*” means the Iowa collaboration for youth development council created by this section.

2. *Collaboration council created.* An Iowa collaboration for youth development council is created as an alliance of state agencies that address the needs of youth in Iowa.

3. *Purpose.* The purpose of the youth development council is to improve the lives and futures of Iowa’s youth by doing all of the following:

a. Adopting and applying positive youth development principles and practices at the state and local levels.

b. Increasing the quality, efficiency, and effectiveness of opportunities and services and other supports for youth.

c. Improving and coordinating state youth policy and programs across state agencies.

4. *Vision statement.* All youth development activities addressed by the youth development council shall be aligned around the following vision statement: “All Iowa youth will be safe, healthy, successful, and prepared for adulthood.”

5. *Membership.* The youth development council membership shall be determined by the council itself and shall include the directors or chief administrators, or their designees, from the following state agencies and programs:

a. Child advocacy board.

b. Iowa commission on volunteer service in the office of the governor.

c. Department of education.

d. Department of human rights.

e. Department of human services.

f. Department of public health.

g. Department of workforce development.

h. Governor’s office of drug control policy.

i. Iowa cooperative extension service in agriculture and home economics.

j. Early childhood Iowa office in the department of management.

6. *Procedure.* Except as otherwise provided by law, the youth development council shall determine its own rules of procedure and operating policies, including but not limited to terms of members. The youth development council may form committees or subgroups as necessary to achieve its purpose.

7. *Duties.* The youth development council’s duties shall include but are not limited to all of the following:

a. Study, explore, and plan for the best approach to structure and formalize the functions and activities of the youth development council to meet its purpose, and make formal recommendations for improvement to the governor and general assembly.

b. Review indicator data and identify barriers to youth success and develop strategies to address the barriers.

c. Coordinate across agencies the state policy priorities for youth.

d. Strengthen partnerships with the nonprofit and private sectors to gather input, build consensus, and maximize use of existing resources and leverage new resources to improve the lives of youth and their families.

- e. Oversee the activities of the youth advisory council.
- f. Seek input from and engage the youth advisory council in the development of more effective policies, practices, and programs to improve the lives and futures of youth.
- g. Report annually by February 1 to the governor and general assembly.
- 8. *State of Iowa youth advisory council.* A state of Iowa youth advisory council is created to provide input to the governor, general assembly, and state and local policymakers on youth issues.
  - a. The purpose of the youth advisory council is to foster communication among a group of engaged youth and the governor, general assembly, and state and local policymakers regarding programs, policies, and practices affecting youth and families; and to advocate for youth on important issues affecting youth.
  - b. The youth advisory council shall consist of no more than twenty-one youth ages fourteen through twenty years who reside in Iowa. Membership shall be for two-year staggered terms. The department director, or the director's designee, shall select council members using an application process. The department director or the director's designee shall strive to maintain a diverse council membership and shall take into consideration race, ethnicity, disabilities, gender, and geographic location of residence of the applicants.
  - c. Except as otherwise provided by law, the youth advisory council shall determine its own rules of procedure and operating policies, subject to approval by the department director or the director's designee.
  - d. The youth advisory council shall meet at least quarterly.
- 9. *Lead agency.* The lead agency for support of the Iowa collaboration for youth development council and the state of Iowa youth advisory council is the department. The department shall coordinate activities and, with funding made available to it for such purposes, provide staff support for the youth development council and the youth advisory council.

2009 Acts, ch 53, §1; 2009 Acts, ch 179, §35; 2010 Acts, ch 1031, §295

## SUBCHAPTER 10

### STATUS OF AFRICAN AMERICANS

#### **216A.141 Definitions.**

For purposes of this subchapter, unless the context otherwise requires:

1. "*Commission*" means the commission on the status of African Americans.
2. "*Office*" means the office on the status of African Americans of the department of human rights.

88 Acts, ch 1201, §1

C89, §601K.141

91 Acts, ch 50, §3

C93, §216A.141

2010 Acts, ch 1031, §148, 149, 170

#### **216A.142 Commission on the status of African Americans established.**

1. The commission on the status of African Americans is established and shall consist of seven members appointed by the governor, subject to confirmation by the senate. All members shall reside in Iowa. At least five members shall be individuals who are African American.

2. Terms of office are staggered four-year terms. Members whose terms expire may be reappointed. Vacancies on the commission shall be filled for the remainder of the term of and in the same manner as the original appointment. The commission shall meet quarterly and may hold special meetings on the call of the chairperson. The members of the commission shall be reimbursed for actual expenses while engaged in their official duties. Members may also be eligible to receive compensation as provided in section 7E.6.

3. Members of the commission shall appoint a chairperson and vice chairperson and other officers as the commission deems necessary. A majority of members of the commission shall constitute a quorum. A quorum shall be required for the conduct of business of the commission, and the affirmative vote of a majority of the currently appointed members is necessary for any substantive action taken by the commission. A member shall not vote on any action if the member has a conflict of interest on the matter, and a statement by the member of a conflict of interest shall be conclusive for this purpose.

88 Acts, ch 1201, §2

C89, §601K.142

91 Acts, ch 50, §4

C93, §216A.142

2010 Acts, ch 1031, §150, 170

Confirmation, see §2.32

#### **216A.143 Commission powers and duties.**

The commission shall have the following powers and duties:

1. Study the opportunities for and changing needs of the African American community in this state.

2. Serve as liaison between the office and the public, sharing information and gathering constituency input.

3. Recommend to the board for adoption rules pursuant to chapter 17A as it deems necessary for the commission and office.

4. Recommend executive and legislative action to the governor and general assembly.

5. Establish advisory committees, work groups, or other coalitions as appropriate.

88 Acts, ch 1201, §3

C89, §601K.143

C93, §216A.143

95 Acts, ch 69, §1; 2010 Acts, ch 1031, §151, 170

**216A.144 and 216A.145** Repealed by 2010 Acts, ch 1031, § 168, 170.

#### **216A.146 Office on the status of African Americans.**

The office on the status of African Americans is established and shall do the following:

1. Serve as the central permanent agency to advocate for African Americans.

2. Coordinate and cooperate with the efforts of state departments and agencies to serve the needs of African Americans in participating fully in the economic, social, and cultural life of the state, and provide direct assistance to individuals who request it.

3. Develop, coordinate, and assist other public or private organizations which serve African Americans.

4. Serve as an information clearinghouse on programs and agencies operating to assist African Americans.

88 Acts, ch 1201, §6

C89, §601K.146

91 Acts, ch 50, §6

C93, §216A.146

2003 Acts, ch 145, §286; 2010 Acts, ch 1031, §152, 170

**216A.147 through 216A.149** Repealed by 2010 Acts, ch 1031, § 168, 170.

**216A.150** Reserved.

## SUBCHAPTER 11

## ASIAN AND PACIFIC ISLANDER AFFAIRS

**216A.151 Definitions.**

For purposes of this subchapter, unless the context otherwise requires:

1. “*Asian and Pacific Islander*” means an individual from any of the countries of Asia or islands of the Pacific.
2. “*Commission*” means the commission of Asian and Pacific Islander affairs.
3. “*Office*” means the office of Asian and Pacific Islander affairs of the department of human rights.

2004 Acts, ch 1020, §3; 2010 Acts, ch 1031, §153 – 155, 170

**216A.152 Commission of Asian and Pacific Islander affairs established.**

1. The commission of Asian and Pacific Islander affairs is established and shall consist of seven members appointed by the governor, subject to confirmation by the senate. Members shall be appointed representing every geographical area of the state and ethnic groups of Asian and Pacific Islander heritage. All members shall reside in Iowa.

2. Terms of office are four years and shall begin and end pursuant to section 69.19. Members whose terms expire may be reappointed. Vacancies on the commission may be filled for the remainder of the term of and in the same manner as the original appointment. Members shall receive actual expenses incurred while serving in their official capacity, subject to statutory limits. Members may also be eligible to receive compensation as provided in section 7E.6.

3. Members of the commission shall appoint a chairperson and vice chairperson and other officers as the commission deems necessary. The commission shall meet at least quarterly during each fiscal year. A majority of the members of the commission shall constitute a quorum. A quorum shall be required for the conduct of business of the commission, and the affirmative vote of a majority of the currently appointed members is necessary for any substantive action taken by the commission. A member shall not vote on any action if the member has a conflict of interest on the matter, and a statement by the member of a conflict of interest shall be conclusive for this purpose.

2004 Acts, ch 1020, §4; 2010 Acts, ch 1031, §156, 170

Confirmation, see §2.32

**216A.153 Commission powers and duties.**

The commission shall have the following powers and duties:

1. Study the opportunities for and changing needs of the Asian and Pacific Islander persons in this state.
2. Serve as liaison between the office and the public, sharing information and gathering constituency input.
3. Recommend to the board for adoption rules pursuant to chapter 17A as it deems necessary for the commission and office.
4. Recommend legislative and executive action to the governor and general assembly.
5. Establish advisory committees, work groups, or other coalitions as appropriate.

2004 Acts, ch 1020, §5; 2010 Acts, ch 1031, §157, 170

**216A.154 Office of Asian and Pacific Islander affairs.**

The office of Asian and Pacific Islander affairs is established and shall do the following:

1. Serve as the central permanent agency to advocate for Iowans of Asian and Pacific Islander heritage.
2. Coordinate and cooperate with the efforts of state departments and agencies to serve the needs of Iowans of Asian and Pacific Islander heritage in participating fully in the economic, social, and cultural life of the state, and provide direct assistance to individuals who request it.

3. Develop, coordinate, and assist other public or private organizations which serve Iowans of Asian and Pacific Islander heritage.

4. Serve as an information clearinghouse on programs and agencies operating to assist Iowans of Asian and Pacific Islander heritage.

2004 Acts, ch 1020, §6; 2010 Acts, ch 1031, §158, 170

**216A.155 through 216A.160** Repealed by 2010 Acts, ch 1031, § 168, 170.

## SUBCHAPTER 12

### NATIVE AMERICAN AFFAIRS

#### **216A.161 Definitions.**

For purposes of this subchapter, unless the context otherwise requires:

1. “*Commission*” means the commission of Native American affairs.
  2. “*Office*” means the office of Native American affairs of the department of human rights.
  3. “*Tribal government*” means the governing body of a federally recognized Indian tribe.
- 2008 Acts, ch 1184, §39; 2010 Acts, ch 1031, §159 – 161, 170

#### **216A.162 Establishment — purpose.**

1. A commission of Native American affairs is established consisting of eleven voting members appointed by the governor, subject to confirmation by the senate.

2. The purpose of the commission shall be to work in concert with Native American groups and Native Americans in this state to advance the interests of Native Americans in the areas of human rights, access to justice, economic equality, and the elimination of discrimination.

3. The members of the commission shall be as follows:

a. Seven public members appointed in compliance with sections 69.16 and 69.16A who shall be appointed with consideration given to the geographic residence of the member and the population density of Native Americans within the vicinity of the geographic residence of a member. Of the seven public members appointed, at least one shall be a Native American who is an enrolled tribal member living on a tribal settlement or reservation in Iowa and whose tribal government is located in Iowa.

b. Four members selected by and representing tribal governments.

c. All members of the commission shall be residents of Iowa.

4. Members of the commission shall appoint one of their members to serve as chairperson and may appoint such other officers as the commission deems necessary. The commission shall meet at least four times per year and shall hold special meetings on the call of the chairperson. The members of the commission shall be reimbursed for actual expenses while engaged in their official duties. A member may also be eligible to receive compensation as provided in section 7E.6. A majority of the members of the commission shall constitute a quorum. A quorum shall be required for the conduct of business of the commission, and the affirmative vote of a majority of the currently appointed members is necessary for any substantive action taken by the commission. A member shall not vote on any action if the member has a conflict of interest on the matter, and a statement by the member of a conflict of interest shall be conclusive for this purpose.

2008 Acts, ch 1184, §40; 2008 Acts, ch 1191, §52, 53; 2010 Acts, ch 1031, §162, 163, 170

Confirmation, see §2.32

#### **216A.163 Term of office.**

Five of the members appointed to the initial commission shall be designated by the governor to serve two-year terms, and six shall be designated by the governor to serve four-year terms. Succeeding appointments shall be for a term of four years. Vacancies in the membership shall be filled for the remainder of the term of the original appointment.

2008 Acts, ch 1184, §41

**216A.164 Meetings of the commission.** Repealed by 2010 Acts, ch 1031, § 168, 170.

**216A.165 Duties.**

The commission shall have all powers necessary to carry out the functions and duties specified in this subchapter and shall do all of the following:

1. Study the opportunities for and changing needs of Native American persons in this state.
  2. Serve as a liaison between the department and the public, sharing information and gathering constituency input.
  3. Recommend to the board for adoption rules pursuant to chapter 17A as it deems necessary for the commission and office.
  4. Recommend legislative and executive action to the governor and general assembly.
  5. Establish advisory committees, work groups, or other coalitions as appropriate.
- 2008 Acts, ch 1184, §43; 2008 Acts, ch 1191, §54; 2010 Acts, ch 1031, §164, 170

**216A.166 Office of Native American affairs.**

The office of Native American affairs is established and shall do the following:

1. Serve as the central permanent agency to advocate for Native Americans.
  2. Coordinate and cooperate with the efforts of state departments and agencies to serve the needs of Native Americans in participating fully in the economic, social, and cultural life of the state, and provide direct assistance to individuals who request it.
  3. Develop, coordinate, and assist other public or private organizations which serve Native Americans.
  4. Serve as an information clearinghouse on programs and agencies operating to assist Native Americans.
- 2008 Acts, ch 1184, §44; 2008 Acts, ch 1191, §55; 2010 Acts, ch 1031, §165, 170

**216A.167 Limitations on authority.**

1. The commission and office shall not have the authority to do any of the following:
  - a. Implement or administer the duties of the state of Iowa under the federal Indian Gaming Regulatory Act, shall not have any authority to recommend, negotiate, administer, or enforce any agreement or compact entered into between the state of Iowa and Indian tribes located in the state pursuant to section 10A.104, and shall not have any authority relative to Indian gaming issues.
  - b. Administer the duties of the state under the federal National Historic Preservation Act, the federal Native American Graves Protection and Repatriation Act, and chapter 263B. The commission shall also not interfere with the advisory role of a separate Indian advisory council or committee established by the state archeologist by rule for the purpose of consultation on matters related to ancient human skeletal remains and associated artifacts.
2. This subchapter shall not diminish or inhibit the right of any tribal government to interact directly with the state or any of its departments or agencies for any purpose which a tribal government desires to conduct its business or affairs as a sovereign governmental entity.

2008 Acts, ch 1184, §45; 2010 Acts, ch 1031, §166, 167, 170

**216A.168 through 216A.170** Repealed by 2010 Acts, ch 1031, § 168, 170.

## CHAPTER 216B

## DEPARTMENT FOR THE BLIND

Referred to in §7E.5

This chapter not enacted as a part of this title;  
transferred from chapter 601L in Code 1993

216B.1	Definitions.	216B.5	Commission employees.
216B.2	Commission created.	216B.6	Powers.
216B.3	Commission duties.	216B.7	Report.
216B.4	Federal aid.	216B.8	Contract bids.

**216B.1 Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. “*Commission*” means the commission for the blind.
2. “*Department*” means the department for the blind.
3. “*Director*” means the director of the department for the blind.

86 Acts, ch 1245, §1256

C87, §601K.121

88 Acts, ch 1277, §29, 31

C89, §601L.1

C93, §216B.1

**216B.2 Commission created.**

The commission for the blind is established consisting of three members appointed by the governor, subject to confirmation by the senate. Members of the commission shall serve three-year terms beginning and ending as provided in section 69.19. The commission shall adopt rules concerning programs and services for blind persons provided under this chapter.

Commission members shall be reimbursed for actual expenses incurred in performance of their duties. Members may also be eligible to receive compensation as provided in section 7E.6. The members of the commission shall appoint officers for the commission. A majority of the members of the commission shall constitute a quorum.

86 Acts, ch 1245, §1257

C87, §601K.122

88 Acts, ch 1277, §31

C89, §601L.2

C93, §216B.2

99 Acts, ch 96, §23

Confirmation, see §2.32

**216B.3 Commission duties.**

The commission shall:

1. Prepare and maintain a complete register of the blind of the state which shall describe the condition, cause of blindness, ability to receive education and industrial training, and other facts the commission deems of value.

2. Assist in marketing of products of blind workers of the state.

3. Ameliorate the condition of the blind by promoting visits to them in their homes for the purpose of instruction and by other lawful methods as the commission deems expedient.

4. Make inquiries concerning the causes of blindness to ascertain what portion of cases are preventable, and cooperate with the other organized agents of the state in the adoption and enforcement of proper preventive measures.

5. Provide for suitable vocational training if the commission deems it advisable and necessary. The commission may establish workshops for the employment of the blind, paying suitable wages for work under the employment. The commission may provide or pay for, during their training period, the temporary lodging and support of persons receiving vocational training. The commission may use receipts or earnings that accrue from the operation of workshops as provided in this chapter, but a detailed statement of receipts

or earnings and expenditures shall be made monthly to the director of the department of management.

6. Establish, manage, and control a special training, orientation, and adjustment center or centers for the blind. Training in the centers shall be limited to persons who are sixteen years of age or older, and the department shall not provide or cause to be provided any academic education or training to children under the age of sixteen except that the commission may provide library services to these children. The commission may provide for the maintenance, upkeep, repair, and alteration of the buildings and grounds designated as centers for the blind including the expenditure of funds appropriated for that purpose. Nonresidents may be admitted to Iowa centers for the blind as space is available, upon terms determined by rule.

7. Establish and maintain offices for the department and commission.

8. Accept gifts, grants, devises, or bequests of real or personal property from any source for the use and purposes of the department. Notwithstanding sections 8.33 and 12C.7, the interest accrued from moneys received under this section shall not revert to the general fund of the state.

9. Provide library services to persons who are blind and persons with disabilities.

10. Act as a bureau of information and industrial aid for the blind, such as assisting the blind in finding employment.

11. Be responsible for the budgetary and personnel decisions for the department and commission.

12. Manage and control the property, both real and personal, belonging to the department. The commission shall, according to the schedule established in this subsection, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and plastic products with recycled content, including but not limited to plastic garbage can liners. For purposes of this subsection, "*recycled content*" means that the content of the product contains a minimum of thirty percent postconsumer material.

a. By July 1, 1991, one hundred percent of the purchases of inks which are used for newsprint paper for printing services performed internally or contracted for by the commission shall be soybean-based.

b. By July 1, 1995, a minimum of ten percent of the purchases of garbage can liners made by the commission shall be plastic garbage can liners with recycled content. The percentage purchased shall increase by ten percent annually until fifty percent of the purchases of garbage can liners are plastic garbage can liners with recycled content.

c. By July 1, 1993, one hundred percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the commission, shall be soybean-based to the extent formulations for such inks are available.

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

(1) A listing of plastic products which are regularly purchased by the commission for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the commission, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

e. The department of natural resources shall review the procurement specifications currently used by the commission to eliminate, wherever possible, discrimination against the procurement of products manufactured with recycled content and soybean-based inks.

f. The department of natural resources shall assist the commission in locating suppliers of products with recycled content and soybean-based inks, and collecting data on recycled content and soybean-based ink purchases.

g. The commission, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

h. The department of natural resources shall cooperate with the commission in all phases of implementing this section.

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

14. Purchase and use recycled printing and writing paper in accordance with the schedule established in section 8A.315; establish a wastepaper recycling program in accordance with the recommendations made by the department of natural resources and requirements of section 8A.329; and, in accordance with section 8A.311, require product content statements and compliance with requirements regarding contract bidding.

15. Develop a plan to provide telephone yellow pages information without charge to persons declared to be blind under the standards in section 422.12, subsection 2, paragraph “a”, subparagraph (5). The department may apply for federal funds to support the service. The program shall be limited in scope by the availability of funds.

16. a. A gasoline-powered motor vehicle purchased by the commission shall not operate on gasoline other than ethanol blended gasoline as defined in section 214A.1. A diesel-powered motor vehicle purchased by the commission shall not operate on diesel fuel other than biodiesel fuel as defined in section 214A.1, if commercially available. A state issued credit card shall not be valid to purchase gasoline other than ethanol blended gasoline or to purchase diesel fuel other than biodiesel fuel, if commercially available. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on ethanol blended gasoline or biodiesel fuel, as applicable. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

b. Of all new passenger vehicles and light pickup trucks purchased by the commission, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

(1) A flexible fuel which is any of the following:

(a) E-85 gasoline as provided in section 214A.2.

(b) B-20 biodiesel blended fuel as provided in section 214A.2.

(c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

(2) Compressed or liquefied natural gas.

(3) Propane gas.

(4) Solar energy.

(5) Electricity.

c. The provisions of paragraph “b” do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

17. Comply with the requirements for the purchase of lubricating oils, industrial oils, greases, and hydraulic fluids as established pursuant to section 8A.316.

18. Give preference to purchasing designated biobased products in the same manner as provided in section 8A.317.

19. Plan, establish, administer, and promote a statewide program to provide audio news and information services to blind or visually impaired persons residing in this state.

a. The commission may enter into necessary contracts and arrangements with the national federation for the blind to provide for the delivery of newspapers over the telephone, furnished by the national federation for the blind.

b. The commission may enter into necessary contracts and arrangements with the Iowa radio reading information service for the blind and print handicapped to provide for the delivery of newspapers, magazines, and other printed materials over the radio, furnished by the Iowa radio reading information service for the blind and print handicapped.

C87, §601K.123

88 Acts, ch 1185, §4; 88 Acts, ch 1277, §31

C89, §601L.3

89 Acts, ch 83, §79; 89 Acts, ch 272, §39; 90 Acts, ch 1237, §5, 6; 91 Acts, ch 97, §59; 91 Acts, ch 194, §8; 91 Acts, ch 254, §23; 92 Acts, ch 1095, §4

C93, §216B.3

93 Acts, ch 26, §2; 93 Acts, ch 176, §38; 94 Acts, ch 1119, §24; 95 Acts, ch 44, §1; 95 Acts, ch 62, §2; 96 Acts, ch 1129, §30; 98 Acts, ch 1082, §3; 99 Acts, ch 114, §14; 99 Acts, ch 121, §8; 2000 Acts, ch 1109, §3; 2003 Acts, ch 145, §207; 2004 Acts, ch 1176, §10; 2006 Acts, ch 1142, §59, 60; 2007 Acts, ch 22, §52; 2008 Acts, ch 1104, §3; 2008 Acts, ch 1169, § 37, 42; 2009 Acts, ch 41, §222; 2009 Acts, ch 133, §230; 2010 Acts, ch 1079, §1

Referred to in §8A.302, 8A.321, 8A.322

#### **216B.4 Federal aid.**

1. The director may accept financial aid from the government of the United States for carrying out rehabilitation and physical restoration of the blind and for providing library, news, and information services to persons who are blind and persons with disabilities.

2. A contribution or grant shall not be accepted if a condition is attached to it for its use or administration other than that it be used for assistance to the blind.

86 Acts, ch 1245, §1258

C87, §601K.124

88 Acts, ch 1277, §31

C89, §601L.4

C93, §216B.4

96 Acts, ch 1129, §31; 2002 Acts, ch 1119, §28; 2004 Acts, ch 1176, §11; 2010 Acts, ch 1079, §2

#### **216B.5 Commission employees.**

The commission may employ staff who shall be qualified by experience to assume the responsibilities of the offices. The director shall be the administrative officer of the commission and shall be responsible for implementing policy set by the commission. The director shall carry out programs and policies as determined by the commission.

86 Acts, ch 1245, §1259

C87, §601K.125

88 Acts, ch 1277, §31

C89, §601L.5

C93, §216B.5

#### **216B.6 Powers.**

The commission shall have all powers necessary to carry out the functions and duties specified in this chapter, including, but not limited to the power to establish advisory committees on special studies, to solicit and accept gifts and grants, to adopt rules according to chapter 17A for the commission and department, and to contract with public and private groups to conduct its business. All departments, divisions, agencies, and offices of the state shall make available upon request of the commission information which is pertinent to the subject matter of the study and which is not by law confidential.

86 Acts, ch 1245, §1260

C87, §601K.126

88 Acts, ch 1277, §31

C89, §601L.6

C93, §216B.6

99 Acts, ch 96, §24

**216B.7 Report.**

The commission shall make a detailed report of its activities, studies, conclusions and recommendations to the general assembly not later than February 15 of each odd-numbered year.

- 86 Acts, ch 1245, §1261
- C87, §601K.127
- 88 Acts, ch 1277, §31
- C89, §601L.7
- C93, §216B.7

**216B.8 Contract bids.**

A bidder awarded a contract with the department shall disclose the names of all subcontractors, who will work on the project being bid, within forty-eight hours after the award of the contract. If a subcontractor named by a bidder awarded a contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost.

- 90 Acts, ch 1161, §5
- C91, §601L.8
- C93, §216B.8

**CHAPTER 216C**

**RIGHTS OF PERSONS WITH DISABILITIES**

This chapter not enacted as a part of this title;  
transferred from chapter 601D in Code 1993

216C.1	Participation by persons with disabilities.	216C.7	Penalty for denying rights.
216C.2	Public employment.	216C.8	White cane safety day.
216C.3	Free use of public facilities.	216C.9	Curb ramps and sloped areas for persons with disabilities.
216C.4	Accommodations.		
216C.5	Use of guide dogs.	216C.10	Use of hearing dog.
216C.6	Failure to use cane or dog not negligence.	216C.11	Service dogs and assistive animals.

**216C.1 Participation by persons with disabilities.**

1. It is the policy of this state to encourage and enable persons who are blind or partially blind and persons with disabilities to participate fully in the social and economic life of the state and to engage in remunerative employment.

2. To encourage participation by persons with disabilities, it is the policy of this state to ensure compliance with federal requirements concerning persons with disabilities.

- [C71, §93B.1; C73, 75, 77, 79, 81, §601D.1]
- C93, §216C.1

93 Acts, ch 95, §6; 96 Acts, ch 1129, §32; 2010 Acts, ch 1079, §3

**216C.2 Public employment.**

Persons who are blind or partially blind and persons with disabilities shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds, on the same terms and conditions as other persons, unless it is shown that the particular disability prevents the performance of the work required.

- [C71, §93B.2; C73, 75, 77, 79, 81, §601D.2]
- C93, §216C.2

96 Acts, ch 1129, §33; 2010 Acts, ch 1079, §4  
Referred to in §331.324

**216C.3 Free use of public facilities.**

Persons who are blind or partially blind and persons with disabilities have the same right as other persons to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public elevators, public facilities, and other public places.

[C62, 66, §351.31; C71, §93B.3; C73, 75, 77, 79, 81, §601D.3]

C93, §216C.3

96 Acts, ch 1129, §34; 2010 Acts, ch 1079, §5

Referred to in §216C.5, 216C.10, 216C.11

**216C.4 Accommodations.**

Persons who are blind or partially blind and persons with disabilities are entitled to full and equal accommodations, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, other public conveyances or modes of transportation, hotels, lodging places, eating places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

[C71, §93B.4; C73, 75, 77, 79, 81, §601D.4]

C93, §216C.4

96 Acts, ch 1129, §35; 2010 Acts, ch 1079, §6

Referred to in §216C.5, 216C.10, 216C.11

**216C.5 Use of guide dogs.**

Every blind or partially blind person shall have the right to be accompanied by a guide dog, under control and especially trained for the purpose, in any of the places listed in sections 216C.3 and 216C.4 without being required to make additional payment for the guide dog. A landlord shall waive lease restrictions on the keeping of a guide dog for a blind person. The blind person is liable for damage done to the premises or facilities by a guide dog.

[C62, 66, §351.30; C71, §93B.5; C73, 75, 77, 79, 81, §601D.5]

83 Acts, ch 46, §3

C93, §216C.5

**216C.6 Failure to use cane or dog not negligence.**

A blind or partially blind pedestrian not carrying a cane or using a guide dog in any place shall have all of the rights and privileges conferred by law upon other persons, and the failure of a blind or partially blind pedestrian to carry a cane or to use a guide dog in any place shall not be held to constitute or be evidence of contributory negligence.

[C71, §93B.6; C73, 75, 77, 79, 81, §601D.6]

C93, §216C.6

**216C.7 Penalty for denying rights.**

Any person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with the rights of any person under this chapter shall be guilty of a simple misdemeanor.

[C62, 66, §351.32; C71, §93B.7; C73, 75, 77, 79, 81, §601D.7]

C93, §216C.7

**216C.8 White cane safety day.**

The governor shall annually take suitable public notice of October 15 as "White Cane Safety Day". The governor shall issue a proclamation commenting upon the significance of the white cane; calling upon the citizens to observe the provisions of this chapter and sections 321.332 and 321.333 and to take precautions necessary for the safety of persons with disabilities; reminding the citizens of the policies herein declared and urging the citizens to cooperate in giving effect to them; and emphasizing the need of the citizens to be aware of the presence of

persons with disabilities in the community and to offer assistance to persons with disabilities upon appropriate occasions.

[C71, §93B.8; C73, 75, 77, 79, 81, §601D.8]

C93, §216C.8

96 Acts, ch 1129, §36

#### **216C.9 Curb ramps and sloped areas for persons with disabilities.**

1. If a street, road, or highway in this state is newly built or reconstructed, a curb ramp or sloped area shall be constructed or installed at each intersection of the street, road, or highway with a sidewalk or path. If a sidewalk or path in this state is newly built or reconstructed, a curb ramp or sloped area shall be constructed or installed at each intersection of the sidewalk or path with a street, highway, or road.

2. Curb ramps and sloped areas that are required pursuant to this section shall be constructed or installed in compliance with applicable federal requirements adopted in accordance with the federal Americans With Disabilities Act, including but not limited to the guidelines issued by the federal architectural and transportation barriers compliance board.

[C75, 77, 79, 81, §601D.9]

C93, §216C.9

93 Acts, ch 95, §7; 96 Acts, ch 1129, §37; 2010 Acts, ch 1079, §7; 2010 Acts, ch 1193, §43

Referred to in §331.361

#### **216C.10 Use of hearing dog.**

1. A deaf or hard-of-hearing person has the right to be accompanied by a hearing dog, under control and especially trained to assist the deaf or hard-of-hearing by responding to sound, in any place listed in sections 216C.3 and 216C.4 without being required to make additional payment for the hearing dog. A landlord shall waive lease restrictions on the keeping of dogs for a deaf or hard-of-hearing person with a hearing dog. The deaf or hard-of-hearing person is liable for damage done to any premises or facility by a hearing dog.

2. A person who denies or interferes with the right of a deaf or hard-of-hearing person under this section is, upon conviction, guilty of a simple misdemeanor.

86 Acts, ch 1245, §1263

C87, §601D.10

C93, §216C.10

93 Acts, ch 75, §5; 2010 Acts, ch 1079, §8

#### **216C.11 Service dogs and assistive animals.**

1. For purposes of this section, “*service dog*” means a dog specially trained to assist a person with a disability, whether described as a service dog, a support dog, an independence dog, or otherwise. “*Assistive animal*” means a simian or other animal specially trained or in the process of being trained to assist a person with a disability.

2. A person with a disability, a person assisting a person with a disability by controlling a service dog or an assistive animal, or a person training a service dog or an assistive animal has the right to be accompanied by a service dog or an assistive animal, under control, in any of the places listed in sections 216C.3 and 216C.4 without being required to make additional payment for the service dog or assistive animal. A landlord shall waive lease restrictions on the keeping of animals for the service dog or assistive animal of a person with a disability. The person is liable for damage done to any premises or facility by a service dog or assistive animal.

3. A person who knowingly denies or interferes with the right of a person under this section is, upon conviction, guilty of a simple misdemeanor.

88 Acts, ch 1067, §1

C89, §601D.11

91 Acts, ch 69, §1

C93, §216C.11

96 Acts, ch 1129, §113; 2009 Acts, ch 163, §1; 2010 Acts, ch 1069, §27; 2010 Acts, ch 1079, §9

Referred to in §717F.1

## CHAPTER 216D

## OPERATION OF FOOD SERVICE IN PUBLIC BUILDINGS

Referred to in §331.361

This chapter not enacted as a part of this title;  
transferred from chapter 601C in Code 1993

216D.1	Public policy.	216D.4	Other public buildings.
216D.2	Definitions.		
216D.3	Agreement with commission for blind.		

**216D.1 Public policy.**

It is the policy of this state to provide maximum opportunities for training blind persons, helping them to become self-supporting and demonstrating their capabilities. This chapter shall be construed to carry out this policy.

[C71, §93C.1; C73, 75, 77, 79, 81, §601C.1]  
C93, §216D.1

**216D.2 Definitions.**

For the purposes of this chapter:

1. “*Food service*” includes restaurant, cafeteria, snack bar, vending machines for food and beverages, and goods and services customarily offered in connection with any of these.

2. “*Public office building*” means the state capitol, all county courthouses, all city halls, and all buildings used primarily for governmental offices of the state or any county or city. It does not include public schools or buildings at institutions of the state board of regents or the state department of human services.

[C71, §93C.2; C73, 75, 77, 79, 81, S81, §601C.2; 81 Acts, ch 117, §1095]  
83 Acts, ch 96, §157, 159  
C93, §216D.2  
94 Acts, ch 1173, §9

**216D.3 Agreement with commission for blind.**

A governmental agency which proposes to operate or continue a food service in a public office building shall first attempt in good faith to make an agreement for the commission for the blind to operate the food service without payment of rent. The governmental agency shall not offer or grant to any other party a contract or concession to operate such food service unless the governmental agency determines in good faith that the commission for the blind is not willing to or cannot satisfactorily provide such food service. This chapter shall not impair any valid contract existing on July 1, 1969, and shall not preclude renegotiation of such contract on the same terms and with the same parties.

[C71, §93C.3; C73, 75, 77, 79, 81, §601C.3]  
C93, §216D.3  
Referred to in §216D.4

**216D.4 Other public buildings.**

With respect to all state, county, municipal, and school buildings which are not subject to section 216D.3, the governmental agency in charge of the building shall consider allowing the commission for the blind to operate any existing or proposed food service in the building, and shall discuss such operation with the commission for the blind upon its request.

[C71, §93C.4; C73, 75, 77, 79, 81, §601C.4]  
C93, §216D.4

## CHAPTER 216E

### ASSISTIVE DEVICES

216E.1	Definitions.	216E.5	Nonconformity disclosure requirement.
216E.2	Express warranties.	216E.6	Remedies.
216E.3	Assistive device replacement or refund.	216E.7	Exemptions.
216E.4	Manufacturer's duty to provide reimbursement or a loaner for temporary replacement of assistive devices — penalties.		

#### 216E.1 Definitions.

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

1. “*Assistive device*” means any item, piece of equipment, or product system which is purchased, or whose transfer is accepted in this state, and which is used to increase, maintain, or improve the functional capabilities of individuals with disabilities concerning a major life activity. “*Assistive device*” does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. “*Assistive device*” does not mean any device for which a certificate of title is issued by the state department of transportation but does mean any item, piece of equipment, or product system otherwise meeting the definition of “*assistive device*” that is incorporated, attached, or included as a modification in or to such a certificated device.

2. “*Assistive device dealer*” means a person who is in the business of selling assistive devices.

3. “*Assistive device lessor*” means a person who leases assistive devices to consumers, or who holds the lessor’s rights, under a written lease.

4. “*Collateral costs*” means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of shipping, sales tax, and of obtaining an alternative assistive device.

5. “*Consumer*” means any one of the following:

a. The purchaser of an assistive device, if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale.

b. A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive device.

c. A person who may enforce the warranty.

d. A person who leases an assistive device from an assistive device lessor under a written lease.

6. “*Demonstrator*” means an assistive device used primarily for the purpose of demonstration to the public.

7. “*Early termination costs*” means any expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to the manufacturer. “*Early termination costs*” includes a penalty for prepayment under a finance arrangement.

8. “*Early termination savings*” means any expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer which shall include an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total payments remaining for the period of the lease term remaining after the early termination and the present value of those remaining payments at the date of the early termination.

9. “*Loaner*” means an assistive device, provided free of charge to the consumer, for use by the consumer, that need not be new or be identical to, or have functional capabilities equal

to or greater than, those of the original assistive device, but that meets all of the following conditions:

- a. The loaner is in good working order.
- b. The loaner performs, at a minimum, the most essential functions of the original assistive device, in light of the disabilities of the consumer.
- c. Any differences between the loaner and the original assistive device do not create a threat to the consumer's health or safety.

10. "*Major life activity*" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

11. "*Manufacturer*" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, distributor branch, and any warrantors of the assistive device, but does not include an assistive device dealer or assistive device lessor.

12. "*Nonconformity*" means any defect, malfunction, or condition which substantially impairs the use, value, or safety of an assistive device or any of its component parts, but does not include a condition, defect, or malfunction that is the result of abuse, neglect, or unauthorized modification or alteration of the assistive device by the consumer.

13. "*Reasonable attempt to repair*" means any of the following occurring within the terms of an express warranty applicable to a new assistive device or within one year after first delivery of the assistive device to a consumer, whichever is sooner:

- a. The manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers accepts return of the new assistive device for repair at least two times.

- b. The manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers places the assistive device out of service for an aggregate of at least thirty cumulative days because of warranty nonconformities.

98 Acts, ch 1042, §1; 2006 Acts, ch 1159, §9, 10

Referred to in §321.1

### **216E.2 Express warranties.**

1. A manufacturer or assistive device lessor who sells or leases an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device, warranting the assistive device to be free of any nonconformity. The duration of the express warranty shall be not less than one year after first delivery of the assistive device to the consumer. If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.

2. An express warranty does not take effect until the consumer takes possession of the new assistive device.

98 Acts, ch 1042, §2

### **216E.3 Assistive device replacement or refund.**

1. If an assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers, and makes the assistive device available for repair before one year after first delivery of the device to the consumer or within the period of the express warranty if the warranty is longer than one year, a reasonable attempt to repair the nonconformity shall be made.

2. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirements of either paragraph "a" or "b" upon the request of a consumer.

- a. The manufacturer shall provide for a refund by doing one of the following:

- (1) If the assistive device was purchased by the consumer, accept return of the assistive device and refund to the consumer and to any holder of perfected security interest in the consumer's assistive device, as the holder's interest may appear, the full purchase price plus

any finance charge paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use.

(2) If the assistive device was leased by the consumer, accept return of the assistive device, refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as the holder's interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use. The manufacturer shall have a cause of action against the dealer or lessor for reimbursement of any amount that the manufacturer pays to a consumer which exceeds the net price received by the manufacturer for the assistive device.

b. The manufacturer shall provide a comparable new assistive device or offer a refund to the consumer if the consumer does any one of the following:

(1) Offers to transfer possession of the assistive device to the manufacturer. No later than thirty days after that offer, the manufacturer shall provide the consumer with the comparable new assistive device or a refund. When the manufacturer provides the new assistive device or refund, the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

(2) Offers to return the assistive device to the manufacturer. No later than thirty days after the offer, the manufacturer shall provide a refund to the consumer. When the manufacturer provides a refund, the consumer shall return the assistive device having the nonconformity to the manufacturer.

(3) Offers to transfer possession of a leased assistive device to the manufacturer. No later than thirty days after the offer, the manufacturer shall provide a refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

3. Under the provisions of this section, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device lessor's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings.

4. Under the provisions of this section, a reasonable allowance for use shall not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor, or assistive device dealer.

5. A person shall not enforce a lease against a consumer after the consumer receives a refund.

98 Acts, ch 1042, §3

#### **216E.4 Manufacturer's duty to provide reimbursement or a loaner for temporary replacement of assistive devices — penalties.**

1. Whenever an assistive device covered by a manufacturer's express warranty is tendered by a consumer to the dealer from whom the assistive device was purchased or exchanged for the repair of any defect, malfunction, or nonconformity to which the warranty is applicable, the manufacturer shall provide the consumer, at the consumer's choice, for the duration of the repair period, either a rental assistive device reimbursement of up to twenty dollars per day, or a loaner, without cost to the consumer, if a loaner is reasonably available or obtainable by the manufacturer, assistive device lessor, or assistive device dealer, if any of the following applies:

a. The repair period exceeds ten working days, including the day on which the device is tendered to the manufacturer or an assistive device dealer designated by the manufacturer for repairs. If the assistive device dealer does not tender the assistive device to the manufacturer in a timely enough manner for the manufacturer to make the repairs within

ten days, the manufacturer shall have a cause of action against the assistive device dealer for reimbursement of any penalties that the manufacturer must pay.

b. The nonconformity is the same for which the assistive device has been tendered to the assistive device dealer for repair on at least two previous occasions.

2. The provisions of this section regarding a manufacturer's duty shall apply for the period of the applicable express warranty, or until the date any repair required by the warranty is completed and the assistive device is returned to the consumer with the nonconformity eliminated, whichever is later, even if the assistive device is returned after the end of the warranty period.

98 Acts, ch 1042, §4

#### **216E.5 Nonconformity disclosure requirement.**

An assistive device returned by a consumer or assistive device lessor in this state or any other state for nonconformity shall not be sold or leased again in this state unless full written disclosure of the reason for return is made to any prospective buyer or lessee by the manufacturer, assistive device dealer, or assistive device lessor.

98 Acts, ch 1042, §5

#### **216E.6 Remedies.**

1. This chapter shall not limit rights or remedies available to a consumer under any other law.

2. Any waiver of rights by a consumer under this chapter is void.

3. In addition to pursuing any other remedy, a consumer may bring an action to recover any damages caused by a violation of this chapter. The court shall award a consumer who prevails in such an action no more than three times the amount of any pecuniary loss, together with costs and reasonable attorney fees, and any equitable relief that the court determines is appropriate.

98 Acts, ch 1042, §6

#### **216E.7 Exemptions.**

This chapter does not apply to a hearing aid sold, leased, or transferred to a consumer by an audiologist licensed under chapter 154F, or a hearing aid dispenser licensed under chapter 154A, if the audiologist or dispenser provides either an express warranty for the hearing aid or provides for service and replacement of the hearing aid.

98 Acts, ch 1042, §7; 2005 Acts, ch 3, §49; 2009 Acts, ch 41, §87; 2009 Acts, ch 133, §84

## SUBTITLE 2

### HUMAN SERVICES — INSTITUTIONS

Referred to in §714.8

## CHAPTER 217

### DEPARTMENT OF HUMAN SERVICES

Referred to in §252B.9

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217.11 and 217.12 Repealed by 2008 Acts, ch 1072, §6.	217.40	Training for guardians and conservators.
217.13 Department to provide certain volunteer services — volunteer liability.	217.41	Refugee services foundation.
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217.15 Administrator of division of administration.		
217.16 Cooperation with other divisions.		SUBCHAPTER II
217.17 Administrator of division of planning.		FIELD SERVICES ORGANIZATION
217.18 Official seal.	217.42	Service areas — offices.
217.19 Expenses.	217.43	Service area advisory boards — location of county offices.
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#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### **217.1 Programs of department.**

There is established a department of human services to administer programs designed to improve the well-being and productivity of the people of the state of Iowa. The department shall concern itself with the problems of human behavior, adjustment, and daily living through the administration of programs of family, child, and adult welfare, economic assistance including costs of medical care, rehabilitation toward self-care and support, delinquency prevention and control, treatment and rehabilitation of juvenile offenders, care

and treatment of persons with mental illness or an intellectual disability, and other related programs as provided by law.

[C71, 73, 75, 77, 79, 81, §217.1]

83 Acts, ch 96, §63, 159; 96 Acts, ch 1129, §38; 2012 Acts, ch 1019, §20

Referred to in §7E.5

Department to develop and implement strategies to increase efficiencies by reducing paperwork, decreasing staff time, and providing more streamlined services; annual progress report to joint appropriations subcommittee on health and human services; 2010 Acts, ch 1031, §335

### **217.2 Council on human services.**

1. *a.* There is created within the department of human services a council on human services which shall act in a policymaking and advisory capacity on matters within the jurisdiction of the department. The council shall consist of seven voting members appointed by the governor subject to confirmation by the senate. Appointments shall be made on the basis of interest in public affairs, good judgment, and knowledge and ability in the field of human services. Appointments shall be made to provide a diversity of interest and point of view in the membership and without regard to religious opinions or affiliations. The voting members of the council shall serve for six-year staggered terms.

*b.* Each term of a voting member shall commence and end as provided by section 69.19.

*c.* All voting members of the council shall be electors of the state of Iowa. No more than four members shall belong to the same political party and no more than two members shall, at the time of appointment, reside in the same congressional district. At least one member of the council shall be a member of a county board of supervisors at the time of appointment to the council. Vacancies occurring during a term of office shall be filled in the same manner as the original appointment for the balance of the unexpired term subject to confirmation by the senate.

2. In addition to the voting members described in subsection 1, the membership of the council shall include four legislators as ex officio, nonvoting members. The four legislators shall be appointed one each by the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives for terms as provided in section 69.16B.

[C71, 73, 75, 77, 79, 81, §217.2; 81 Acts, ch 78, §20, 21]

83 Acts, ch 96, §157, 159; 2009 Acts, ch 115, §1

Confirmation, see §2.32

### **217.3 Duties of council.**

The council on human services shall:

1. Organize annually and select a chairperson and vice chairperson.
2. Adopt and establish policy for the operation and conduct of the department of human services, subject to any guidelines which may be adopted by the general assembly, and the implementation of all services and programs thereunder.
3. Report immediately to the governor any failure by the director or any administrator of the department of human services to carry out any of the policy decisions or directives of the council.
4. Approve the budget of the department of human services prior to submission to the governor. Prior to approval of the budget, the council shall publicize and hold a public hearing to provide explanations and hear questions, opinions, and suggestions regarding the budget. Invitations to the hearing shall be extended to the governor, the governor-elect, the director of the department of management, and other persons deemed by the council as integral to the budget process. The budget materials submitted to the governor shall include a review of options for revising the medical assistance program made available by federal action or by actions implemented by other states as identified by the department, the medical assistance advisory council and the executive committee of the medical assistance advisory council created in section 249A.4B, and by county representatives. The review shall address what potential revisions could be made in this state and how the changes would be beneficial to Iowans.
5. Insure that all programs administered or services rendered by the department directly

to any citizen or through a local board of welfare to any citizen are coordinated and integrated so that any citizen does not receive a duplication of services from various departments or local agencies that could be rendered by one department or local agency. If the council finds that such is not the case, it shall hear and determine which department or local agency shall provide the needed service or services and enter an order of their determination by resolution of the council which must be concurred in by at least a majority of the members. Thereafter such order or resolution of the council shall be obeyed by all state departments and local agencies to which it is directed.

6. Adopt all necessary rules recommended by the director or administrators of divisions hereinafter established prior to their promulgation pursuant to chapter 17A.

7. Approve the establishment of any new division or reorganization, consolidation or abolition of any established division prior to the same becoming effective.

8. Recommend to the governor the names of individuals qualified for the position of director of human services when a vacancy exists in the office.

[C71, 73, 75, 77, 79, 81, §217.3]

83 Acts, ch 96, §157, 159; 89 Acts, ch 283, §18; 95 Acts, ch 205, §36; 98 Acts, ch 1155, §7; 2005 Acts, ch 120, §1

Referred to in §225C.6, 249A.4B

### **217.3A Advisory committees.**

1. *General.* The council on human services shall establish and utilize the advisory committees identified in this section and may establish and utilize other advisory committees. The council shall establish appointment provisions, membership terms, operating guidelines, and other operational requirements for committees established pursuant to this section.

2. *Child abuse prevention.* The council shall establish a child abuse prevention program advisory committee to support the child abuse prevention program implemented in accordance with section 235A.1. The duties of the advisory committee shall include all of the following:

a. Advise the director of human services and the administrator of the division of the department of human services responsible for child and family programs regarding expenditures of funds received for the child abuse prevention program.

b. Review the implementation and effectiveness of legislation and administrative rules concerning the child abuse prevention program.

c. Recommend changes in legislation and administrative rules to the general assembly and the appropriate administrative officials.

d. Require reports from state agencies and other entities as necessary to perform its duties.

e. Receive and review complaints from the public concerning the operation and management of the child abuse prevention program.

f. Approve grant proposals.

3. *Child support.*

a. The council shall establish a child support advisory committee.

(1) Members of the advisory committee shall include at least one district judge and representatives of custodial parent groups, noncustodial parent groups, the general assembly, the office of ombudsman, the Iowa state bar association, the Iowa county attorneys association, and other constituencies which have an interest in child support enforcement issues, appointed by the respective entity.

(2) The legislative members of the advisory committee shall be appointed as follows: one senator each by the majority leader of the senate, after consultation with the president of the senate, and by the minority leader of the senate, and one member of the house of representatives each by the speaker of the house of representatives, after consultation with the majority leader of the house of representatives, and by the minority leader of the house of representatives.

b. The legislative members of the advisory committee shall serve for terms as provided in section 69.16B. Appointments shall comply with sections 69.16 and 69.16A. Vacancies shall be filled by the original appointing authority and in the manner of the original appointments.

c. The child support advisory committee shall assist the department in all of the following activities:

(1) Review of existing child support guidelines and recommendations for revision.

(2) Examination of the operation of the child support system to identify program improvements or enhancements which would increase the effectiveness of securing parental support and parental involvement.

(3) Recommendation of legislation which would clarify and improve state law regarding support for children.

d. The committee shall receive input from the public regarding any child support issues.

4. *Child welfare.*

a. The council shall establish a child welfare advisory committee to advise the department of human services on programmatic and budgetary matters related to the provision or purchase of child welfare services. The committee shall meet to review departmental budgets, policies, and programs, and proposed budgets, policies, and programs, and to make recommendations and suggestions to make the state child welfare budget, programs, and policies more effective in serving families and children.

b. The membership of the advisory committee shall include representatives of child welfare service providers, juvenile court services, the Iowa foster and adoptive parent association, the child advocacy board, the coalition for family and children's services in Iowa, children's advocates, service consumers, and others who have training or knowledge related to child welfare services. In addition, four members shall be legislators, all serving as ex officio, nonvoting members, with one each appointed by the speaker of the house of representatives, the minority leader of the house of representatives, the majority leader of the senate, and the minority leader of the senate. The director of human services and the administrator of the division of the department of human services responsible for child welfare services, or their designees, shall also be ex officio, nonvoting members, and shall serve as resource persons to the advisory committee.

2010 Acts, ch 1031, §391; 2013 Acts, ch 10, §29

Subsection 3, paragraph a, subparagraph (1) amended

#### **217.4 Meetings of council.**

The council shall meet at least monthly. Additional meetings shall be called by the chairperson or upon written request of any three members thereof as necessary to carry out the duties of the council. The chairperson shall preside at all meetings or in the absence of the chairperson the vice chairperson shall preside. The members of the council shall be paid a per diem as specified in section 7E.6 and their reasonable and necessary expenses.

[C71, 73, 75, 77, 79, 81, §217.4]

90 Acts, ch 1256, §36

Mileage expense rate, see §70A.9

#### **217.5 Director of human services.**

The chief administrative officer for the department of human services is the director of human services. The director shall be appointed by the governor subject to confirmation by the senate and shall serve at the pleasure of the governor. The governor shall fill a vacancy in this office in the same manner as the original appointment was made. The director shall be selected primarily for administrative ability.

The director shall not be selected on the basis of political affiliation and shall not engage in political activity while holding this position.

[C71, 73, 75, 77, 79, 81, §217.5]

83 Acts, ch 96, §157, 159; 88 Acts, ch 1134, §43

Confirmation, see §2.32

#### **217.6 Rules and regulations — organization of department.**

1. The director is hereby authorized to recommend to the council for adoption such rules and regulations as are necessary to carry into practice the programs of the various divisions and to establish such divisions and to assign or reassign duties, powers, and responsibilities within the department, all with the approval of the council on human services, within the

department as the director deems necessary and appropriate for the proper administration of the duties, functions and programs with which the department is charged. Any action taken, decision made, or administrative rule adopted by any administrator of a division may be reviewed by the director. The director, upon such review, may affirm, modify, or reverse any such action, decision, or rule.

2. The rules and regulations adopted for the public benefits and programs administered by the department of human services shall apply the residency eligibility restrictions required by federal and state law.

3. The director shall organize the department of human services into divisions to carry out in efficient manner the intent of this chapter. The department of human services may be initially divided into the following divisions of responsibility: the division of child and family services, the division of mental health and disability services, the division of administration, and the division of planning, research and statistics.

4. If the department of human services requires or requests a service consumer, service provider, or other person to maintain required documentation in electronic form, the department shall accept such documentation submitted by electronic means and shall not require a physical copy of the documentation unless required by state or federal law.

[C71, 73, 75, 77, 79, 81, §217.6; 81 Acts, ch 78, §20, 22]

83 Acts, ch 96, §64, 159; 94 Acts, ch 1170, §27; 2006 Acts, ch 1115, §21; 2010 Acts, ch 1031, §406; 2011 Acts, ch 34, §52; 2011 Acts, ch 122, §19, 23

#### **217.7 Administrators of divisions.**

The director may appoint an administrator of each of the divisions. The administrators shall be selected on the basis of their particular professional qualifications, education, and background relative to the assigned responsibilities of their divisions.

[C71, 73, 75, 77, 79, 81, §217.7]

88 Acts, ch 1134, §44

#### **217.8 Division of child and family services.**

The administrator of the division of child and family services shall be qualified by training, experience, and education in the field of welfare and social problems. The administrator is charged with the administration of programs involving neglected, dependent, and delinquent children, child welfare, family investment program, and aid to persons with disabilities and shall administer and be in control of other related programs established for the general welfare of families, adults, and children as directed by the director.

[C50, 54, 58, 62, 66, §218.79; C71, 73, 75, 77, 79, 81, §217.8; 81 Acts, ch 27, §2; 82 Acts, ch 1260, §17]

90 Acts, ch 1239, §3; 93 Acts, ch 97, §24; 96 Acts, ch 1129, §113

#### **217.9 Additional duties.**

The administrator of the division of child and family services may have the additional following duties, powers and responsibilities:

1. Develop a program of basic education, recreation, vocational training and guidance for social adjustment.

2. Administer programs and statutes involved with child placement, employment and supervision of state boards.

3. Prepare a budget and such report or reports as required by law or as directed by the director.

4. Develop a program in corrective institutions for juveniles designed to rehabilitate the inmates and patients and institute a program of placement and parole supervision for all parolees of said corrective institutions for juveniles.

[C50, 54, 58, 62, 66, §218.80; C71, 73, 75, 77, 79, 81, §217.9]

**217.9A** Repealed by 98 Acts, ch 1206, § 19.

**217.10 Administrator of division of mental health and disability services.**

The administrator of the division of mental health and disability services shall be qualified as provided in section 225C.3, subsection 3. The administrator's duties are enumerated in section 225C.4.

[C50, 54, 58, 62, 66, §218.75; C71, 73, 75, 77, 79, 81, §217.10; 81 Acts, ch 78, §20, 23, 50]  
94 Acts, ch 1170, §28; 2006 Acts, ch 1115, §22

**217.11 and 217.12** Repealed by 2008 Acts, ch 1072, § 6. See § 216A.107.

**217.13 Department to provide certain volunteer services — volunteer liability.**

1. The department of human services shall establish volunteer programs designed to enhance the services provided by the department. Roles for volunteers may include but shall not be limited to parent aides, friendly visitors, commodity distributors, clerical assistants, medical transporters, and other functions to complement and supplement the department's work with clients. Roles for volunteers shall include conservators and guardians. The department shall adopt rules for programs which are established.

2. *a.* The director shall appoint a coordinator of volunteer services to oversee the provision of services of volunteer conservators and guardians on a volunteer basis to individuals in this state requiring such services. The coordinator, after consulting with personnel assigned to the district of the department, shall recommend to the director how best to serve the needs of individuals in need of the services of a guardian or conservator. Where possible, the coordinator shall recommend that the services be provided on a multicounty basis.

*b.* The coordinator shall cooperate with the administrators of the divisions of the department in providing these services and shall seek out alternative sources for providing the services required under this section.

3. All volunteers registered with the department and in compliance with departmental rules are considered state employees for purposes of chapter 669. However, this section does not except a conservator or guardian from an action brought under section 658.1A or 658.3. This section does not relieve a guardian or conservator from duties under chapter 633.

88 Acts, ch 1170, §1; 2005 Acts, ch 175, §91

**217.14** Repealed by 83 Acts, ch 96, § 156, 159.

**217.15 Administrator of division of administration.**

The administrator of the division of administration shall be qualified in the general field of governmental administration with special training and experience in the areas of competitive bidding, contract letting, accounting and budget preparation.

[C71, 73, 75, 77, 79, 81, §217.15]

**217.16 Cooperation with other divisions.**

The administrator of the division of administration shall cooperate with the administrators of the other divisions of the department of human services, assist them and the director of the department in the preparation of annual budgets and such other like reports as may be requested by the director or required by law.

[C71, 73, 75, 77, 79, 81, §217.16]

83 Acts, ch 96, §157, 159

**217.17 Administrator of division of planning.**

The administrator of the division of planning, research, and statistics shall be qualified in the general field of governmental planning with special training and experience in the areas of preparation and development of plans for future efficient reorganization and administration of government social functions. The administrator of the division of planning, research, and statistics shall cooperate with the administrators of the other divisions of the department of human services, assisting them and the director of the department in their planning, research, and statistical problems. The administrator of the division of planning,

research, and statistics shall assist the administrators, director, and the council on human services by proposing administrative and organizational changes at both the state and local level to provide more efficient and integrated social services to the citizens of this state. The planning, research, and statistical operations now forming an integral part of the present state functions assigned to the administrators of this department along with their future needs in this regard are all assigned to and shall be administered by the administrator of the division.

[C71, 73, 75, 77, 79, 81, §217.17]

83 Acts, ch 96, §65, 159; 2013 Acts, ch 90, §42

Section amended

#### **217.18 Official seal.**

The department shall have an official seal with the words "Iowa Department of Human Services" and such other design as the department prescribes engraved thereon. Every commission, order or other paper of an official nature executed by the department may be attested with such seal.

[S13, §2727-a1; SS15, §2727-a3; C24, 27, 31, 35, 39, §3281; C46, 50, 54, 58, 62, 66, §217.8; C71, 73, 75, 77, 79, 81, §217.18]

83 Acts, ch 96, §157, 159

#### **217.19 Expenses.**

1. The director of said department, the director's staff, assistants and employees shall, in addition to salary, receive their necessary traveling expenses by the nearest traveled and practicable route, when engaged in the performance of official business.

2. The department of administrative services shall work with the department of human services to develop and implement an expense policy applicable to the members of a board, commission, committee, or other body under the auspices of the department of human services who meet the income requirements for payment of per diem in accordance with section 7E.6, subsection 2. The policy shall allow for the payment of the member's expenses to be addressed through use of direct billings, travel purchase card, prepaid expenses, or other alternative means of addressing the expenses in lieu of reimbursement of the member.

[S13, §2727-a5; C24, 27, 31, 35, 39, §3282; C46, 50, 54, 58, 62, 66, §217.9; C71, 73, 75, 77, 79, 81, §217.19]

2008 Acts, ch 1187, §113

**217.20 Trips to other states.** Repealed by 2011 Acts, ch 127, § 56, 89. See § 8A.512A.

#### **217.21 Annual report.**

The department shall, annually, at the time provided by law make a report to the governor and general assembly, and cover therein the annual period ending with June 30 preceding, which report shall embrace:

1. An itemized statement of its expenditures concerning each program under its administration.

2. Adequate and complete statistical reports for the state as a whole concerning all payments made under its administration.

3. Such recommendations as to changes in laws under its administration as the director may deem necessary.

4. The observations and recommendations of the director and the council on human services relative to the programs of the department.

5. Such other information as the director or council on human services may deem advisable, or which may be requested by the governor or by the general assembly.

[S13, §2727-a9, -a12, -a16, -a34; SS15, §2727-a3; C24, 27, 31, 35, 39, §3285; C46, 50, 54, 58, 62, 66, §217.11; C71, 73, 75, 77, 79, 81, §217.21]

83 Acts, ch 96, §157, 159

**217.22** Repealed by 83 Acts, ch 96, § 156, 159.

**217.23 Personnel — merit system — reimbursement for damaged property.**

1. The director of human services or the director's designee, shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the department. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of chapter 8A, subchapter IV.

2. The department may expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed three hundred dollars for each item. The department shall establish rules in accordance with chapter 17A to carry out the purpose of this section.

[C75, 77, 79, 81, §217.23]

85 Acts, ch 253, §7; 2003 Acts, ch 145, §208; 2007 Acts, ch 218, §37

**217.24 Payment by electronic funds transfer.**

The department of human services shall continue expanding the practice of making payments to program participants and vendors by means of electronic funds transfer. The department shall seek the capacity for making payment by such means for all programs administered by the department.

2010 Acts, ch 1031, §407

**217.25 through 217.29** Reserved.

**217.30 Confidentiality of records — report of recipients.**

1. The following information relative to individuals receiving services or assistance from the department shall be held confidential:

a. Names and addresses of individuals receiving services or assistance from the department, and the types of services or amounts of assistance provided, except as otherwise provided in subsection 4.

b. Information concerning the social or economic conditions or circumstances of particular individuals who are receiving or have received services or assistance from the department.

c. Agency evaluations of information about a particular individual.

d. Medical or psychiatric data, including diagnosis and past history of disease or disability, concerning a particular individual.

2. Information described in subsection 1 shall not be disclosed to or used by any person or agency except for purposes of administration of the programs of services or assistance, and shall not in any case, except as otherwise provided in subsection 4, paragraph "b", be disclosed to or used by persons or agencies outside the department unless they are subject to standards of confidentiality comparable to those imposed on the department by this section.

3. Nothing in this section shall restrict the disclosure or use of information regarding the cost, purpose, number of persons served or assisted by, and results of any program administered by the department, and other general and statistical information, so long as the information does not identify particular individuals served or assisted.

4. a. The general assembly finds and determines that the use and disclosure of information as provided in this subsection are for purposes directly connected with the administration of the programs of services and assistance referred to in this section and are essential for their proper administration.

b. Confidential information described in subsection 1, paragraphs "a", "b", and "c", shall be disclosed to public officials for use in connection with their official duties relating to law enforcement, audits and other purposes directly connected with the administration of such programs, upon written application to and with approval of the director or the director's designee. Confidential information described in subsection 1, paragraphs "a", "b", and "c", shall also be disclosed to public officials for use in connection with their official duties relating

to the support and protection of children and families, upon written application to and with the approval of the director or the director's designee.

c. It shall be unlawful for any person to solicit, disclose, receive, use, or to authorize or knowingly permit, participate in, or acquiesce in the use of any information obtained from any such report or record for commercial or political purposes.

d. If approved by the director of human services or the director's designee pursuant to a written request, the department shall disclose information described in subsection 1 to other state agencies or to any other person who is not subject to the provisions of chapter 17A and is providing services to recipients under chapter 239B who are participating in the promoting independence and self-sufficiency through employment job opportunities and basic skills program, if necessary for the recipients to receive the services.

e. Information described in subsection 1, paragraphs "a", "b", and "c", is subject to disclosure in accordance with section 235A.15, subsection 10.

5. If it is definitely established that any provision of this section would cause any of the programs of services or assistance referred to in this section to be ineligible for federal funds, such provision shall be limited or restricted to the extent which is essential to make such program eligible for federal funds. The department shall adopt, pursuant to chapter 17A, any rules necessary to implement this subsection.

6. The provisions of this section shall apply to recipients of assistance under chapter 252. The reports required to be prepared by the department under this section shall, with respect to such assistance or services, be prepared by the person or officer charged with the oversight of the poor.

7. Violation of this section shall constitute a serious misdemeanor.

8. The provisions of this section shall take precedence over section 17A.12, subsection 7. [C39, §3828.047; C46, 50, 54, 58, §239.10, 241.25, 249.44; C62, 66, §239.10, 241.25, 241A.16, 249.44, 249A.18; C71, 73, §239.10, 241.25, 241A.16, 249.44, 249A.8; C75, 77, 79, 81, §217.30] 93 Acts, ch 54, §1; 93 Acts, ch 97, §8; 97 Acts, ch 41, §32; 2000 Acts, ch 1088, §1; 2000 Acts, ch 1123, §1; 2004 Acts, ch 1153, §1; 2008 Acts, ch 1072, §2; 2013 Acts, ch 90, §43

Referred to in §135G.12, 135H.13, 216A.107, 217.31, 232.71D, 235A.15, 235A.17, 235A.24, 237.9, 237.21, 239B.8, 299.13  
For requirement to make available requested record of reasons for excluding child from attending a hearing or meeting, see §232.91  
Subsection 2 amended

**217.31 Action for damages.**

Any person may institute a civil action for damages under chapter 669 or to restrain the dissemination of confidential records set out in section 217.30, subsection 1, paragraph "b", "c", or "d", in violation of that section, and any person, agency or governmental body proven to have disseminated or to have requested and received confidential records in violation of section 217.30, subsection 1, paragraph "b", "c", or "d", shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorney fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars.

Any reasonable grounds that a public employee has violated any provision of section 217.30 shall be grounds for immediate removal from access of any kind to confidential records or suspension from duty without pay.

[C75, 77, 79, 81, §217.31]

2013 Acts, ch 90, §44

Unnumbered paragraph 2 amended

**217.32 Office space in county.**

Where the department of human services assigns personnel to an office located in a county for the purpose of performing in that county designated duties and responsibilities assigned by law to the department, it shall be the responsibility of the county to provide and maintain the necessary office space and office supplies and equipment for the personnel so assigned in the same manner as if they were employees of the county. The department shall at least annually, or more frequently if the department so elects, reimburse the county for a portion, designated by law, of the cost of maintaining office space and providing supplies and equipment as required by this section, and also for a similar portion of the cost of

providing the necessary office space if in order to do so it is necessary for the county to lease office space outside the courthouse or any other building owned by the county. The portion of the foregoing costs reimbursed to the county under this section shall be equivalent to the proportion of those costs which the federal government authorizes to be paid from available federal funds, unless the general assembly directs otherwise when appropriating funds for support of the department.

[C75, 77, 79, 81, §217.32]

83 Acts, ch 96, §157, 159

### **217.33 Legal services.**

The director of human services pursuant to a state plan funded in part by the federal government may provide services for eligible persons by contract with nonprofit legal aid organizations.

[C77, 79, 81, §217.33]

83 Acts, ch 96, §157, 159

### **217.34 Debt setoff.**

The investigations division of the department of inspections and appeals and the department of human services shall provide assistance to set off against a person's or provider's income tax refund or rebate any debt which has accrued through written contract, nonpayment of premiums pursuant to section 249A.3, subsection 2, paragraph "a", subparagraph (1), subrogation, departmental recoupment procedures, or court judgment and which is in the form of a liquidated sum due and owing the department of human services. The department of inspections and appeals, with approval of the department of human services, shall adopt rules under chapter 17A necessary to assist the department of administrative services in the implementation of the setoff under section 8A.504 in regard to money owed to the state for public assistance overpayments or nonpayment of premiums as specified in this section. The department of human services shall adopt rules under chapter 17A necessary to assist the department of administrative services in the implementation of the setoff under section 8A.504, in regard to collections by the child support recovery unit and the foster care recovery unit.

83 Acts, ch 96, §160; 83 Acts, ch 153, §2; 89 Acts, ch 250, §1; 2003 Acts, ch 145, §209; 2011 Acts, ch 120, §2; 2013 Acts, ch 138, §122, 127

2013 amendment to this section takes effect January 1, 2014; 2013 Acts, ch 138, §127  
Section amended

### **217.35 Fraud and recoupment activities.**

Notwithstanding the requirement for deposit of recovered moneys under section 239B.14, recovered moneys generated through fraud and recoupment activities are appropriated to the department of human services to be used for additional fraud and recoupment activities performed by the department of human services or the department of inspections and appeals. The department of human services may use the recovered moneys appropriated to add not more than five full-time equivalent positions, in addition to those funded by annual appropriations. The appropriation of the recovered moneys is subject to both of the following conditions:

1. The director of human services determines that the investment can reasonably be expected to increase recovery of assistance paid in error, due to fraudulent or nonfraudulent actions, in excess of the amount recovered in the previous fiscal year.

2. The amount expended for the additional fraud and recoupment activities shall not exceed the amount of the projected increase in assistance recovered.

2005 Acts, ch 175, §92

### **217.36 Distribution of earned income tax credit information.**

1. The department shall ensure that educational materials relating to the federal and state earned income tax credits are provided in accordance with this section to each household receiving assistance or benefits under:

a. The hawk-i program under chapter 514I.

b. The family investment program under chapter 239B.  
 c. The medical assistance Act under chapter 249A.  
 d. The food programs defined in section 234.1 which are administered by the department.  
 e. Any other appropriate programs administered by, or under the oversight of, the department of human services.

2. The department shall, by mail or through the internet, provide a household described in subsection 1 with access to:

a. Internal revenue service publications relating to the federal earned income tax credit.  
 b. Department of revenue publications relating to the state earned income tax credit.  
 c. Information prepared by tax preparers who provide volunteer or free federal or state income tax preparation services to low-income and other eligible persons and who are located in close geographic proximity to the person.

3. In January of each year, the department or a representative of the department shall mail to each household described in subsection 1 information about the federal and state earned income tax credit that provides the household with referrals to the resources described in subsection 2.

4. The mailings required by the department under this section do not have to be made as a separate mailing but may be included in existing mailings being made to the appropriate households.

2008 Acts, ch 1157, §1

**217.37** Repealed by 91 Acts, ch 258, § 72.

**217.38 Restitution to individuals of Japanese ancestry.**

Notwithstanding any other law of this state, payments paid to an eligible individual of Japanese ancestry under section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100-383, Tit. I, shall not be considered as income or an asset for determining the eligibility for state or local government benefit or entitlement programs. The proceeds are not subject to recoupment for the receipt of governmental benefits or entitlements and liens, except liens for child support, are not enforceable against these sums for any reason.

89 Acts, ch 285, §1; 2010 Acts, ch 1061, §180

**217.39 Persecuted victims of World War II — reparations — heirs.**

Notwithstanding any other law of this state, payments paid to and income from lost property of a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or as an heir of such victim which is exempt from state income tax as provided in section 422.7, subsection 35, shall not be considered as income or an asset for determining the eligibility for state or local government benefit or entitlement programs. The proceeds are not subject to recoupment for the receipt of governmental benefits or entitlements, and liens, except liens for child support, are not enforceable against these sums for any reason.

2000 Acts, ch 1103, §1, 3

**217.40 Training for guardians and conservators.**

The department of human services, or a person designated by the director, shall establish training programs designed to assist all duly appointed guardians and conservators in understanding their fiduciary duties and liabilities, the special needs of the ward, and how to best serve the ward and the ward's interests.

89 Acts, ch 178, §2

**217.41 Refugee services foundation.**

1. The department of human services shall cause a refugee services foundation to be created for the sole purpose of engaging in refugee resettlement activities to promote the welfare and self-sufficiency of refugees who live in Iowa and who are not citizens of the United States. The foundation may establish an endowment fund to assist in the financing of its activities. The foundation shall be incorporated under chapter 504.

2. The foundation shall be created in a manner so that donations and bequests to the foundation qualify as tax deductible under federal and state income tax laws. The foundation is not a state agency and shall not exercise sovereign power of the state. The state is not liable for any debts of the foundation.

3. The refugee services foundation shall have a board of directors of five members. One member shall be appointed by the governor and four members shall be appointed by the director of human services. Members of the board shall serve three-year terms beginning on July 1, and ending on June 30. A vacancy on the board shall be filled in the same manner as the original appointment for the remainder of the term. Not more than two members appointed by the director of human services shall be of the same gender or of the same political party.

4. The refugee services foundation may accept and administer trusts deemed by the board to be beneficial. Notwithstanding section 633.63, the foundation may act as trustee of such a trust.

2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §146; 2005 Acts, ch 3, §50

**217.41A Electronic health records system task force.** Repealed by 2008 Acts, ch 1188, § 28. See § 135.156.

## SUBCHAPTER II

### FIELD SERVICES ORGANIZATION

#### **217.42 Service areas — offices.**

1. The organizational structure to deliver the department's field services shall be based upon service areas designated by the department. The service areas shall serve as a basis for providing field services to persons residing in the counties comprising the service area.

2. The department shall maintain an office in each county. Based on the annual appropriations for field operations, the department shall strive to maintain a full-time presence in each county. If it is not possible to maintain a full-time presence in each county, the department shall provide staff based on its caseweight system to assure the provision of services. The department shall consult with the county boards of supervisors of those counties regarding staffing prior to any modification of office hours.

3. A county or group of counties may voluntarily enter into a chapter 28E agreement with the department to provide funding or staff persons to deliver field services in county offices. The agreement shall cover the full fiscal year but may be revised by mutual consent.

92 Acts, ch 1079, §1; 2001 Acts, 2nd Ex, ch 4, §1, 9; 2010 Acts, ch 1031, §296, 401, 402

#### **217.43 Service area advisory boards — location of county offices.**

1. The department shall establish a service area advisory board in each service area. Each of the county boards of supervisors of the counties comprising the service area shall appoint two service area advisory board members. The following requirements apply to the appointments made by a county board of supervisors: the membership shall be appointed in accordance with section 69.16, relating to political affiliation, and section 69.16A, relating to gender balance; not more than one of the members shall be a member of the board of supervisors; and appointments shall be made on the basis of interest in maintaining and improving service delivery. Appointments shall be made a part of the regular proceedings of the board of supervisors and shall be filed with the county auditor and the service area manager. A vacancy on the board shall be filled in the same manner as the original appointment. The boards of supervisors shall develop and agree to other organizational provisions involving the advisory board, including reporting requirements.

2. The purpose of the advisory boards is to improve communication and coordination between the department and the counties and to advise the department regarding maintenance and improvement of service delivery in the counties and communities comprising the service areas.

3. The department shall determine the community in which each county office will be

located. The county board of supervisors shall determine the location of the office space for the county office. The county board of supervisors shall make reasonable efforts to collocate the office with other state and local government or private entity offices in order to maintain the offices in a cost-effective location that is convenient to the public.

92 Acts, ch 1079, §2; 93 Acts, ch 54, §2; 2001 Acts, 2nd Ex, ch 4, §2, 9

Referred to in §251.3, 251.5, 252.6, 331.321

Emergency relief duties of service area advisory board, see §251.5

**217.44 Service areas — employee and volunteer record checks.**

1. The department shall conduct criminal and child and dependent adult abuse record checks of persons who are potential employees, employees, potential volunteers, and volunteers in service area offices in a position having direct contact with the department’s clients. The record checks shall be performed in this state and the department may conduct these checks in other states. If the department determines that a person has been convicted of a crime or has a record of founded child or dependent adult abuse, the department shall perform an evaluation to determine whether the crime or founded abuse warrants prohibition of the person’s employment or participation as a volunteer. The record checks and evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

2. In an evaluation, the department shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded abuse again, and the number of crimes or founded abuses committed by the person involved.

3. The department may permit a person who is evaluated to be employed or to participate as a volunteer if the person complies with the department’s conditions relating to employment or participation as a volunteer which may include completion of additional training.

4. If the department determines that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of employment or participation as a volunteer, the person shall not be employed by or participate as a volunteer in a department service area office in a position having direct contact with the department’s clients.

2000 Acts, ch 1112, §52; 2001 Acts, 2nd Ex, ch 4, §3, 9

**CHAPTER 217A**

**PARENTAL INVOLVEMENT**

Repealed by 2006 Acts, ch 1030, §87

**CHAPTER 218**

**INSTITUTIONS GOVERNED BY HUMAN SERVICES DEPARTMENT**

218.1	Institutions controlled.	218.10	Subordinate officers and employees.
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218.52	Supplies — competition.		
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218.55	Purchase from an institution.		
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### 218.1 Institutions controlled.

The director of human services shall have the general and full authority given under statute to control, manage, direct, and operate the following institutions under the director's jurisdiction, and may at the director's discretion assign the powers and authorities given the director by statute to any one of the deputy directors, division administrators, or officers or employees of the divisions of the department of human services:

1. Glenwood state resource center.
2. Woodward state resource center.
3. Mental health institute, Cherokee, Iowa.
4. Mental health institute, Clarinda, Iowa.
5. Mental health institute, Independence, Iowa.
6. Mental health institute, Mount Pleasant, Iowa.
7. State training school.
8. Iowa juvenile home.

9. Other facilities not attached to the campus of the main institution as program developments require.

[S13, §2727-a8, -a77; SS15, §2713-n2, 2727-a96; C24, 27, 31, 35, 39, §3287; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.1; 81 Acts, ch 73, §1; 82 Acts, ch 1260, §18]

83 Acts, ch 96, §66, 157, 159; 83 Acts, ch 101, §37; 92 Acts, ch 1140, §21; 2000 Acts, ch 1112, §1, 45

Referred to in §218.2, 218.3, 218.4, 218.13, 218.42, 218.58, 222.2, 225C.13, 226.47, 227.19, 229.1, 230.34, 232.69, 237.4, 280.16, 282.33, 357H.1, 708.3A, 709.16

### **218.2 Powers of governor — report of abuses.**

Nothing contained in section 218.1 shall limit the general supervisory or examining powers vested in the governor by the laws or Constitution of the State of Iowa, or legally vested by the governor in any committee appointed by the governor.

The administrator to whom primary responsibility of a particular institution has been assigned shall make reports to the director of human services as are requested by the director and the director shall report, in writing, to the governor any abuses found to exist in any of the institutions.

[S13, §2727-a9, -a18; C24, 27, 31, 35, 39, §3288, 3289; C46, 50, 54, 58, 62, 66, §218.2, 218.3; C71, 73, 75, 77, 79, 81, §218.2]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §2; 2006 Acts, ch 1010, §67

### **218.3 Definitions.**

For the purposes of this chapter, unless the context otherwise requires:

1. “*Administrator*” means the person to whom the director of human services has assigned power and authority over an institution in accordance with section 218.1.

2. “*Institution*” means an institution listed in section 218.1.

[C71, 73, 75, 77, 79, 81, §218.3; 81 Acts, ch 78, §20, 24; 82 Acts, ch 1260, §19]

83 Acts, ch 96, §67, 157, 159; 83 Acts, ch 101, §38; 91 Acts, ch 258, §36; 94 Acts, ch 1170, §29; 2000 Acts, ch 1112, §3

### **218.4 Recommendation for rules.**

The administrators of particular institutions shall recommend to the council on human services for adoption such rules not inconsistent with law as they may deem necessary for the discharge of their duties, the management of each of such institutions, the admission of residents thereto and the treatment, care, custody, education and discharge of residents. It is made the duty of the particular administrators to establish rules by which danger to life and property from fire will be minimized. In the discharge of their duties and in the enforcement of their rules, they may require any of their appointees to perform duties in addition to those required by statute.

Rules adopted by the council shall be uniform and shall apply to all institutions under the particular administrator and to all other institutions under the administrator’s jurisdiction, and the primary rules for use in institutions where persons with mental illness are served shall, unless otherwise indicated, uniformly apply to county or private hospitals in which persons with mental illness are served, but the rules shall not interfere with proper medical treatment administered to patients by competent physicians. Annually, signed copies of the rules shall be sent to the superintendent of each institution or hospital under the control or supervision of a particular administrator and copies shall also be sent to the clerk of each district court, the chairperson of the board of supervisors of each county and, as appropriate, to the officer in charge of institutions or hospitals caring for persons with mental illness in each county who shall be responsible for seeing that the rules are posted in each institution or hospital in a prominent place. The rules shall be kept current to meet the public need and shall be revised and published annually.

The state fire marshal shall cause to be made an annual inspection of all the institutions

listed in section 218.1 and shall make written report thereof to the particular administrator of the state department of human services in control of such institution.

[S13, §2727-a30, -a48, 5718-a3; SS15, §2727-a50, -a96; C24, 27, 31, 35, 39, §3290; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.4]

83 Acts, ch 96, §157, 159, 160; 94 Acts, ch 1170, §30; 2000 Acts, ch 1112, §4

#### **218.5 Fire protection contracts.**

The administrators shall have power to enter into contracts with the governing body of any city or other municipal corporation for the protection from fire of any property under the administrators' primary control, located in any municipal corporation or in territory contiguous to the municipal corporation, upon terms as may be agreed upon.

[C31, 35, §3290-d1; C39, §3290.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.5]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §5

#### **218.6 Transfer of appropriations made to institutions.**

Notwithstanding section 8.39, subsection 1, without the prior written consent and approval of the governor and the director of the department of management, the director of human services may transfer funds between the appropriations made for the same type of institution, listed as follows:

1. The state resource centers.
2. The state mental health institutes.
3. The state juvenile institutions consisting of the state training school and the Iowa juvenile home.

2005 Acts, ch 175, §93

#### **218.7 and 218.8 Reserved.**

#### **218.9 Appointment of superintendents.**

The administrator in charge of an institution, subject to the approval of the director of human services, shall appoint the superintendent of the institution.

The superintendent or warden shall have immediate custody and control, subject to the orders and policies of the division administrator in charge of the institution, of all property used in connection with the institution except as provided in this chapter. The tenure of office shall be at the pleasure of the appointing authority. The appointing authority may transfer a superintendent or warden from one institution to another.

[S13, §2727-a24; C24, 27, 31, 35, 39, §3292; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.9; 81 Acts, ch 27, §3, ch 73, §2, ch 78, §20, 25; 82 Acts, ch 1260, §20]

83 Acts, ch 96, §68, 157, 159; 83 Acts, ch 101, §39; 84 Acts, ch 1277, §17; 90 Acts, ch 1239, §4; 94 Acts, ch 1170, §31; 2000 Acts, ch 1112, §6

#### **218.10 Subordinate officers and employees.**

The administrator in charge of a particular institution, with the consent and approval of the director of human services, shall determine the number of subordinate officers and employees for the institution. Subject to this chapter, the officers and employees shall be appointed and discharged by the superintendent or business manager pursuant to chapter 8A, subchapter IV. The superintendent shall keep, in the record of each subordinate officer and employee, the date of employment, the compensation, and the date of each discharge, and the reasons for discharge.

[S13, §2727-a37; SS15, §2713-n2, 2727-a96; C24, 27, 31, 35, 39, §3293; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.10]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1245, §260; 2000 Acts, ch 1112, §7; 2003 Acts, ch 145, §210

#### **218.11 Interagency case information service.** Repealed by 2013 Acts, ch 19, § 2.

**218.12 Bonds.**

The administrator in charge of any particular institution shall require each officer and any employee of such administrator and of every institution under the administrator's control who may be charged with the custody or control of any money or property belonging to the state to give an official bond, properly conditioned, and signed by sufficient sureties in a sum to be fixed by the administrator, which bond shall be approved by the administrator, and filed in the office of the secretary of state.

[S13, §2727-a31; C24, 27, 31, 35, 39, §3295; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.12]

**218.13 Record checks.**

1. For the purposes of this section, unless the context otherwise requires:
  - a. "Department" means the department of human services.
  - b. "Institution" means an institution controlled by the department as described in section 218.1.

- c. "Resident" means a person committed or admitted to an institution.

2. If a person is being considered for employment involving direct responsibility for a resident or with access to a resident when the resident is alone, or if a person will reside in a facility utilized by an institution, and if the person has been convicted of a crime or has a record of founded child or dependent adult abuse, the department shall perform an evaluation to determine whether the crime or founded abuse warrants prohibition of employment or residence in the facility. The department shall conduct criminal and child and dependent adult abuse record checks of the person in this state and may conduct these checks in other states. The investigation and evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

3. If the department determines that a person, who is employed by an institution or resides in a facility utilized by an institution, has been convicted of a crime or has a record of founded child or dependent adult abuse, the department shall perform an evaluation to determine whether prohibition of the person's employment or residence is warranted. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

4. In an evaluation, the department shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded abuse again, and the number of crimes or founded abuses committed by the person involved. The department may permit a person who is evaluated to be employed or reside or to continue employment or residence if the person complies with the department's conditions relating to employment or residence which may include completion of additional training.

5. If the department determines that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of employment or residence, the person shall not be employed by an institution or reside in a facility utilized by an institution.

91 Acts, ch 138, §3; 97 Acts, ch 169, §12

Referred to in §218.64, 235A.15

**218.14 Dwelling of superintendent or other employee.**

1. The administrator having control over an institution may, with consent of the director of human services, furnish the superintendent of the institution, in addition to salary, with a dwelling or with appropriate quarters in lieu of the dwelling, or the administrator may compensate the superintendent of the institution in lieu of furnishing a dwelling or quarters. If the superintendent of the institution is furnished with a dwelling or quarters, either of which is owned by the state, the superintendent may also be furnished with water, heat, and electricity.

2. The administrator having control over an institution may furnish assistant

superintendents or other employees, or both, with a dwelling or with appropriate quarters, owned by the state. The assistant superintendent or employee, who is so furnished, shall pay rent for the dwelling or quarters in an amount to be determined by the superintendent of the institution, which shall be the fair market rental value of the dwelling or quarters. If an assistant superintendent or employee is furnished with a dwelling or quarters, either of which is owned by the state, the assistant superintendent or employee may also be furnished with water, heat, and electricity. However, the furnishing of these utilities shall be considered in determining the fair market rental value of the dwelling or quarters.

[S13, §2727-a38; SS15, §2713-n2, 2727-a96, 5717; C24, 27, 31, 35, 39, §3297, 3746; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §218.14, 246.7; C81, §218.14]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §8

Referred to in §35D.13

Similar provisions, see §35D.13 and 904.305

#### **218.15 Salaries — how paid.**

The salaries and wages shall be included in the semimonthly payrolls and paid in the same manner as other expenses of the several institutions.

[S13, §2727-a38; C24, 27, 31, 35, 39, §3298; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.15]

#### **218.16 Reserved.**

#### **218.17 Authorized leave.**

Vacations and sick leave with pay as authorized in section 70A.1 shall only be taken at such times as the superintendent or the business manager in charge of an officer or employee, as the case may be, may direct, and only after written authorization by the superintendent or business manager, and for the number of days specified in the authorization. A copy of the authorization shall be attached to the institution's copy of the payroll of the institution, for audit purposes, for the period during which the vacation was taken, and the semimonthly payroll shall show the number of days the person was absent under the authorization.

[S13, §2727-a74c, -a74d; C24, 27, 31, 35, 39, §3300; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.17]

2000 Acts, ch 1112, §9

#### **218.18 Repealed by 90 Acts, ch 1129, § 2.**

#### **218.19 Districts.**

The administrator having control over a type of institution shall, from time to time, divide the state into districts from which the type of institution may receive residents. The particular administrator shall promptly notify the proper county or judicial officers of all changes in the districts.

[S13, §2727-a21; C24, 27, 31, 35, 39, §3302; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.19]

83 Acts, ch 96, §159, 160; 2000 Acts, ch 1112, §10

#### **218.20 Place of commitments — transfers.**

Commitments, unless otherwise permitted by the administrator having control over an institution, shall be to the institution located in the district embracing the county from which the commitment is issued. An administrator may, at the expense of the state, transfer a resident of one institution to another like institution.

[S13, §2727-a26; C24, 27, 31, 35, 39, §3303; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.20]

83 Acts, ch 96, §159, 160; 2000 Acts, ch 1112, §11

#### **218.21 Record of residents.**

The administrator of the department of human services in control of a state institution shall, as to every person committed to any of said institutions, keep the following record: Name,

residence, sex, age, nativity, occupation, civil condition, date of entrance or commitment, date of discharge, whether a discharge was final, condition of the person when discharged, the name of the institutions from which and to which such person has been transferred, and, if dead, the date, and cause of death.

[S13, §2727-a22; C24, 27, 31, 35, 39, §3304; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.21]

83 Acts, ch 96, §157, 159, 160

Referred to in §218.22

#### **218.22 Record privileged.**

Except with the consent of the administrator in charge of an institution, or on an order of a court of record, the record provided in section 218.21 shall be accessible only to the administrator of the division of the department of human services in control of such institution, the director of the department of human services and to assistants and proper clerks authorized by such administrator or the administrator's director. The administrator of the division of such institution is authorized to permit the division of library services of the department of education and the historical division of the department of cultural affairs to copy or reproduce by any photographic, photostatic, microfilm, microcard or other process which accurately reproduces a durable medium for reproducing the original and to destroy in the manner described by law such records of residents designated in section 218.21.

[S13, §2727-a22; C24, 27, 31, 35, 39, §3305; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.22]

83 Acts, ch 96, §157, 159, 160; 93 Acts, ch 48, §11; 2011 Acts, ch 132, §40, 106

#### **218.23 Reports to administrator.**

The superintendent of an institution shall, within ten days after the commitment or entrance of a person to the institution, cause a true copy of the person's entrance record to be made and forwarded to the administrator in control of the institution. When a patient or resident leaves, or is discharged, or transferred, or dies in an institution, the superintendent or person in charge shall within ten days after that date send the information to the office of the institution's administrator on forms which the administrator prescribes.

[S13, §2727-a22; C24, 27, 31, 35, 39, §3306; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.23]

83 Acts, ch 96, §159, 160; 2000 Acts, ch 1112, §12

#### **218.24 Questionable commitment.**

The superintendent is required to immediately notify the administrator in control of the superintendent's particular institution if there is any question as to the propriety of the commitment or detention of any person received at such institution, and said administrator, upon such notification, shall inquire into the matter presented, and take such action as may be deemed proper in the premises.

[S13, §2727-a29; C24, 27, 31, 35, 39, §3307; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.24]

#### **218.25 Religious beliefs.**

The superintendent of an institution, receiving a person committed to the institution, shall inquire of the person as to the person's religious preference and enter the preference in the book kept for the purpose, and cause the person to sign the book.

[S13, §5718-a1; C24, 27, 31, 35, 39, §3308; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.25]

2000 Acts, ch 1112, §13

#### **218.26 Religious worship.**

Any such resident, during the time of the resident's detention, shall be allowed, for at least one hour on each Sunday and in times of extreme sickness, and at such other suitable and reasonable times as is consistent with proper discipline in said institution, to receive spiritual

advice, instruction, and ministrations from any recognized member of the clergy of the church or denomination which represents the resident's religious belief.

[S13, §5718-a1, -a2; C24, 27, 31, 35, 39, §3309; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.26]

83 Acts, ch 96, §159, 160

#### **218.27 Religious belief of minors.**

In case such resident is a minor and has formed no choice, the minor's preference may, at any time, be expressed by the minor with the approval of parents or guardian, if the minor has any such.

[S13, §5718-a3; C24, 27, 31, 35, 39, §3310; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.27]

83 Acts, ch 96, §159, 160

#### **218.28 Investigation.**

The administrator of the department of human services in control of a particular institution or the administrator's authorized officer or employee shall visit, and minutely examine, at least once in six months, and more often if necessary or required by law, the institutions under such administrator's control, and the financial condition and management thereof.

[S13, §2727-a10, -a19; C24, 27, 31, 35, 39, §3311; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.28]

83 Acts, ch 96, §157, 159; 2005 Acts, ch 3, §51

#### **218.29 Scope of investigation.**

The administrator of the department of human services in control of a particular institution or the administrator's authorized officer or employee shall, during such investigation and as far as possible, see every resident of each institution, especially those admitted since the preceding visit, and shall give such residents as may require it, suitable opportunity to converse with such administrator or authorized officer or employee apart from the officers and attendants.

[S13, §2727-a19; C24, 27, 31, 35, 39, §3312; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.29]

83 Acts, ch 96, §157, 159

#### **218.30 Investigation of other institutions.**

The administrators to whom control of institutions has been assigned, or their authorized officers or employees, may investigate charges of abuse, neglect, or mismanagement on the part of an officer or employee of a private institution which is subject to the administrator's particular supervision or control. The administrator who has been assigned to have authority over the state mental health institutes, or the administrator's authorized officer or employee, shall also investigate charges concerning county care facilities in which persons with mental illness are served.

[S13, §2727-a74b; C24, 27, 31, 35, 39, §3313; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.30]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §32; 2000 Acts, ch 1112, §14

#### **218.31 Witnesses.**

In aid of any investigation the administrator shall have the power to summon and compel the attendance of witnesses; to examine the same under oath, which the administrator shall have power to administer; to have access to all books, papers, and property material to such investigation, and to order the production of any other books or papers material thereto. Witnesses other than those in the employ of the state shall be entitled to the same fees as in civil cases in the district court.

[S13, §2727-a10; C24, 27, 31, 35, 39, §3314; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.31]

Referred to in §218.32  
Witness fees, §622.69 – 622.75

**218.32 Contempt.**

Any person failing or refusing to obey the orders of the administrator issued under section 218.31, or to give or produce evidence when required, shall be reported by the administrator to the district court in the county where the offense occurs, and shall be dealt with by the court as for contempt of court.

[S13, §2727-a10; C24, 27, 31, 35, 39, §3315; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.32]

Contempts, chapter 665

**218.33 Transcript of testimony.**

The particular administrator involved shall cause the testimony taken at such investigation to be transcribed and filed in the administrator's office at the seat of government within ten days after the same is taken, or as soon thereafter as practicable, and when so filed the same shall be open for the inspection of any person.

[S13, §2727-a10; C24, 27, 31, 35, 39, §3316; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.33]

**218.34 through 218.39** Repealed by 78 Acts, ch 1104, § 3.

**218.40 Services required.**

Residents of said institutions subject to the provisions hereinafter provided, may be required to render any proper and reasonable service either in the institutions proper or in the industries established in connection therewith.

[S13, §2727-a51; SS15, §5718-a11; C24, 27, 31, 35, 39, §3323; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.40]

83 Acts, ch 96, §159, 160

**218.41 Custody.**

When a resident of an institution is so working outside the institution proper, the resident shall be deemed at all times in the actual custody of the head of the institution.

[SS15, §5718-a11; C24, 27, 31, 35, 39, §3324; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.41]

83 Acts, ch 96, §159, 160

**218.42 Wages of residents.**

If a resident performs services for the state at an institution listed in section 218.1, the administrator in control of the institution shall pay the resident a wage in accordance with federal wage and hour requirements. However, the wage amount shall not exceed the amount of the prevailing wage paid in the state for a like service or its equivalent.

[SS15, §5718-a11a; C24, 27, 31, 35, 39, §3325; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.42]

83 Acts, ch 96, §159, 160; 95 Acts, ch 82, §1

**218.43 Deduction to pay court costs.**

If such wage be paid, the administrator in control of such institution may deduct therefrom an amount sufficient to pay all or a part of the costs taxed to such resident by reason of the resident's commitment to said institution. In such case the amount so deducted shall be forwarded to the clerk of the district court or proper official.

[SS15, §5718-a11a; C24, 27, 31, 35, 39, §3326; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.43]

83 Acts, ch 96, §159, 160

**218.44 Wages paid to dependent — deposits.**

If such wage be paid, the administrator in control of such institution may pay all or any part of the same directly to any dependent of such resident, or may deposit such wage to the account of such resident, or may so deposit part thereof and allow the resident a portion for

the resident's own personal use, or may pay to the county of commitment all or any part of the resident's care, treatment or subsistence while at said institution from any credit balance accruing to the account of said resident.

[SS15, §5718-a11a; C24, 27, 31, 35, 39, §3327; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.44]

83 Acts, ch 96, §159, 160

#### **218.45 Conferences.**

Quarterly conferences of the superintendents of the institutions shall be held with the administrator in control of the institutions at Des Moines or at institutions under the administrator's jurisdiction, for the consideration of all matters relative to the management of the institutions. Full minutes of the conferences shall be preserved in the records of the administrator. The administrator in control may cause papers on appropriate subjects to be prepared and read at the conferences.

[S13, §2727-a20; C24, 27, 31, 35, 39, §3328; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.45]

2000 Acts, ch 1112, §15

#### **218.46 Scientific investigation.**

1. The administrator who is in charge of an institution shall encourage the scientific investigation, on the part of the superintendent and medical staff of the institution, as to the most successful methods of institutional management and treating the persons committed to the institution. In addition, the administrator shall procure and furnish to the superintendent and medical staff information relative to such management and treatment and, from time to time, publish bulletins and reports of scientific and clinical work done in that type of institution.

2. The administrators of such state institutions are authorized to provide services and facilities for the scientific observation, rechecking, and treatment of persons with mental illness within the state. Application by, or on behalf of, any person for such services and facilities shall be made to the administrator in charge of the particular institution involved and shall be made on forms furnished by such administrator. The time and place of admission of any person to outpatient or clinical services and facilities for scientific observation, rechecking and treatment and the use of such services and facilities for the benefit of persons who have already been hospitalized for psychiatric evaluation and appropriate treatment or involuntarily hospitalized as seriously mentally ill shall be in accordance with rules and regulations adopted by the administrator in control of the particular institution involved.

[S13, §2727-a27; C24, 27, 31, 35, 39, §3329; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.46]

83 Acts, ch 96, §157, 159; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §16

Publications; §7A.27

#### **218.47 Monthly report.**

The superintendent or business manager of each institution shall, on the first day of each month, account to the administrator in control of the particular institution for all state funds received during the preceding month, and, at the same time, remit the accounting to the treasurer of state.

[S13, §2727-a40; C24, 27, 31, 35, 39, §3330; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.47]

2000 Acts, ch 1112, §17

#### **218.48 Annual reports.**

The superintendent or business manager of each institution shall make an annual report to the administrator in control of the particular institution and include in the report a detailed and accurate inventory of the stock and supplies on hand, and their amount and value, under the following headings: livestock, farm produce on hand, vehicles, agricultural implements, machinery, mechanical fixtures, real estate, furniture, and bedding in residents' department,

state property in superintendent's department, clothing, dry goods, provisions and groceries, drugs and medicine, fuel, library, and all other state property under appropriate headings to be determined by the particular administrator involved.

[S13, §2705-b, 2727-a32; C24, 27, 31, 35, 39, §3331; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.48]

2000 Acts, ch 1112, §18

#### **218.49 Contingent fund.**

The administrator in control of an institution may permit the superintendent or the business manager of each institution to retain a stated amount of funds under the superintendent's or business manager's supervision as a contingent fund for the payment of freight, postage, commodities purchased on authority of the particular superintendent or business manager involved on a cash basis, salaries, and bills granting discount for cash.

[SS15, §2727-a44; C24, 27, 31, 35, 39, §3332; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.49]

2000 Acts, ch 1112, §19

#### **218.50 Requisition for contingent fund.**

If necessary, the director of the department of human services shall make proper requisition upon the director of the department of administrative services for a warrant on the state treasurer to secure the said contingent fund for each institution.

[SS15, §2727-a44; C24, 27, 31, 35, 39, §3333; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.50]

83 Acts, ch 96, §157, 159; 2003 Acts, ch 145, §286

#### **218.51 Monthly reports of contingent fund.**

A monthly report of the status of such contingent fund shall be submitted by the proper officer of said institution to the administrator in control of the institution involved and such rules as such administrator may establish.

[SS15, §2727-a44; C24, 27, 31, 35, 39, §3334; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.51]

#### **218.52 Supplies — competition.**

The administrator in control of a state institution shall, in the purchase of supplies, afford all reasonable opportunity for competition, and shall give preference to local dealers and Iowa producers when such can be done without loss to the state.

[S13, §2727-a46; SS15, §2727-a50; C24, 27, 31, 35, 39, §3335; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.52]

Preference to Iowa products, §8A.311, 73.1 et seq.

#### **218.53 Dealers may file addresses.**

Jobbers or others desirous of selling supplies shall, by filing with the administrator in control of a state institution a memorandum showing their address and business, be afforded an opportunity to compete for the furnishing of supplies, under such rules as such administrator may prescribe.

[SS15, §2727-a50; C24, 27, 31, 35, 39, §3336; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.53]

#### **218.54 Samples preserved.**

When purchases are made by sample, the same shall be properly marked and retained until after an award or delivery of such items is made.

[SS15, §2727-a50; C24, 27, 31, 35, 39, §3337; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.54]

**218.55 Purchase from an institution.**

An administrator may purchase supplies of any institution under the administrator's control, for use in any other institution under the administrator's control, and reasonable payment for the supplies shall be made as in the case of other purchases.

[S13, §2727-a47; C24, 27, 31, 35, 39, §3338; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.55]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §20

**218.56 Purchase of supplies — vendor warrants.**

The administrators shall, from time to time, adopt and make of record, rules and regulations governing the purchase of all articles and supplies needed at the various institutions under their control, and the form and verification of vouchers for such purchases.

The department of human services shall mail vendor warrants for the department of corrections.

[S13, §2727-a41, -a42, -a49; C24, 27, 31, 35, 39, §3339; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.56]

90 Acts, ch 1247, §4

**218.57 Combining appropriations.**

The director of the department of administrative services may combine the balances carried in all specific appropriations into a special account for each institution under the control of a particular administrator, except that the support fund for each institution shall be carried as a separate account.

[S13, §2727-a43; C24, 27, 31, 35, 39, §3344; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.57]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §21; 2003 Acts, ch 145, §286

**218.58 Construction, repair, and improvement projects — emergencies.**

The department shall work with the department of administrative services to accomplish the following responsibilities:

1. The department shall prepare and submit to the director of the department of management, as provided in section 8.23, a multiyear construction program including estimates of the expenditure requirements for the construction, repair, or improvement of buildings, grounds, or equipment at the institutions listed in section 218.1.

2. The director shall have plans and specifications prepared by the department of administrative services for authorized construction, repair, or improvement projects costing over the competitive bid threshold in section 26.3, or as established in section 314.1B. An appropriation for a project shall not be expended until the department of administrative services has adopted plans and specifications and has completed a detailed estimate of the cost of the project, prepared under the supervision of a registered architect or licensed professional engineer. Plans and specifications shall not be adopted and a project shall not proceed if the project would require an expenditure of money in excess of the appropriation.

3. The department of administrative services shall comply with the competitive bid procedures in chapter 26 to let all contracts under chapter 8A, subchapter III, for authorized construction, repair, or improvement of departmental buildings, grounds, or equipment.

4. If the director of the department of human services and the director of the department of administrative services determine that emergency repairs or improvements estimated to cost more than the competitive bid threshold in section 26.3, or as established in section 314.1B are necessary to assure the continued operation of a departmental institution, the requirements of subsections 2 and 3 for preparation of plans and specifications and competitive procurement procedures are waived. A determination of necessity for waiver by the director of the department of human services and the director of the department of administrative services shall be in writing and shall be entered in the project record for emergency repairs or improvements. Emergency repairs or improvements shall be accomplished using plans and specifications and competitive quotation or bid procedures, as applicable, to the greatest extent possible, considering the necessity for rapid completion

of the project. A waiver of the requirements of subsections 2 and 3 does not authorize an expenditure in excess of an amount otherwise authorized for the repair or improvement.

5. A claim for payment relating to a project shall be itemized on a voucher form pursuant to section 8A.514, certified by the claimant and the architect or engineer in charge, and audited and approved by the department of administrative services. Upon approval by the department of administrative services, the director of the department of administrative services shall draw a warrant to be paid by the treasurer of state from funds appropriated for the project. A partial payment made before completion of the project does not constitute final acceptance of the work or a waiver of any defect in the work.

6. Subject to the prior approval of the administrator in control of a departmental institution, minor projects costing five thousand dollars or less may be authorized and completed by the executive head of the institution through the use of day labor. A contract is not required if a minor project is to be completed with the use of resident labor.

84 Acts, ch 1256, §1; 86 Acts, ch 1245, §314; 2003 Acts, ch 145, §211, 286; 2006 Acts, ch 1017, §23, 42, 43; 2007 Acts, ch 126, §44

**218.59 through 218.63** Reserved.

**218.64 Investigation of death.**

1. For the purposes of this section, unless the context otherwise requires, “*institution*” and “*resident*” mean the same as defined in section 218.13.

2. Upon the death of a resident of an institution, the county medical examiner shall conduct a preliminary investigation of the death as provided in section 331.802. The cost of the preliminary investigation shall be paid by the department of human services.

2008 Acts, ch 1187, §134

Referred to in §222.12, 226.34, 331.802

**218.65 Property of deceased resident.**

The superintendent or business manager of each institution shall, upon the death of any resident or patient, immediately take possession of all property of the deceased left at the institution, and deliver the property to the duly appointed and qualified representative of the deceased.

[S13, §2727-a72; C24, 27, 31, 35, 39, §3352; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.65]

83 Acts, ch 96, §159, 160; 2000 Acts, ch 1112, §22

**218.66 Property of small value.**

If administration be not granted within one year from the date of the death of the decedent, and the value of the estate of decedent is so small as to make the granting of administration inadvisable, then delivery of the money and other property left by the decedent may be made to the surviving spouse and heirs of the decedent.

[S13, §2727-a72; C24, 27, 31, 35, 39, §3353; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.66]

**218.67 Estate administrator not identified.**

If an estate administrator is not identified within one year from the death of a decedent in an institution, and a surviving spouse or heir is not known, the superintendent of the institution may convert all the decedent’s property into cash and in so doing the superintendent shall have the powers possessed by a general administrator of an estate.

[S13, §2727-a72; C24, 27, 31, 35, 39, §3354; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.67]

2000 Acts, ch 1112, §23

**218.68 Money deposited with treasurer of state.**

Said money shall be transmitted to the treasurer of state as soon after one year after the death of the intestate as practicable, and be credited to the support fund of the institution of which the intestate was a resident.

[S13, §2727-a72; C24, 27, 31, 35, 39, §3355; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.68]

83 Acts, ch 96, §159, 160

Referred to in §218.69

**218.69 Permanent record.**

A complete permanent record of the money transmitted to the treasurer of state under section 218.68, showing by whom and with whom it was left, its amount, the date of the death of the owner, the owner's reputed place of residence before the owner became a resident of the institution, the date on which it was transmitted to the state treasurer, and any other facts which may tend to identify the intestate and explain the case, shall be kept by the superintendent of the institution or business manager, as the case may be, and a transcript of the record shall be sent to, and kept by, the treasurer of state.

[S13, §2727-a72; C24, 27, 31, 35, 39, §3356; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.69]

83 Acts, ch 96, §159, 160; 2000 Acts, ch 1112, §24

**218.70 Payment to party entitled.**

Said money shall be paid, at any time within ten years from the death of the intestate, to any person who is shown to be entitled thereto. Payment shall be made from the state treasury out of the support fund of such institution in the manner provided for the payment of other claims from that fund.

[S13, §2727-a73, -a74; C24, 27, 31, 35, 39, §3357; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.70]

**218.71 Reserved.****218.72 Temporary quarters in emergency.**

In case the buildings at any institution under the control of an administrator are destroyed or rendered unfit for habitation by reason of fire, storms, or other like causes, to such an extent that the residents cannot be housed and cared for, the administrator shall make temporary provision for the housing and care of the residents at some other place in the state. Like provision may be made in case any pestilence breaks out among the residents. The reasonable cost of the change, including transfer of residents, shall be paid from any money in the state treasury not otherwise appropriated.

[C51, §3143; R60, §5156; C73, §4795; C97, §5693; SS15, §2713-n18; C24, 27, 31, 35, 39, §3359; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.72]

83 Acts, ch 96, §157, 159, 160; 2000 Acts, ch 1112, §25

**218.73 through 218.77 Reserved.****218.78 Institutional receipts deposited.**

1. All institutional receipts of the department of human services, including funds received from client participation at the state resource centers under section 222.78 and at the state mental health institutes under section 230.20, shall be deposited in the general fund except for reimbursements for services provided to another institution or state agency, for receipts deposited in the revolving farm fund under section 904.706, for deposits into the medical assistance fund under section 249A.11, and rentals charged to employees or others for room, apartment, or house and meals, which shall be available to the institutions.

2. If approved by the director of human services, the department may use appropriated funds for the granting of educational leave.

[C77, 79, 81, §218.78, 218.101; 81 Acts, ch 11, §14, ch 75, §2]

83 Acts, ch 96, §157, 159; 85 Acts, ch 146, §1; 88 Acts, ch 1249, §5; 2000 Acts, ch 1112, §51; 2005 Acts, ch 167, §30, 66; 2010 Acts, ch 1141, §24

**218.79 through 218.82** Reserved.

**218.83 Administrative improvement.**

The director of human services and the administrators assigned to have authority over the institutions shall cooperate with any department or agency of the state government in any manner, including the exchange of employees, calculated to improve administration of the affairs of the institutions.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.83]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §26

**218.84 Abstracting claims and keeping accounts.**

The director of the department of human services shall have sole charge of abstracting and certifying claims for payment and the keeping of a central system of accounts in institutions under the director's control.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.84]

83 Acts, ch 96, §157, 159

**218.85 Uniform system of accounts.**

The director of human services through the administrators in control of the institutions shall install in all the institutions the most modern, complete, and uniform system of accounts, records, and reports possible. The system shall be prescribed by the director of the department of administrative services as authorized in section 8A.502, subsection 13, and, among other matters, shall clearly show the detailed facts relative to the handling and uses of all purchases.

[S13, §2727-a13; C24, 27, 31, 35, 39, §3286; C46, §217.12; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.85]

83 Acts, ch 96, §157, 159; 89 Acts, ch 284, §5; 2000 Acts, ch 1112, §27; 2003 Acts, ch 145, §212

Requirement of auditor of state, §11.5

**218.86 Abstract of claims.**

Vouchers for expenditures other than salaries shall be submitted to the director of the department of administrative services, who shall prepare in triplicate an abstract of claims submitted showing the name of the claimant and the institutions and institutional fund on account of which the payment is made. The claims and abstracts of claims shall be returned to the director of the department of human services where the correctness of the abstracts shall be certified by the director. The original abstract shall be delivered to the director of the department of administrative services, the duplicate to be retained in the office of the director of the department of human services and the triplicate forwarded to the proper institution to be retained as a record of claims paid.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.86]

94 Acts, ch 1107, §9; 2003 Acts, ch 145, §286

Referred to in §218.100

**218.87 Warrants issued by director of the department of administrative services.**

Upon such certificate the director of the department of administrative services shall, if the institution named has sufficient funds, issue the director's warrants upon the state treasurer, for the amounts and to the claimants indicated thereon. The director of the department

of administrative services shall deliver the warrants thus issued to the director of human services, who will cause same to be transmitted to the payees thereof.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.87]

2003 Acts, ch 145, §286

Referred to in §218.100

#### **218.88 Institutional payrolls.**

At the close of each pay period, the superintendent or business manager of each institution shall prepare and forward to the director of human services a semimonthly payroll which shall show the name of each officer and employee, the semimonthly pay, time paid for, the amount of pay, and any deductions. A substitute shall not be permitted to receive compensation in the name of the employee for whom the substitute is acting.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §218.88]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §28

Referred to in §218.100

**218.89 Abstracts of payrolls.** Repealed by 2003 Acts, ch 145, § 291.

**218.90 and 218.91** Repealed by 83 Acts, ch 96, § 156, 159.

#### **218.92 Patients with dangerous mental disturbances.**

When a patient in a state resource center for persons with an intellectual disability, a state mental health institute, or another institution under the administration of the department of human services has become so mentally disturbed as to constitute a danger to self, to other patients or staff of the institution, or to the public, and the institution cannot provide adequate security, the administrator in charge of the institution, with the consent of the director of the Iowa department of corrections, may order the patient to be transferred to the Iowa medical and classification center, if the superintendent of the institution from which the patient is to be transferred, with the support of a majority of the medical staff, recommends the transfer in the interest of the patient, other patients, or the public. If the patient transferred was hospitalized pursuant to sections 229.6 to 229.15, the transfer shall be promptly reported to the court that ordered the hospitalization of the patient, as required by section 229.15, subsection 5. The Iowa medical and classification center has the same rights, duties, and responsibilities with respect to the patient as the institution from which the patient was transferred had while the patient was hospitalized in the institution. The cost of the transfer shall be paid from the funds of the institution from which the transfer is made.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.92; 82 Acts, ch 1100, §5]

83 Acts, ch 96, §69, 159; 89 Acts, ch 83, §34; 94 Acts, ch 1170, §33; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §29, 51; 2012 Acts, ch 1019, §21

See also §226.30

#### **218.93 Consultants for director or administrators.**

The director of human services or the administrators in control of the institutions are authorized to secure the services of consultants to furnish advice on administrative, professional, or technical problems to the director or the administrators, their employees, or employees of institutions under their jurisdiction or to provide in-service training and instruction for the employees. The director and administrators are authorized to pay the consultants at a rate to be determined by them from funds under their control or from any institutional funding under their jurisdiction as the director or administrator may determine.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.93]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §30

#### **218.94 Director may buy and sell real estate — options.**

The director of the department of human services shall have full power to secure options to purchase real estate, to acquire and sell real estate, and to grant utility easements, for the proper uses of said institutions. Real estate shall be acquired and sold and utility easements granted, upon such terms and conditions as the director may determine. Upon sale of the

real estate, the proceeds shall be deposited with the treasurer of state and credited to the general fund of the state. There is hereby appropriated from the general fund of the state a sum equal to the proceeds so deposited and credited to the general fund of the state to the department of human services, which may be used to purchase other real estate or for capital improvements upon property under the director's control.

The costs incident to securing of options, acquisition and sale of real estate and granting of utility easements, including, but not limited to, appraisals, invitations for offers, abstracts, and other necessary costs, may be paid from moneys appropriated for support and maintenance to the institution at which such real estate is located. Such fund shall be reimbursed from the proceeds of the sale.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.94]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1244, §29

#### **218.95 Synonymous terms.**

1. For purposes of construing the provisions of this and the following subtitles of this title and chapters 16, 35B, 347B, 709A, 904, 913, and 914 relating to persons with mental illness and reconciling these provisions with other former and present provisions of statute, the following terms shall be considered synonymous:

a. "*Mentally ill*" and "*insane*", except that the hospitalization or detention of any person for treatment of mental illness shall not constitute a finding or create a presumption that the individual is legally insane in the absence of a finding of incompetence made pursuant to section 229.27.

b. "*Parole*" and "*convalescent leave*".

c. "*Resident*" and "*patient*".

d. "*Escape*" and "*depart without proper authorization*".

e. "*Warrant*" and "*order of admission*".

f. "*Escapee*" and "*patient*".

g. "*Sane*" and "*in good mental health*".

h. "*Asylum*" and "*hospital*".

i. "*Commitment*" and "*admission*".

2. It is hereby declared to be the policy of the general assembly that words which have come to have a degrading meaning shall not be employed in institutional records having reference to persons with various mental conditions and that in all records pertaining to persons with various mental conditions the less discriminatory of the foregoing synonyms shall be employed.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.95]

83 Acts, ch 96, §159, 160; 96 Acts, ch 1129, §39; 2009 Acts, ch 41, §263

#### **218.96 Gifts, grants and devises.**

The director of the department of human services is authorized to accept gifts, grants, devises or bequests of real or personal property from the federal government or any source. The director may exercise such powers with reference to the property so accepted as may be deemed essential to its preservation and the purposes for which given, devised or bequeathed.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.96]

83 Acts, ch 96, §157, 159

#### **218.97 Reserved.**

#### **218.98 Canteen maintained.**

The administrators in control of the institutions may maintain a canteen at any institution under their jurisdiction and control for the sale to persons residing in the institution of toilet articles, candy, tobacco products, notions, and other sundries, and may provide the necessary facilities, equipment, personnel, and merchandise for such sale. The administrators shall specify what commodities will be sold in the canteen. The department may establish and

maintain a permanent operating fund for each canteen. The fund shall consist of the receipts from the sale of commodities at the canteen.

[C62, 66, 71, 73, 75, 77, 79, 81, §218.98]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1112, §31

**218.99 Counties to be notified of patients' personal accounts.**

The administrator in control of a state institution shall direct the business manager of each institution under the administrator's jurisdiction which is mentioned in section 331.424, subsection 1, paragraph "a", subparagraphs (1) and (2), and for which services are paid under section 331.424A, to quarterly inform the county of residence of any patient or resident who has an amount in excess of two hundred dollars on account in the patients' personal deposit fund and the amount on deposit. The administrators shall direct the business manager to further notify the county of residence at least fifteen days before the release of funds in excess of two hundred dollars or upon the death of the patient or resident. If the patient or resident has no residency in this state or the person's residency is unknown so that the person is deemed to be a state case, notice shall be made to the director of human services and the administrator in control of the institution involved.

[C66, 71, 73, 75, 77, 79, 81, S81, §218.99; 81 Acts, ch 117, §1026]

83 Acts, ch 96, §157, 159, 160; 83 Acts, ch 123, §80, 209; 95 Acts, ch 206, §6, 12; 97 Acts, ch 169, §1; 98 Acts, ch 1100, §23; 2000 Acts, ch 1112, §32; 2004 Acts, ch 1090, §33; 2010 Acts, ch 1061, §165; 2012 Acts, ch 1120, §68, 130

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**218.100 Central warehouse and supply depot.**

The department of human services shall establish a fund for maintaining and operating a central warehouse as a supply depot and distribution facility for surplus government products, carload canned goods, paper products, other staples, and such other items as determined by the department. The fund shall be permanent and shall be composed of the receipts from the sales of merchandise, recovery of handling, operating and delivery charges of such merchandise, and from the funds contributed by the institutions now in a contingent fund being used for this purpose. All claims for purchases of merchandise, operating, and salary expenses shall be subject to the provisions of sections 218.86 to 218.88.

[C71, 73, 75, 77, 79, 81, §218.100]

83 Acts, ch 96, §157, 159; 2003 Acts, ch 145, §213

Legislative intent that upon completion of the central warehouse and supply depot of the department of corrections pursuant to §904.118A, the department of human services cease utilizing the central warehouse and supply depot established under this section; 2008 Acts, ch 1180, §19

**218.101** Repealed by 81 Acts, ch 75, § 4.

## CHAPTER 219

### STATE MEDICAL INSTITUTION

Repealed by 2010 Acts, ch 1141, §28

### SUBTITLE 3

#### MENTAL HEALTH

Referred to in §714.8

### CHAPTER 220

RESERVED

### CHAPTER 220A

#### INTERAGENCY INFORMATION SERVICE ON PERSONS WITH MENTAL DISABILITIES

Repealed by 2013 Acts, ch 19, §3

### CHAPTER 221

#### INTERSTATE MENTAL HEALTH COMPACT

Referred to in §331.394

221.1	Mental health compact enacted.	221.4	Payments.
221.2	Administrator.	221.5	Consultation.
221.3	Supplementary agreements.	221.6	Distribution of compact.

#### **221.1 Mental health compact enacted.**

The interstate compact on mental health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows, and the contracting states solemnly agree that:

1. *Article I.* The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

2. *Article II.* As used in this compact:

a. "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

b. "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

c. "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

d. "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

e. “*After-care*” shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

f. “*Mental illness*” shall mean mental disease to such extent that a person so afflicted requires care and treatment for the person’s own welfare, or the welfare of others, or of the community.

g. “*Mental deficiency*” shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing the person and the person’s affairs, but shall not include mental illness as defined herein.

h. “*State*” shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

### 3. *Article III.*

a. Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, the person shall be eligible for care and treatment in an institution in that state irrespective of the person’s residence, settlement or citizenship qualifications.

b. The provisions of paragraph “a” of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient’s full record with due regard for the location of the patient’s family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

c. No state shall be obliged to receive any patient pursuant to the provisions of paragraph “b” of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

d. In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that the interstate patient would be taken if the interstate patient were a local patient.

e. Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

### 4. *Article IV.*

a. Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient’s intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

b. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

c. In supervising, treating, or caring for a patient on after-care pursuant to the terms of

this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

5. *Article V.* Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, the patient shall be detained in the state where found pending disposition in accordance with law.

6. *Article VI.* The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

7. *Article VII.*

a. No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

b. The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

c. No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

d. Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

e. Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

8. *Article VIII.*

a. Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on the guardian's own behalf or in respect of any patient for whom the guardian may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue the guardian's power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

b. The term "guardian" as used in paragraph "a" of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

9. *Article IX.*

a. No provision of this compact except article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

b. To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

10. *Article X.*

a. Each party state shall appoint a “compact administrator” who, on behalf of the compact administrator’s state, shall act as general coordinator of activities under the compact in the administrator’s state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by the administrator’s state either in the capacity of sending or receiving state. The compact administrator or the administrator’s duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

b. The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

11. *Article XI.* The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

12. *Article XII.* This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

13. *Article XIII.*

a. A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

b. Withdrawal from any agreement permitted by article VII, paragraph “b”, as to costs or from any supplementary agreement made pursuant to article XI shall be in accordance with the terms of such agreement.

14. *Article XIV.* This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[C66, 71, 73, 75, 77, 79, 81, §218A.1]

C93, §221.1

2008 Acts, ch 1032, §201

### **221.2 Administrator.**

Pursuant to the compact, the administrator of the division of mental health and disability services of the department of human services shall be the compact administrator. The compact administrator may cooperate with all departments, agencies, and officers of this state and its subdivisions in facilitating the proper administration of the compact and of any supplementary agreement entered into by this state under the compact.

[C66, 71, 73, 75, 77, 79, 81, §218A.2; 81 Acts, ch 78, §20, 26]

83 Acts, ch 96, §157, 159

C93, §221.2  
94 Acts, ch 1170, §34; 2006 Acts, ch 1115, §23

**221.3 Supplementary agreements.**

The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provisions of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

[C66, 71, 73, 75, 77, 79, 81, §218A.3]  
C93, §221.3

**221.4 Payments.**

The compact administrator, subject to the approval of the director of the department of human services, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

[C66, 71, 73, 75, 77, 79, 81, §218A.4]  
83 Acts, ch 96, §157, 159  
C93, §221.4

**221.5 Consultation.**

The compact administrator is hereby directed to consult with the immediate family of our proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to take no final action without approval of the district court of the county of admission or commitment.

[C66, 71, 73, 75, 77, 79, 81, §218A.5]  
C93, §221.5

**221.6 Distribution of compact.**

Duly authorized copies of this chapter shall, upon its approval be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments.

[C66, 71, 73, 75, 77, 79, 81, §218A.6]  
C93, §221.6

## CHAPTER 222

### PERSONS WITH AN INTELLECTUAL DISABILITY

Referred to in §225C.6, 232.51, 235B.2, 235B.3, 235E.1, 235E.2, 252.16, 252.23, 331.381, 331.394

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**222.1 Purpose of state resource centers.**

1. The Glenwood state resource center and the Woodward state resource center are established and shall be maintained as the state's regional resource centers for the purpose of providing treatment, training, instruction, care, habilitation, and support of persons with an intellectual disability or other disabilities in this state, and providing facilities, services, and other support to the communities located in the region being served by a state resource center. In addition, the state resource centers are encouraged to serve as a training resource for community-based program staff, medical students, and other participants in professional education programs. A resource center may request the approval of the council on human services to change the name of the resource center for use in communication with the public, in signage, and in other forms of communication.

2. A special intellectual disability unit may be maintained at one of the state mental health institutes for the purposes set forth in sections 222.88 to 222.91.

[S13, §2727-a93, -a95; SS15, §2727-a93, -a96; C24, 27, 31, 35, 39, §3465, 3468; C46, 50, 54, 58, 62, §223.1, 223.4; C66, 71, 73, 75, 77, 79, 81, §222.1]

95 Acts, ch 82, §6; 98 Acts, ch 1155, §8; 2000 Acts, ch 1112, §46; 2012 Acts, ch 1019, §22  
Referred to in §222.73

### 222.2 Definitions.

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

1. “Administrator” means the person assigned by the director of human services, in accordance with section 218.1, to control the state resource centers.
2. “Auditor” means the county auditor or the auditor’s designee.
3. “Central point of coordination process” means the same as defined in section 331.440.\*
4. “Department” means the department of human services.
5. “Intellectual disability” means the same as defined in section 4.1.
6. “Special unit” means a special intellectual disability unit established at a state mental health institute pursuant to sections 222.88 to 222.91.

7. “State resource centers” or “resource centers” means the Glenwood state resource center and the Woodward state resource center.

8. “Superintendents” means the superintendents of the state resource centers.

[C97, §2699; C24, 27, 31, 35, 39, §3411; C46, 50, 54, 58, 62, §222.1; C66, 71, 73, 75, 77, 79, 81, §222.2; 81 Acts, ch 78, §20, 30]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §35; 96 Acts, ch 1183, §1; 97 Acts, ch 169, §14; 2000 Acts, ch 1112, §47 – 50; 2001 Acts, ch 155, §14; 2004 Acts, ch 1090, §33; 2012 Acts, ch 1019, §23

\*Section 331.440 is repealed; corrective legislation is pending  
Section not amended; footnote added

### 222.3 Superintendents.

The administrator shall appoint a qualified superintendent for each of the resource centers who shall receive such salary as the administrator shall determine.

[SS15, §2727-a96; C24, 27, 31, 35, 39, §3466; C46, 50, 54, 58, 62, §223.2; C66, 71, 73, 75, 77, 79, 81, §222.3]

2000 Acts, ch 1112, §51

### 222.4 Duties.

The superintendents shall:

1. Perform all duties required by law and by the administrator not inconsistent with law.
2. Oversee and insure individual treatment and professional care of each patient in the resource centers.
3. Maintain a full and complete record of the condition of each patient in the resource centers.
4. Have custody, control, and management of all patients in such manner as deemed best subject to the regulations of the administrator.

[SS15, §2727-a96; C24, 27, 31, 35, 39, §3467; C46, 50, 54, 58, 62, §223.3; C66, 71, 73, 75, 77, 79, 81, §222.4]

2000 Acts, ch 1112, §51

Referred to in §222.90

### 222.5 Preadmission diagnostic evaluation.

No person shall be eligible for admission to a resource center or a special unit until a preadmission diagnostic evaluation has been made by a resource center or a special unit which confirms or establishes the need for admission.

[C24, 27, 31, 35, 39, §3444; C46, 50, 54, 58, 62, §222.34; C66, 71, 73, 75, 77, 79, 81, §222.5]

2000 Acts, ch 1112, §51

**222.6 State districts.**

The administrator shall divide the state into two districts in such manner that one of the resource centers shall be located within each of the districts. Such districts may from time to time be changed. After such districts have been established, the administrator shall notify all boards of supervisors, county auditors, and clerks of the district courts of the action. Thereafter, unless the administrator otherwise orders, all admissions or commitments of persons with an intellectual disability from a district shall be to the resource center located within such district.

[C24, 27, 31, 35, 39, §3476; C46, 50, 54, 58, 62, §223.10; C66, 71, 73, 75, 77, 79, 81, §222.6] 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51; 2012 Acts, ch 1019, §24

For future amendment to this section, effective July 1, 2014, see 2013 Acts, ch 130, §17, 35  
Section not amended; footnote added

**222.7 Transfers.**

The administrator may transfer patients from one state resource center to the other and may at any time transfer patients from the resource centers to the hospitals for persons with mental illness, or transfer patients in the resource centers to a special unit or vice versa. The administrator may also transfer patients from a hospital for persons with mental illness to a resource center if:

1. In the case of a patient who entered the hospital for persons with mental illness voluntarily, consent is given in advance by the patient or, if the patient is a minor or is incompetent, the person responsible for the patient.

2. In the case of a patient hospitalized pursuant to sections 229.6 to 229.15, the consent of the court which hospitalized the patient is obtained in advance, rather than afterward as otherwise permitted by section 229.15, subsection 4.

[SS15, §2727-a96; C24, 27, 31, 35, 39, §3456, 3472, 3477; C46, 50, 54, 58, 62, §222.46, 223.8, 223.11; C66, 71, 73, 75, 77, 79, 81, §222.7]

83 Acts, ch 96, §71, 159; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51

Referred to in §226.8

**222.8 Communications by patients.**

Persons admitted to the resource centers or a special unit shall have all reasonable opportunity and facility for communication with their friends. Such persons shall be permitted to write and send letters, provided the letters contain nothing of an offensive character. Letters written by any patient to the administrator or to any state or county official shall be forwarded unopened.

[C24, 27, 31, 35, 39, §3445; C46, 50, 54, 58, 62, §222.35; C66, 71, 73, 75, 77, 79, 81, §222.8] 2000 Acts, ch 1112, §51

**222.9 Unauthorized departures.**

If any person with an intellectual disability shall depart without proper authorization from a resource center or a special unit, it shall be the duty of the superintendent and the superintendent's assistants and all peace officers of any county in which such patient may be found to take and detain the patient without a warrant or order and to immediately report such detention to the superintendent who shall immediately provide for the return of such patient to the resource center or special unit.

[C24, 27, 31, 35, 39, §3460; C46, 50, 54, 58, 62, §222.50; C66, 71, 73, 75, 77, 79, 81, §222.9] 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51; 2012 Acts, ch 1019, §25

**222.10 Duty of peace officer.**

When any person with an intellectual disability departs without proper authority from an institution in another state and is found in this state, any peace officer in any county in which such patient is found may take and detain the patient without warrant or order and shall report such detention to the administrator. The administrator shall provide for the return of the patient to the authorities in the state from which the unauthorized departure was made. Pending return, such patient may be detained temporarily at one of the institutions of this state governed by the administrator or by the administrator of the division of child and family

services of the department of human services. The provisions of this section relating to the administrator shall also apply to the return of other nonresident persons with an intellectual disability having legal residency outside the state of Iowa.

[C58, 62, §222.55; C66, 71, 73, 75, 77, 79, 81, §222.10]

83 Acts, ch 96, §157, 159; 96 Acts, ch 1129, §113; 2012 Acts, ch 1019, §26; 2012 Acts, ch 1120, §69, 130

2012 amendment to this section by 2012 Acts, ch 1120, §69, takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

### **222.11 Expense.**

All actual and necessary expenses incurred in the taking into protective custody, restraint, and transportation of such patients to the resource centers shall be paid on itemized vouchers, sworn to by the claimants, and approved by the superintendent and the administrator from any money in the state treasury not otherwise appropriated.

[C24, 27, 31, 35, 39, §3461; C46, 50, 54, 58, 62, §222.51; C66, 71, 73, 75, 77, 79, 81, §222.11]  
2000 Acts, ch 1112, §51

### **222.12 Deaths investigated.**

1. Upon the death of a patient of a resource center or special unit, a preliminary investigation of the death shall be conducted as required by section 218.64 by the county medical examiner as provided in section 331.802. Such a preliminary investigation shall also be conducted in the event of a sudden or mysterious death of a patient in a private institution for persons with an intellectual disability. The chief administrative officer of any private institution may request an investigation of the death of any patient by the county medical examiner.

2. Notice of the death of the patient, and the cause of death, shall be sent to the county board of supervisors and to the judge of the court that had jurisdiction over a committed patient. The fact of death with the time, place, and alleged cause shall be entered upon the docket of the court.

3. The parent, guardian, or other person responsible for the admission of a patient to a private institution for persons with an intellectual disability may also request such a preliminary investigation by the county medical examiner in the event of the death of the patient that is not sudden or mysterious. The person or persons making the request are liable for the expense of such preliminary investigation and payment for the expense may be required in advance.

[C24, 27, 31, 35, 39, §3447; C46, 50, 54, 58, 62, §222.37; C66, 71, 73, 75, 77, 79, 81, §222.12]  
96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51; 2008 Acts, ch 1187, §135; 2012 Acts, ch 1019, §27

For future amendment to subsection 2, effective July 1, 2014, see 2013 Acts, ch 130, §18, 35  
Section not amended; footnote added

### **222.13 Voluntary admissions.**

1. If an adult person is believed to be a person with an intellectual disability, the adult person or the adult person's guardian may submit a request in writing through the central point of coordination process\* for the county board of supervisors of the adult person's county of residence to apply to the superintendent of any state resource center for the voluntary admission of the adult person either as an inpatient or an outpatient of the resource center. The board of supervisors shall, on forms prescribed by the department's administrator, apply to the superintendent of the resource center in the district for the admission of the adult person to the resource center. An application for admission to a special unit of any adult person believed to be in need of any of the services provided by the special unit under section 222.88 may be made in the same manner, upon request of the adult person or the adult person's guardian. The superintendent shall accept the application if a preadmission diagnostic evaluation, performed through the central point of coordination process,\* confirms or establishes the need for admission, except that an application shall not be accepted if the institution does not have adequate facilities available or if the acceptance will result in an overcrowded condition.

2. If the resource center has no appropriate program for the treatment of an adult or minor person with an intellectual disability applying under this section or section 222.13A, the board of supervisors shall arrange for the placement of the person in any public or private facility within or without the state, approved by the director of the department of human services, which offers appropriate services for the person, as determined through the central point of coordination process.\*

3. Upon applying for admission of an adult or minor person to a resource center, or a special unit, or upon arranging for the placement of the person in a public or private facility, the board of supervisors shall make a full investigation into the financial circumstances of that person and those liable for that person's support under section 222.78 to determine whether or not any of them are able to pay the expenses arising out of the admission of the person to a resource center, special treatment unit, or public or private facility. If the board finds that the person or those legally responsible for the person are presently unable to pay the expenses, the board shall direct that the expenses be paid by the county. The board may review its finding at any subsequent time while the person remains at the resource center, or is otherwise receiving care or treatment for which this chapter obligates the county to pay. If the board finds upon review that the person or those legally responsible for the person are presently able to pay the expenses, the finding shall apply only to the charges incurred during the period beginning on the date of the review and continuing thereafter, unless and until the board again changes its finding. If the board finds that the person or those legally responsible for the person are able to pay the expenses, the board shall direct that the charges be so paid to the extent required by section 222.78, and the county auditor shall be responsible for the collection of the charges.

[C24, 27, 31, 35, 39, §3464, 3477.2; C46, 50, 54, 58, 62, §222.54, 223.13; C66, 71, 73, 75, 77, 79, 81, §222.13]

83 Acts, ch 96, §157, 159; 95 Acts, ch 82, §7; 96 Acts, ch 1183, §2; 97 Acts, ch 169, §2; 2000 Acts, ch 1112, §51; 2004 Acts, ch 1090, §33; 2012 Acts, ch 1019, §28; 2012 Acts, ch 1120, §70, 130; 2013 Acts, ch 90, §45

Referred to in §222.14, 222.15, 222.31, 222.59, 331.381, 331.502

\*Section 331.440, which implements the central point of coordination process, is repealed; corrective legislation is pending

2012 amendment to subsection 1 by 2012 Acts, ch 1120, §70, takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Subsection 1 amended

### **222.13A Voluntary admissions — minors.**

1. If a minor is believed to be a person with an intellectual disability, the minor's parent, guardian, or custodian may request the county board of supervisors to apply for admission of the minor as a voluntary patient in a state resource center. If the resource center does not have appropriate services for the minor's treatment, the board of supervisors may arrange for the admission of the minor in a public or private facility within or without the state, approved by the director of human services, which offers appropriate services for the minor's treatment.

2. Upon receipt of an application for voluntary admission of a minor, the board of supervisors shall provide for a preadmission diagnostic evaluation of the minor to confirm or establish the need for the admission. The preadmission diagnostic evaluation shall be performed by a person who meets the qualifications of a qualified intellectual disability professional who is designated through the central point of coordination process.\*

3. During the preadmission diagnostic evaluation, the minor shall be informed both orally and in writing that the minor has the right to object to the voluntary admission. If the preadmission diagnostic evaluation determines that the voluntary admission is appropriate but the minor objects to the admission, the minor shall not be admitted to the state resource center unless the court approves of the admission. A petition for approval of the minor's admission may be submitted to the juvenile court by the minor's parent, guardian, or custodian.

4. As soon as practicable after the filing of a petition for approval of the voluntary admission, the court shall determine whether the minor has an attorney to represent the minor in the proceeding. If the minor does not have an attorney, the court shall assign to the minor an attorney. If the minor is unable to pay for an attorney, the attorney shall

be compensated by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

5. The court shall order the admission of a minor who objects to the admission, only after a hearing in which it is shown by clear and convincing evidence that both of the following circumstances exist:

a. The minor needs and will substantially benefit from treatment or habilitation.

b. A placement which involves less restriction of the minor's liberties for the purposes of treatment or habilitation is not feasible.

95 Acts, ch 82, §8; 96 Acts, ch 1183, §3; 99 Acts, ch 135, §15; 2000 Acts, ch 1112, §51; 2004 Acts, ch 1090, §33; 2012 Acts, ch 1019, §29

Referred to in §222.13, 222.15, 222.59

\*Section 331.440, which implements the central point of coordination process, is repealed; corrective legislation is pending  
Section not amended; footnote added

#### **222.14 Care by county pending admission.**

If the institution is unable to receive a patient, the superintendent shall notify the county board of supervisors of the county from which the application in behalf of the prospective patient was made of the time when such person may be received. Until such time as the patient is able to be received by the institution, or when application has been made for admission to a public or private facility as provided in section 222.13 and the application is pending, the care of said person shall be provided as arranged by the county board of supervisors.

[C24, 27, 31, 35, 39, §3433; C46, 50, 54, 58, 62, §222.23; C66, 71, 73, 75, 77, 79, 81, §222.14]  
Referred to in §331.381

#### **222.15 Discharge of patients admitted voluntarily.**

This section applies to any person who was voluntarily admitted to a state resource center or other facility in accordance with the provisions of section 222.13 or 222.13A. Except as otherwise provided by this section, if the person or the person's parent, guardian, or custodian submits a written request for the person's release, the person shall be immediately released.

1. If the person is an adult and was admitted pursuant to an application by the person or the person's guardian and the request for release is made by a different person, the release is subject to the agreement of the person voluntarily admitted or the person's guardian, if the guardian submitted the application.

2. If the person is a minor who was admitted pursuant to the provisions of section 222.13A, the person's release prior to becoming eighteen years of age is subject to the consent of the person's parent, guardian, or custodian, or to the approval of the court if the admission was approved by the court.

3. a. If the administrator of the facility in which the patient is admitted certifies that in the administrator's opinion the release of the person would be contrary to the safety of the person or the community, the release may be postponed by a court order. The administrator's certification shall be filed with the clerk of the district court for the county in which the facility is located no later than one day following the submission of the written request for release. The period of postponement shall be the period of time the court determines necessary to permit the commencement of judicial proceedings for the person's involuntary commitment. The period of postponement shall not exceed five days unless the period of postponement is extended by court order for good cause shown.

b. If a petition for the person's involuntary commitment is timely filed, the administrator may detain the person in the facility and provide treatment until disposition of the petition. The treatment shall be limited to that necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to

the person or to others if allowed to continue. The administrator shall not otherwise provide treatment to the person without the person's consent.

[SS15, §2727-a96; C24, 27, 31, 35, 39, §3473; C46, 50, 54, 58, 62, §223.9; C66, 71, 73, 75, 77, 79, 81, §222.15]

95 Acts, ch 82, §9; 2000 Acts, ch 1112, §51

Referred to in §222.59

For future strike of subsection 3, effective July 1, 2014, see 2013 Acts, ch 130, §19, 35

Section not amended; footnote added

### **222.16 Petition for adjudication of intellectual disability.**

A petition for the adjudication of a person as having an intellectual disability within the meaning of this chapter may, with the permission of the court, be filed without fee against a person with the clerk of the district court of the county or city in which the person who is alleged to have an intellectual disability resides or is found. The petition may be filed by any relative of the person, by a guardian, or by any reputable citizen of the county where the person who is alleged to have an intellectual disability resides or is found.

Commitment of a person pursuant to section 222.31 does not constitute a finding or raise a presumption that the person is incompetent to vote. The court shall make a separate determination as to the person's competency to vote. The court shall find a person incompetent to vote only upon determining that the person lacks sufficient mental capacity to comprehend and exercise the right to vote.

[C24, 27, 31, 35, 39, §3413; C46, 50, 54, 58, 62, §222.3; C66, 71, 73, 75, 77, 79, 81, §222.16]

96 Acts, ch 1129, §44; 98 Acts, ch 1185, §6; 2012 Acts, ch 1019, §30

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

### **222.16A Judicial proceedings.**

1. The chief judge of a judicial district may appoint one or more judicial hospitalization referees for each county in the district to discharge the duties imposed on the court by this chapter. The judicial hospitalization qualification provisions of section 229.21 shall apply to referees appointed under this section in performing duties pursuant to this chapter. An order or findings by a referee pursuant to this chapter may be appealed to a judge of the district court by filing notice with the clerk of the district court within seven days after the findings or order is made, and hearing by the district court shall be de novo. The court shall schedule a hearing before a district judge at the earliest practicable time.

2. The juvenile court has exclusive original jurisdiction in any court proceedings concerning a minor pursuant to this chapter.

95 Acts, ch 82, §10

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

### **222.17 Allegations verified.**

The petition shall be verified by affidavit, may be filed on information or belief, and shall:

1. Allege that such person has an intellectual disability within the meaning of this chapter.  
2. Allege that the filing of the petition is conducive to the welfare of such person and of the community.

3. List the name and residence of all known persons supervising, caring for, or supporting such person, or assuming, or under obligation to do so.

4. List the name and residence, if known, of the parents of such person and of all other persons legally chargeable with the supervision, care, or support of such person.

5. List the names of all obtainable witnesses known to the petitioner by which the allegations of the petition may be established.

6. State whether such person has been examined by a qualified physician with a view of determining the person's mental condition.

[C24, 27, 31, 35, 39, §3414, 3415; C46, 50, 54, 58, 62, §222.4, 222.5; C66, 71, 73, 75, 77, 79, 81, §222.17]

2012 Acts, ch 1019, §31

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

**222.18 County attorney to appear.**

The county attorney shall, if requested, appear on behalf of any petitioner for the commitment of a person alleged to have an intellectual disability under this chapter, and on behalf of all public officials and superintendents in all matters pertaining to the duties imposed upon them by this chapter.

Upon the filing of the petition, the court shall enter an order directing the county attorney of the county in which the person who is alleged to have an intellectual disability resides to make a full investigation regarding the financial condition of that person and of those persons legally liable for that person's support under section 222.78.

[C24, 27, 31, 35, 39, §3412; C46, 50, 54, 58, 62, §222.2; C66, 71, 73, 75, 77, 79, 81, §222.18] 84 Acts, ch 1299, §1; 96 Acts, ch 1129, §45; 2012 Acts, ch 1019, §32

Referred to in §331.756(42)

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

**222.19 Party respondents.**

The following persons, in addition to the person alleged to have an intellectual disability, shall be made party respondents if the persons reside in this state and their names and residences are known:

1. The parent or parents of said principal person.
2. The person with whom said principal person is living.
3. The person or persons assuming to give the principal respondent care and attention.
4. The guardian, if there be such, of the person or property of the principal respondent.

[C24, 27, 31, 35, 39, §3416; C46, 50, 54, 58, 62, §222.6; C66, 71, 73, 75, 77, 79, 81, §222.19] 2012 Acts, ch 1019, §33

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

**222.20 Notice served.**

Notice of the pendency of said petition and of the time and place of hearing thereon shall be served upon all respondents who are residents of the county in which the petition is filed, in the manner in which the original notices are served. The court shall by written order direct the manner and time of service on all other parties. No notice need be served on those who are personally before the court.

[C24, 27, 31, 35, 39, §3417; C46, 50, 54, 58, 62, §222.7; C66, 71, 73, 75, 77, 79, 81, §222.20]

Manner of service, R.C.P. 1.302 - 1.315

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

**222.21 Order requiring attendance.**

If the person alleged to have an intellectual disability is not before the court, the court may issue an order requiring the person who has the care, custody, and control of the person who is alleged to have an intellectual disability to bring the person into court at the time and place stated in the order.

[C24, 27, 31, 35, 39, §3417; C46, 50, 54, 58, 62, §222.7; C66, 71, 73, 75, 77, 79, 81, §222.21] 96 Acts, ch 1129, §46; 2012 Acts, ch 1019, §34

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

**222.22 Time of appearance.**

The time of appearance shall not be less than five days after completed service unless the court orders otherwise. Appearance on behalf of the person who is alleged to have an intellectual disability may be made by any citizen of the county or by any relative. The district court shall assign counsel for the person who is alleged to have an intellectual disability. Counsel shall prior to proceedings personally consult with the person who is alleged to have an intellectual disability unless the judge appointing counsel certifies that in the judge's opinion, consultation shall serve no useful purpose. The certification shall be made a part of the record. An attorney assigned by the court shall be compensated by the

county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

[C24, 27, 31, 35, 39, §3418; C46, 50, 54, 58, 62, §222.8; C66, 71, 73, 75, 77, 79, 81, §222.22] 96 Acts, ch 1129, §47; 99 Acts, ch 135, §16; 2012 Acts, ch 1019, §35

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

### **222.23 Persons to be present.**

At any hearing for commitment under this chapter, the person whose commitment is sought, the person's appointed counsel, the person's own attorney, if any, and any physician or psychologist whose testimony is to be made a part of the record shall be present unless the presiding judge shall determine that the presence will not be in the best interest of the person whose commitment is sought. Such determination shall be made a part of the record.

[C66, 71, 73, 75, 77, 79, 81, §222.23]

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

### **222.24 When held.**

The hearing may be heard in term time or in vacation. The petition shall be taken as confessed by all respondents, except the principal person, who are duly served and who do not appear at the time required by the notice.

[C24, 27, 31, 35, 39, §3419; C46, 50, 54, 58, 62, §222.9; C66, 71, 73, 75, 77, 79, 81, §222.24]

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

### **222.25 Custody pending hearing.**

Pending final hearing, the court may at any time after the filing of the petition and on satisfactory showing that it is in the best interest of the person who is alleged to have an intellectual disability and of the community that the person be at once taken into custody, or that service of notice will be ineffectual if the person is not taken into custody, issue an order for the immediate production of the person before the court. In such case, the court may make any proper order for the custody or confinement of the person as will protect the person and the community and insure the presence of the person at the hearing. The person shall not be confined with those accused or convicted of crime.

[C24, 27, 31, 35, 39, §3420; C46, 50, 54, 58, 62, §222.10; C66, 71, 73, 75, 77, 79, 81, §222.25] 96 Acts, ch 1129, §48; 2012 Acts, ch 1019, §36

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

### **222.26 Hearing in equity.**

The hearing on the allegations of the petition shall be as in equity proceedings. Answers to allegations shall not be required but may be filed. The court may require the petitioner to answer under oath such interrogatories as may be propounded by said court.

[C24, 27, 31, 35, 39, §3421, 3422; C46, 50, 54, 58, 62, §222.11, 222.12; C66, 71, 73, 75, 77, 79, 81, §222.26]

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

### **222.27 Hearing in public.**

Hearings shall be public, unless otherwise requested by the parent, guardian, or other person having custody of the person with an intellectual disability, or if the judge considers a closed hearing in the best interests of the person with an intellectual disability.

[C24, 27, 31, 35, 39, §3423; C46, 50, 54, 58, 62, §222.13; C66, 71, 73, 75, 77, 79, 81, §222.27] 96 Acts, ch 1129, §113; 2012 Acts, ch 1019, §37; 2013 Acts, ch 90, §46

For future repeal of this section, effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section amended

### **222.28 Commission to examine.**

The court may, at or prior to the final hearing, appoint a commission of one qualified physician and one qualified psychologist, designated through the central point of

coordination process,\* who shall make a personal examination of the person alleged to have an intellectual disability for the purpose of determining the mental condition of the person.

[C24, 27, 31, 35, 39, §3424; C46, 50, 54, 58, 62, §222.14; C66, 71, 73, 75, 77, 79, 81, §222.28] 96 Acts, ch 1183, §4; 2004 Acts, ch 1090, §33; 2012 Acts, ch 1019, §38

Referred to in §222.31

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

\*Section 331.440, which implements the central point of coordination process, is repealed; corrective legislation is pending  
Section not amended; footnotes added

### **222.29 Report.**

Said commission shall report in writing to the court the facts attending the mental condition of said person, its conclusion based thereon, and its recommendations concerning such person. The commission shall also report to the court sworn answers to such questions as may be required by the court. Such reports shall be filed with the clerk of the court.

[C24, 27, 31, 35, 39, §3425; C46, 50, 54, 58, 62, §222.15; C66, 71, 73, 75, 77, 79, 81, §222.29]

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

### **222.30 Ruling on report.**

No objections or exceptions need be made to said report. The court may set the report aside, and may order a new examination by the same or by a new commission, or may make such findings of fact in lieu of said report as may be justified by the evidence before the court.

[C24, 27, 31, 35, 39, §3426; C46, 50, 54, 58, 62, §222.16; C66, 71, 73, 75, 77, 79, 81, §222.30]

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

### **222.31 Commitment — liability for charges.**

1. If in the opinion of the court, or of a commission as authorized in section 222.28, the person has an intellectual disability within the meaning of this chapter and the court determines that it will be conducive to the welfare of that person and of the community to commit the person to a proper institution for treatment, training, instruction, care, habilitation, and support, and that services or support provided to the family of such a person who is a child will not enable the family to continue to care for the child in the child's home, the court shall by proper order:

a. Commit the person to any public or private facility within or without the state, approved by the director of the department of human services. If the person has not been examined by a commission as appointed in section 222.28, the court shall, prior to issuing an order of commitment, appoint such a commission to examine the person for the purpose of determining the mental condition of the person. No order of commitment shall be issued unless the commission shall recommend that such order be issued and the private institution to which the person is to be committed shall advise the court that it is willing to receive the person.

b. (1) Commit the person to the state resource center designated by the administrator to serve the county in which the hearing is being held, or to a special unit. The court shall, prior to issuing an order of commitment, request that a diagnostic evaluation of the person be made by a person qualified to perform the diagnostic evaluation. The cost of the evaluation shall be defrayed by the committed person's county of residence unless otherwise ordered by the court. The cost of the evaluation to be charged may be equal to but shall not exceed the actual cost of the evaluation. An order of commitment shall not be issued unless the superintendent of the institution recommends that the order be issued and advises the court that adequate facilities for the care of the person are available.

(2) The court shall examine the report of the county attorney filed pursuant to section 222.13, and if the report shows that neither the person nor those liable for the person's support under section 222.78 are presently able to pay the charges rising out of the person's care in a resource center, or special treatment unit, shall enter an order stating that finding and directing that the charges be paid by the person's county of residence. The court may, upon request of the board of supervisors, review its finding at any subsequent time while the person remains at the resource center, or is otherwise receiving care or treatment for which this chapter obligates the county to pay. If the court finds upon review that the person or those

legally responsible for the person are presently able to pay the expenses, that finding shall apply only to the charges incurred during the period beginning on the date of the board's request for the review and continuing thereafter, unless and until the court again changes its finding. If the court finds that the person, or those liable for the person's support, are able to pay the charges, the court shall enter an order directing that the charges be so paid to the extent required by section 222.78.

2. In its order, the court shall include a finding as to whether the person has sufficient mental capacity to comprehend and exercise the right to vote.

[C24, 27, 31, 35, 39, §3428; C46, 50, 54, 58, 62, §222.18; C66, 71, 73, 75, 77, 79, 81, §222.31] 83 Acts, ch 96, §157, 159; 83 Acts, ch 123, §81, 209; 84 Acts, ch 1299, §2, 3; 85 Acts, ch 67, §23; 92 Acts, ch 1229, §2; 98 Acts, ch 1185, §7; 2000 Acts, ch 1112, §51; 2009 Acts, ch 133, §215; 2012 Acts, ch 1019, §39; 2012 Acts, ch 1120, §71, 130

Referred to in §48A.2, 222.16, 222.36, 222.59

For future repeal of this section, effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

2012 amendment to subsection 1, paragraph b, subparagraph (1) takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Subsection 1, paragraph b, subparagraph (1) amended

### **222.32 Committed person under jurisdiction of court.**

Any person committed to any private institution shall remain under the jurisdiction of the court and the order of commitment may at any time be set aside or modified by changing the place of commitment or terminating the commitment and appointing a guardian in lieu thereof.

[C24, 27, 31, 35, 39, §3429; C46, 50, 54, 58, 62, §222.19; C66, 71, 73, 75, 77, 79, 81, §222.32]

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

**222.33** Repealed by 84 Acts, ch 1299, § 19.

### **222.34 Guardianship proceedings.**

If a guardianship is proposed for a person with an intellectual disability, guardianship proceedings shall be initiated and conducted as provided in chapter 633.

[C24, 27, 31, 35, 39, §3431; C46, 50, 54, 58, 62, §222.21; C66, 71, 73, 75, 77, 79, 81, §222.34]

84 Acts, ch 1299, §4; 96 Acts, ch 1129, §113; 2012 Acts, ch 1019, §40

**222.35** Repealed by 84 Acts, ch 1299, § 19.

### **222.36 Custody pending admission.**

If a resource center or a special unit is unable to immediately receive a person committed under section 222.31, subsection 1, paragraph "b", the superintendent shall notify the court of the time when such person may be received. In the meantime, said person shall be cared for under such order as the court may enter.

[C24, 27, 31, 35, 39, §3433; C46, 50, 54, 58, 62, §222.23; C66, 71, 73, 75, 77, 79, 81, §222.36]

2000 Acts, ch 1112, §51; 2009 Acts, ch 133, §216

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

### **222.37 Order to deliver committed person.**

Upon the entry of an order of commitment, the clerk shall deliver to a suitable person designated by the court, an order of commitment and a duplicate thereof commanding such person to immediately deliver the committed person to the institution, resource center, or special unit, as designated by the court.

[C24, 27, 31, 35, 39, §3434; C46, 50, 54, 58, 62, §222.24; C66, 71, 73, 75, 77, 79, 81, §222.37]

2000 Acts, ch 1112, §51

Referred to in §602.8102(36)

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

**222.38 Delivery of person to institution, resource center, or special unit.**

The court may, for the purpose of committing a person direct the clerk to authorize the employment of one or more assistants. If a person with an intellectual disability is taken to an institution, resource center, or special unit, at least one attendant shall be of the same sex.

[C24, 27, 31, 35, 39, §3435; C46, 50, 54, 58, 62, §222.25; C66, 71, 73, 75, 77, 79, 81, §222.38] 85 Acts, ch 99, §3; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51; 2012 Acts, ch 1019, §41

Referred to in §602.8102(36)

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

**222.39 Receipt acknowledged by superintendent.**

The superintendent of the institution, resource center, or special unit on the order of commitment shall acknowledge receipt for said person. The duplicate order shall be left with the superintendent and shall be sufficient authority to restrain and care for said committed person.

[C24, 27, 31, 35, 39, §3436; C46, 50, 54, 58, 62, §222.26; C66, 71, 73, 75, 77, 79, 81, §222.39] 2000 Acts, ch 1112, §51

Referred to in §602.8102(36)

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

**222.40 Filing order with clerk.**

The person executing said order shall make due return thereon of the person's doings and forthwith file the same with the clerk.

[C24, 27, 31, 35, 39, §3437; C46, 50, 54, 58, 62, §222.27; C66, 71, 73, 75, 77, 79, 81, §222.40] Referred to in §602.8102(36)

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

**222.41 Exclusive method of discharge.**

No person committed under this chapter shall be discharged from the institution, resource center, or special unit except as provided in this chapter. Nothing in this chapter shall abridge the right of petition for a writ of habeas corpus.

[C24, 27, 31, 35, 39, §3438; C46, 50, 54, 58, 62, §222.28; C66, 71, 73, 75, 77, 79, 81, §222.41] 2000 Acts, ch 1112, §51

Constitutional provision, Iowa Constitution, Art. I, §13

Habeas corpus, chapter 663

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

**222.42 Petition for discharge.**

A petition for the discharge of a person who has been committed to an institution, a resource center, or a special unit under this chapter or to vary such order of commitment may at any time after six months from the date of such commitment be filed by the person committed or by any reputable person. If the commitment be to a private institution, the petition shall be filed with the court ordering such commitment. If the commitment be to a resource center or a special unit, the petition shall be filed in the proper court of the county where the institution is situated.

[C24, 27, 31, 35, 39, §3439; C46, 50, 54, 58, 62, §222.29; C66, 71, 73, 75, 77, 79, 81, §222.42] 2000 Acts, ch 1112, §51

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

**222.43 Grounds.**

1. Discharges and modifications of orders may be made on any of the following grounds:
  - a. That the person adjudged to have an intellectual disability does not have an intellectual disability.
  - b. That the person adjudged to have an intellectual disability has improved as to be capable of self-care.
  - c. That the relatives or friends of the person with an intellectual disability are able and willing to support and care for the person with an intellectual disability and request the

person's discharge, and in the judgment of the superintendent of the institution or resource center having charge of the person, no harmful consequences are likely to follow such discharge.

d. That, for any other cause, said discharge should be made or such modification should be entered.

2. Petitions for discharge or modification of an order of commitment to a special unit may be made upon any of the foregoing grounds, when applicable.

[C24, 27, 31, 35, 39, §3440; C46, 50, 54, 58, 62, §222.30; C66, 71, 73, 75, 77, 79, 81, §222.43] 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51; 2009 Acts, ch 41, §263; 2012 Acts, ch 1019, §42

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

#### **222.44 Notice to superintendent.**

Notice of the hearing for discharge or modification of orders shall be served on the superintendent of the institution, resource center, or special unit, and on such parties as the court may find from the record are interested.

[C24, 27, 31, 35, 39, §3441; C46, 50, 54, 58, 62, §222.31; C66, 71, 73, 75, 77, 79, 81, §222.44] 2000 Acts, ch 1112, §51

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

#### **222.45 Power of court.**

On the hearing, the court may discharge the person with an intellectual disability from all supervision, control, and care, or may transfer the person from a public institution to a private institution, or vice versa, or transfer the person from a special unit to a resource center, or vice versa, as the court deems appropriate under all the circumstances. If the person has been determined to lack the mental capacity to vote, the court shall include in its order a finding that this determination remains in force or is revoked.

[C24, 27, 31, 35, 39, §3442; C46, 50, 54, 58, 62, §222.32; C66, 71, 73, 75, 77, 79, 81, §222.45] 84 Acts, ch 1299, §5; 96 Acts, ch 1129, §113; 98 Acts, ch 1185, §8; 2000 Acts, ch 1112, §51; 2012 Acts, ch 1019, §43

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

#### **222.46 No bar to future petitions.**

The denial of one petition for discharge or modification shall be no bar to another on the same or different grounds within a reasonable time thereafter, such reasonable time to be determined by the court.

[C24, 27, 31, 35, 39, §3443; C46, 50, 54, 58, 62, §222.33; C66, 71, 73, 75, 77, 79, 81, §222.46]

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

#### **222.47 Penalty for false petition of commitment.**

Any person who shall maliciously seek to have any person adjudged as a person with an intellectual disability, knowing that such person does not have an intellectual disability, shall be guilty of a fraudulent practice.

[C24, 27, 31, 35, 39, §3448; C46, 50, 54, 58, 62, §222.38; C66, 71, 73, 75, 77, 79, 81, §222.47] 2012 Acts, ch 1019, §44

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

#### **222.48 Fees for witnesses.**

The fees for attendance of witnesses and execution of legal process shall be the same as are allowed by law for similar service in other cases. For service as commissioner, a reasonable sum as determined by the court and the actual and necessary traveling expenses shall be allowed.

[C24, 27, 31, 35, 39, §3449; C46, 50, 54, 58, 62, §222.39; C66, 71, 73, 75, 77, 79, 81, §222.48] Fees, §331.655, 622.69 - 622.75

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

#### **222.49 Costs paid.**

The costs of proceedings shall be paid by the county or the state, as determined in accordance with section 222.60, unless otherwise ordered by the court. When the person alleged to have an intellectual disability is found not to have an intellectual disability, the court shall render judgment for such costs against the person filing the petition except when the petition is filed by order of court.

[C24, 27, 31, 35, 39, §3450; C46, 50, 54, 58, 62, §222.40; C66, 71, 73, 75, 77, 79, 81, §222.49]  
2012 Acts, ch 1019, §45; 2012 Acts, ch 1120, §72, 130

For future repeal of this section, effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
2012 amendment to this section by 2012 Acts, ch 1120, §72, takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

#### **222.50 County of residence or state to pay.**

When the proceedings are instituted in a county in which the person who is alleged to have an intellectual disability was found but which is not the county of residence of the person, and the costs are not taxed to the petitioner, the person's county of residence or the state, as determined in accordance with section 222.60, shall, on presentation of a properly itemized bill for such costs, repay the costs to the former county.

[C24, 27, 31, 35, 39, §3451; C46, 50, 54, 58, 62, §222.41; C66, 71, 73, 75, 77, 79, 81, §222.50]  
96 Acts, ch 1129, §49; 2012 Acts, ch 1019, §46; 2012 Acts, ch 1120, §73, 130

Referred to in §331.502  
2012 amendment to this section by 2012 Acts, ch 1120, §73, takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

#### **222.51 Costs collected.**

Costs incident to the hearings and commitment of a person with an intellectual disability to an institution, a resource center, or a special unit may be collected from the person with an intellectual disability and from all persons legally chargeable with the support of the person with an intellectual disability.

[C24, 27, 31, 35, 39, §3452; C46, 50, 54, 58, 62, §222.42; C66, 71, 73, 75, 77, 79, 81, §222.51]  
84 Acts, ch 1299, §6; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51; 2012 Acts, ch 1019, §47

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35  
Section not amended; footnote added

#### **222.52 Proceedings against delinquent — hearing on intellectual disability.**

When in proceedings against an alleged delinquent or dependent child, the court is satisfied from any evidence that such child has an intellectual disability, the court may order a continuance of such proceeding, and may direct an officer of the court or some other proper person to file a petition against such child permitted under the provisions of this chapter. Pending hearing of the petition the court may by order provide proper custody for the child.

[C24, 27, 31, 35, 39, §3453; C46, 50, 54, 58, 62, §222.43; C66, 71, 73, 75, 77, 79, 81, §222.52]  
2012 Acts, ch 1019, §48

Referred to in §222.53, 222.54

#### **222.53 Conviction — suspension.**

If on the conviction in the district court of any person for any crime or for any violation of any municipal ordinance, or if on the determination in the court that a child is dependent, neglected, or delinquent and it appears from any evidence presented to the court before sentence, that such person has an intellectual disability within the meaning of this chapter, the court may suspend sentence or order, and may order any officer of the court or some other proper person to file a petition permitted under the provisions of this chapter against

such person. Pending hearing of the petition, the court shall provide for the custody of such person as directed in section 222.52.

[C24, 27, 31, 35, 39, §3454; C46, 50, 54, 58, 62, §222.44; C66, 71, 73, 75, 77, 79, 81, §222.53]  
2012 Acts, ch 1019, §49

Referred to in §222.54

#### **222.54 Procedure after hearing.**

Should it be found under sections 222.52 and 222.53 that such person does not have an intellectual disability, the court shall proceed with the original proceedings as though no petition had been filed.

[C24, 27, 31, 35, 39, §3455; C46, 50, 54, 58, 62, §222.45; C66, 71, 73, 75, 77, 79, 81, §222.54]  
2012 Acts, ch 1019, §50

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

#### **222.55 Procedure regarding a person with mental illness.**

If it appears at any time that a person has under the provisions of this chapter been committed to a private institution and should be evaluated and treated in a hospital for persons with mental illness, the person may be hospitalized under any of the provisions of sections 229.2 to 229.15.

[C24, 27, 31, 35, 39, §3457; C46, 50, 54, 58, 62, §222.47; C66, 71, 73, 75, 77, 79, 81, §222.55]  
84 Acts, ch 1299, §7; 96 Acts, ch 1129, §113

Hospitalization of persons with mental illness, chapter 229

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

#### **222.56 Transfer to institution for persons with an intellectual disability.**

When the mental condition of a person in a private institution for persons with mental illness is found to be such that the patient should be transferred to an institution for persons with an intellectual disability, the person may be proceeded against under this chapter.

[C24, 27, 31, 35, 39, §3458; C46, 50, 54, 58, 62, §222.48; C66, 71, 73, 75, 77, 79, 81, §222.56]  
84 Acts, ch 1299, §8; 96 Acts, ch 1129, §113; 2012 Acts, ch 1019, §51

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

#### **222.57 Court records.**

Each court having jurisdiction under this chapter shall keep a separate docket of proceedings in which shall be made such entries as shall, together with the papers filed, preserve a complete and perfect record of each case. The original petitions, writs, and returns made thereto and the reports of commissions shall be filed with the clerk of the court.

[C24, 27, 31, 35, 39, §3462; C46, 50, 54, 58, 62, §222.52; C66, 71, 73, 75, 77, 79, 81, §222.57]  
Referred to in §602.8102(37)

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

#### **222.58 Administrator to keep record.**

The administrator shall keep a record of all persons adjudged to have an intellectual disability and of the orders respecting such persons by the courts throughout the state. Copies of such orders shall be furnished by the clerk of the court without the administrator's application therefor.

[C24, 27, 31, 35, 39, §3463; C46, 50, 54, 58, 62, §222.53; C66, 71, 73, 75, 77, 79, 81, §222.58]  
2012 Acts, ch 1019, §52

For future repeal of this section effective July 1, 2014, see 2013 Acts, ch 130, §34, 35

Section not amended; footnote added

#### **222.59 Alternative to state resource center placement.**

1. Upon receiving a request from an authorized requester, the superintendent of a state resource center shall coordinate with the central point of coordination process\* in assisting the requester in identifying available community-based services as an alternative to continued placement of a patient in the state resource center. For the purposes of this

section, “*authorized requester*” means the parent, guardian, or custodian of a minor patient, the guardian of an adult patient, or an adult patient who does not have a guardian. The assistance shall identify alternatives to continued placement which are appropriate to the patient’s needs and shall include but are not limited to any of the following:

- a. Providing information on currently available services that are an alternative to residence in the state resource center.
- b. Referring the patient to an appropriate case management agency or other provider of service.

2. If a patient was admitted pursuant to section 222.13 or section 222.13A and the patient wishes to be placed outside of the state resource center, the discharge for the placement shall be made in accordance with the provisions of section 222.15.

3. If a patient was involuntarily committed, a petition for approval of a proposed placement outside the state resource center shall be filed, by the authorized requester or the superintendent of the state resource center where the patient is placed, with the court which made the commitment with either of the following recommendations for the court’s consideration:

- a. That the patient’s commitment is no longer necessary and should be discontinued.
- b. That the patient’s commitment is still appropriate but the patient should be transferred to another public or private facility in accordance with the provisions of section 222.31, subsection 1, paragraph “a”.

[C97, §2698; C24, 27, 31, 35, 39, §3405, 3446; C46, §221.4; C46, 50, 54, 58, 62, §222.36, 223.19; C66, 71, 73, 75, 77, 79, 81, §222.59]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1271, §1502; 95 Acts, ch 82, §11; 96 Acts, ch 1183, §5; 2000 Acts, ch 1112, §51; 2004 Acts, ch 1090, §33; 2009 Acts, ch 133, §217

Referred to in §331.381

For future strike of subsection 3, effective July 1, 2014, see 2013 Acts, ch 130, §20, 35

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

Section not amended; footnotes added

### **222.60 Costs paid by county or state — diagnosis and evaluation.**

1. All necessary and legal expenses for the cost of admission or commitment or for the treatment, training, instruction, care, habilitation, support and transportation of persons with an intellectual disability, as provided for in the county management plan provisions implemented pursuant to section 331.439, subsection 1,\* in a state resource center, or in a special unit, or any public or private facility within or without the state, approved by the director of human services, shall be paid by either:

- a. The person’s county of residence.
- b. The state when the person is a resident in another state or in a foreign country or the residence is unknown. The payment responsibility shall be deemed to be a state case.

2. a. Prior to a county of residence approving the payment of expenses for a person under this section, the county may require that the person be diagnosed to determine if the person has an intellectual disability or that the person be evaluated to determine the appropriate level of services required to meet the person’s needs relating to an intellectual disability. The diagnosis and the evaluation may be performed concurrently and shall be performed by an individual or individuals approved by the county who are qualified to perform the diagnosis or the evaluation. Following the initial approval for payment of expenses, the county may require that an evaluation be performed at reasonable time periods.

b. The cost of a county-required diagnosis and an evaluation is at the county’s expense. For a state case, the state may apply the diagnosis and evaluation provisions of this subsection at the state’s expense.

c. A diagnosis or an evaluation under this section may be part of a county’s central point of coordination process under section 331.440,\* provided that a diagnosis is performed only by an individual qualified as provided in this section.

3. a. A diagnosis of an intellectual disability under this section shall be made only when the onset of the person’s condition was prior to the age of eighteen years and shall be based on an assessment of the person’s intellectual functioning and level of adaptive skills. The diagnosis shall be made by an individual who is a psychologist or psychiatrist who is

professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person's adaptive skills.

b. A diagnosis of an intellectual disability shall be made in accordance with the criteria provided in the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, as provided in the definition of intellectual disability in section 4.1.

[C39, §3477.3, 3477.4, 3477.7; C46, 50, 54, 58, 62, §223.14, 223.15, 223.18; C66, 71, 73, 75, 77, 79, 81, §222.60]

83 Acts, ch 96, §157, 159; 95 Acts, ch 82, §12; 95 Acts, ch 190, §1; 95 Acts, ch 206, §13; 2000 Acts, ch 1112, §51; 2004 Acts, ch 1090, §33; 2009 Acts, ch 41, §223; 2012 Acts, ch 1019, §53 – 55; 2012 Acts, ch 1120, §74, 75, 130

Referred to in §222.49, 222.50, 222.65, 222.77, 222.78, 249A.12, 331.381

For future amendment to subsection 1, unnumbered paragraph 1, effective July 1, 2014, see 2013 Acts, ch 130, §21, 35

\*Sections 331.439 and 331.440 are repealed; corrective legislation is pending

2012 amendments to subsections 1 and 2 by 2012 Acts, ch 1120, §74, 75, take effect July 1, 2013; 2012 Acts, ch 1120, §130

Subsections 1 and 2 amended

#### **222.60A Cost of assessment.**

Notwithstanding any provision of this chapter to the contrary, any amount attributable to any fee assessed pursuant to section 249A.21 that would otherwise be the liability of any county shall be paid by the state. The department may transfer funds from the appropriation for medical assistance to pay any amount attributable to any fee assessed pursuant to section 249A.21 that is a liability of the state.

2004 Acts, ch 1085, §3, 10, 11

Referred to in §331.381

#### **222.61 Residency determined.**

When a county receives an application on behalf of any person for admission to a resource center or a special unit or when a court issues an order committing any person to a resource center or a special unit, the board of supervisors shall refer the determination of residency to the central point of coordination process\* to determine and certify that the residence of the person is in one of the following:

1. In the county in which the application is received or in which the court is located.
2. In some other county of the state.
3. In another state or in a foreign country.
4. Unknown.

[C66, 71, 73, 75, 77, 79, 81, §222.61]

97 Acts, ch 169, §3; 2000 Acts, ch 1112, §51; 2004 Acts, ch 1090, §33, 37; 2012 Acts, ch 1120, §76, 130

Referred to in §331.381, 331.502

For future amendment to this section, effective July 1, 2014, see 2013 Acts, ch 130, §22, 35

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

#### **222.62 Residency in another county.**

When the board of supervisors determines through the central point of coordination process\* that the residency of the person is other than in the county in which the application is received, the determination shall be certified to the superintendent of the resource center or the special unit where the person is a patient. The certification shall be accompanied by a copy of the evidence supporting the determination. The superintendent shall charge the expenses already incurred and unadjusted, and all future expenses of the patient, to the county certified to be the county of residency.

[C66, 71, 73, 75, 77, 79, 81, §222.62]

97 Acts, ch 169, §4; 2000 Acts, ch 1112, §51; 2004 Acts, ch 1090, §33, 38; 2012 Acts, ch 1120, §77, 130

Referred to in §331.381, 331.502

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**222.63 Finding of residency — objection.**

A board of supervisors' certification utilizing the central point of coordination process\* that a person's residency is in another county shall be sent to the auditor of the county of residence. The certification shall be accompanied by a copy of the evidence supporting the determination. The auditor of the county of residence shall submit the certification to the board of supervisors of the auditor's county and it shall be conclusively presumed that the patient has residency in that county unless that county disputes the determination of residency as provided in section 331.394.

[C66, 71, 73, 75, 77, 79, 81, §222.63]

2004 Acts, ch 1090, §33, 39; 2012 Acts, ch 1120, §78, 130

Referred to in §331.381, 331.502

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**222.64 Foreign state or country or unknown residency.**

If the residency of the person is determined by a county or the state to be in a foreign state or country or is determined to be unknown, the county or the state shall certify the determination to the administrator. The certification shall be accompanied by a copy of the evidence supporting the determination. The care of the person shall be as arranged by the county or the state or by an order as the court may enter. Application for admission or order of commitment may be made pending investigation by the administrator.

[C66, 71, 73, 75, 77, 79, 81, §222.64]

97 Acts, ch 169, §5; 2004 Acts, ch 1090, §33, 40; 2012 Acts, ch 1120, §79, 130

Referred to in §331.381, 331.502

For future amendment to this section, effective July 1, 2014, see 2013 Acts, ch 130, §23, 35

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**222.65 Investigation.**

If an application is made for placement of a person in a state resource center or special unit, the department's administrator shall immediately investigate the residency of the person and proceed as follows:

1. If the administrator concurs with a certified determination as to residency of the person so that the person is deemed a state case under section 222.60, the administrator shall cause the person either to be transferred to a resource center or a special unit or to be transferred to the place of foreign residency.

2. If the administrator disputes a certified determination of residency, the administrator shall order the person transferred to a state resource center or a special unit until the dispute is resolved.

3. If the administrator disputes a certified determination of residency, the administrator shall utilize the procedure provided in section 331.394 to resolve the dispute. A determination of the person's residency status made pursuant to section 331.394 is conclusive.

[C66, 71, 73, 75, 77, 79, 81, §222.65]

2000 Acts, ch 1112, §51; 2004 Acts, ch 1090, §41; 2012 Acts, ch 1120, §80, 130

Referred to in §331.381, 331.502

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**222.66 Transfers — state cases — expenses.**

1. The transfer to a resource center or a special unit or to the place of residency of a person with an intellectual disability who has no residence in this state or whose residency is unknown, shall be made in accordance with such directions as shall be prescribed by the administrator and when practicable by employees of the state resource center or the special unit. The actual and necessary expenses of such transfers shall be paid by the department on itemized vouchers sworn to by the claimants and approved by the administrator and the approved amount is appropriated to the department from any funds in the state treasury not otherwise appropriated.

2. The case of a person with an intellectual disability who is determined to have no residence in this state or whose residence is unknown shall be considered a state case.

[C66, 71, 73, 75, 77, 79, 81, §222.66]

96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §51; 2012 Acts, ch 1019, §56; 2012 Acts, ch 1120, §81, 130

Referred to in §331.381, 331.502

2012 amendment to this section by 2012 Acts, ch 1120, §81, takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

#### **222.67 Charge on finding of residency.**

If a person has been received into a resource center or a special unit as a patient whose residency is unknown and the administrator determines that the residency of the patient was at the time of admission or commitment in a county of this state, the administrator shall certify the determination and charge all legal costs and expenses pertaining to the admission or commitment and support of the patient to the county of residence. The certification shall be sent to the county of residence. The certification shall be accompanied by a copy of the evidence supporting the determination. If the person's residency status has been determined in accordance with section 331.394, the legal costs and expenses shall be charged to the county or as a state case in accordance with that determination. The costs and expenses shall be collected as provided by law in other cases.

[C66, 71, 73, 75, 77, 79, 81, §222.67]

2000 Acts, ch 1112, §51; 2004 Acts, ch 1090, §42; 2012 Acts, ch 1120, §82, 130

Referred to in §331.381

For future amendment to this section, effective July 1, 2014, see 2013 Acts, ch 130, §24, 35

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

#### **222.68 Costs paid in first instance.**

All necessary and legal expenses for the cost of admission or commitment of a person to a resource center or a special unit when the person's residency is found to be in another county of this state shall in the first instance be paid by the county from which the person was admitted or committed. The county of residence shall reimburse the county which pays for all such expenses. If a county fails to make such reimbursement within forty-five days following submission of a properly itemized bill to the county of residence, a penalty of not greater than one percent per month on and after forty-five days from submission of the bill may be added to the amount due.

[C24, 27, 31, 35, 39, §3451; C46, 50, 54, 58, 62, §222.41; C66, 71, 73, 75, 77, 79, 81, §222.68]

98 Acts, ch 1218, §68; 2000 Acts, ch 1112, §51; 2012 Acts, ch 1120, §83, 130

Referred to in §331.381

For future amendment to this section, effective July 1, 2014, see 2013 Acts, ch 130, §25, 35

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

#### **222.69 Payment by state.**

The amount necessary to pay the necessary and legal expenses of admission or commitment of a person to a resource center or a special unit when the person's residence is outside this state or is unknown is appropriated to the department from any money in the state treasury not otherwise appropriated. Such payments shall be made by the department on itemized vouchers executed by the auditor of the county from which the expenses have been paid and approved by the administrator.

[C66, 71, 73, 75, 77, 79, 81, §222.69]

2000 Acts, ch 1112, §51; 2012 Acts, ch 1120, §84, 130

Referred to in §331.381, 331.502

For future amendment to this section, effective July 1, 2014, see 2013 Acts, ch 130, §26, 35

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**222.70 Residency disputes.**

If a dispute arises between counties or between the department and a county as to the residency of a person admitted or committed to a resource center, a special unit, or a community-based service, the dispute shall be resolved as provided in section 331.394.

[C66, 71, 73, 75, 77, 79, 81, §222.70]

94 Acts, ch 1170, §1; 2000 Acts, ch 1112, §51; 2004 Acts, ch 1090, §43; 2012 Acts, ch 1120, §85, 130

Referred to in §331.381

For future amendment to this section, effective July 1, 2014, see 2013 Acts, ch 130, §27, 35

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**222.71 and 222.72** Repealed by 2004 Acts, ch 1090, § 55.

**222.73 Billing of patient charges — computation of actual costs — cost settlement.**

1. The superintendent of each resource center and special unit shall compute by February 1 the average daily patient charge and outpatient treatment charges for which each county will be billed for services provided to patients chargeable to the county during the fiscal year beginning the following July 1. The department shall certify the amount of the charges and notify the counties of the billing charges.

a. The superintendent shall compute the average daily patient charge for a resource center or special unit for services provided in the following fiscal year, in accordance with generally accepted accounting procedures, by totaling the expenditures of the resource center or special unit for the immediately preceding calendar year, by adjusting the expenditures by a percentage not to exceed the percentage increase in the consumer price index for all urban consumers for the immediately preceding calendar year, and by dividing the adjusted expenditures by the total inpatient days of service provided during the immediately preceding calendar year.

b. The department shall compute the outpatient treatment charges, in accordance with generally accepted accounting procedures, on the basis of the actual cost of the outpatient treatment provided during the immediately preceding calendar year.

2. a. The superintendent shall certify to the department the billings to each county for services provided to patients chargeable to the county during the preceding calendar quarter. The county billings shall be based on the average daily patient charge and outpatient treatment charges computed pursuant to subsection 1, and the number of inpatient days and outpatient treatment service units chargeable to the county. The billings to a county of residence are subject to adjustment for all of the following circumstances:

(1) The county billing for a patient shall be reduced by the amount received for the patient's care from a source other than state appropriated funds.

(2) If more than twenty percent of the cost of a patient's care is initially paid from a source other than state appropriated funds, the amount paid shall be subtracted from the average per-patient-per-day cost of that patient's care and the patient's county shall be billed for the full balance of the cost so computed.

(3) The county of a patient who is eligible for reimbursement under the medical assistance program shall be responsible for the costs which are not reimbursed by the medical assistance program, regardless of the level of care provided to the patient.

(4) A county shall be responsible for eighty percent of the cost of care of a patient who is not eligible for reimbursement under the medical assistance program.

(5) The billings for counties shall be credited with one hundred percent of the client participation for patients eligible for medical assistance in the calculation of the per diem rate for patients.

(6) A county shall not be billed for the cost of a patient unless the patient's admission is authorized through the applicable central point of coordination process.\* The state resource center and the county shall work together to locate appropriate alternative placements and services, and to educate patients and the family members of patients regarding such alternatives.

b. The per diem costs billed to each county shall not exceed the per diem costs billed

to the county in the fiscal year beginning July 1, 1996. However, the per diem costs billed to a county may be adjusted in a fiscal year to reflect increased costs to the extent of the percentage increase in the total of county fixed budgets pursuant to the allowed growth factor adjustment authorized by the general assembly for that fiscal year in accordance with section 331.439.\*\*

3. The superintendent shall compute in January the actual per-patient-per-day cost for each resource center or special unit for the immediately preceding calendar year, in accordance with generally accepted accounting procedures, by totaling the actual expenditures of the resource center or special unit for the calendar year and by dividing the total actual expenditures by the total inpatient days of service provided during the calendar year.

4. The department shall certify to the counties by February 1 the actual per-patient-per-day costs, as computed pursuant to subsection 3, and the actual costs owed by each county for the immediately preceding calendar year for patients chargeable to the county. If the actual costs owed by the county are greater than the charges billed to the county pursuant to subsection 2, the department shall bill the county for the difference with the billing for the quarter ending June 30. If the actual costs owed by the county are less than the charges billed to the county pursuant to subsection 2, the department shall credit the county for the difference starting with the billing for the quarter ending June 30.

5. A superintendent of a resource center or special unit may request that the director of human services enter into a contract with a person for the resource center or special unit to provide consultation or treatment services or for fulfilling other purposes which are consistent with the purposes stated in section 222.1. The contract provisions shall include charges which reflect the actual cost of providing the services. Any income from a contract authorized under this subsection may be retained by the resource center or special unit to defray the costs of providing the services or fulfilling the other purposes. Except for a contract voluntarily entered into by a county under this subsection, the costs or income associated with a contract authorized under this subsection shall not be considered in computing charges and per diem costs in accordance with the provisions of subsections 1 through 4.

[SS15, §2727-a96; C24, 27, 31, 35, 39, §3469; C46, 50, 54, 58, 62, §223.5; C66, 71, 73, 75, 77, 79, 81, §222.73]

86 Acts, ch 1169, §1; 88 Acts, ch 1249, §6; 88 Acts, ch 1276, §38; 95 Acts, ch 82, §4; 96 Acts, ch 1183, §6 – 8; 98 Acts, ch 1155, §9; 2000 Acts, ch 1112, §51; 2001 Acts, ch 155, §15 – 17; 2004 Acts, ch 1090, §33; 2009 Acts, ch 41, §263; 2012 Acts, ch 1120, §86, 130

Referred to in §222.74, 331.381

For the period beginning October 1, 2008, and ending September 30, 2010, or the period for which funding from the federal American Recovery and Reinvestment Act of 2009 can be used, per diem amounts billed to counties may be adjusted downward to comply with the federal Act; 2009 Acts, ch 182, §58, 59

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

\*\*Section 331.439 is repealed; corrective legislation is pending

2012 amendment to subsection 2, paragraph a, unnumbered paragraph 1, takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Subsection 2, paragraph a, unnumbered paragraph 1 amended

### **222.74 Duplicate to county.**

When certifying to the department amounts to be charged against each county as provided in section 222.73, the superintendent shall send to the county auditor of each county against which the superintendent has so certified any amount, a duplicate of the certification statement. The county auditor upon receipt of the duplicate certification statement shall enter it to the credit of the state in the ledger of state accounts, and shall immediately issue a notice to the county treasurer authorizing the treasurer to transfer the amount from the county fund to the general state revenue. The county treasurer shall file the notice as authority for making the transfer and shall include the amount transferred in the next remittance of state taxes to the treasurer of state, designating the fund to which the amount belongs.

[C66, 71, 73, 75, 77, 79, 81, §222.74]

83 Acts, ch 123, §82, 209; 2001 Acts, ch 155, §18

Referred to in §222.75, 331.381, 331.502

**222.75 Delinquent payments — penalty.**

If a county fails to pay a billed charge within forty-five days from the date the county auditor received the certification statement from the superintendent pursuant to section 222.74, the department may charge the delinquent county a penalty of not greater than one percent per month on and after forty-five days from the date the county auditor received the certification statement until paid.

[C66, 71, 73, 75, 77, 79, 81, §222.75]  
98 Acts, ch 1218, §69; 2001 Acts, ch 155, §19  
Referred to in §331.381

**222.76 Repealed by 81 Acts, ch 117, § 1097.****222.77 Patients on leave.**

The cost of support of patients placed on convalescent leave or removed as a habilitation measure from a resource center, or a special unit, except when living in the home of a person legally bound for the support of the patient, shall be paid by the county of residence or the state as provided in section 222.60.

[C66, 71, 73, 75, 77, 79, 81, S81, §222.77; 81 Acts, ch 117, §1027]  
83 Acts, ch 123, §83, 209; 2000 Acts, ch 1112, §51; 2012 Acts, ch 1120, §87, 130  
Referred to in §222.78, 331.381  
2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

**222.78 Parents and others liable for support.**

1. The father and mother of any patient admitted or committed to a resource center or to a special unit, as either an inpatient or an outpatient, and any person, firm, or corporation bound by contract made for support of the patient are liable for the support of the patient. The patient and those legally bound for the support of the patient shall be liable to the county or state, as applicable, for all sums advanced in accordance with the provisions of sections 222.60 and 222.77.

2. The liability of any person, other than the patient, who is legally bound for the support of a patient who is under eighteen years of age in a resource center or a special unit shall not exceed the average minimum cost of the care of a normally intelligent minor without a disability of the same age and sex as the minor patient. The administrator shall establish the scale for this purpose but the scale shall not exceed the standards for personal allowances established by the state division under the family investment program. The father or mother shall incur liability only during any period when the father or mother either individually or jointly receive a net income from whatever source, commensurate with that upon which they would be liable to make an income tax payment to this state. The father or mother of a patient shall not be liable for the support of the patient upon the patient attaining eighteen years of age. Nothing in this section shall be construed to prevent a relative or other person from voluntarily paying the full actual cost as established by the administrator for caring for the patient with an intellectual disability.

[C39, §3477.5; C46, 50, 54, 58, 62, §223.16, 223.20; C66, 71, 73, 75, 77, 79, 81, §222.78]  
93 Acts, ch 97, §27; 98 Acts, ch 1218, §70; 2000 Acts, ch 1112, §51; 2012 Acts, ch 1019, §57; 2012 Acts, ch 1120, §88, 130

Referred to in §218.78, 222.13, 222.18, 222.31, 222.79, 222.80, 222.81, 222.82, 226.8, 234.39, 331.381  
For future amendment to this section, effective July 1, 2014, see 2013 Acts, ch 130, §28, 35  
2012 amendment to this section by 2012 Acts, ch 1120, §88, takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

**222.79 Certification statement presumed correct.**

In actions to enforce the liability imposed by section 222.78, the superintendent or the county of residence, as applicable, shall submit a certification statement stating the sums charged, and the certification statement shall be considered presumptively correct.

[C66, 71, 73, 75, 77, 79, 81, §222.79]  
2001 Acts, ch 155, §20; 2012 Acts, ch 1120, §89, 130  
Referred to in §331.381  
2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

**222.80 Liability to county or state.**

A person admitted or committed to a county institution or home or admitted or committed at county or state expense to a private hospital, sanitarium, or other facility for treatment, training, instruction, care, habilitation, and support as a patient with an intellectual disability shall be liable to the county or state, as applicable, for the reasonable cost of the support as provided in section 222.78.

[C66, 71, 73, 75, 77, 79, 81, §222.80]

96 Acts, ch 1129, §50; 2012 Acts, ch 1019, §58; 2012 Acts, ch 1120, §90, 130

Referred to in §331.381

For future amendment to this section, effective July 1, 2014, see 2013 Acts, ch 130, §29, 35

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**222.81 Claim against estate.**

The total amount of liability provided in section 222.78 shall be allowed as a claim of the sixth class against the estate of the person or against the estate of the father or mother of such person.

[C66, 71, 73, 75, 77, 79, 81, §222.81]

Referred to in §331.381

**222.82 Collection of liabilities and claims.**

If liabilities and claims exist as provided in section 222.78 or other provision of this chapter, the county of residence or the state, as applicable, may proceed as provided in this section. If the liabilities and claims are owed to a county of residence, the county's board of supervisors may direct the county attorney to proceed with the collection of the liabilities and claims as a part of the duties of the county attorney's office when the board of supervisors deems such action advisable. If the liabilities and claims are owed to the state, the state shall proceed with the collection. The board of supervisors or the state, as applicable, may compromise any and all liabilities to the county or state arising under this chapter when such compromise is deemed to be in the best interests of the county or state. Any collections and liens shall be limited in conformance to section 614.1, subsection 4.

[C39, §3477.6; C46, 50, 54, 58, 62, §223.17; C66, 71, 73, 75, 77, 79, 81, §222.82]

2012 Acts, ch 1120, §91, 130

Referred to in §331.381, 331.756(43)

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**222.83 Nonresident patients.**

The estates of all nonresident patients who are provided treatment, training, instruction, care, habilitation, and support in or by a resource center or a special unit, and all persons legally bound for the support of such persons, shall be liable to the state for the reasonable value of such services. The certificate of the superintendent of the resource center or special unit in which any nonresident is or has been a patient, showing the amounts drawn from the state treasury or due therefrom as provided by law on account of such nonresident patient, shall be presumptive evidence of the reasonable value of such services furnished such patient by the resource center or special unit.

[C66, 71, 73, 75, 77, 79, 81, §222.83]

2000 Acts, ch 1112, §51

**222.84 Patients' personal deposit fund.**

There is hereby established at each resource center and special unit a fund which shall be known as the "patients' personal deposit fund"; provided that in the case of a special unit, the director may direct that the patients' personal deposit fund be maintained and administered as a part of the fund established, pursuant to sections 226.43 to 226.46, by the mental health institute where the special unit is located.

[C66, 71, 73, 75, 77, 79, 81, §222.84]

2000 Acts, ch 1112, §51

**222.85 Deposit of moneys — exception to guardians.**

Any funds coming into the possession of the superintendent or any employee of a resource center or special unit belonging to any patient in that institution shall be deposited in the name of the patient in the patients' personal deposit fund, except that if a guardian of the property has been appointed for the person, the guardian shall have the right to demand and receive such funds. Funds belonging to a patient deposited in the patients' personal deposit fund may be used for the purchase of personal incidentals, desires, and comforts for the patient.

Money paid to a resource center from any source other than state appropriated funds and intended to pay all or a portion of the cost of care of a patient, which cost would otherwise be paid from state or county funds or from the patient's own funds, shall not be deemed money belonging to the patient for the purposes of this section.

[C66, 71, 73, 75, 77, 79, 81, §222.85]

2000 Acts, ch 1112, §51

**222.86 Payment for care from fund.**

If a patient is not receiving medical assistance under chapter 249A and the amount in the account of any patient in the patients' personal deposit fund exceeds two hundred dollars, the business manager of the resource center or special unit may apply any amount of the excess to reimburse the county of residence or the state for liability incurred by the county or the state for the payment of care, support, and maintenance of the patient, when billed by the county or state, as applicable.

[C66, 71, 73, 75, 77, 79, 81, S81, §222.86; 81 Acts, ch 11, §15]

2000 Acts, ch 1112, §51; 2012 Acts, ch 1120, §92, 130

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**222.87 Deposit in bank.**

The business manager shall deposit the patients' personal deposit fund in a commercial account of a bank of reputable standing. When deposits in the commercial account exceed average monthly withdrawals, the business manager may deposit the excess at interest. The savings account shall be in the name of the patients' personal deposit fund and interest paid thereon may be used for recreational purposes for the patients at the resource center or special unit.

[C66, 71, 73, 75, 77, 79, 81, §222.87]

2000 Acts, ch 1112, §51

**222.88 Special intellectual disability unit.**

The director of human services may organize and establish a special intellectual disability unit at an existing institution which may provide:

1. Psychiatric and related services to children with an intellectual disability and adults who are also emotionally disturbed or otherwise mentally ill.
2. Specific programs to meet the needs of such other special categories of persons with an intellectual disability as may be designated by the director.
3. Appropriate diagnostic evaluation services.

[C71, 73, 75, 77, 79, 81, §222.88]

83 Acts, ch 96, §157, 159; 96 Acts, ch 1129, §51, 113; 2012 Acts, ch 1019, §59

Referred to in §222.1, 222.2, 222.13, 222.91

**222.89 Location — staff and personnel.**

The director may:

1. Designate a portion of the physical facilities of one of the mental health institutes to be occupied by the offices and facilities of the special unit.
2. Determine the extent to which the special unit may effectively utilize services of the mental health institute staff, and what staff personnel should be employed for and assigned specifically to the special unit.

[C71, 73, 75, 77, 79, 81, §222.89]

Referred to in §222.1, 222.2

**222.90 Superintendent.**

The director shall appoint a qualified superintendent of the special unit. The superintendent shall employ all staff personnel to be assigned specifically to the special unit, and shall have the same duties with respect to the special unit as are imposed upon superintendents of resource centers by section 222.4.

[C71, 73, 75, 77, 79, 81, §222.90]

2000 Acts, ch 1112, §51

Referred to in §222.1, 222.2

**222.91 Direct referral to special unit.**

In addition to any other manner of referral, admission, or commitment to the special unit provided for by this chapter, persons may be referred directly to the special unit by courts, law enforcement agencies, or state penal or correctional institutions for services under subsection 2 of section 222.88; but persons so referred shall not be admitted or committed unless a preadmission diagnostic evaluation indicates that the person would benefit from such services, and the admission or commitment of the person to the special unit would not cause the special unit's patient load to exceed its capacity.

[C71, 73, 75, 77, 79, 81, §222.91]

Referred to in §222.1, 222.2

For future amendment to this section, effective July 1, 2014, see 2013 Acts, ch 130, §30, 35

Section not amended; footnote added

**222.92 Net general fund appropriation — state resource centers.**

1. The department shall operate the state resource centers on the basis of net appropriations from the general fund of the state. The appropriation amounts shall be the net amounts of state moneys projected to be needed for the state resource centers for the fiscal year of the appropriations. The purpose of utilizing net appropriations is to encourage the state resource centers to operate with increased self-sufficiency, to improve quality and efficiency, and to support collaborative efforts between the state resource centers and counties and other providers of funding for the services available from the state resource centers. The state resource centers shall not be operated under the net appropriations in a manner that results in a cost increase to the state or in cost shifting between the state, the medical assistance program, counties, or other sources of funding for the state resource centers.

2. The net appropriation made for a state resource center may be used throughout the fiscal year in the manner necessary for purposes of cash flow management, and for purposes of cash flow management, a state resource center may temporarily draw more than the amount appropriated, provided the amount appropriated is not exceeded at the close of the fiscal year.

3. Subject to the approval of the department, except for revenues segregated as provided in section 249A.11, revenues received that are attributed to a state resource center for a fiscal year shall be credited to the state resource center's account and shall be considered repayment receipts as defined in section 8.2, including but not limited to all of the following:

- a. Moneys received by the state from billings to counties.
- b. The federal share of medical assistance program revenue received under chapter 249A.
- c. Federal Medicare program payments.
- d. Moneys received from client financial participation.
- e. Other revenues generated from current, new, or expanded services that the state resource center is authorized to provide.

4. For purposes of allocating moneys to the state resource centers from the salary adjustment fund created in section 8.43, the state resource centers shall be considered to be funded entirely with state moneys.

5. Notwithstanding section 8.33, up to five hundred thousand dollars of a state resource center's revenue that remains unencumbered or unobligated at the close of the fiscal year

shall not revert but shall remain available for expenditure for purposes of the state resource center until the close of the succeeding fiscal year.

2005 Acts, ch 175, §94; 2012 Acts, ch 1120, §93, 130

2012 amendment to subsection 3, paragraph a, takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Subsection 3, paragraph a amended

**222.93** Repealed by 85 Acts, ch 146, § 4.

## CHAPTERS 223 to 224B

RESERVED

### CHAPTER 225

#### PSYCHIATRIC HOSPITAL

Referred to in §229.1

225.1	Establishment.	225.21	Compensation claims — filing — approval.
225.2	Name — location.	225.22	Liability of private patients — payment.
225.3	Under control of state board of regents.	225.23	Collection for treatment.
225.4	Repealed by 76 Acts, ch 1136, §26.	225.24	Collection of preliminary expense.
225.5	Cooperation of hospitals.	225.25	Commitment of private patient as public.
225.6	Repealed by 76 Acts, ch 1136, §26.	225.26	Private patients — disposition of funds.
225.7	Classes of patients.	225.27	Discharge — transfer.
225.8	Maintenance.	225.28	Appropriation.
225.9	Voluntary private patients.	225.29	Repealed by 76 Acts, ch 1136, §26.
225.10	Voluntary public patients.	225.30	Blanks — audit.
225.11	Initiating commitment procedures.	225.31	Repealed by 75 Acts, ch 139, §82.
225.12	Voluntary public patient — physician's report.	225.32	Report and order to accompany patient.
225.13	Financial condition.	225.33	Death of patient — disposal of body.
225.14	Patient costs.	225.34	Repealed by 96 Acts, ch 1215, §59.
225.15	Examination and treatment.	225.35	Expense collected.
225.16	Voluntary public patients — admission.	225.36	through 225.42 Repealed by 75 Acts, ch 139, §82.
225.17	Committed private patient — treatment.	225.43	through 225.45 Repealed by 77 Acts, ch 44, §1.
225.18	Attendants.		
225.19	Compensation for attendant.		
225.20	Compensation for physician. Repealed by 2006 Acts, ch 1059, §14.		

#### **225.1 Establishment.**

There shall be established a state psychiatric hospital, especially designed, kept, and administered for the care, observation, and treatment of those persons who are afflicted with abnormal mental conditions.

[C24, 27, 31, 35, §3954; C39, §3482.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.1]

**225.2 Name — location.**

It shall be known as the state psychiatric hospital, and shall be located at Iowa City, and integrated with the university of Iowa college of medicine and university hospital of the state university of Iowa.

[C24, 27, 31, 35, §3955; C39, §3482.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.2] 2001 Acts, ch 74, §9

**225.3 Under control of state board of regents.**

The state board of regents shall have full power to manage, control, and govern the said hospital the same as other institutions already under its control.

[C24, 27, 31, 35, §3957; C39, §3482.03; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.3]

**225.4** Repealed by 76 Acts, ch 1136, § 26.

**225.5 Cooperation of hospitals.**

The medical director of the state psychiatric hospital shall seek to bring about systematic cooperation between the several state hospitals for persons with mental illness and the state psychiatric hospital.

[C24, 27, 31, 35, §3959; C39, §3482.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.5] 96 Acts, ch 1129, §113

**225.6** Repealed by 76 Acts, ch 1136, § 26.

**225.7 Classes of patients.**

Patients admitted to the said state psychiatric hospital shall be divided into four classes:

1. Voluntary private patients.
2. Committed private patients.
3. Voluntary public patients.
4. Committed public patients.

[C24, 27, 31, 35, §3961; C39, §3482.07; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.7]

**225.8 Maintenance.**

All voluntary private patients and committed private patients shall be kept and maintained without expense to the state, and the voluntary public patients and committed public patients shall be kept and maintained by the state.

[C24, 27, 31, 35, §3962; C39, §3482.08; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.8]

**225.9 Voluntary private patients.**

Voluntary private patients may be admitted in accordance with the regulations to be established by the state board of regents, and their care, nursing, observation, treatment, medicine, and maintenance shall be without expense to the state. However, the charge for such care, nursing, observation, treatment, medicine, and maintenance shall not exceed the cost of the same to the state. The physicians on the hospital staff may charge such patients for their medical services under such rules, regulations and plan therefor as approved by the state board of regents.

[C24, 27, 31, 35, §3963; C39, §3482.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.9]

**225.10 Voluntary public patients.**

Persons suffering from mental diseases may be admitted to the state psychiatric hospital as voluntary public patients if a physician authorized to practice medicine or osteopathic medicine in the state of Iowa files information with the board of supervisors of the person's county of residence or the board's designee, stating all of the following:

1. That the physician has examined the person and finds that the person is suffering from some abnormal mental condition that can probably be remedied by observation, treatment, and hospital care.

2. That the physician believes it would be appropriate for the person to enter the state psychiatric hospital for that purpose and that the person is willing to do so.

3. That neither the person nor those legally responsible for the person are able to provide the means for the observation, treatment, and hospital care.

[C24, 27, 31, 35, §3964; C39, §3482.10; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.10] 2006 Acts, ch 1059, §1; 2008 Acts, ch 1088, §141; 2013 Acts, ch 90, §47

Referred to in §225.12, 225.16, 225.30  
Additional information blanks; §225.30  
Section amended

### **225.11 Initiating commitment procedures.**

When a court finds upon completion of a hearing held pursuant to section 229.12 that the contention that a respondent is seriously mentally impaired has been sustained by clear and convincing evidence, and the application filed under section 229.6 also contends or the court otherwise concludes that it would be appropriate to refer the respondent to the state psychiatric hospital for a complete psychiatric evaluation and appropriate treatment pursuant to section 229.13, the judge may order that a financial investigation be made in the manner prescribed by section 225.13. If the costs of a respondent's evaluation or treatment are payable in whole or in part by a county, an order under this section shall be for referral of the respondent through the central point of coordination process\* for an evaluation and referral of the respondent to an appropriate placement or service, which may include the state psychiatric hospital for additional evaluation or treatment. For purposes of this chapter, "central point of coordination process" means the same as defined in section 331.440.\*

[C77, 79, 81, §225.11]

96 Acts, ch 1183, §9; 2004 Acts, ch 1090, §33

Referred to in §225.17

\*Section 331.440, which implements the central point of coordination process, is repealed; corrective legislation is pending  
Section not amended; footnote added

### **225.12 Voluntary public patient — physician's report.**

A physician filing information under section 225.10 shall include a written report to the county board of supervisors or the board's designee, giving a history of the case as will be likely to aid in the observation, treatment, and hospital care of the person named in the information and describing the history in detail.

[C24, 27, 31, 35, §3966; C39, §3482.12; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.12] 2002 Acts, ch 1119, §29; 2006 Acts, ch 1059, §2

### **225.13 Financial condition.**

The county board of supervisors or the board's designee is responsible for investigating the financial condition of a person being admitted to the state psychiatric hospital and of those legally responsible for the person's support.

[C24, 27, 31, 35, §3967; C39, §3482.13; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.13] 2006 Acts, ch 1059, §3

Referred to in §225.11, 225.14, 225.16, 225.25

### **225.14 Patient costs.**

If it is determined through the financial condition investigation made pursuant to section 225.13 that a person is a committed or voluntary private patient, the person or those legally responsible for the person's support are liable for expenses as provided in section 225.22. The costs of a committed or voluntary public patient shall be paid by the state as provided in section 225.28.

[C24, 27, 31, 35, §3968; C39, §3482.14; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.14] 2006 Acts, ch 1059, §4

### **225.15 Examination and treatment.**

When a respondent arrives at the state psychiatric hospital, the admitting physician shall examine the respondent and determine whether or not, in the physician's judgment, the respondent is a fit subject for observation, treatment, and hospital care. If, upon

examination, the physician decides that the respondent should be admitted to the hospital, the respondent shall be provided a proper bed in the hospital. The physician who has charge of the respondent shall proceed with observation, medical treatment, and hospital care as in the physician's judgment are proper and necessary, in compliance with sections 229.13 to 229.16. After the respondent's admission, the observation, medical treatment, and hospital care of the respondent may be provided by a mental health professional, as defined in section 228.1, who is licensed as a physician, advanced registered nurse practitioner, or physician assistant.

A proper and competent nurse shall also be assigned to look after and care for the respondent during observation, treatment, and care. Observation, treatment, and hospital care under this section which are payable in whole or in part by a county shall only be provided as determined through the central point of coordination process.\*

[C24, 27, 31, 35, §3969; C39, §3482.15; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.15] 96 Acts, ch 1183, §10; 2004 Acts, ch 1090, §33; 2012 Acts, ch 1120, §55

Referred to in §225.16, 225.17

\*Section 331.440, which implements the central point of coordination process, is repealed; corrective legislation is pending  
Section not amended; footnote added

#### **225.16 Voluntary public patients — admission.**

1. If the county board of supervisors or the board's designee finds from the physician's information which was filed under the provisions of section 225.10 that it would be appropriate for the person to be admitted to the state psychiatric hospital, and the report of the county board of supervisors or the board's designee made pursuant to section 225.13 shows that the person and those who are legally responsible for the person are not able to pay the expenses incurred at the hospital, or are able to pay only a part of the expenses, the person shall be considered to be a voluntary public patient and the board of supervisors shall direct that the person shall be sent to the state psychiatric hospital at the state university of Iowa for observation, treatment, and hospital care.

2. When the patient arrives at the hospital, the patient shall be cared for in the same manner as is provided for committed public patients in section 225.15.

[C24, 27, 31, 35, §3970; C39, §3482.16; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.16] 2006 Acts, ch 1059, §5

#### **225.17 Committed private patient — treatment.**

1. If the judge of the district court finds pursuant to section 225.11 that the respondent is an appropriate subject for placement at the state psychiatric hospital, and that the respondent, or those legally responsible for the respondent, are able to pay the expenses associated with the placement, the judge shall enter an order directing that the respondent shall be sent to the state psychiatric hospital at the state university of Iowa for observation, treatment, and hospital care as a committed private patient.

2. When the respondent arrives at the hospital, the respondent shall receive the same treatment as is provided for committed public patients in section 225.15, in compliance with sections 229.13 to 229.16. However, observation, treatment, and hospital care under this section of a respondent whose expenses are payable in whole or in part by a county shall only be provided as determined through the central point of coordination process.\*

[C24, 27, 31, 35, §3971; C39, §3482.17; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.17] 96 Acts, ch 1183, §11; 2004 Acts, ch 1090, §33; 2006 Acts, ch 1059, §6

\*Section 331.440, which implements the central point of coordination process, is repealed; corrective legislation is pending  
Section not amended; footnote added

#### **225.18 Attendants.**

The county board of supervisors or the board's designee may appoint a person to accompany the committed public patient or the voluntary public patient or the committed private patient from the place where the patient may be to the state psychiatric hospital, or to accompany the patient from the hospital to a place as may be designated by the county.

If a patient is moved pursuant to this section, at least one attendant shall be of the same gender as the patient.

[C24, 27, 31, 35, §3974; C39, §3482.18; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.18] 85 Acts, ch 99, §4; 2006 Acts, ch 1059, §7

**225.19 Compensation for attendant.**

An individual appointed by the county board of supervisors or the board's designee to accompany a person to or from the hospital or to make an investigation and report on any question involved in the matter shall receive three dollars per day for the time actually spent in making the investigation and actual necessary expenses incurred in making the investigation or trip. This section does not apply to an appointee who receives fixed compensation or a salary.

[C24, 27, 31, 35, §3975; C39, §3482.19; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.19] 2006 Acts, ch 1059, §8  
Referred to in §225.21

**225.20 Compensation for physician.** Repealed by 2006 Acts, ch 1059, § 14.

**225.21 Compensation claims — filing — approval.**

The person making claim to compensation under section 225.19 shall file the claim in the office of the county auditor. The claim is subject to review and approval by the board of supervisors or the board's designee.

[C24, 27, 31, 35, §3977; C39, §3482.21; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.21; 82 Acts, ch 1104, §6]

83 Acts, ch 123, §84, 209; 2006 Acts, ch 1059, §9  
Referred to in §225.24

**225.22 Liability of private patients — payment.**

Every committed private patient, if the patient has an estate sufficient for that purpose, or if those legally responsible for the patient's support are financially able, shall be liable to the county and state for all expenses paid by them in behalf of such patient. All bills for the care, nursing, observation, treatment, medicine, and maintenance of such patients shall be paid by the director of the department of administrative services in the same manner as those of committed and voluntary public patients as provided in this chapter, unless the patient or those legally responsible for the patient make such settlement with the state psychiatric hospital.

[C24, 27, 31, 35, §3978; C39, §3482.22; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.22] 2003 Acts, ch 145, §286  
Referred to in §225.14

**225.23 Collection for treatment.**

If the bills for a committed or voluntary private patient are paid by the state, the state psychiatric hospital shall file a certified copy of the claim for the bills with the department of administrative services. The department shall proceed to collect the claim in the name of the state psychiatric hospital.

[C24, 27, 31, 35, §3979; C39, §3482.23; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.23] 2003 Acts, ch 145, §286; 2006 Acts, ch 1059, §10; 2012 Acts, ch 1120, §94, 130  
Referred to in §225.35, 331.502  
2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

**225.24 Collection of preliminary expense.**

Unless a committed private patient or those legally responsible for the patient's support offer to settle the amount of the claims, the county auditor of the person's county of residence shall collect, by action if necessary, the amount of all claims for per diem and expenses that have been approved by the county board of supervisors or the board's designee and paid by

the county as provided under section 225.21. Any amount collected shall be credited to the county treasury.

[C24, 27, 31, 35, §3980; C39, §3482.24; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.24]  
2006 Acts, ch 1059, §11  
Referred to in §225.35, 331.502

**225.25 Commitment of private patient as public.**

If a patient is committed to the state psychiatric hospital as a private patient and after admission it is determined through an investigation made pursuant to section 225.13 that the person is a public patient, the expense of keeping and maintaining the patient from the date of the filing of the information upon which the order is made shall be paid by the state.

[C24, 27, 31, 35, §3981; C39, §3482.25; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.25]  
2006 Acts, ch 1059, §12

**225.26 Private patients — disposition of funds.**

All moneys collected from private patients shall be used for the support of the said hospital.

[C24, 27, 31, 35, §3982; C39, §3482.26; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.26]

**225.27 Discharge — transfer.**

The state psychiatric hospital may, at any time, discharge any patient as recovered, as improved, or as not likely to be benefited by further treatment. If the patient being so discharged was involuntarily hospitalized, the hospital shall notify the committing judge or court of the discharge as required by section 229.14 or section 229.16, whichever is applicable. Upon receiving the notification, the court shall issue an order confirming the patient's discharge from the hospital or from care and custody, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. The court or judge shall, if necessary, appoint a person to accompany the discharged patient from the state psychiatric hospital to such place as the hospital or the court may designate, or authorize the hospital to appoint such attendant.

[C24, 27, 31, 35, §3983; C39, §3482.27; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.27]  
2001 Acts, ch 155, §41

**225.28 Appropriation.**

The state shall pay to the state psychiatric hospital, out of any money in the state treasury not otherwise appropriated, all expenses for the administration of the hospital, and for the care, treatment, and maintenance of committed and voluntary public patients therein, including their clothing and all other expenses of the hospital for the public patients. The bills for the expenses shall be rendered monthly in accordance with rules agreed upon by the director of the department of administrative services and the state board of regents.

[C24, 27, 31, 35, §3984; C39, §3482.28; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.28]  
2003 Acts, ch 145, §286  
Referred to in §225.14

**225.29** Repealed by 76 Acts, ch 1136, § 26.

**225.30 Blanks — audit.**

The medical faculty of the university of Iowa college of medicine shall prepare blanks containing such questions and requiring such information as may be necessary and proper to be obtained by the physician who examines a person or respondent whose referral to the state psychiatric hospital is contemplated. A judge may request that a physician who examines a respondent as required by section 229.10 complete such blanks in duplicate in the course of the examination. A physician who proposes to file information under section 225.10 shall obtain and complete such blanks in duplicate and file them with the information. The blanks shall be printed by the state and a supply of the blanks shall be made available to counties.

The director of the department of administrative services shall audit, allow, and pay the cost of the blanks as other bills for public printing are allowed and paid.

[C24, 27, 31, 35, §3986, 3987; C39, §3482.30, 3482.31; C46, 50, 54, 58, 62, 66, 71, 73, §225.30; C75, §225.30, 225.31; C77, 79, 81, §225.30]

2001 Acts, ch 74, §10; 2002 Acts, ch 1119, §30; 2003 Acts, ch 145, §286; 2006 Acts, ch 1059, §13

**225.31** Repealed by 75 Acts, ch 139, § 82.

**225.32 Report and order to accompany patient.**

One of the duplicate reports shall be sent to the state psychiatric hospital with the patient, together with a certified copy of the order of the court.

[C24, 27, 31, 35, §3988; C39, §3482.32; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.32]

**225.33 Death of patient — disposal of body.**

In the event that a committed public patient or a voluntary public patient or a committed private patient should die while at the state psychiatric hospital or at the university hospital, the state psychiatric hospital shall have the body prepared for shipment in accordance with the rules prescribed by the state board of health for shipping such bodies; and it shall be the duty of the state board of regents to make arrangements for the embalming and such other preparation as may be necessary to comply with the rules and for the purchase of suitable caskets.

[C24, 27, 31, 35, §3989; C39, §3482.33; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.33]  
2001 Acts, ch 74, §11

**225.34** Repealed by 96 Acts, ch 1215, § 59.

**225.35 Expense collected.**

In the event that the said person is a committed private patient, it shall be the duty of the county auditor of the proper county to proceed to collect all of such expenses, in accordance with the provisions of sections 225.23 and 225.24.

[C24, 27, 31, 35, §3991; C39, §3482.35; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §225.35]  
Referred to in §331.502

**225.36 through 225.42** Repealed by 75 Acts, ch 139, § 82.

**225.43 through 225.45** Repealed by 77 Acts, ch 44, § 1.

## CHAPTER 225A

RESERVED

## CHAPTER 225B

## PREVENTION OF DISABILITIES

Future repeal of chapter; see §225B.8

225B.1	Findings and intent.	225B.5	State agencies — cooperative efforts.
225B.2	Definitions.	225B.6	Evaluation.
225B.3	Prevention of disabilities policy council established — membership — duties.	225B.7	Implementation.
225B.4	Technical assistance committee to the prevention policy council established — membership — duties.	225B.8	Repeal.

**225B.1 Findings and intent.**

1. The general assembly finds that:

a. Thousands of Iowans are affected by a developmental disability which is a disability that arises before age twenty-two and is of sufficient severity to affect an individual's ability to participate as an independent, productive member of the community. Many other Iowans experience less severe mental or physical disabilities or disabilities which occur in their adult years which require specialized services. Many disabilities are due to conditions that are preventable or could be minimized if recognized or treated early. Preventing disabilities would result in a substantial savings to the state both in terms of human potential and public funds.

b. There is a need for a coordinated and comprehensive prevention of disabilities effort in the state. Many state departments and private organizations are involved in prevention activities but there is no unified prevention strategy or ongoing coordination in the planning, implementation, and evaluation of prevention of disabilities activities in the state.

2. It is the intent of the general assembly to establish a system to coordinate prevention of disability activities among the state departments and to assist the governor and the general assembly in determining priorities and establishing policies for the prevention of disabilities.

91 Acts, ch 169, §1

**225B.2 Definitions.**

As used in this chapter unless the context otherwise requires:

1. "Committee" means the technical assistance committee to the council.

2. "Council" means the prevention of disabilities policy council.

3. "Disability" means a mental or physical impairment that results in significant functional limitation in one or more areas of major life activity and in the need for specialized care, treatment, or training services of extended duration.

4. "Prevention activities" means activities that attempt to eliminate the occurrence of the disability, reduce the prevalence of the disability in the community, identify a problem early and use intervention at the outset to eliminate the potential for abnormality, or minimize the long-term disability or mitigate the effects of the disability.

91 Acts, ch 169, §2

**225B.3 Prevention of disabilities policy council established — membership — duties.**

1. A prevention of disabilities policy council is established to provide oversight in the development and operation of a coordinated prevention of disabilities system. The council shall consist of the following members:

a. Two members of the senate appointed by the senate majority leader and minority leader and two members of the house of representatives appointed by the speaker of the house and the house minority leader.

b. Three providers of disability prevention services, recommended by the Iowa developmental disabilities council, appointed by the governor, and confirmed by the senate.

c. Three persons with expertise in priority prevention areas, recommended by the Iowa developmental disabilities council, appointed by the governor, and confirmed by the senate.

d. Three persons with disabilities or family members of a person with disabilities, recommended by the Iowa developmental disabilities council, appointed by the governor, and confirmed by the senate.

2. Members of the council appointed by the governor shall serve three-year staggered terms. Members of the general assembly appointed to the council shall serve two-year terms and shall serve as ex officio, nonvoting members. Vacancies on the council shall be filled in the same manner as original appointments. Members are entitled to reimbursement of actual expenses incurred in performance of their official duties.

3. The council shall do all of the following:

a. Oversee the planning, implementation, and evaluation of a coordinated strategy for the prevention of disabilities among state departments which is based upon the Iowa state plan for the prevention of developmental disabilities of 1988.

b. Promote cooperative and complementary planning among the public, private, and volunteer sectors involved in prevention activities and research regarding disabilities.

c. Develop and implement a system to measure the outcome and assess the overall impact of the prevention efforts of the state.

d. Encourage research into the causes and prevention of disabling conditions.

e. Promote professional and provider training in state-of-the-art prevention of disabilities measures.

f. Recommend policy and priorities for the prevention of disabilities.

g. Adopt rules to implement this chapter.

h. Seek and apply for federal grants and private foundation funding to support the responsibilities of the council. The council shall also seek in-kind and other private contributions to fulfill the federal matching funds requirements for the purpose of section 225B.7.

i. Submit to the governor and the general assembly by November 1, 1992, and annually on November 1 thereafter, a report that includes all of the following:

(1) A continuum of cost-effective prevention of disability activities.

(2) A listing of existing activities and the state agency responsible for the activities.

(3) Recommendations to coordinate the planning, delivery, and evaluation of existing activities.

(4) Recommendations to address the lack of prevention of disability activities.

(5) Recommendations to measure the outcomes and assess the overall impacts of the state's prevention of disability efforts.

(6) Recommendations to promote cooperative planning among the public, private, and volunteer sectors and to increase public-private partnership involvement in prevention of disability activities.

(7) A review of existing research and personnel training programs.

(8) Priorities for disability prevention activities in the state.

(9) Recommendations for legislative, administrative, or budgetary changes.

4. The council shall meet at least six times during the year. A majority of the members of the council constitutes a quorum, and a majority of the council is necessary to act on matters within the purview of the council.

91 Acts, ch 169, §3; 2001 Acts, ch 74, §12; 2012 Acts, ch 1023, §28

Confirmation, see §2.32

#### **225B.4 Technical assistance committee to the prevention policy council established — membership — duties.**

1. A technical assistance committee to the prevention of disabilities policy council is established and shall consist of the following members:

a. The director of the department of human services, or the director's designee.

b. The director of the Iowa department of public health, or the director's designee.

c. The director of the department of education, or the director's designee.

d. The director of the department of natural resources, or the director's designee.

- e. The director of the state department of transportation, or the director’s designee.
  - f. The commissioner of the department of public safety, or the commissioner’s designee.
  - g. The director of the department of human rights, or the director’s designee.
  - h. The president of Iowa state university of science and technology, or the president’s designee.
  - i. The president of the university of Iowa, or the president’s designee.
  - j. The president of the university of northern Iowa, or the president’s designee.
  - 2. The technical assistance committee shall do all of the following:
    - a. Provide technical assistance to the council in developing a prevention of disabilities coordination system.
    - b. Establish policies to facilitate the development, implementation, and evaluation of the prevention of disabilities coordination system.
    - c. Recommend prevention of disability priorities to the council.
    - 3. The committee shall meet as needed to assist the council.
    - 4. Members are entitled to reimbursement of actual expenses incurred in performance of their official duties.
- 91 Acts, ch 169, §4

**225B.5 State agencies — cooperative efforts.**

The departments represented by the committee shall cooperate with the council in collecting and sharing pertinent data, and in developing, implementing, and evaluating the prevention of disabilities coordination system.

91 Acts, ch 169, §5

**225B.6 Evaluation.**

The prevention coordination system and the council are subject to review and evaluation by the governor and the general assembly.

91 Acts, ch 169, §6

**225B.7 Implementation.**

The prevention coordination system and the activities of the council shall be implemented as resources are made available.

91 Acts, ch 169, §7; 2001 Acts, ch 74, §13; 2002 Acts, ch 1119, §31  
 Referred to in §225B.3

**225B.8 Repeal.**

This chapter is repealed July 1, 2015.

2000 Acts, ch 1228, §40, 46; 2001 Acts, ch 191, §36; 2006 Acts, ch 1184, §105; 2011 Acts, ch 129, §89, 156; 2012 Acts, ch 1133, §96

CHAPTER 225C

MENTAL HEALTH AND DISABILITY SERVICES

Referred to in §230A.101, 331.389, 423.3

County participation in funding for services to persons with disabilities; §249A.26, 331.388 – 331.398

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## SUBCHAPTER I

## GENERAL PROVISIONS

**225C.1 Findings and purpose.**

1. The general assembly finds that services to persons with mental illness, an intellectual

disability, developmental disabilities, or brain injury are provided in many parts of the state by highly autonomous community-based service providers working cooperatively with state and county officials. However, the general assembly recognizes that heavy reliance on property tax funding for mental health and intellectual disability services has enabled many counties to exceed minimum state standards for the services resulting in an uneven level of services around the state. Consequently, greater efforts should be made to ensure close coordination and continuity of care for those persons receiving publicly supported disability services in Iowa. It is the purpose of this chapter to continue and to strengthen the services to persons with disabilities now available in the state of Iowa, to make disability services conveniently available to all persons in this state upon a reasonably uniform financial basis, and to assure the continued high quality of these services.

2. It is the intent of the general assembly that the service system for persons with disabilities emphasize the ability of persons with disabilities to exercise their own choices about the amounts and types of services received; that all levels of the service system seek to empower persons with disabilities to accept responsibility, exercise choices, and take risks; that disability services are individualized, provided to produce results, flexible, and cost-effective; and that disability services be provided in a manner which supports the ability of persons with disabilities to live, learn, work, and recreate in communities of their choice.

[81 Acts, ch 78, §1, 20]

94 Acts, ch 1170, §10; 2006 Acts, ch 1115, §2; 2012 Acts, ch 1019, §60

Referred to in §225C.6B, 225C.7

### 225C.2 Definitions.

As used in this chapter:

1. “*Administrator*” means the administrator of the division.
2. “*Central point of coordination process*” means the same as defined in section 331.440.\*
3. “*Commission*” means the mental health and disability services commission.
4. “*Department*” means the department of human services.
5. “*Director*” means the director of human services.
6. “*Disability services*” means services and other support available to a person with mental illness, an intellectual disability or other developmental disability, or brain injury.
7. “*Division*” means the division of mental health and disability services of the department.
8. “*Mental health and disability services region*” means a mental health and disability services region formed in accordance with section 331.389.
9. “*Mental health and disability services regional service system*” means the mental health and disability service system for a mental health and disability services region.
10. “*Person with a disability*” means a person with mental illness, an intellectual disability or other developmental disability, or brain injury.

11. “*Regional administrator*” means the same as defined in section 331.388.

[S81, §225C.1; 81 Acts, ch 78, §2, 20; 82 Acts, ch 1117, §1, 2]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §11; 96 Acts, ch 1183, §12; 2004 Acts, ch 1090, §4, 33; 2006 Acts, ch 1115, §3, 24; 2010 Acts, ch 1031, §382; 2012 Acts, ch 1019, §61; 2012 Acts, ch 1120, §1, 20, 21

Referred to in §230A.102, 331.388

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

Subsections 8, 9, and 11 take effect July 1, 2013, but apply earlier for purposes of adopting rules that are to take effect on or after that date; 2012 Acts, ch 1120, §20, 21

NEW subsections 8 and 9 and former subsection 8 renumbered as 10

NEW subsection 11

### 225C.3 Division of mental health and disability services — state mental health authority.

1. The division is designated the state mental health authority as defined in 42 U.S.C. § 201(m) (1976) for the purpose of directing the benefits of the National Mental Health Act, 42 U.S.C. § 201 et seq. This designation does not preclude the board of regents from authorizing or directing any institution under its jurisdiction to carry out educational, prevention, and research activities in the areas of mental health and intellectual disability. The division may contract with the board of regents or any institution under the board’s jurisdiction to perform any of these functions.

2. The division is designated the state developmental disabilities agency for the purpose of directing the benefits of the Developmental Disabilities Services and Facilities Construction Act, 42 U.S.C. § 6001 et seq.

3. The division is administered by the administrator. The administrator of the division shall be qualified in the general field of mental health, intellectual disability, or other disability services, and preferably in more than one field. The administrator shall have at least five years of experience as an administrator in one or more of these fields.

1, 2. [C66, 71, 73, 75, 77, §225B.1; C79, 81, §225B.2; S81, §225C.2; 81 Acts, ch 78, §3, 20]

3. [C50, 54, 58, 62, 66, §218.75; C71, 73, 75, 77, 79, 81, §217.10; S81, §225C.2; 81 Acts, ch 78, §3, 20]

94 Acts, ch 1170, §12; 2006 Acts, ch 1115, §34; 2012 Acts, ch 1019, §62

Referred to in §217.10

#### **225C.4 Administrator's duties.**

1. To the extent funding is available, the administrator shall perform the following duties:

a. Prepare and administer the comprehensive mental health and disability services plan as provided in section 225C.6B, including state mental health and intellectual disability plans for the provision of disability services within the state and the state developmental disabilities plan. The administrator shall take into account any related planning activities implemented by the Iowa department of public health, the state board of regents or a body designated by the board for that purpose, the department of management or a body designated by the director of the department for that purpose, the department of education, the department of workforce development and any other appropriate governmental body, in order to facilitate coordination of disability services provided in this state. The state mental health and intellectual disability plans shall be consistent with the state health plan, and shall take into account mental health and disability services regional service system management plans.

b. Assist mental health and disability services region governing boards and regional administrators in planning for community-based disability services.

c. Emphasize the provision of evidence-based outpatient and community support services by community mental health centers and local intellectual disability providers as a preferable alternative to acute inpatient services and services provided in large institutional settings.

d. Encourage and facilitate coordination of disability services with the objective of developing and maintaining in the state a disability service delivery system to provide disability services to all persons in this state who need the services, regardless of the place of residence or economic circumstances of those persons. The administrator shall work with the commission and other state agencies, including but not limited to the departments of corrections, education, and public health and the state board of regents, to develop and implement a strategic plan to expand access to qualified mental health workers across the state.

e. Encourage and facilitate applied research and preventive educational activities related to causes and appropriate treatment for disabilities. The administrator may designate, or enter into agreements with, private or public agencies to carry out this function.

f. Coordinate community-based services with those of the state mental health institutes and state resource centers.

g. Administer state programs regarding the care, treatment, and supervision of persons with mental illness or an intellectual disability, except the programs administered by the state board of regents.

h. Administer and distribute state appropriations in connection with the mental health and disability regional services fund established by section 225C.7A.

i. Act as compact administrator with power to effectuate the purposes of interstate compacts on mental health.

j. Establish and maintain a data collection and management information system oriented to the needs of patients, providers, the department, and other programs or facilities in accordance with section 225C.6A. The system shall be used to identify, collect, and analyze service outcome and performance measures data in order to assess the effects of the services on the persons utilizing the services. The administrator shall annually submit to the

commission information collected by the department indicating the changes and trends in the disability services system. The administrator shall make the outcome data available to the public.

k. Prepare a division budget and reports of the division's activities.

l. Establish suitable agreements with other state agencies to encourage appropriate care and to facilitate the coordination of disability services.

m. Provide consultation and technical assistance to patients' advocates appointed pursuant to section 229.19, in cooperation with the judicial branch and the certified volunteer long-term care ombudsmen certified pursuant to section 231.45.

n. Provide technical assistance to agencies and organizations, to aid them in meeting standards which are established, or with which compliance is required, under statutes administered by the administrator, including but not limited to chapters 227 and 230A.

o. Recommend to the commission minimum accreditation standards for the maintenance and operation of community mental health centers, services, and programs under section 230A.110. The administrator's review and evaluation of the centers, services, and programs for compliance with the adopted standards shall be as provided in section 230A.111.

p. Recommend to the commission minimum standards for supported community living services. The administrator shall review and evaluate the services for compliance with the adopted standards.

q. In cooperation with the department of inspections and appeals, recommend minimum standards under section 227.4 for the care of and services to persons with mental illness or an intellectual disability residing in county care facilities. The administrator shall also cooperate with the department of inspections and appeals in recommending minimum standards for care of and services provided to persons with mental illness or an intellectual disability living in a residential care facility regulated under chapter 135C.

r. In cooperation with the Iowa department of public health, recommend minimum standards for the maintenance and operation of public or private facilities offering disability services, which are not subject to licensure by the department or the department of inspections and appeals.

s. Provide technical assistance concerning disability services and funding to mental health and disability services region governing boards and regional administrators.

t. Coordinate with the mental health planning and advisory council created pursuant to 42 U.S.C. § 300x-3 to ensure the council membership includes representation by a military veteran who is knowledgeable concerning the behavioral and mental health issues of veterans.

u. Enter into performance-based contracts with regional administrators as described in section 331.390. A performance-based contract shall require a regional administrator to fulfill the statutory and regulatory requirements of the regional service system under this chapter and chapter 331. A failure to fulfill the requirements may be addressed by remedies specified in the contract, including but not limited to suspension of contract payments or cancellation of the contract. The contract provisions may include but are not limited to requirements for the regional service system to attain outcomes within a specified range of acceptable performance in any of the following categories:

- (1) Access standards for the required core services.
- (2) Penetration rates for serving the number of persons expected to be served.
- (3) Utilization rates for inpatient and residential treatment.
- (4) Readmission rates for inpatient and residential treatment.
- (5) Employment of the persons receiving services.
- (6) Administrative costs.
- (7) Data reporting.
- (8) Timely and accurate claims processing.

v. Provide information through the internet concerning waiting lists for services implemented by mental health and disability services regions.

2. The administrator may:

a. Apply for, receive, and administer federal aids, grants, and gifts for purposes relating to disability services or programs.

b. Establish and supervise suitable standards of care, treatment, and supervision for persons with disabilities in all institutions under the control of the director of human services.

c. Appoint professional consultants to furnish advice on any matters pertaining to disability services. The consultants shall be paid as provided by an appropriation of the general assembly.

d. Administer a public housing unit within a bureau of the division to apply for, receive, and administer federal assistance, grants, and other public or private funds for purposes related to providing housing in accordance with section 225C.45.

[C50, 54, 58, 62, 66, §218.76; C71, 73, 75, 77, 79, 81, §217.11, 217.12; S81, §225C.3; 81 Acts, ch 78, §4, 20]

83 Acts, ch 96, §157, 159; 85 Acts, ch 122, §1; 90 Acts, ch 1204, §45; 92 Acts, ch 1128, §1; 94 Acts, ch 1170, §13; 95 Acts, ch 82, §2, 13; 95 Acts, ch 206, §7, 12; 96 Acts, ch 1186, §23; 98 Acts, ch 1047, §20; 99 Acts, ch 129, §9; 99 Acts, ch 160, §2, 3; 2000 Acts, ch 1112, §33, 51; 2006 Acts, ch 1115, §4, 5; 2010 Acts, ch 1031, §374; 2010 Acts, ch 1106, §1; 2012 Acts, ch 1019, §63; 2012 Acts, ch 1120, §2, 3, 20, 21; 2013 Acts, ch 18, §15; 2013 Acts, ch 90, §48; 2013 Acts, ch 140, §187, 189

Referred to in §217.10, 225C.6B, 225C.52, 331.390

2012 amendments to subsection 1, paragraphs a, b, c, f, h, q, and s, and new paragraphs u and v, enacted in 2012 Acts, ch 1120, §2, 3, take effect July 1, 2013, but apply earlier for purposes of adopting rules that are to take effect on or after that date; 2012 Acts, ch 1120, §20, 21

Subsection 1, paragraphs a, b, c, f, h, j, m, o, q, and s amended

Subsection 1, NEW paragraphs u and v

### **225C.5 Mental health and disability services commission.**

1. A mental health and disability services commission is created as the state policy-making body for the provision of services to persons with mental illness, an intellectual disability, other developmental disabilities, or brain injury. The commission's voting members shall be appointed to three-year staggered terms by the governor and are subject to confirmation by the senate. Commission members shall be appointed on the basis of interest and experience in the fields of mental health, intellectual disability, other developmental disabilities, and brain injury, in a manner so as to ensure adequate representation from persons with disabilities and individuals knowledgeable concerning disability services. The department shall provide staff support to the commission, and the commission may utilize staff support and other assistance provided to the commission by other persons. The commission shall meet at least four times per year. The membership of the commission shall consist of the following persons who, at the time of appointment to the commission, are active members of the indicated groups:

a. Three members shall be members of a county board of supervisors selected from nominees submitted by the county supervisor affiliate of the Iowa state association of counties.

b. Two members shall be selected from nominees submitted by the director.

c. One member shall be an active board member of a community mental health center selected from nominees submitted by the Iowa association of community providers.

d. One member shall be an active board member of an agency serving persons with a developmental disability selected from nominees submitted by the Iowa association of community providers.

e. One member shall be a board member or employee of a provider of mental health or developmental disabilities services to children.

f. Two members shall be administrators of the central point of coordination process established in accordance with section 331.440\* selected from nominees submitted by the community services affiliate of the Iowa state association of counties.

g. One member shall be selected from nominees submitted by the state's council of the association of federal, state, county, and municipal employees.

h. Three members shall be service consumers or family members of service consumers. Of these members, one shall be a service consumer, one shall be a parent of a child service consumer, and one shall be a parent or other family member of a person admitted to and living at a state resource center.

i. Two members shall be selected from nominees submitted by service advocates. Of these

members, one shall be an active member of a statewide organization for persons with brain injury.

j. One member shall be an active board member of an agency serving persons with a substance abuse problem selected from nominees submitted by the Iowa behavioral health association.

k. One member shall be a military veteran who is knowledgeable concerning the behavioral and mental health issues of veterans.

l. In addition to the voting members, the membership shall include four members of the general assembly with one member designated by each of the following: the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives. A legislative member serves for a term as provided in section 69.16B in an ex officio, nonvoting capacity and is eligible for per diem and expenses as provided in section 2.10.

2. The three-year terms shall begin and end as provided in section 69.19. Vacancies on the commission shall be filled as provided in section 2.32. A member shall not be appointed for more than two consecutive three-year terms.

3. Members of the commission shall qualify by taking the oath of office prescribed by law for state officers. At its first meeting of each year, the commission shall organize by electing a chairperson and a vice chairperson for terms of one year. Commission members are entitled to a per diem as specified in section 7E.6 and reimbursement for actual and necessary expenses incurred while engaged in their official duties, to be paid from funds appropriated to the department.

[C66, 71, 73, 75, 77, §225B.2, 225B.3, 225B.6; C79, 81, §225B.3; S81, §225C.4; 81 Acts, ch 78, §5, 20]

90 Acts, ch 1256, §39; 94 Acts, ch 1170, §14; 2002 Acts, ch 1146, §1; 2002 Acts, 2nd Ex, ch 1003, §238, 262; 2003 Acts, ch 101, §3, 4; 2004 Acts, ch 1090, §5, 33; 2008 Acts, ch 1156, §30, 58; 2008 Acts, ch 1187, §51; 2009 Acts, ch 106, §7, 14; 2010 Acts, ch 1031, §383; 2010 Acts, ch 1106, §2; 2011 Acts, ch 34, §53; 2012 Acts, ch 1019, §64

Referred to in §135C.23, 227.4, 331.388

Confirmation, see §2.32

\*Section 331.440 is repealed; corrective legislation is pending  
Section not amended; footnote added

### **225C.6 Duties of commission.**

1. To the extent funding is available, the commission shall perform the following duties:

a. Advise the administrator on the administration of the overall state disability services system.

b. Pursuant to recommendations made for this purpose by the administrator, adopt necessary rules pursuant to chapter 17A which relate to disability programs and services, including but not limited to definitions of each disability included within the term “*disability services*” as necessary for purposes of state, county, and regional planning, programs, and services.

c. Adopt standards for community mental health centers, services, and programs as recommended under section 230A.110. The administrator shall determine whether to grant, deny, or revoke the accreditation of the centers, services, and programs.

d. Adopt standards for the provision under medical assistance of individual case management services.

e. Unless another governmental body sets standards for a service available to persons with disabilities, adopt state standards for that service. The commission shall review the licensing standards used by the department of human services or department of inspections and appeals for those facilities providing disability services.

f. Assure that proper reconsideration and appeal procedures are available to persons aggrieved by decisions, actions, or circumstances relating to accreditation.

g. Adopt necessary rules for awarding grants from the state and federal government as well as other moneys that become available to the division for grant purposes.

h. Annually submit to the governor and the general assembly:

(1) A report concerning the activities of the commission.

(2) Recommendations formulated by the commission for changes in law.

i. By January 1 of each odd-numbered year, submit to the governor and the general assembly an evaluation of:

(1) The extent to which services to persons with disabilities are actually available to persons in each county in the state and the quality of those services.

(2) The effectiveness of the services being provided by disability service providers in this state and by each of the state mental health institutes established under chapter 226 and by each of the state resource centers established under chapter 222.

j. Advise the administrator, the council on human services, the governor, and the general assembly on budgets and appropriations concerning disability services.

k. Coordinate activities with the Iowa developmental disabilities council and the mental health planning council, created pursuant to federal law. The commission shall work with other state agencies on coordinating, collaborating, and communicating concerning activities involving persons with disabilities.

l. Pursuant to a recommendation made by the administrator, identify basic financial eligibility standards for the disability services provided by a mental health and disability services region. The initial standards shall be as specified in chapter 331.

m. Identify disability services outcomes and indicators to support the ability of eligible persons with a disability to live, learn, work, and recreate in communities of the persons' choice. The identification duty includes but is not limited to responsibility for identifying, collecting, and analyzing data as necessary to issue reports on outcomes and indicators at the county and state levels.

2. Notwithstanding section 217.3, subsection 6, the commission may adopt the rules authorized by subsection 1, pursuant to chapter 17A, without prior review and approval of those rules by the council on human services.

3. If the executive branch creates a committee, task force, council, or other advisory body to consider disability services policy or program options involving children or adult consumers, the commission is designated to receive and consider any report, findings, recommendations, or other work product issued by such body. The commission may address the report, findings, recommendations, or other work product in fulfilling the commission's functions and to advise the department, council on human services, governor, and general assembly concerning disability services.

4. a. The department shall coordinate with the department of inspections and appeals in the establishment of facility-based and community-based, subacute mental health services.

b. A person shall not provide community-based, subacute mental health services unless the person has been accredited to provide the services. The commission shall adopt standards for subacute mental health services and for accreditation of providers of community-based, subacute mental health services.

c. As used in this subsection, "*subacute mental health services*" means all of the following:

(1) A comprehensive set of wraparound services for persons who have had or are at imminent risk of having acute or crisis mental health symptoms that do not permit the persons to remain in or threatens removal of the persons from their home and community, but who have been determined by a mental health professional and a licensed health care professional, subject to the professional's scope of practice, not to need inpatient acute hospital services. For the purposes of this subparagraph, "*mental health professional*" means the same as defined in section 228.1 and "*licensed health care professional*" means a person licensed under chapter 148 to practice medicine and surgery or osteopathic medicine and surgery, an advanced registered nurse practitioner licensed under chapter 152 or 152E and registered with the board of nursing, or a physician assistant licensed to practice under the supervision of a physician as authorized in chapters 147 and 148C.

(2) Intensive, recovery-oriented treatment and monitoring of the person with direct or remote access to a psychiatrist or advanced registered nurse practitioner.

(3) An outcome-focused, interdisciplinary approach designed to return the person to living successfully in the community.

(4) Services that may be provided in a wide array of settings ranging from the person's home to a facility providing subacute mental health services.

(5) Services that are time limited to not more than ten days or another time period determined in accordance with rules adopted for this purpose.

d. Subacute mental health services and the standards for the services shall be established in a manner that allows for accessing federal Medicaid funding.

[C66, 71, 73, 75, 77, §225B.4, 225B.7; C79, 81, §225B.3(2); S81, §225C.5; 81 Acts, ch 78, §6, 20]

83 Acts, ch 96, §157, 159; 88 Acts, ch 1245, §1; 94 Acts, ch 1170, §15; 98 Acts, ch 1181, §15; 99 Acts, ch 160, §4, 5; 2000 Acts, ch 1112, §51; 2001 Acts, ch 74, §14; 2001 Acts, ch 155, §28; 2002 Acts, ch 1146, §2, 3, 25; 2006 Acts, ch 1115, §6, 13; 2007 Acts, ch 218, §118; 2010 Acts, ch 1031, §375; 2011 Acts, ch 34, §54; 2012 Acts, ch 1023, §29; 2012 Acts, ch 1120, §4, 5, 20, 21, 56; 2013 Acts, ch 90, §49

Referred to in §135G.1, 225C.6B, 225C.28A, 225C.52, 249A.31, 331.397  
2012 amendments to subsection 1, paragraphs b and l, take effect July 1, 2013, but apply earlier for purposes of adopting rules that are to take effect on or after that date; 2012 Acts, ch 1120, §20, 21  
Subsection 1, paragraphs b and c amended  
Subsection 1, paragraph l stricken and rewritten

### **225C.6A Disability services system central data repository.**

1. The department shall do the following relating to data concerning the disability services system in the state:

a. Plan, collect, and analyze data as necessary to issue cost estimates for serving additional populations and providing core disability services statewide. The department shall maintain compliance with applicable federal and state privacy laws to ensure the confidentiality and integrity of individually identifiable disability services data. The department may periodically assess the status of the compliance in order to assure that data security is protected.

b. Implement a central data repository under this section for collecting and analyzing state, county and region, and private contractor data. The department shall establish a client identifier for the individuals receiving services.

c. Consult on an ongoing basis with regional administrators, service providers, and other stakeholders in implementing the central data repository and operations of the repository. The consultation shall focus on minimizing the state and local costs associated with operating the repository.

d. Engage with other state and local government and nongovernmental entities operating the Iowa health information network under chapter 135 and other data systems that maintain information relating to individuals with information in the central data repository in order to integrate data concerning individuals.

2. A county or region shall not be required to utilize a uniform data operational or transactional system. However, the system utilized shall have the capacity to exchange information with the department, counties and regions, contractors, and others involved with services to persons with a disability who have authorized access to the central data repository. The information exchanged shall be labeled consistently and share the same definitions. Each regional administrator shall regularly report to the department the following information for each individual served: demographic information, expenditure data, and data concerning the services and other support provided to each individual, as specified by the department.

3. The outcome and performance measures applied to the regional service system shall utilize measurement domains. The department may identify other measurement domains in consultation with system stakeholders to be utilized in addition to the following initial set of measurement domains:

- a. Access to services.
- b. Life in the community.
- c. Person-centeredness.
- d. Health and wellness.
- e. Quality of life and safety.
- f. Family and natural supports.

4. a. The processes used for collecting outcome and performance measures data shall

include but are not limited to direct surveys of the individuals and families receiving services and the providers of the services. The department shall involve a workgroup of persons who are knowledgeable about both the regional service system and survey techniques to implement and maintain the processes. The workgroup shall conduct an ongoing evaluation for the purpose of eliminating the collection of information that is not utilized. The surveys shall be conducted with a conflict-free approach in which someone other than a provider of services surveys an individual receiving the services.

b. The outcome and performance measures data shall encompass and provide a means to evaluate both the regional services and the services funded by the medical assistance program provided to the same service populations.

c. The department shall develop and implement an internet-based approach with graphical display of information to provide outcome and performance measures data to the public and those engaged with the regional service system.

d. The department shall include any significant costs for collecting and interpreting outcome and performance measures and other data in the department's operating budget.

2004 Acts, ch 1090, §34; 2006 Acts, ch 1159, §1, 3; 2007 Acts, ch 218, §87, 92; 2010 Acts, ch 1031, §376; 2013 Acts, ch 19, §1; 2013 Acts, ch 140, §188

Referred to in §225C.4, 225C.52

Proposed amendments by 2012 Acts, ch 1120, §6, 7, and 95, repealed by 2013 Acts, ch 140, §190

See Code editor's note on simple harmonization

Section amended

### **225C.6B Mental health and disability services system — legislative intent — comprehensive plan — state and regional service systems.**

#### **1. Intent.**

a. The general assembly intends for the state to implement a comprehensive, continuous, and integrated state mental health and disability services plan in accordance with the requirements of sections 225C.4 and 225C.6 and other provisions of this chapter, by increasing the department's responsibilities in the development, funding, oversight, and ongoing leadership of mental health and disability services in this state.

b. In order to further the purposes listed in section 225C.1 and in other provisions of this chapter, the general assembly intends that efforts focus on the goal of making available a comprehensive array of high-quality, evidence-based consumer and family-centered mental health and disability services and other support in the least restrictive, community-based setting appropriate for a consumer.

c. In addition, it is the intent of the general assembly to promote policies and practices that achieve for consumers the earliest possible detection of mental health problems and the need for disability services and for early intervention; to stress that all health care programs address mental health disorders with the same urgency as physical health disorders; to promote the policies of all public programs that serve adults and children with mental disorders or with a need for disability services, including but not limited to child welfare, Medicaid, education, housing, criminal and juvenile justice, substance abuse treatment, and employment services; to consider the special mental health and disability services needs of adults and children; and to promote recovery and resiliency as expected outcomes for all consumers.

2. *Comprehensive plan.* The division shall develop a comprehensive written five-year state mental health and disability services plan with annual updates and readopt the plan every five years. The plan shall describe the key components of the state's mental health and disability services system, including the services that are community-based, state institution-based, or regional or state-based. The five-year plan and each update shall be submitted annually to the commission on or before October 30 for review and approval.

3. *State and regional disability service systems.* The publicly financed disability services for persons with mental illness, intellectual disability or other developmental disability, or brain injury in this state shall be provided by the department and the counties operating together as regions. The financial and administrative responsibility for such services is as follows:

a. Disability services for children and adults that are covered under the medical assistance program pursuant to chapter 249A are the responsibility of the state.

b. Adult mental health and intellectual disability services that are not covered under the medical assistance program are the responsibility of the county-based regional service system.

2007 Acts, ch 218, §93; 2010 Acts, ch 1031, §377, 378; 2012 Acts, ch 1120, §8, 20, 21

Referred to in §225C.4

Subsection 3 takes effect July 1, 2013, but applies earlier for purposes of adopting rules to take effect on or after that date; 2012 Acts, ch 1120, §20, 21

NEW subsection 3

#### **225C.6C Regional service system — regulatory requirements.**

1. The departments of inspections and appeals, human services, and public health shall comply with the requirements of this section in their efforts to improve the regulatory requirements applied to the mental health and disability regional service system administration and service providers.

2. The three departments shall work together to establish a process to streamline accreditation, certification, and licensing standards applied to the regional service system administration and service providers.

3. The departments of human services and inspections and appeals shall jointly review the standards and inspection process applicable to residential care facilities.

4. The three departments shall do all of the following in developing regulatory requirements applicable to the regional service system administration and service providers:

a. Consider the costs to administrators and providers in the development of quality monitoring efforts.

b. Implement the use of uniform, streamlined, and statewide cost reporting standards and tools by the regional service system and the department of human services.

c. Make quality monitoring information, including services, quality, and location information, easily available and understandable to all citizens.

d. Establish standards that are clearly understood and are accompanied by interpretive guidelines to support understanding by those responsible for applying the standards.

e. Develop a partnership with providers in order to improve the quality of services and develop mechanisms for the provision of technical assistance.

f. Develop consistent data collection efforts based on statewide standards and make information available to all providers. The efforts under this paragraph shall be made with representatives of the Iowa state association of counties.

g. Evaluate existing provider qualification and monitoring efforts to identify duplication and gaps, and align the efforts with valued outcomes.

h. Streamline and enhance existing standards.

i. Consider allowing providers to seek accreditation from a national accrediting body in lieu of state accreditation or certification.

2012 Acts, ch 1120, §28

#### **225C.7 Mental health and developmental disabilities community services fund.**

1. A mental health and developmental disabilities community services fund is established in the office of the treasurer of state under the authority of the department, which shall consist of the amounts appropriated to the fund by the general assembly for each fiscal year. Before completion of the department's budget estimate as required by section 8.23, the department shall determine and include in the estimate the amount which should be appropriated to the fund for the forthcoming fiscal period in order to implement the purpose stated in section 225C.1.

2. Moneys appropriated to the fund shall be allocated to counties for funding of community-based mental health, intellectual disability, developmental disabilities, and brain injury services in the manner provided in the appropriation to the fund. If the allocation methodology includes a population factor, the most recent population estimates issued by the United States bureau of the census shall be applied.

3. If a county has not established or is not affiliated with a community mental health

center under chapter 230A, the county shall expend a portion of the money received under this appropriation to contract with a community mental health center to provide mental health services to the county's residents. If such a contractual relationship is unworkable or undesirable, the commission may waive the expenditure requirement. However, if the commission waives the requirement, the commission shall address the specific concerns of the county and shall attempt to facilitate the provision of mental health services to the county's residents through an affiliation agreement or other means.

4. a. A county is entitled to receive money from the fund if that county raised by county levy and expended for mental health, intellectual disability, and developmental disabilities services, in the preceding fiscal year, an amount of money at least equal to the amount so raised and expended for those purposes during the fiscal year beginning July 1, 1980.

b. With reference to the fiscal year beginning July 1, 1980, money "*raised by county levy and expended for mental health, intellectual disability, and developmental disabilities services*" means the county's maintenance of effort determined by using the general allocation application for the state community mental health and mental retardation services fund under section 225C.10, subsection 1, Code 1993. The department, with the agreement of each county, shall establish the actual amount expended by each county for persons with mental illness, an intellectual disability, or a developmental disability in the fiscal year which began on July 1, 1980, and this amount shall be deemed each county's maintenance of effort.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.17; S81, §225C.6; 81 Acts, ch 78, §7, 20]

94 Acts, ch 1170, §16; 97 Acts, ch 169, §7; 2004 Acts, ch 1090, §6; 2007 Acts, ch 218, §77; 2012 Acts, ch 1019, §65

Referred to in §135.180, 230A.107

#### **225C.7A Mental health and disability regional services fund.**

1. A mental health and disability regional services fund is created in the office of the treasurer of state under the authority of the department, which shall consist of the amounts appropriated to the fund by the general assembly for each fiscal year. Before completion of the department's budget estimate as required by section 8.23, the director of human services, in consultation with the commission, shall determine and include in the estimate the amount, which in order to address the increase in the costs of providing services, should be appropriated to the fund for the succeeding fiscal year.

2. The department shall distribute the moneys appropriated from the fund to mental health and disability services regions for funding of disability services in accordance with performance-based contracts with the regions and in the manner provided in the appropriations. If the allocation methodology includes a population factor, the definition of "*population*" in section 331.388 shall be applied.

2012 Acts, ch 1120, §9, 20, 21

Referred to in §225C.4, 331.391, 331.398

Section takes effect July 1, 2013, but applies earlier for purposes of adopting rules to take effect on or after that date; 2012 Acts, ch 1120, §20, 21

NEW section

**225C.8 Legal settlement dispute resolution.** Repealed by 2012 Acts, ch 1120, § 129, 130. See § 331.394.

Section repeal by 2012 Acts, ch 1120, §129 is effective July 1, 2013; 2012 Acts, ch 1120, §130

**225C.9 through 225C.11** Repealed by 94 Acts, ch 1170, § 54.

#### **225C.12 Partial reimbursement to counties for local inpatient mental health care and treatment.**

1. A county which pays, from county funds budgeted under section 331.424A, the cost of care and treatment of a person with mental illness who is admitted pursuant to a preliminary diagnostic evaluation under sections 225C.14 to 225C.17 for treatment as an inpatient of a hospital facility, other than a state mental health institute, which has a designated mental health program and is a hospital accredited by the accreditation program for hospital facilities of the joint commission on accreditation of health care organizations, is entitled to reimbursement from the state for a portion of the daily cost so incurred by the county.

However, a county is not entitled to reimbursement for a cost incurred in connection with the hospitalization of a person who is eligible for medical assistance under chapter 249A, or who is entitled to have care or treatment paid for by any other third-party payor, or who is admitted for preliminary diagnostic evaluation under sections 225C.14 to 225C.17. The amount of reimbursement for the cost of treatment of a local inpatient to which a county is entitled, on a per-patient-per-day basis, is an amount equal to twenty percent of the average of the state mental health institutes' individual average daily patient costs in the most recent calendar quarter for the program in which the local inpatient would have been served if the patient had been admitted to a state mental health institute.

2. A county may claim reimbursement by filing with the administrator a claim in a form prescribed by the administrator by rule. Claims may be filed on a quarterly basis, and when received shall be verified as soon as reasonably possible by the administrator. The administrator shall certify to the director of the department of administrative services the amount to which each county claiming reimbursement is entitled, and the director of the department of administrative services shall issue warrants to the respective counties drawn upon funds appropriated by the general assembly for the purpose of this section. A county shall place funds received under this section in the county mental health, intellectual disability, and developmental disabilities services fund created under section 331.424A.\* If the appropriation for a fiscal year is insufficient to pay all claims arising under this section, the director of the department of administrative services shall prorate the funds appropriated for that year among the claimant counties so that an equal proportion of each county's claim is paid in each quarter for which proration is necessary.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.16, 227.18; S81, §225C.11; 81 Acts, ch 78, §12, 20, ch 117, §1028]

96 Acts, ch 1129, §113; 96 Acts, ch 1183, §13; 2003 Acts, ch 145, §286; 2012 Acts, ch 1019, §66

\*The "county mental health and disabilities services fund" probably intended; corrective legislation is pending  
Section not amended; footnote added

### **225C.13 Authority to establish and lease facilities.**

1. The administrator assigned, in accordance with section 218.1, to control the state mental health institutes and the state resource centers may enter into agreements under which a facility or portion of a facility administered by the administrator is leased to a department or division of state government, a county or group of counties, or a private nonprofit corporation organized under chapter 504. A lease executed under this section shall require that the lessee use the leased premises to deliver either disability services or other services normally delivered by the lessee.

2. The division administrator may work with the appropriate administrator of the department's institutions to establish mental health and intellectual disability services for all institutions under the control of the director of human services and to establish an autism unit, following mutual planning and consultation with the medical director of the state psychiatric hospital, at an institution or a facility administered by the department to provide psychiatric and related services and other specific programs to meet the needs of autistic persons, and to furnish appropriate diagnostic evaluation services.

[S81, §225C.12; 81 Acts, ch 78, §14, 20]

94 Acts, ch 1170, §17; 2000 Acts, ch 1112, §34; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393; 2006 Acts, ch 1115, §25; 2012 Acts, ch 1019, §67

### **225C.14 Preliminary diagnostic evaluation.**

1. Except in cases of medical emergency, a person shall be admitted to a state mental health institute as an inpatient only after a preliminary diagnostic evaluation performed through the central point of coordination process\* has confirmed that the admission is appropriate to the person's mental health needs, and that no suitable alternative method of providing the needed services in a less restrictive setting or in or nearer to the person's home community is currently available. If provided for through the central point of coordination process,\* the evaluation may be performed by a community mental health center or by an

alternative diagnostic facility. The policy established by this section shall be implemented in the manner and to the extent prescribed by sections 225C.15, 225C.16 and 225C.17.

2. As used in this section and sections 225C.15, 225C.16 and 225C.17, the term “*medical emergency*” means a situation in which a prospective patient is received at a state mental health institute in a condition which, in the opinion of the chief medical officer, or that officer’s physician designee, requires the immediate admission of the person notwithstanding the policy stated in subsection 1.

[C79, 81, §225B.4; S81, §225C.13; 81 Acts, ch 78, §15, 20]

94 Acts, ch 1170, §18; 96 Acts, ch 1183, §14; 2004 Acts, ch 1090, §33

Referred to in §225C.12, 225C.15, 225C.16, 331.382

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

Section not amended; footnote added

#### **225C.15 County implementation of evaluations.**

The board of supervisors of a county shall, no later than July 1, 1982, require that the policy stated in section 225C.14 be followed with respect to admission of persons from that county to a state mental health institute. A community mental health center which is supported, directly or in affiliation with other counties, by that county may perform the preliminary diagnostic evaluations for that county, unless the performance of the evaluations is not covered by the agreement entered into by the county and the center, and the center’s director certifies to the board of supervisors that the center does not have the capacity to perform the evaluations, in which case the board of supervisors shall proceed under section 225C.17.

[C79, 81, §225B.5; S81, §225C.14; 81 Acts, ch 78, §16, 20]

96 Acts, ch 1183, §15; 2013 Acts, ch 90, §50

Referred to in §225C.12, 225C.14, 331.382

Section amended

#### **225C.16 Referrals for evaluation.**

1. The chief medical officer of a state mental health institute, or that officer’s physician designee, shall advise a person residing in that county who applies for voluntary admission, or a person applying for the voluntary admission of another person who resides in that county, in accordance with section 229.41, that the board of supervisors has implemented the policy stated in section 225C.14, and shall advise that a preliminary diagnostic evaluation of the prospective patient be sought, if that has not already been done. This subsection does not apply when voluntary admission is sought in accordance with section 229.41 under circumstances which, in the opinion of the chief medical officer or that officer’s physician designee, constitute a medical emergency.

2. The clerk of the district court in that county shall refer a person applying for authorization for voluntary admission, or for authorization for voluntary admission of another person, in accordance with section 229.42, to the appropriate entity designated through the central point of coordination process\* of the person’s county of residence under section 225C.14 for the preliminary diagnostic evaluation unless the applicant furnishes a written statement from the appropriate entity which indicates that the evaluation has been performed and that the person’s admission to a state mental health institute is appropriate. This subsection does not apply when authorization for voluntary admission is sought under circumstances which, in the opinion of the chief medical officer or that officer’s physician designee, constitute a medical emergency.

3. Judges of the district court in that county or the judicial hospitalization referee appointed for that county shall so far as possible arrange for the entity designated through the central point of coordination process\* under section 225C.14 to perform a prehearing examination of a respondent required under section 229.8, subsection 3, paragraph “b”.

4. The chief medical officer of a state mental health institute shall promptly submit to the appropriate entity designated through the central point of coordination process\* under section 225C.14 a report of the voluntary admission of a patient under the medical emergency clauses of subsections 1 and 2. The report shall explain the nature of the emergency which

necessitated the admission of the patient without a preliminary diagnostic evaluation by the designated entity.

[C79, 81, §225B.6; S81, §225C.15; 81 Acts, ch 78, §17, 20]

96 Acts, ch 1183, §16; 2004 Acts, ch 1090, §33; 2012 Acts, ch 1120, §96, 130

Referred to in §225C.12, 225C.14, 331.382, 602.8102(39)

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

2012 amendment to subsection 2 takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Subsection 2 amended

#### **225C.17 Alternative diagnostic facility.**

If a county is not served by a community mental health center having the capacity to perform the required preliminary diagnostic evaluations, the board of supervisors shall arrange for the evaluations to be performed by an alternative diagnostic facility for the period until the county is served by a community mental health center with the capacity to provide that service. An alternative diagnostic facility may be the outpatient service of a state mental health institute or any other mental health facility or service able to furnish the requisite professional skills to properly perform a preliminary diagnostic evaluation of a person whose admission to a state mental health institute is being sought or considered on either a voluntary or an involuntary basis.

[C79, 81, §225B.7; S81, §225C.16; 81 Acts, ch 78, §18, 20]

Referred to in §225C.12, 225C.14, 225C.15, 331.382

#### **225C.18 Mental health and developmental disabilities regional planning councils.**

1. A county may participate in a mental health and developmental disabilities regional planning council. The region encompassed by a planning council shall be determined by the counties participating in the planning council.

2. The boards of supervisors of the counties comprising the planning council shall determine the size and membership of the planning council.

3. A planning council may perform the following tasks:

a. Develop a planning process and plan for services to persons with disabilities residing in the region. Planning shall encompass a five-year time span and shall be annually updated. The plans shall be submitted to the boards of supervisors of the counties in the region and to the commission.

b. Recommend the expenditure of all state and county funds, and to the extent possible, federal funds for disability services within the region.

c. Provide for input into the planning process by the public and service consumers, providers, and funders.

d. Work with staff assigned to the planning council to perform needs assessments, plan development, and to work with consumers, providers, and funders, and fulfill other necessary functions.

e. Make recommendations to the county boards of supervisors associated with the planning area and to the commission, concerning disability services and related budget issues.

f. Perform other duties at the request of the counties comprising the region and of the commission.

4. The provisions of this section relating to services to persons with disabilities are not intended as and shall not be construed as a requirement to provide services.

94 Acts, ch 1170, §19; 97 Acts, ch 169, §8 – 11

#### **225C.19 Emergency mental health crisis services system.**

1. For the purposes of this section:

a. “*Emergency mental health crisis services provider*” means a provider accredited or approved by the department to provide emergency mental health crisis services.

b. “*Emergency mental health crisis services system*” or “*services system*” means a coordinated array of crisis services for providing a response to assist an individual adult or child who is experiencing a mental health crisis or who is in a situation that is reasonably likely to cause the individual to have a mental health crisis unless assistance is provided.

2. a. The division shall implement an emergency mental health crisis services system in

consultation with counties, and community mental health centers and other mental health and social service providers, in accordance with this section.

b. The purpose of the services system is to provide a statewide array of time-limited intervention services to reduce escalation of crisis situations, relieve the immediate distress of individuals experiencing a crisis situation, reduce the risk of individuals in a crisis situation doing harm to themselves or others, and promote timely access to appropriate services for those who require ongoing mental health services.

c. The services system shall be available twenty-four hours per day, seven days per week to any individual who is in or is determined by others to be in a crisis situation, regardless of whether the individual has been diagnosed with a mental illness or a co-occurring mental illness and substance abuse disorder. The system shall address all ages, income levels, and health coverage statuses.

d. The goals of an intervention offered by a provider under the services system shall include but are not limited to symptom reduction, stabilization of the individual receiving the intervention, and restoration of the individual to a previous level of functioning.

e. The elements of the services system shall be specified in administrative rules adopted by the commission.

3. The services system elements shall include but are not limited to all of the following:

a. Standards for accrediting or approving emergency mental health crisis services providers. Such providers may include but are not limited to a community mental health center, a provider approved in a waiver adopted by the commission to provide services to a county in lieu of a community mental health center, a unit of the department or other state agency, a county, or any other public or private provider who meets the accreditation or approval standards for an emergency mental health crisis services provider.

b. Identification by the division of geographic regions, service areas, or other means of distributing and organizing the emergency mental health crisis services system to ensure statewide availability of the services.

c. Coordination of emergency mental health crisis services with all of the following:

(1) The district and juvenile courts.

(2) Law enforcement.

(3) Judicial district departments of correctional services.

(4) County central point of coordination processes.\*

(5) Other mental health, substance abuse, and co-occurring mental illness and substance abuse services available through the state and counties to serve both children and adults.

d. Identification of basic services to be provided through each accredited or approved emergency mental health crisis services provider which may include but are not limited to face-to-face crisis intervention, stabilization, support, counseling, preadmission screening for individuals who may require psychiatric hospitalization, transportation, and follow-up services.

e. Identification of operational requirements for emergency mental health crisis services provider accreditation or approval which may include providing a telephone hotline, mobile crisis staff, collaboration protocols, follow-up with community services, information systems, and competency-based training.

4. The division shall initially implement the program through a competitive block grant process. The implementation shall be limited to the extent of the appropriations provided for the program.

2008 Acts, ch 1187, §52; 2009 Acts, ch 41, §88

Appropriation of funds for implementation of system beginning January 1, 2009; 2008 Acts, ch 1187, §9; 2009 Acts, ch 182, §72, 87

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

Section not amended; footnote added

#### **225C.20 Responsibilities of counties for individual case management services.**

Individual case management services funded under medical assistance shall be provided by the department except when a county or a consortium of counties contracts with the department to provide the services. A county or consortium of counties may contract to be the provider at any time and the department shall agree to the contract so long as the contract meets the standards for case management adopted by the department. The county

or consortium of counties may subcontract for the provision of case management services so long as the subcontract meets the same standards. A county board of supervisors may change the provider of individual case management services at any time. If the current or proposed contract is with the department, the county board of supervisors shall provide written notification of a change at least ninety days before the date the change will take effect.

88 Acts, ch 1245, §7; 89 Acts, ch 283, §20; 93 Acts, ch 172, §31; 2000 Acts, ch 1112, §53, 58

**225C.21 Supported community living services.**

1. As used in this section, “*supported community living services*” means services provided in a noninstitutional setting to adult persons with mental illness, an intellectual disability, or developmental disabilities to meet the persons’ daily living needs.

2. The commission shall adopt rules pursuant to chapter 17A establishing minimum standards for supported community living services. The administrator shall determine whether to grant, deny, or revoke approval for any supported community living service.

3. Approved supported community living services may receive funding from the state, federal and state social services block grant funds, and other appropriate funding sources, consistent with state legislation and federal regulations. The funding may be provided on a per diem, per hour, or grant basis, as appropriate.

85 Acts, ch 141, §1; 91 Acts, ch 38, §1

CS85, §225C.19

C89, §225C.21

94 Acts, ch 1170, §20; 96 Acts, ch 1129, §52; 98 Acts, ch 1181, §12; 99 Acts, ch 160, §6; 2010 Acts, ch 1031, §379; 2012 Acts, ch 1019, §68

Referred to in §135C.6

**225C.22** Repealed by 89 Acts, ch 320, § 13.

**225C.23 Brain injury recognized as disability.**

1. The department of human services, the Iowa department of public health, the department of education and its divisions of special education and vocational rehabilitation services, the department of human rights and its division for persons with disabilities, the department for the blind, and all other state agencies which serve persons with brain injuries, shall recognize brain injury as a distinct disability and shall identify those persons with brain injuries among the persons served by the state agency.

2. For the purposes of this section, “*brain injury*” means the same as defined in section 135.22.

88 Acts, ch 1219, §2; 94 Acts, ch 1068, §7; 94 Acts, ch 1109, §3; 99 Acts, ch 141, §30; 2012 Acts, ch 1120, §67

**225C.24** Repealed by 90 Acts, ch 1012, § 1, 2.

SUBCHAPTER II

BILL OF RIGHTS

**225C.25 Short title.**

Sections 225C.25 through 225C.28B shall be known as “the bill of rights and service quality standards of persons with an intellectual disability, developmental disabilities, brain injury, or chronic mental illness”.

85 Acts, ch 249, §2; 92 Acts, ch 1241, §63; 2012 Acts, ch 1019, §69

Referred to in §225C.29

**225C.26 Scope.**

These rights and service quality standards apply to any person with an intellectual disability, a developmental disability, brain injury, or chronic mental illness who receives services which

are funded in whole or in part by public funds or services which are permitted under Iowa law.

85 Acts, ch 249, §3; 92 Acts, ch 1241, §64; 2012 Acts, ch 1019, §70

Referred to in §135C.2, 225C.25, 225C.29

**225C.27 Purpose.** Repealed by 2010 Acts, ch 1031, § 381.

**225C.28** Repealed by 92 Acts, ch 1241, § 79.

**225C.28A Service quality standards.**

As the state participates more fully in funding services and other support to persons with an intellectual disability, developmental disabilities, brain injury, or chronic mental illness, it is the intent of the general assembly that the state shall seek to attain the following quality standards in the provision of the services:

1. Provide comprehensive evaluation and diagnosis adapted to the cultural background, primary language, and ethnic origin of the person.
2. Provide an individual treatment, habilitation, and program plan.
3. Provide treatment, habilitation, and program services that are individualized, provided to produce results, flexible, and cost-effective, as appropriate.
4. Provide periodic review of the individual plan.
5. Provide for the least restrictive environment and age-appropriate services.
6. Provide appropriate training and employment opportunities so that the person's ability to contribute to and participate in the community is maximized.
7. Provide an ongoing process to determine the degree of access to and the effectiveness of the services and other support in achieving the disability services outcomes and indicators identified by the commission pursuant to section 225C.6.

92 Acts, ch 1241, §66; 2006 Acts, ch 1115, §8; 2012 Acts, ch 1019, §71

Referred to in §225C.25, 225C.29

**225C.28B Rights of persons with an intellectual disability, developmental disabilities, brain injury, or chronic mental illness.**

All of the following rights shall apply to a person with an intellectual disability, a developmental disability, brain injury, or chronic mental illness:

1. *Wage protection.* A person with an intellectual disability, a developmental disability, brain injury, or chronic mental illness engaged in work programs shall be paid wages commensurate with the going rate for comparable work and productivity.
2. *Insurance protection.* Pursuant to section 507B.4, subsection 3, paragraph "g", a person or designated group of persons shall not be denied insurance coverage by reason of an intellectual disability, a developmental disability, brain injury, or chronic mental illness.
3. *Due process.* A person with an intellectual disability, a developmental disability, brain injury, or chronic mental illness retains the right to citizenship in accordance with the laws of the state.
4. *Participation in planning activities.* If an individual treatment, habilitation, and program plan is developed for a person with an intellectual disability, a developmental disability, brain injury, or chronic mental illness, the person has the right to participate in the formulation of the plan.

92 Acts, ch 1241, §67; 2012 Acts, ch 1019, §72; 2012 Acts, ch 1023, §148

Referred to in §225C.25, 225C.29

**225C.29 Compliance.**

Except for a violation of section 225C.28B, subsection 2, the sole remedy for violation of a rule adopted by the commission to implement sections 225C.25 through 225C.28B shall be by a proceeding for compliance initiated by request to the division pursuant to chapter 17A. Any decision of the division shall be in accordance with due process of law and is subject to appeal to the Iowa district court pursuant to sections 17A.19 and 17A.20 by any aggrieved party. Either the division or a party in interest may apply to the Iowa district court for an order to enforce the decision of the division. Any rules adopted by the commission to

implement sections 225C.25 through 225C.28B do not create any right, entitlement, property or liberty right or interest, or private cause of action for damages against the state or a political subdivision of the state or for which the state or a political subdivision of the state would be responsible. Any violation of section 225C.28B, subsection 2, shall solely be subject to the enforcement by the commissioner of insurance and penalties granted by chapter 507B for a violation of section 507B.4, subsection 3, paragraph “g”.

85 Acts, ch 249, §6; 92 Acts, ch 1241, §68; 92 Acts, ch 1247, §17; 2012 Acts, ch 1023, §149

**225C.30 and 225C.31** Reserved.

**225C.32 Plan appeals process.**

The department shall establish an appeals process by which a mental health, intellectual disability, and developmental disabilities coordinating board or an affected party may appeal a decision of the department or of the coordinating board.

88 Acts, ch 1245, §8; 2012 Acts, ch 1019, §73

**225C.33 and 225C.34** Reserved.

### SUBCHAPTER III

#### FAMILY SUPPORT SUBSIDY

**225C.35 Definitions.**

For purposes of this subchapter, unless the context otherwise requires:

1. “*Department*” means the department of human services.
2. “*Family*” means a family member and the parent or legal guardian of the family member.
3. “*Family member*” means a person less than eighteen years of age who by educational determination has a moderate, severe, or profound educational disability or special health care needs or who otherwise meets the definition of developmental disability in the federal Developmental Disabilities Act, section 102(5), as codified in 42 U.S.C. § 6001(5). The department shall adopt rules establishing procedures for determining whether a child has a developmental disability.
4. “*Legal guardian*” means a person appointed by a court to exercise powers over a family member.
5. “*Medical assistance*” means payment of all or part of the care authorized to be provided pursuant to chapter 249A.
6. “*Parent*” means a biological or adoptive parent.
7. “*Supplemental security income*” means financial assistance provided to individuals pursuant to Tit. XVI of the federal Social Security Act, 42 U.S.C. § 1381 – 1383c.

88 Acts, ch 1122, §2; 90 Acts, ch 1114, §1; 96 Acts, ch 1129, §113; 2009 Acts, ch 41, §89  
 Referred to in §225C.37

**225C.36 Family support subsidy program.**

A family support subsidy program is created as specified in this subchapter. The purpose of the family support subsidy program is to keep families together by defraying some of the special costs of caring for a family member at home. The department shall adopt rules to implement the purposes of this section and sections 225C.37 through 225C.42 which assure that families retain the greatest possible flexibility in determining appropriate use of the subsidy.

88 Acts, ch 1122, §3; 90 Acts, ch 1114, §2; 2009 Acts, ch 41, §90  
 Referred to in §225C.49

**225C.37 Program specifications rules.**

1. A parent or legal guardian of a family member may apply to the local office of the department for the family support subsidy program. The application shall include:
  - a. A statement that the family resides in a county of this state.

b. Verification that the family member meets the definitional requirements of section 225C.35, subsection 3. Along with the verification, the application shall identify an age when the family member's eligibility for the family support subsidy under such definitional requirements will end. The age identified is subject to approval by the department.

c. A statement that the family member resides, or is expected to reside, with the parent or legal guardian of the family member or, on a temporary basis, with another relative of the family member.

d. A statement that if the child receives medical assistance, then the family support subsidy shall only be used for the cost of a service which is not covered by medical assistance. The family may receive welfare assistance for which the family is eligible.

e. Verification that the net taxable income for the family for the calendar year immediately preceding the date of application did not exceed forty thousand dollars unless it can be verified that the estimated net taxable income for the family for the year in which the application is made will be less than forty thousand dollars.

2. Within the limits set by the appropriation for this purpose, the department shall approve or disapprove the application based on the family support services plan which identifies the needs of the child and the family and the eligibility criteria required to be included in the application under subsection 1, paragraphs "a" through "e", and shall notify the parent or legal guardian of the decision.

3. Effective July 1, 2010, the department shall not accept new applications for the family support subsidy program and shall not approve pending applications for the program. Subsidy termination or application denial relating to family members enrolled in the family support subsidy program as of July 1, 2010, is subject to section 225C.40.

88 Acts, ch 1122, §4; 90 Acts, ch 1039, §13; 90 Acts, ch 1114, §3; 2006 Acts, ch 1159, §11; 2009 Acts, ch 41, §263; 2010 Acts, ch 1031, §403

Referred to in §225C.36, 225C.40

### **225C.38 Payment — amount — reports.**

1. If an application for a family support subsidy is approved by the department:

a. A family support subsidy shall be paid to the parent or legal guardian on behalf of the family member. An approved subsidy shall be payable as of the first of the next month after the department approves the written application.

b. A family support subsidy shall be used to meet the special needs of the family. This subsidy is intended to complement but not supplant public assistance or social service benefits based on economic need, available through governmental programs or other means available to the family.

c. Except as provided in section 225C.41, a family support subsidy for a fiscal year shall be in an amount determined by the department. The parent or legal guardian receiving a family support subsidy may elect to receive a payment amount which is less than the amount determined in accordance with this paragraph.

2. The department shall administer the family support subsidy program and the payments made under the program as follows:

a. In each fiscal year, the department shall establish a figure for the number of family members for whom a family support subsidy shall be provided at any one time during the fiscal year. The figure shall be established by dividing the amount appropriated by the general assembly for family support subsidy payments during the fiscal year by the family support subsidy payment amount established in subsection 1, paragraph "c".

b. On or before July 15 in each fiscal year, the department shall approve the provision of a number of family support subsidies equal to the figure established in paragraph "a". During any thirty-day period, the number of family members for whom a family support subsidy is provided shall not be less than this figure.

c. Unless there are exceptional circumstances and the family requests and receives approval from the department for an exception to policy, a family is not eligible to receive the family support subsidy if any of the following are applicable to the family or the family member for whom the application was submitted:

(1) The family member is a special needs child who was adopted by the family and the family is receiving financial assistance under section 600.17.

(2) Medical assistance home and community-based waiver services are provided for the family member and the family lives in a county in which comprehensive family support program services are available.

(3) Medical assistance home and community-based waiver services are provided for the family member under a consumer choices option.

3. The parent or legal guardian who receives a family support subsidy shall report, in writing, the following information to the department:

a. Not less than annually, a statement that the family support subsidy was used to meet the special needs of the family.

b. The occurrence of any event listed in section 225C.40.

c. A request to terminate the family support subsidy.

88 Acts, ch 1122, §5; 91 Acts, ch 38, §2, 3; 98 Acts, ch 1218, §71; 2006 Acts, ch 1159, §12, 13, 29; 2013 Acts, ch 138, §86

Referred to in §225C.36, 225C.40  
Subsection 1, paragraph c amended

#### **225C.39 Subsidy payments not alienable.**

Family support subsidy payments shall not be alienable by action, including but not limited to, assignment, sale, garnishment, or execution, and in the event of bankruptcy shall not pass to or through a trustee or any other person acting on behalf of creditors.

88 Acts, ch 1122, §6

Referred to in §225C.36

#### **225C.40 Termination or denial of subsidy — hearing.**

1. The family support subsidy shall terminate if any of the following occur:

a. The family member dies.

b. The family no longer meets the eligibility criteria in section 225C.37.

c. The family member attains the age of eighteen years.

d. The family member is no longer eligible for special education pursuant to section 256B.9, subsection 1, paragraph “c” or “d”.

2. The family support subsidy may be terminated by the department if a report required by section 225C.38, subsection 3, is not timely made or a report required by section 225C.38, subsection 3, paragraph “a”, contains false information.

3. If an application for a family support subsidy is denied, the family member end-of-eligibility age identified in the application is not approved by the department, or a family support subsidy is terminated by the department, the parent or legal guardian of the affected family member may request, in writing, a hearing before an impartial hearing officer.

4. If a family appeals the termination of a family member who has attained the age of eighteen years, family support subsidy payments for that family member shall be withheld pending resolution of the appeal.

88 Acts, ch 1122, §7; 2006 Acts, ch 1159, §14; 2008 Acts, ch 1187, §114

Referred to in §225C.36, 225C.37, 225C.38

#### **225C.41 Appropriations.**

Family support subsidy payments shall be paid from funds appropriated by the general assembly for this purpose.

Notwithstanding section 8.33, funds remaining unexpended on June 30 of any fiscal year shall not revert to the general fund of the state but shall remain available to provide family support subsidy payments or to expand the comprehensive family support program in the succeeding fiscal year.

88 Acts, ch 1122, §8; 91 Acts, ch 38, §4; 2006 Acts, ch 1159, §15

Referred to in §225C.36, 225C.38

#### **225C.42 Annual evaluation of program.**

1. The department shall conduct an annual evaluation of the family support subsidy

program and shall submit the evaluation report with recommendations to the governor and general assembly. The report shall be submitted on or before October 30 and provide an evaluation of the latest completed fiscal year.

2. The evaluation content shall include but is not limited to all of the following items:

a. A statement of the number of children and families served by the program during the period and the number remaining on the waiting list at the end of the period.

b. A description of the children and family needs to which payments were applied.

c. An analysis of the extent to which payments enabled children to remain in their homes. The analysis shall include but is not limited to all of the following items concerning children affected by the payments: the number and percentage of children who remained with their families; the number and percentage of children who returned to their home from an out-of-home placement and the type of placement from which the children returned; and the number of children who received an out-of-home placement during the period and the type of placement.

d. An analysis of parent satisfaction with the program.

e. An analysis of efforts to encourage program participation by eligible families.

f. The results of a survey of families participating in the program in order to assess the adequacy of subsidy payment amounts and the degree of unmet need for services and supports.

3. The evaluation content may include any of the following items:

a. An overview of the reasons families voluntarily terminated participation in the family support subsidy program and the involvement of the department in offering suitable alternatives.

b. The geographic distribution of families receiving subsidy payments.

c. An overview of problems encountered by families in applying for the program, including obtaining documentation of eligibility.

88 Acts, ch 1122, §9; 91 Acts, ch 38, §5; 2004 Acts, ch 1116, §1, 2; 2005 Acts, ch 19, §36; 2006 Acts, ch 1159, §16, 28; 2013 Acts, ch 138, §87

Referred to in §225C.36  
Subsection 1 amended

**225C.43 and 225C.44** Reserved.

#### SUBCHAPTER IV

#### PUBLIC HOUSING UNIT

##### **225C.45 Public housing unit.**

1. The administrator may establish a public housing unit within a bureau of the division to apply for, receive, and administer federal assistance, grants, and other public or private funds for purposes related to providing housing.

2. In implementing the public housing unit, the division may do all of the following:

a. Prepare, implement, and operate housing projects and provide for the construction, improvement, extension, alteration, or repair of a housing project under the division's jurisdiction.

b. Develop and implement studies, conduct analyses, and engage in research concerning housing and housing needs. The information obtained from these activities shall be made available to the public and to the building, housing, and supply industries.

c. Cooperate with the Iowa finance authority and participate in any of the authority's programs. Use any funds obtained pursuant to subsection 1 to participate in the authority's programs. The division shall comply with rules adopted by the authority as the rules apply to the housing activities of the division.

3. In accepting contributions, grants, or other financial assistance from the federal government relating to a housing activity of the division, including construction, operation,

or maintenance, or in managing a housing project or undertaking constructed or owned by the federal government, the division may do any of the following:

a. Comply with federally required conditions or enter into contracts or agreements as may be necessary, convenient, or desirable.

b. Take any other action necessary or desirable in order to secure the financial aid or cooperation of the federal government.

c. Include in a contract with the federal government for financial assistance any provision which the federal government may require as a condition of the assistance that is consistent with the provisions of this section.

4. The division shall not proceed with a housing project pursuant to this section, unless both of the following conditions are met:

a. A study for a report which includes recommendations concerning the housing available within a community is publicly issued by the division. The study shall be included in the division's recommendations for a housing project.

b. The division's recommendations are approved by a majority of the city council or board of supervisors with jurisdiction over the geographic area affected by the recommendations.

5. Property acquired or held pursuant to this section is public property used for essential public purposes and is declared to be exempt from any tax or special assessment of the state or any state public body as defined in section 403A.2. In lieu of taxes on the property, the division may agree to make payments to the state or a state public body, including but not limited to the division, as the division finds necessary to maintain the purpose of providing low-cost housing in accordance with this section.

6. Any property owned or held by the division pursuant to this section is exempt from levy and sale by execution. An execution or other judicial process shall not be issued against the property and a judgment against the division shall not be a lien or charge against the property. However, the provisions of this subsection shall not apply to or limit the right of the federal government to pursue any remedies available under this section. The provisions of this subsection shall also not apply to or limit the right of an obligee to take either of the following actions:

a. Foreclose or otherwise enforce a mortgage or other security executed or issued pursuant to this section.

b. Pursue remedies for the enforcement of a pledge or lien on rents, fees, or revenues.

7. In any contract with the federal government to provide annual payments to the division, the division may obligate itself to convey to the federal government possession of or title to the housing project in the event of a substantial default as defined in the contract and with respect to the covenant or conditions to which the division is subject. The obligation shall be specifically enforceable and shall not constitute a mortgage. The contract may also provide that in the event of a conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the housing project and funds in accordance with the terms of the contract. However, the contract shall require that, as soon as is practicable after the federal government is satisfied that all defaults with respect to the housing project are cured and the housing project will be operated in accordance with the terms of the contract, the federal government shall reconvey the housing project to the division.

8. The division shall not undertake a housing project pursuant to this section until a public hearing has been held. At the hearing, the division shall notify the public of the proposed project's name, location, number of living units proposed, and approximate cost. Notice of the public hearing shall be published at least once in a newspaper of general circulation at least fifteen days prior to the date set for the hearing.

92 Acts, ch 1128, §2; 94 Acts, ch 1170, §21; 95 Acts, ch 82, §3

Referred to in §225C.4

SUBCHAPTER V  
FAMILY SUPPORT SERVICES

Legislative findings, 94 Acts, ch 1041, §1

**225C.46 Personal assistance services program.** Repealed by 2006 Acts, ch 1159, § 27.

**225C.47 Comprehensive family support program.**

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

a. (1) “Family” means a group of interdependent persons living in the same household. A family consists of an individual with a disability and any of the following:

- (a) The individual’s parent.
- (b) The individual’s sibling.
- (c) The individual’s grandparent, aunt, or uncle.
- (d) The individual’s legal custodian.

(e) A person who is providing short-term foster care to the individual subject to a case permanency plan which provides for reunification between the individual and the individual’s parent.

(2) “Family” does not include a person who is employed to provide services to an individual with a disability in an out-of-home setting, including but not limited to a hospital, nursing facility, personal care home, board and care home, group foster care home, or other institutional setting.

b. “Individual with a disability” means an individual who is less than twenty-two years of age and meets the definition of developmental disability in 42 U.S.C. § 6001.

c. “Services and support” means services or other assistance intended to enable an individual with a disability to control the individual’s environment, to remain living with the individual’s family, to function more independently, and to increase the integration of the individual into the individual’s community. Services and support may include but are not limited to funding for purchase of equipment, respite care, supplies, assistive technology, and payment of other costs attributable to the individual’s disability which are identified by the individual’s family.

2. A comprehensive family support program is created in the department of human services to provide a statewide system of services and support to eligible families. The program shall be implemented in a manner which enables a family member of an individual with a disability to identify the services and support needed to enable the individual to reside with the individual’s family, to function more independently, and to increase the individual’s integration into the community.

3. Eligibility for the comprehensive family support program is limited to families who meet all the following conditions:

- a. The family resides in the state of Iowa.
- b. The family includes an individual with a disability.
- c. The family expresses an intent for the family member who is an individual with a disability to remain living in the family’s home.
- d. The family’s taxable income is less than sixty thousand dollars in the most recently completed tax year.

4. A family may apply to the department or to a family support center developed pursuant to this section for assistance under the comprehensive family support program. The department or family support center shall determine eligibility for the program in accordance with the provisions of this section.

5. The department shall design the program. The department shall adopt rules to implement the program which provide for all of the following:

a. (1) An application process incorporating the eligibility determination processes of other disability services programs to the extent possible.

(2) Eligible families maintain control of decisions which affect the families’ children who are individuals with a disability.

b. (1) Existing local agencies are utilized to provide facilities and a single entry point for comprehensive family support program applicants.

(2) Services and support are provided in a timely manner and emergency access to needed services and support is provided.

c. Technical assistance is provided to service and support providers and users.

d. State, regional, and local media are utilized to publicize the family support program.

e. A process is available to appeal the department's or family support center's decisions involving families that apply for the comprehensive family support program and are denied services and support under the comprehensive family support program. The department shall make reasonable efforts to utilize telecommunications so that a family initiating an appeal may complete the appeal process in the family's local geographic area.

f. (1) Identification of the services and support and service provider components included in the comprehensive family support program.

(2) Upon request by a family member, provision of assistance in locating a service provider.

g. Identification of payment for services and support directly to families, by voucher, or by other appropriate means to maintain family control over decision making.

h. Implementation of the program in accordance with the funding appropriated for the program.

i. The utilization of a voucher system for payment provisions for the family support center component of the program developed under subsection 7.

6. Services and support provided under the comprehensive family support program shall not be used to supplant other services and support available to a family of an individual with disabilities but shall be used to meet family needs that would not be met without the program.

7. The comprehensive family support program shall include a family support center component developed by the department in accordance with this subsection. Under the component, a family member of an individual with a disability shall be assisted by a family support center in identifying the services and support to be provided to the family under the family support subsidy program or the comprehensive family support program. The identification of services and support shall be based upon the specific needs of the individual and the individual's family which are not met by other service programs available to the individual and the individual's family.

94 Acts, ch 1041, §3; 96 Acts, ch 1084, §1 – 5; 2006 Acts, ch 1159, §17 – 21; 2013 Acts, ch 138, §88

Referred to in §225C.49

Subsection 5, unnumbered paragraph 1 amended

**225C.48 Comprehensive family support council.** Repealed by 2013 Acts, ch 138, § 105.

**225C.49 Departmental duties concerning services to individuals with a disability.**

1. The department shall provide coordination of the programs administered by the department which serve individuals with a disability and the individuals' families, including but not limited to the following juvenile justice and child welfare services: family-centered services described under section 232.102, decategorization of child welfare funding provided for under section 232.188, and foster care services paid under section 234.35, subsection 3. The department shall regularly review administrative rules associated with such programs and make recommendations to the council on human services, governor, and general assembly for revisions to remove barriers to the programs for individuals with a disability and the individuals' families including the following:

a. Eligibility prerequisites which require declaring the individual at risk of abuse, neglect, or out-of-home placement.

b. Time limits on services which restrict addressing ongoing needs of individuals with a disability and their families.

2. The department shall coordinate the department's programs and funding utilized by individuals with a disability and their families with other state and local programs and funding directed to individuals with a disability and their families.

3. In implementing the provisions of this section, the department shall do all of the following:

a. Compile information concerning services and other support available to individuals with a disability and their families. Make the information available to individuals with a disability and their families and department staff.

b. Utilize internal training resources or contract for additional training of staff concerning the information under paragraph “a” and training of families and individuals as necessary to implement the family support subsidy and comprehensive family support programs under this chapter.

4. The department shall designate one individual whose sole duties are to provide central coordination of the programs under sections 225C.36 and 225C.47 and to oversee development and implementation of the programs.

96 Acts, ch 1084, §7; 2006 Acts, ch 1159, §23, 24; 2007 Acts, ch 172, §8; 2013 Acts, ch 138, §89

Subsection 4 amended

**225C.50** Reserved.

SUBCHAPTER VI  
MENTAL HEALTH SERVICES  
SYSTEM FOR CHILDREN  
AND YOUTH

**225C.51 Definitions.**

For the purposes of this subchapter:

1. “*Child*” or “*children*” means a person or persons under eighteen years of age.  
2. “*Children’s system*” or “*mental health services system for children and youth*” means the mental health services system for children and youth implemented pursuant to this subchapter.

3. “*Functional impairment*” means difficulties that substantially interfere with or limit a person from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills and that substantially interfere with or limit the person’s role or functioning in family, school, or community activities. “*Functional impairment*” includes difficulties of episodic, recurrent, and continuous duration. “*Functional impairment*” does not include difficulties resulting from temporary and expected responses to stressful events in a person’s environment.

4. “*Other qualifying mental health disorder*” means a mental health crisis or any diagnosable mental health disorder that is likely to lead to mental health crisis unless there is an intervention.

5. “*Serious emotional disturbance*” means a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the most current diagnostic and statistical manual of mental disorders published by the American psychiatric association that results in a functional impairment. “*Serious emotional disturbance*” does not include substance use and developmental disorders unless such disorders co-occur with such a diagnosable mental, behavioral, or emotional disorder.

6. “*Youth*” means a person eighteen years of age or older but under twenty-two years of age who met the criteria for having a serious emotional disturbance prior to the age of eighteen.

2008 Acts, ch 1187, §53; 2009 Acts, ch 41, §91, 92

**225C.52 Mental health services system for children and youth — purpose.**

1. Establishing a comprehensive community-based mental health services system for children and youth is part of fulfilling the requirements of the division and the commission to facilitate a comprehensive, continuous, and integrated state mental health and disability

services plan in accordance with sections 225C.4, 225C.6, and 225C.6A, and other provisions of this chapter. The purpose of establishing the children's system is to improve access for children and youth with serious emotional disturbances and youth with other qualifying mental health disorders to mental health treatment, services, and other support in the least restrictive setting possible so the children and youth can live with their families and remain in their communities. The children's system is also intended to meet the needs of children and youth who have mental health disorders that co-occur with substance abuse, intellectual disability, developmental disabilities, or other disabilities. The children's system shall emphasize community-level collaborative efforts between children and youth and the families and the state's systems of education, child welfare, juvenile justice, health care, substance abuse, and mental health.

2. The goals and outcomes desired for the children's system shall include but are not limited to all of the following:

- a. Identifying the mental health needs of children and youth.
- b. Performing comprehensive assessments of children and youth that are designed to identify functional skills, strengths, and services needed.
- c. Providing timely access to available treatment, services, and other support.
- d. Offering information and referral services to families to address service needs other than mental health.
- e. Improving access to needed mental health services by allowing children and youth to be served with their families in the community.
- f. Preventing or reducing utilization of more costly, restrictive care by reducing the unnecessary involvement of children and youth who have mental health needs and their families with law enforcement, the corrections system, and detention, juvenile justice, and other legal proceedings; reducing the involvement of children and youth with child welfare services or state custody; and reducing the placement of children and youth in the state juvenile institutions, state mental health institutes, or other public or private residential psychiatric facilities.
- g. Increasing the number of children and youth assessed for functional skill levels.
- h. Increasing the capacity to develop individualized, strengths-based, and integrated treatment plans for children, youth, and families.
- i. Promoting communications with caregivers and others about the needs of children, youth, and families engaged in the children's system.
- j. Developing the ability to aggregate data and information, and to evaluate program, service, and system efficacy for children, youth, and families being served on a local and statewide basis.
- k. Implementing and utilizing outcome measures that are consistent with but not limited to the national outcomes measures identified by the substance abuse and mental health services administration of the United States department of health and human services.
- l. Identifying children and youth whose mental health or emotional condition, whether chronic or acute, represents a danger to themselves, their families, school students or staff, or the community.

2008 Acts, ch 1187, §54; 2010 Acts, ch 1031, §380; 2012 Acts, ch 1019, §74

**225C.53 Role of department and division — transition to adult system.**

1. The department is the lead agency responsible for the development, implementation, oversight, and management of the mental health services system for children and youth in accordance with this chapter. The department's responsibilities shall be fulfilled by the division.

2. The division's responsibilities relating to the children's system include but are not limited to all of the following:

- a. Ensuring that the rules adopted for the children's system provide that, within the limits of appropriations for the children's system, children and youth shall not be inappropriately denied necessary mental health services.
- b. Establishing standards for the provision of home and community-based mental health treatment, services, and other support under the children's system.

c. Identifying and implementing eligibility criteria for the treatment, services, and other support available under the children’s system.

d. Ongoing implementation of recommendations identified through children’s system improvement efforts.

3. An adult person who met the criteria for having a serious emotional disturbance prior to the age of eighteen may qualify to continue services through the adult mental health system. 2008 Acts, ch 1187, §55

**225C.54 Mental health services system for children and youth — initial implementation.**

1. The mental health services system for children and youth shall be initially implemented by the division commencing with the fiscal year beginning July 1, 2008. The division shall begin implementation by utilizing a competitive bidding process to allocate state block grants to develop services through existing community mental health centers, providers approved in a waiver adopted by the commission to provide services to a county in lieu of a community mental health center, and other local service partners. The implementation shall be limited to the extent of the appropriations provided for the children’s system.

2. In order to maximize federal financial participation in the children’s system, the division and the department’s Medicaid program staff shall analyze the feasibility of leveraging existing Medicaid options, such as expanding the home and community-based services waiver for children’s mental health services, reviewing the feasibility of implementing other Medicaid options such as the federal Tax Equity and Financial Responsibility Act of 1982 (TEFRA) option for children with severe mental illness or emotional disturbance and Medicaid administrative funding, and determining the need for service enhancements through revisions to the Medicaid state plan and the federal state children’s health insurance program and the healthy and well kids in Iowa program.

3. Initial block grants shall support a wide range of children, youth, and family services and initiatives including but not limited to school-based mental health projects, system reviews providing service gap analysis, status studies of the mental health needs of children and youth in representative areas of the state, and mental health assessment capacity development based in public and nonpublic schools and clinical settings using standard functional assessment tools. The purpose of developing the assessment capacity is to determine children’s and youths’ degree of impairment in daily functioning due to emotional, behavioral, psychological, psychiatric, or substance use problems.

4. The initial block grants may also support an array of programs and services including but not limited to mobile crisis intervention services, or other support intended to prevent more intensive or inpatient interventions, skills training, intensive care coordination, and cognitive-behavioral and multisystemic family therapy. In addition, support may be provided for prevention-oriented services including mental health consultations regarding home visits, child welfare, juvenile justice, and maternal and child health services, and consultation for preschool programs.

5. The division shall report regularly to the commission, general assembly, and governor concerning the implementation status of the children’s system, including but not limited to an annual report submitted each January. The report may address funding requirements and statutory amendments necessary to further develop the children’s system.

2008 Acts, ch 1187, §56

Appropriation of funds for implementation of system beginning January 1, 2009; 2008 Acts, ch 1187, §9; 2009 Acts, ch 182, §72, 87

**CHAPTER 225D**

**AUTISM SUPPORT PROGRAM**

225D.1 Definitions.

225D.2 Autism support program — fund.

**225D.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “*Applied behavioral analysis*” means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function, including the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.

2. “*Autism*” means autism spectrum disorders as defined in section 514C.28.

3. “*Autism service provider*” means a person providing applied behavioral analysis, who meets all of the following criteria:

a. Is certified as a behavior analyst by the behavior analyst certification board or is a health professional licensed under chapter 147.

b. Is approved as a member of the provider network by the department.

4. “*Autism support fund*” or “*fund*” means the autism support fund created in section 225D.2.

5. “*Clinically relevant*” means medically necessary and resulting in the development, maintenance, or restoration, to the maximum extent practicable, of the functioning of an individual.

6. “*Department*” means the department of human services.

7. “*Diagnostic assessment of autism*” means medically necessary assessment, evaluations, or tests performed by a licensed child psychiatrist, developmental pediatrician, or clinical psychologist.

8. “*Eligible individual*” means a child less than nine years of age who has been diagnosed with autism based on a diagnostic assessment of autism, is not otherwise eligible for coverage for applied behavioral analysis treatment under the medical assistance program, section 514C.28, or private insurance coverage, and whose household income does not exceed four hundred percent of the federal poverty level.

9. “*Federal poverty level*” means the most recently revised poverty income guidelines published by the United States department of health and human services.

10. “*Household income*” means household income as determined using the modified adjusted gross income methodology pursuant to section 2002 of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

11. “*Medical assistance*” or “*Medicaid*” means assistance provided under the medical assistance program pursuant to chapter 249A.

12. “*Regional autism assistance program*” means the regional autism assistance program created in section 256.35.

13. “*Treatment plan*” means a plan for the treatment of autism developed by a licensed physician or licensed psychologist pursuant to a comprehensive evaluation or reevaluation performed in consultation with the patient and the patient’s representative.

2013 Acts, ch 138, §82, 85

NEW section

#### **225D.2 Autism support program — fund.**

1. The department shall implement an autism support program beginning January 1, 2014, to provide payment for the provision of applied behavioral analysis treatment for eligible individuals. The department shall adopt rules, including standards and guidelines pursuant to chapter 17A to implement and administer the program. In adopting the rules, standards, and guidelines for the program, the department shall consult with and incorporate the recommendations of an expert panel convened by the regional autism assistance program to provide expert opinion on clinically relevant practices and guidance on program implementation and administration. The expert panel shall consist of families of individuals with autism; educational, medical, and human services specialists, professionals, and providers; and others with interest in or expertise related to autism. The program shall be implemented and administered in a manner so that payment for services is available throughout the state, including in rural and under-resourced areas.

2. At a minimum, the rules, standards, and guidelines for the program shall address all of the following:

a. A maximum annual benefit amount for an eligible individual of thirty-six thousand dollars.

b. A maximum of twenty-four months of applied behavioral analysis treatment.

c. Notwithstanding the age limitation for an eligible individual, a provision that if an eligible individual reaches nine years of age prior to completion of the maximum applied behavioral analysis treatment period specified in paragraph "b", the individual may complete such treatment in accordance with the individual's treatment plan, not to exceed the maximum treatment period.

d. A graduated schedule for cost-sharing by an eligible individual based on a percentage of the total benefit amount expended for the eligible individual, annually. Cost-sharing shall be applicable to eligible individuals with household incomes at or above two hundred percent of the federal poverty level in incrementally increased amounts up to a maximum of ten percent. The rules shall provide a financial hardship exemption from payment of the cost-sharing based on criteria established by rule of the department.

e. Application, approval, compliance, and appeal processes for eligible individuals as necessary to operate and manage the program.

f. Enrollment, renewal, and reimbursement of claims provisions for autism service providers participating in the program.

g. A requirement of family engagement and participation as part of the eligible individual's treatment plan.

h. A requirement that the autism service provider coordinate interventions with the school in which the eligible individual is enrolled.

i. A requirement that the administrator of the program utilize the regional autism assistance program to coordinate interventions between eligible individuals and their families receiving support through the autism support program with appropriate medical, educational, and treatment providers, including integrated health homes. The regional autism assistance program shall provide for family navigation and coordination and integration of services through the statewide system of regional child health specialty clinics, utilizing the community child health team model. As necessitated by the availability of resources in the community where services are delivered, telehealth may be used in delivering and coordinating interventions with appropriate providers. To the extent available and accessible to an eligible individual, the eligible individual shall be enrolled in an integrated health home that is an approved provider enrolled in the medical assistance program. Health home services that are covered services under the medical assistance program shall be reimbursed under the autism support program at rates consistent with those established under the medical assistance program.

j. Requirements related to review of treatment plans, which may require review once every six months, subject to utilization review requirements established by rule. A more or less frequent review may be agreed upon by the eligible individual and the licensed physician or licensed psychologist developing the treatment plan.

k. Recognition of the results of a diagnostic assessment of autism as valid for a period of not less than twelve months, unless a licensed physician or licensed psychologist determines that a more frequent assessment is necessary.

3. Moneys in the autism support fund created under subsection 5 shall be expended only for eligible individuals who are not eligible for coverage for applied behavioral analysis treatment under the medical assistance program, section 514C.28, or private insurance. Payment for applied behavioral analysis treatment through the fund shall be limited to only applied behavioral analysis treatment that is clinically relevant and only to the extent approved under the guidelines established by rule of the department.

4. This section shall not be construed as granting an entitlement for any program, service, or other support for eligible individuals. Any state obligation to provide a program, service, or other support pursuant to this section is limited to the extent of the funds appropriated for the purposes of the program. The department may establish a waiting list or terminate participation of eligible individuals if the department determines that moneys in the autism support fund are insufficient to cover future claims for reimbursement beyond ninety days.

5. a. An autism support fund is created in the state treasury under the authority of the

department. Moneys appropriated to and all other moneys specified for deposit in the fund shall be deposited in the fund and used for the purposes of the program.

b. The department shall adopt rules pursuant to chapter 17A to administer the fund and reimbursements made from the fund.

c. Moneys in the fund are appropriated to the department and shall be used by the department for the purposes of the autism support program. The department shall be the administrator of the fund for auditing purposes.

d. The department shall submit an annual report to the governor and the general assembly no later than January 1 of each year that includes but is not limited to all of the following:

(1) The total number of applications received under the program for the immediately preceding fiscal year.

(2) The number of applications approved and the total amount of funding expended for reimbursements under the program in the immediately preceding fiscal year.

(3) The cost of administering the program in the immediately preceding fiscal year.

(4) The number of eligible individuals on a waiting list, if any, and the amount of funding necessary to reduce the existing waiting list.

(5) Recommendations for any changes to the program.

2013 Acts, ch 138, §83, 85

Referred to in §225D.1  
 Partial item veto applied  
 NEW section

## CHAPTER 226

### STATE MENTAL HEALTH INSTITUTES

Referred to in §21.5, 125.2, 225C.6, 229.1, 229.38, 229.42, 252.16, 476B.1

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		226.34	Investigation of death — notice.
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PATIENTS' PERSONAL FUNDS

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226.47 Administrator defined.

## GENERAL PROVISIONS

**226.1 Official designation.**

1. The state hospitals for persons with mental illness shall be designated as follows:
  - a. Mental Health Institute, Mount Pleasant, Iowa.
  - b. Mental Health Institute, Independence, Iowa.
  - c. Mental Health Institute, Clarinda, Iowa.
  - d. Mental Health Institute, Cherokee, Iowa.
2. a. The purpose of the mental health institutes is to operate as regional resource centers providing one or more of the following:
  - (1) Treatment, training, care, habilitation, and support of persons with mental illness or a substance abuse problem.
  - (2) Facilities, services, and other support to the communities located in the region being served by a mental health institute so as to maximize the usefulness of the mental health institutes while minimizing overall costs.
  - (3) A unit for the civil commitment of sexually violent predators committed to the custody of the director of human services pursuant to chapter 229A.
    - b. In addition, the mental health institutes are encouraged to act as a training resource for community-based program staff, medical students, and other participants in professional education programs.
3. A mental health institute may request the approval of the council on human services to change the name of the institution for use in communication with the public, in signage, and in other forms of communication.

[R60, §1471; C73, §1383; C97, §2253; S13, §2253-a; C24, 27, 31, 35, 39, §3483; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.1]

96 Acts, ch 1129, §113; 98 Acts, ch 1155, §10; 2001 Acts, 2nd Ex, ch 6, §33, 37; 2009 Acts, ch 41, §263

Referred to in §230.20

Unit for civil commitment of sexually violent predators located at the mental health institute at Cherokee; 2002 Acts, 2nd Ex, ch 1003, §131

**226.2 Qualifications of superintendent.**

The superintendent of each institute must be qualified by experience and training in the administration of human service programs. A physician shall not serve as both superintendent and business manager. A hospital administrator or other person qualified in business management appointed superintendent may also be designated to perform the duties of business manager without additional compensation. A physician appointed superintendent shall be designated clinical director and shall perform the duties imposed on the superintendent by section 226.6, subsection 1, and such other duties of the superintendent as must by their nature be performed by a physician.

[R60, §1430, 1474; C73, §1386, 1391; C97, §2255, 2258; C24, 27, 31, 35, 39, §3484; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.2; 81 Acts, ch 79, §1]

**226.3 Assistant physicians.**

The assistant physicians shall be of such character and qualifications as to be able to perform the ordinary duties of the superintendent during the superintendent's absence or inability to act.

[R60, §1432; C73, §1394; C97, §2260; C24, 27, 31, 35, 39, §3485; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.3]

**226.4 Salary of superintendent.**

The salary of the superintendent of each hospital shall be determined by the administrator. [R60, §1469, 1496; C97, §2258; C24, 27, 31, 35, 39, §3486; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.4]  
Administrator, §226.47

**226.5 Superintendent as witness.**

The superintendents and assistant physicians of said hospitals, when called as witnesses in any court, shall be paid the same mileage which other witnesses are paid and in addition thereto shall be paid a fee of twenty-five dollars per day, said fee to revert to the support fund of the hospital the superintendent or assistant physician serves.

[C73, §1429; C97, §2293; C24, 27, 31, 35, 39, §3487; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.5]  
Mileage, §622.69

**226.6 Duties of superintendent.**

The superintendent shall:

1. Have the control of the medical, mental, moral, and dietetic treatment of the patients in the superintendent's custody subject to the approval of the administrator.
2. Require all subordinate officers and employees to perform their respective duties.
3. Have an official seal with the name of the hospital and the word "Iowa" thereon and affix the same to all notices, orders of discharge, or other papers required to be given by the superintendent.
4. Keep proper books in which shall be entered all moneys and supplies received on account of any patient and a detailed account of the disposition of the same.

[R60, §1430, 1431; C73, §1391, 1393, 1430; C97, §2258, 2294; C24, 27, 31, 35, 39, §3488; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.6]  
Referred to in §226.2

**226.7 Order of receiving patients.**

1. a. Preference in the reception of patients into said hospitals shall be exercised in the following order:

- (1) Cases of less duration than one year.
- (2) Chronic cases, where the disease is of more than one-year duration, presenting the most favorable prospect for recovery.
- (3) Those for whom application has been longest on file, other things being equal.

b. Where cases are equally meritorious in all other respects, the indigent shall have the preference.

2. If the district court commits a patient to a state mental health institute and a bed for the patient is not available, the institute shall assist the court in locating an alternative placement for the patient.

[R60, §1438; C73, §1422; C97, §2286; C24, 27, 31, 35, 39, §3489; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.7]  
92 Acts, ch 1241, §69; 2009 Acts, ch 41, §263

**226.8 Persons with an intellectual disability not receivable — exception.**

A person who has an intellectual disability, as defined in section 4.1, shall not be admitted, or transferred pursuant to section 222.7, to a state mental health institute unless a professional diagnostic evaluation indicates that such person will benefit from psychiatric treatment or from some other specific program available at the mental health institute to which it is proposed to admit or transfer the person. Charges for the care of any person with an intellectual disability admitted to a state mental health institute shall be made by the institute in the manner provided by chapter 230, but the liability of any other person

to any county for the cost of care of such person with an intellectual disability shall be as prescribed by section 222.78.

[R60, §1468, 1491; C73, §1434; C97, §2298; C24, 27, 31, 35, 39, §3490; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.8]

96 Acts, ch 1129, §113; 2012 Acts, ch 1019, §75

#### **226.9 Custody of patient.**

The superintendent, upon the receipt of a duly executed order of admission of a patient into the hospital for persons with mental illness, pursuant to section 229.13, shall take such patient into custody and restrain the patient as provided by law and the rules of the administrator, without liability on the part of such superintendent and all other officers of the hospital to prosecution of any kind on account thereof, but no person shall be detained in the hospital who is found by the superintendent to be in good mental health.

[C73, §1411; C97, §2278; C24, 27, 31, 35, 39, §3491; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.9]

96 Acts, ch 1129, §113

#### **226.9A Custody of juvenile patients.**

Effective January 1, 1991, a juvenile who is committed to a state mental health institute shall not be placed in a secure ward with adults.

89 Acts, ch 283, §21

#### **226.9B Net general fund appropriation — psychiatric medical institution for children.**

1. The psychiatric medical institution for children beds operated by the state at the state mental health institute at Independence, as authorized in section 135H.6, shall operate on the basis of a net appropriation from the general fund of the state. The allocation made by the department from the annual appropriation to the state mental health institute at Independence for the purposes of the beds shall be the net amount of state moneys projected to be needed for the beds for the fiscal year of the appropriation.

2. Revenues received that are attributed to the psychiatric medical institution for children beds during a fiscal year shall be credited to the mental health institute's account and shall be considered repayment receipts as defined in section 8.2, including but not limited to all of the following:

- a. The federal share of medical assistance program revenue received under chapter 249A.
- b. Moneys received through client financial participation.
- c. Other revenues directly attributable to the psychiatric medical institution for children beds.

2005 Acts, ch 175, §95

#### **226.9C Net general fund appropriation — dual diagnosis program.**

1. The state mental health institute at Mount Pleasant shall operate the dual diagnosis mental health and substance-related disorder treatment program on a net budgeting basis in which fifty percent of the actual per diem and ancillary services costs are chargeable to the patient's county of residence or as a state case, as appropriate. Subject to the approval of the department, revenues attributable to the dual diagnosis program for each fiscal year shall be deposited in the mental health institute's account and are appropriated to the department for the dual diagnosis program, including but not limited to all of the following revenues:

- a. Moneys received by the state from billings to counties under section 230.20.
- b. Moneys received from billings to the Medicare program.
- c. Moneys received from a managed care contractor providing services under contract with the department or any private third-party payor.
- d. Moneys received through client participation.
- e. Any other revenues directly attributable to the dual diagnosis program.

2. The following additional provisions are applicable in regard to the dual diagnosis program:

- a. A county may split the charges between the county's mental health, intellectual

disability, and developmental disabilities services fund\* created pursuant to section 331.424A and the county's budget for substance abuse expenditures.

b. If an individual is committed to the custody of the department of corrections at the time the individual is referred for dual diagnosis treatment, the department of corrections shall be charged for the costs of treatment.

c. (1) Prior to an individual's admission for dual diagnosis treatment, the individual shall have been prescreened. The person performing the prescreening shall be either the mental health professional, as defined in section 228.1, who is contracting with the county central point of coordination process\*\* to provide the prescreening or a mental health professional with the requisite qualifications. A mental health professional with the requisite qualifications shall meet all of the following qualifications: is a mental health professional as defined in section 228.1, is an alcohol and drug counselor certified by the nongovernmental Iowa board of substance abuse certification, and is employed by or providing services for a facility, as defined in section 125.2.

(2) Prior to an individual's admission for dual diagnosis treatment, the individual shall have been screened through a county's central point of coordination process implemented pursuant to section 331.440\*\* to determine the appropriateness of the treatment.

d. A county shall not be chargeable for the costs of treatment for an individual enrolled in and authorized by or decertified by a managed behavioral care plan under the medical assistance program.

e. Notwithstanding section 8.33, state mental health institute revenues related to the dual diagnosis program that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available up to the amount which would allow the state mental health institute to meet credit obligations owed to counties as a result of year-end per diem adjustments for the dual diagnosis program.

2005 Acts, ch 175, §96; 2011 Acts, ch 121, §51, 62; 2012 Acts, ch 1019, §76; 2012 Acts, ch 1021, §49; 2012 Acts, ch 1120, §97, 130

\*Mental health and disability services fund probably intended; corrective legislation is pending

\*\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

2012 amendment to subsection 1, unnumbered paragraph 1, takes effect July 1, 2013; 2012 Acts, ch 1120, §130 Subsection 1, unnumbered paragraph 1 amended

### **226.10 Equal treatment.**

The patients of the state mental health institutes, according to their different conditions of mind and body, and their respective needs, shall be provided for and treated with equal care. If in addition to mental illness a patient has a co-occurring intellectual disability, brain injury, or substance abuse disorder, the care provided shall also address the co-occurring needs.

[C73, §1420; C97, §2284; C24, 27, 31, 35, 39, §3492; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.10]

2012 Acts, ch 1120, §64

### **226.11 Special care permitted.**

Patients may have such special care as may be agreed upon with the superintendent, if the friends or relatives of the patient will pay the expense thereof. Charges for such special care and attendance shall be paid quarterly in advance.

[C73, §1420, 1421; C97, §2284, 2285; C24, 27, 31, 35, 39, §3493; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.11]

### **226.12 Monthly reports.**

The administrator shall assure that the superintendent of each institute provides monthly reports concerning the programmatic, environmental, and fiscal condition of the institute. The administrator or the administrator's designee shall periodically visit each institute to validate the information.

[C73, §1435, 1441; C97, §2299; SS15, §2727-a11; C24, 27, 31, 35, 39, §3494; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.12]

91 Acts, ch 38, §6

**226.13 Patients allowed to write.**

The name and address of the administrator shall be kept posted in every ward in each hospital. Every patient shall be allowed to write once a week what the patient pleases to said administrator and to any other person. The superintendent may send letters addressed to other parties to the administrator for inspection before forwarding them to the individual addressed.

[C73, §1436; C97, §2300; C24, 27, 31, 35, 39, §3495; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.13]

**226.14 Writing material.**

Every patient shall be furnished by the superintendent or party having charge of such person, at least once in each week, with suitable materials for writing, enclosing, sealing, and mailing letters, if the patient requests and uses the same.

[C73, §1437; C97, §2301; C24, 27, 31, 35, 39, §3496; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.14]

**226.15 Letters to administrator.**

The superintendent or other officer in charge of a patient shall, without reading the same, receive all letters addressed to the administrator, if so requested, and shall properly mail the same, and deliver to such patient all letters or other writings addressed to the patient. Letters written to the person so confined may be examined by the superintendent, and if, in the superintendent's opinion, the delivery of such letters would be injurious to the person so confined, the superintendent shall return the letters to the writer with the superintendent's reasons for not delivering them.

[C73, §1438; C97, §2302; C24, 27, 31, 35, 39, §3497; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.15]

**226.16 Unauthorized departure and retaking.**

It shall be the duty of the superintendent and of all other officers and employees of any of said hospitals, in case of the unauthorized departure of any involuntarily hospitalized patient, to exercise all due diligence to take into protective custody and return said patient to the hospital. A notification by the superintendent of such unauthorized departure to any peace officer of the state or to any private person shall be sufficient authority to such officer or person to take and return such patient to the hospital.

[R60, §1445; C73, §1423; C97, §2287; S13, §2287; C24, 27, 31, 35, 39, §3498; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.16]

**226.17 Expense attending retaking.**

All actual and necessary expenses incurred in the taking into protective custody, restraint, and return to the hospital of the patient shall be paid on itemized vouchers, sworn to by the claimants and approved by the business manager and the administrator, from any money in the state treasury not otherwise appropriated.

[R60, §1445; C73, §1423; C97, §2287; S13, §2287; C24, 27, 31, 35, 39, §3499; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.17]

**226.18 Investigation as to mental health.**

The administrator may investigate the mental condition of any patient and shall discharge any person, if, in the administrator's opinion, such person is not mentally ill, or can be cared for after such discharge without danger to others, and with benefit to the patient; but in determining whether such patient shall be discharged, the recommendation of the superintendent shall be secured. If the administrator orders the discharge of an involuntarily hospitalized patient, the discharge shall be by the procedure prescribed in section 229.16. The power to investigate the mental condition of a patient is merely permissive, and does

not repeal or alter any statute respecting the discharge or commitment of patients of the state hospitals.

[S13, §2727-a25; C24, 27, 31, 35, 39, §3500; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.18]

**226.19 Discharge — certificate.**

1. Every patient shall be discharged in accordance with the procedure prescribed in section 229.3 or section 229.16, whichever is applicable, immediately on regaining the patient's good mental health.

2. If a patient's care is the financial responsibility of the state or a county, as part of the patient's discharge planning the state mental health institute shall provide assistance to the patient in obtaining eligibility for the federal state supplemental security income program.

[R60, §1485; C73, §1424; C97, §2288; C24, 27, 31, 35, 39, §3501; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.19]

2005 Acts, ch 175, §97; 2006 Acts, ch 1010, §68

**226.20 and 226.21** Repealed by 75 Acts, ch 139, § 82.

**226.22 Clothing furnished.**

Upon such discharge the business manager shall furnish such person, unless otherwise supplied, with suitable clothing and a sum of money not exceeding twenty dollars, which shall be charged with the other expenses of such patient in the hospital.

[R60, §1485; C73, §1424; C97, §2288; C24, 27, 31, 35, 39, §3504; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.22]

**226.23 Convalescent leave of patients.**

Upon the recommendation of the superintendent and in accordance with section 229.15, subsection 5, in the case of an involuntary patient, the administrator may place on convalescent leave said patient for a period not to exceed one year, under such conditions as are prescribed by said administrator.

[C73, §1424; C97, §2288; C24, 27, 31, 35, 39, §3505; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.23]

**226.24 and 226.25** Repealed by 75 Acts, ch 139, § 82.

**226.26 Dangerous patients.**

The administrator, on the recommendation of the superintendent, and on the application of the relatives or friends of a patient who is not cured and who cannot be safely allowed to go at liberty, may release the patient when fully satisfied that the relatives or friends will provide and maintain all necessary supervision, care, and restraint over the patient. If the patient being released was involuntarily hospitalized, the consent of the district court which ordered the patient's hospitalization placement shall be obtained in advance in substantially the manner prescribed by section 229.14.

[R60, §1482; C73, §1408; C97, §2276; C24, 27, 31, 35, 39, §3508; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.26]

2001 Acts, ch 155, §42

**226.27 Patient accused or acquitted of crime or awaiting judgment.**

If a patient was committed to a state hospital for evaluation or treatment under chapter 812 or the rules of criminal procedure, further proceedings shall be had under chapter 812 or the applicable rule when the evaluation has been completed or the patient has regained mental capacity, as the case may be.

[R60, §1460; C73, §1413; C97, §2280; C24, 27, 31, 35, 39, §3509; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.27]

84 Acts, ch 1323, §1

**226.28 and 226.29** Repealed by 84 Acts, ch 1323, § 7.

**226.30 Transfer of dangerous patients.**

When a patient of any hospital for persons with mental illness becomes incorrigible, and unmanageable to such an extent that the patient is dangerous to the safety of others in the hospital, the administrator may apply in writing to the district court or to any judge thereof, of the county in which the hospital is situated, for an order to transfer the patient to the Iowa medical and classification center and if the order is granted the patient shall be so transferred. The county attorney of the county shall appear in support of the application on behalf of the administrator.

[C24, 27, 31, 35, 39, §3512; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.30; 82 Acts, ch 1100, §6]

96 Acts, ch 1129, §113

Referred to in §226.31, 331.756(45)

See also §218.92

**226.31 Examination by court — notice.**

Before granting the order authorized in section 226.30 the court or judge shall investigate the allegations of the petition and before proceeding to a hearing on the allegations shall require notice to be served on the attorney who represented the patient in any prior proceedings under sections 229.6 to 229.15 or the advocate appointed under section 229.19, or in the case of a patient who entered the hospital voluntarily, on any relative, friend, or guardian of the person in question of the filing of the application. At the hearing the court or judge shall appoint a guardian ad litem for the person, if the court or judge deems such action necessary to protect the rights of the person. The guardian ad litem shall be a practicing attorney.

[C24, 27, 31, 35, 39, §3513; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.31]

90 Acts, ch 1271, §1503

**226.32 Overcrowded conditions.**

The administrator shall order the discharge or removal from the hospital of incurable and harmless patients whenever it is necessary to make room for recent cases. If a patient who is to be so discharged entered the hospital voluntarily, the administrator shall notify the auditor of the county interested at least ten days in advance of the day of actual discharge.

[R60, §1483; C73, §1425; C97, §2289; C24, 27, 31, 35, 39, §3514; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.32]

Referred to in §226.33

**226.33 Notice to court.**

When a patient who was hospitalized involuntarily and who has not fully recovered is discharged from the hospital by the administrator under section 226.32, notice of the order shall at once be sent to the court which ordered the patient's hospitalization, in the manner prescribed by section 229.14.

[R60, §1484; C73, §1426; C97, §2290; C24, 27, 31, 35, 39, §3515; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.33]

2001 Acts, ch 155, §43

**226.34 Investigation of death — notice.**

1. Upon the death of a patient, the county medical examiner shall conduct a preliminary investigation as required by section 218.64, in accordance with section 331.802.

2. If a patient in a mental health institute dies from any cause, the superintendent of the institute shall within three days of the date of death, send by certified mail a written notice of death to all of the following:

- a. The decedent's nearest relative.
- b. The clerk of the district court of the county from which the patient was committed.

c. The sheriff of the county from which the patient was committed.

[C73, §1439; C97, §2303; C24, 27, 31, 35, 39, §3516; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §226.34]

2008 Acts, ch 1187, §136

**226.35 through 226.39** Repealed by 74 Acts, ch 1131, § 51.

**226.40 Emergency patients.**

In case of emergency disaster, with the infliction of numerous casualties among the civilian population, the mental health institutes are authorized to accept sick and wounded persons without commitment or any other formalities.

[C62, 66, 71, 73, 75, 77, 79, 81, §226.40]

**226.41 Charge permitted.**

The hospital is authorized to make a charge for these patients, in the manner now provided by law and subject to the changes hereinafter provided.

[C62, 66, 71, 73, 75, 77, 79, 81, §226.41]

**226.42 Emergency powers of superintendents.**

In case the mental health institutes lose contact with the statehouse, due to enemy action or otherwise, the superintendents of the institutes are hereby delegated the following powers and duties:

1. May collect moneys due the state treasury from the counties and from responsible persons or other relatives, these funds to be collected monthly, instead of quarterly, and to be deposited for use in operating the institutes.

2. The superintendent shall have the power to requisition supplies, such as food, fuel, drugs and medical equipment, from any source available, in the name of the state, with the power to enter into contracts binding the state for payment at an indefinite future time.

3. The superintendent shall be authorized to employ personnel in all categories and for whatever remuneration the superintendent deems necessary, without regard to existing laws, rules or regulations, in order to permit the institute to continue its old functions, as well as meet its additional responsibilities.

[C62, 66, 71, 73, 75, 77, 79, 81, §226.42]

## PATIENTS' PERSONAL FUNDS

**226.43 Fund created.**

There is hereby established at each hospital a fund known as the "*patients' personal deposit fund*".

[C66, 71, 73, 75, 77, 79, 81, §226.43]

Referred to in §222.84

**226.44 Deposits.**

Any funds, including social security benefits, coming into the possession of the superintendent or any employee of the hospital belonging to any patient in that hospital, shall be deposited in the name of that patient in the patients' personal deposit fund, except that if a guardian of the property of that patient has been appointed, the guardian shall have the right to demand and receive such funds. Funds belonging to a patient deposited in the patients' personal deposit fund may be used for the purchase of personal incidentals, desires and comforts for the patient.

[C66, 71, 73, 75, 77, 79, 81, §226.44]

Referred to in §222.84

**226.45 Reimbursement to county or state.**

If a patient is not receiving medical assistance under chapter 249A and the amount to the account of any patient in the patients’ personal deposit fund exceeds two hundred dollars, the business manager of the hospital may apply any of the excess to reimburse the county of residence or the state for a state case for liability incurred by the county or the state for the payment of care, support and maintenance of the patient, when billed by the county of residence or by the administrator for a state case.

[C66, 71, 73, 75, 77, 79, 81, S81, §226.45; 81 Acts, ch 11, §16]

2012 Acts, ch 1120, §98, 130

Referred to in §222.84

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**226.46 Deposit of fund.**

The business manager shall deposit the patients’ personal deposit fund in a commercial account of a bank of reputable standing. When deposits in the commercial account exceed average monthly withdrawals, the business manager may deposit the excess at interest. The savings account shall be in the name of the patients’ personal deposit fund and interest paid thereon may be used for recreational purposes at the hospital.

[C66, 71, 73, 75, 77, 79, 81, §226.46]

Referred to in §222.84

**226.47 Administrator defined.**

For the purpose of this chapter, “*administrator*” means the person assigned, in accordance with section 218.1, to control the state mental health institutes.

[C71, 73, 75, 77, 79, 81, §226.47; 81 Acts, ch 78, §20, 31]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §36; 2000 Acts, ch 1112, §35

## CHAPTER 227

### FACILITIES FOR PERSONS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY

Referred to in §225C.4, 229.38, 331.381

<p>227.1 Supervision.</p> <p>227.2 Inspection.</p> <p>227.3 Residents to have hearing.</p> <p>227.4 Standards for care of persons with mental illness or an intellectual disability in county care facilities.</p> <p>227.5 Reserved.</p> <p>227.6 Removal of residents.</p> <p>227.7 Cost — collection from county.</p> <p>227.8 Notification to guardians.</p> <p>227.9 Investigating mental health.</p>	<p>227.10 Transfers from county or private institutions.</p> <p>227.11 Transfers from state hospitals.</p> <p>227.12 Difference of opinion.</p> <p>227.13 Discharge of transferred patient.</p> <p>227.14 Caring for persons with mental illness from other counties.</p> <p>227.15 Authority to confine in hospital.</p> <p>227.16 through 227.18 Repealed by 81 Acts, ch 78, §51.</p> <p>227.19 Administrator defined.</p>
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**227.1 Supervision.**

All county and private institutions wherein persons with mental illness are kept shall be under the supervision of the administrator.

[S13, §2727-a58; C24, 27, 31, 35, 39, §3517; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.1]

96 Acts, ch 1129, §113

**227.2 Inspection.**

1. The director of inspections and appeals shall make, or cause to be made, at least one licensure inspection each year of every county care facility. Either the administrator

of the division or the director of inspections and appeals, in cooperation with each other, upon receipt of a complaint or for good cause, may make, or cause to be made, a review of a county care facility or of any other private or county institution where persons with mental illness or an intellectual disability reside. A licensure inspection or a review shall be made by a competent and disinterested person who is acquainted with and interested in the care of persons with mental illness and persons with an intellectual disability. The objective of a licensure inspection or a review shall be an evaluation of the programming and treatment provided by the facility. After each licensure inspection of a county care facility, the person who made the inspection shall consult with the county authorities on plans and practices that will improve the care given patients and shall make recommendations to the administrator of the division and the director of public health for coordinating and improving the relationships between the administrators of county care facilities, the administrator of the division, the director of public health, the superintendents of state mental health institutes and resource centers, community mental health centers, and other cooperating agencies, to cause improved and more satisfactory care of patients. A written report of each licensure inspection of a county care facility under this section shall be filed with the administrator of the division and the director of public health and shall include:

- a. The capacity of the institution for the care of residents.
- b. The number, sex, ages, and primary diagnoses of the residents.
- c. The care of residents, their food, clothing, treatment plan, employment, and opportunity for recreational activities and for productive work intended primarily as therapeutic activity.
- d. The number, job classification, sex, duties, and salaries of all employees.
- e. The cost to the state or county of maintaining residents in a county care facility.
- f. The recommendations given to and received from county authorities on methods and practices that will improve the conditions under which the county care facility is operated.
- g. Any failure to comply with standards adopted under section 227.4 for care of persons with mental illness and persons with an intellectual disability in county care facilities, which is not covered in information submitted pursuant to paragraphs "a" to "f", and any other matters which the director of public health, in consultation with the administrator of the division, may require.

2. A copy of the written report prescribed by subsection 1 shall be furnished to the county board of supervisors, to the county mental health and intellectual disability coordinating board or to its advisory board if the county board of supervisors constitutes ex officio the coordinating board, to the administrator of the county care facility inspected and to its certified volunteer long-term care ombudsman, and to the department on aging.

3. The department of inspections and appeals shall inform the administrator of the division of an action by the department to suspend, revoke, or deny renewal of a license issued by the department of inspections and appeals to a county care facility, and the reasons for the action.

4. In addition to the licensure inspections required or authorized by this section, the administrator of the division shall cause to be made an evaluation of each person cared for in a county care facility at least once each year by one or more qualified mental health, intellectual disability, or medical professionals, whichever is appropriate.

a. It is the responsibility of the state to secure the annual evaluation for each person who is on convalescent leave or who has not been discharged from a state mental health institute. It is the responsibility of the county to secure the annual evaluation for all other persons with mental illness in the county care facility.

b. It is the responsibility of the state to secure the annual evaluation for each person who is on leave and has not been discharged from a state resource center. It is the responsibility of the county to secure the annual evaluation for all other persons with an intellectual disability in the county care facility.

c. It is the responsibility of the county to secure an annual evaluation of each resident of a county care facility to whom neither paragraph "a" nor paragraph "b" is applicable.

5. The evaluations required by subsection 4 shall include an examination of each person which shall reveal the person's condition of mental and physical health and the likelihood

of improvement or discharge and other recommendations concerning the care of those persons as the evaluator deems pertinent. One copy of the evaluation shall be filed with the administrator of the division and one copy shall be filed with the administrator of the county care facility.

[S13, §2727-a59; C24, 27, 31, 35, 39, §3518; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §227.2; 81 Acts, ch 78, §20, 32]

96 Acts, ch 1129, §53 – 55; 99 Acts, ch 129, §10; 2000 Acts, ch 1112, §51; 2009 Acts, ch 23, §11; 2012 Acts, ch 1019, §77; 2013 Acts, ch 18, §16

Referred to in §227.3, 229.15  
Subsection 2 amended

### **227.3 Residents to have hearing.**

The inspector conducting any licensure inspection or review under section 227.2 shall give each resident an opportunity to converse with the inspector out of the hearing of any officer or employee of the institution, and shall fully investigate all complaints and report the result in writing to the administrator of the division. The administrator before acting on the report adversely to the institution, shall give the persons in charge a copy of the report and an opportunity to be heard.

[S13, §2727-a60; C24, 27, 31, 35, 39, §3519; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §227.3; 81 Acts, ch 78, §20, 33]

### **227.4 Standards for care of persons with mental illness or an intellectual disability in county care facilities.**

The administrator, in cooperation with the department of inspections and appeals, shall recommend and the mental health and disability services commission created in section 225C.5 shall adopt standards for the care of and services to persons with mental illness or an intellectual disability residing in county care facilities. The standards shall be enforced by the department of inspections and appeals as a part of the licensure inspection conducted pursuant to chapter 135C. The objective of the standards is to ensure that persons with mental illness or an intellectual disability who are residents of county care facilities are not only adequately fed, clothed, and housed, but are also offered reasonable opportunities for productive work and recreational activities suited to their physical and mental abilities and offering both a constructive outlet for their energies and, if possible, therapeutic benefit. When recommending standards under this section, the administrator shall designate an advisory committee representing administrators of county care facilities, county mental health and developmental disabilities regional planning councils, and county care facility certified volunteer long-term care ombudsmen to assist in the establishment of standards.

[S81, §227.4; 81 Acts, ch 78, §20, 34]

85 Acts, ch 122, §2; 94 Acts, ch 1170, §37; 99 Acts, ch 129, §11; 2004 Acts, ch 1090, §7; 2005 Acts, ch 175, §98; 2010 Acts, ch 1031, §389; 2012 Acts, ch 1019, §78; 2013 Acts, ch 18, §17

Referred to in §225C.4, 227.2  
Section amended

### **227.5 Reserved.**

### **227.6 Removal of residents.**

If a county care facility fails to comply with rules and standards adopted under this chapter, the administrator may remove all persons with mental illness and all persons with an intellectual disability cared for in the county care facility at public expense, to the proper state mental health institute or resource center, or to some private or county institution or hospital for the care of persons with mental illness or an intellectual disability that has complied with the rules prescribed by the administrator. Residents being transferred to a state mental health institute or resource center shall be accompanied by an attendant or attendants sent from the institute or resource center. If a resident is transferred under this section, at least one attendant shall be of the same sex. If the administrator finds that the needs of residents with mental illness and residents with an intellectual disability of any

other county or private institution are not being adequately met, those residents may be removed from that institution upon order of the administrator.

[S13, §2727-a63; C24, 27, 31, 35, 39, §3522; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §227.6; 81 Acts, ch 78, §20, 35]

90 Acts, ch 1204, §46; 96 Acts, ch 1129, §56; 2000 Acts, ch 1112, §51; 2012 Acts, ch 1019, §79

Referred to in §229.15

#### **227.7 Cost — collection from county.**

The cost of such removal, including all expenses of said attendant, shall be certified by the superintendent of the hospital receiving the patient, to the director of the department of administrative services, who shall draw a warrant upon the treasurer of state for said sum, which shall be credited to the support fund of said hospital and charged against the general revenues of the state and collected by the director of the department of administrative services from the county which sent said patient to said institution.

[S13, §2727-a63; C24, 27, 31, 35, 39, §3523; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.7]

2003 Acts, ch 145, §286

Referred to in §227.10

#### **227.8 Notification to guardians.**

The administrator shall notify the guardian, or one or more of the relatives, of patients kept at private expense, of all violations of said rules by said private or county institutions, and of the action of the administrator as to all other patients.

[S13, §2727-a63; C24, 27, 31, 35, 39, §3524; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.8]

#### **227.9 Investigating mental health.**

Should the administrator believe that any person in any such county or private institution is in good mental health, or illegally restrained of liberty, the administrator shall institute and prosecute proceedings in the name of the state, before the proper officer, board, or court, for the discharge of such person.

[S13, §2727-a63; C24, 27, 31, 35, 39, §3525; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.9]

#### **227.10 Transfers from county or private institutions.**

Patients who have been admitted at public expense to any institution to which this chapter is applicable may be involuntarily transferred to the proper state hospital for persons with mental illness in the manner prescribed by sections 229.6 to 229.13. The application required by section 229.6 may be filed by the administrator of the division or the administrator's designee, or by the administrator of the institution where the patient is then being maintained or treated. If the patient was admitted to that institution involuntarily, the administrator of the division may arrange and complete the transfer, and shall report it as required of a chief medical officer under section 229.15, subsection 5. The transfer shall be made at county expense, and the expense recovered, as provided in section 227.7. However, transfer under this section of a patient whose expenses are payable in whole or in part by a county is subject to an authorization for the transfer through the central point of coordination process.\*

[S13, §2727-a64; C24, 27, 31, 35, 39, §3526; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.10]

96 Acts, ch 1129, §113; 96 Acts, ch 1183, §17; 2004 Acts, ch 1090, §33

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending  
Section not amended; footnote added

#### **227.11 Transfers from state hospitals.**

A county chargeable with the expense of a patient in a state hospital for persons with mental illness shall transfer the patient to a county or private institution for persons with mental illness that is in compliance with the applicable rules when the administrator of the division or

the administrator's designee orders the transfer on a finding that the patient is suffering from chronic mental illness or from senility and will receive equal benefit by being so transferred. A county shall transfer to its county care facility any patient in a state hospital for persons with mental illness upon request of the superintendent of the state hospital in which the patient is confined pursuant to the superintendent's authority under section 229.15, subsection 5, and approval by the board of supervisors of the county of the patient's residence. In no case shall a patient be thus transferred except upon compliance with section 229.14A or without the written consent of a relative, friend, or guardian if such relative, friend, or guardian pays the expense of the care of such patient in a state hospital. Patients transferred to a public or private facility under this section may subsequently be placed on convalescent or limited leave or transferred to a different facility for continued full-time custody, care, and treatment when, in the opinion of the attending physician or the chief medical officer of the hospital from which the patient was so transferred, the best interest of the patient would be served by such leave or transfer. For any patient who is involuntarily committed, any transfer made under this section is subject to the placement hearing requirements of section 229.14A.

[S13, §2727-a64; C24, 27, 31, 35, §3527, 3528; C39, §3527; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.11]

96 Acts, ch 1129, §113; 2001 Acts, ch 155, §44

Referred to in §230.15, 331.381

#### **227.12 Difference of opinion.**

When a difference of opinion exists between the administrator of the division and the authorities in charge of any private or county hospital in regard to the removal of a patient or patients as herein provided, the matter shall be submitted to the district court of the county in which such hospital is situated and shall be summarily tried as an equitable action, and the judgment of the district court shall be final.

[S13, §2727-a68; C24, 27, 31, 35, 39, §3529; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.12]

#### **227.13 Discharge of transferred patient.**

Patients transferred from a state hospital to such county or private institutions shall not be discharged, when not cured, without the consent of the administrator of the division.

[S13, §2727-a64; C24, 27, 31, 35, 39, §3530; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.13]

#### **227.14 Caring for persons with mental illness from other counties.**

Boards of supervisors of counties having no proper facilities for caring for persons with mental illness may, with the consent of the administrator of the division, provide for such care at the expense of the county in any convenient and proper county or private institution for persons with mental illness which is willing to receive them.

[S13, §2727-a65; C24, 27, 31, 35, 39, §3531; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.14]

96 Acts, ch 1129, §113

Referred to in §331.381

#### **227.15 Authority to confine in hospital.**

No person shall be involuntarily confined and restrained in any private institution or hospital or county hospital or other general hospital with a psychiatric ward for the care or treatment of persons with mental illness, except by the procedure prescribed in sections 229.6 to 229.15.

[S13, §2727-a66; C24, 27, 31, 35, 39, §3532; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §227.15]

96 Acts, ch 1129, §113

**227.16 through 227.18** Repealed by 81 Acts, ch 78, § 51.

**227.19 Administrator defined.**

For the purpose of this chapter, “*administrator*” or “*administrator of the division*” means the person assigned, in accordance with section 218.1, to control the state mental health institutes or that person’s designee.

[C71, 73, 75, 77, 79, 81, S81, §227.19; 81 Acts, ch 78, §20, 36]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §38; 2000 Acts, ch 1112, §36

## CHAPTER 228

### DISCLOSURE OF MENTAL HEALTH AND PSYCHOLOGICAL INFORMATION

Referred to in §235A.15, 331.394

228.1	Definitions.	228.6	Compulsory disclosures.
228.2	Mental health information disclosure prohibited — exceptions — record of disclosure.	228.7	Disclosures for claims administration and peer review — safeguards — penalty.
228.3	Voluntary disclosures.	228.8	Disclosures to family members.
228.4	Revocation of disclosure authorization.	228.9	Disclosure of psychological test material.
228.5	Administrative disclosures.		

**228.1 Definitions.**

As used in this chapter:

1. “*Administrative information*” means an individual’s name, identifying number, age, sex, address, dates and character of professional services provided to the individual, fees for the professional services, third-party payor name and payor number of a patient, if known, name and location of the facility where treatment is received, the date of the individual’s admission to the facility, and the name of the individual’s attending physician or attending mental health professional.

2. “*Data collector*” means a person, other than a mental health professional or an employee of or agent for a mental health facility, who regularly assembles or evaluates mental health information.

3. “*Diagnostic information*” means a therapeutic characterization of the type found in the diagnostic and statistical manual of mental disorders of the American psychiatric association or in a comparable professionally recognized diagnostic manual.

4. “*Mental health facility*” means a community mental health center, hospital, clinic, office, health care facility, infirmary, or similar place in which professional services are provided.

5. “*Mental health information*” means oral, written, or recorded information which indicates the identity of an individual receiving professional services and which relates to the diagnosis, course, or treatment of the individual’s mental or emotional condition.

6. “*Mental health professional*” means an individual who has either of the following qualifications:

a. The individual meets all of the following requirements:

(1) The individual holds at least a master’s degree in a mental health field, including but not limited to psychology, counseling and guidance, nursing, and social work, or is an advanced registered nurse practitioner, a physician assistant, or a physician and surgeon or an osteopathic physician and surgeon.

(2) The individual holds a current Iowa license if practicing in a field covered by an Iowa licensure law.

(3) The individual has at least two years of post-degree clinical experience, supervised by another mental health professional, in assessing mental health needs and problems and in providing appropriate mental health services.

b. The individual holds a current Iowa license if practicing in a field covered by an Iowa licensure law and is a psychiatrist, an advanced registered nurse practitioner who holds a

national certification in psychiatric mental health care registered by the board of nursing, a physician assistant practicing under the supervision of a psychiatrist, or an individual who holds a doctorate degree in psychology and is licensed by the board of psychology.

7. “Peer review organization” means a utilization and quality control peer review organization that has a contract with the federal secretary of health and human services pursuant to Tit. XI, part B, of the federal Social Security Act to review health care services paid for in whole or in part under the Medicare program established by Tit. XVIII of the federal Social Security Act, or another organization of licensed health care professionals performing utilization and quality control review functions.

8. “Professional services” means diagnostic or treatment services for a mental or emotional condition provided by a mental health professional.

9. “Self-insured employer” means a person which provides accident and health benefits or medical, surgical, or hospital benefits on a self-insured basis to its own employees or to employees of an affiliated company or companies and which does not otherwise provide accident and health benefits or medical, surgical, or hospital benefits.

10. “Third-party payor” means a person which provides accident and health benefits or medical, surgical, or hospital benefits, whether on an indemnity, reimbursement, service, or prepaid basis, including but not limited to, insurers, nonprofit health service corporations, health maintenance organizations, governmental agencies, and self-insured employers.

86 Acts, ch 1082, §1; 88 Acts, ch 1226, §2, 3; 95 Acts, ch 120, §2; 2010 Acts, ch 1061, §180; 2012 Acts, ch 1079, §5

Referred to in §125.12, 125.82, 125.86, 135G.1, 225.15, 225C.6, 226.9C, 229.1, 229.15, 229.24, 230A.108, 235A.17, 331.394

### **228.2 Mental health information disclosure prohibited — exceptions — record of disclosure.**

1. Except as specifically authorized in section 228.3, 228.5, 228.6, 228.7, or 228.8, a mental health professional, data collector, or employee or agent of a mental health professional, of a data collector, or of or for a mental health facility shall not disclose or permit the disclosure of mental health information.

2. a. Upon disclosure of mental health information pursuant to section 228.3, 228.5, 228.6, 228.7, or 228.8, the person disclosing the mental health information shall enter a notation on and maintain the notation with the individual’s record of mental health information, stating the date of the disclosure and the name of the recipient of mental health information.

b. The person disclosing the mental health information shall give the recipient of the information a statement which informs the recipient that disclosures may only be made pursuant to the written authorization of an individual or an individual’s legal representative, or as otherwise provided in this chapter, that the unauthorized disclosure of mental health information is unlawful, and that civil damages and criminal penalties may be applicable to the unauthorized disclosure of mental health information.

3. A recipient of mental health information shall not disclose the information received, except as specifically authorized for initial disclosure in section 228.3, 228.5, 228.6, 228.7, or 228.8. However, mental health information may be transferred at any time to another facility, physician, or mental health professional in cases of a medical emergency or if the individual or the individual’s legal representative requests the transfer in writing for the purposes of receipt of medical or mental health professional services, at which time the requirements of subsection 2 shall be followed.

86 Acts, ch 1082, §2; 88 Acts, ch 1226, §4, 5; 90 Acts, ch 1079, §2; 2009 Acts, ch 41, §263

Referred to in §228.5

See also §622.10

### **228.3 Voluntary disclosures.**

1. An individual eighteen years of age or older or an individual’s legal representative may consent to the disclosure of mental health information relating to the individual by a mental health professional, data collector, or employee or agent of a mental health professional, of a data collector, or of or for a mental health facility, by signing a voluntary written authorization. The authorization shall:

a. Specify the nature of the mental health information to be disclosed, the persons or type

of persons authorized to disclose the information, and the purposes for which the information may be used both at the time of the disclosure and in the future.

b. Advise the individual of the individual's right to inspect the disclosed mental health information at any time.

c. State that the authorization is subject to revocation and state the conditions of revocation.

d. Specify the length of time for which the authorization is valid.

e. Contain the date on which the authorization was signed.

2. A copy of the authorization shall:

a. Be provided to the individual or to the legal representative of the individual authorizing the disclosure.

b. Be included in the individual's record of mental health information.

86 Acts, ch 1082, §3; 88 Acts, ch 1226, §6, 7, 9

Referred to in §228.2, 228.9

#### **228.4 Revocation of disclosure authorization.**

An individual or an individual's legal representative may revoke a prior authorization by providing a written revocation to the recipient named in the authorization and to the mental health professional, data collector, or employee or agent of a mental health professional, of a data collector, or of or for a mental health facility previously authorized to disclose the mental health information. The revocation is effective upon receipt of the written revocation by the person previously authorized to disclose the mental health information. After the effective revocation date, mental health information shall not be disclosed pursuant to the revoked authorization. However, mental health information previously disclosed pursuant to the revoked authorization may be used for the purposes stated in the original written authorization.

86 Acts, ch 1082, §4

#### **228.5 Administrative disclosures.**

1. An individual or an individual's legal representative shall be informed that mental health information relating to the individual may be disclosed to employees or agents of or for the same mental health facility or to other providers of professional services or their employees or agents if and to the extent necessary to facilitate the provision of administrative and professional services to the individual.

2. a. If an individual eighteen years of age or older or an individual's legal representative has received a written notification that a fee is due a mental health professional or a mental health facility and has failed to arrange for payment of the fee within a reasonable time after the notification, the mental health professional or mental health facility may disclose administrative information necessary for the collection of the fee to a person or agency providing collection services.

b. If a civil action is filed for the collection of the fee, additional mental health information shall not be disclosed in the litigation, except to the extent necessary to respond to a motion of the individual or the individual's legal representative for greater specificity or to dispute a defense or counterclaim.

3. A mental health professional or an employee of or agent for a mental health facility may disclose mental health information if necessary for the purpose of conducting scientific and data research, management audits, or program evaluations of the mental health professional or mental health facility, to persons who have demonstrated and provided written assurances of their ability to ensure compliance with the requirements of this chapter. The persons shall not identify, directly or indirectly, an individual in any report of the research, audits, or evaluations, or otherwise disclose individual identities in any manner. A disclosure under this section is not subject to the requirements of section 228.2, subsection 2, with the exception that a person receiving mental health information under this section shall be provided a statement prohibiting redisclosure of information unless otherwise authorized by this chapter.

4. Mental health information relating to an individual may be disclosed to other providers

of professional services or their employees or agents if and to the extent necessary to facilitate the provision of administrative and professional services to the individual.

86 Acts, ch 1082, §5; 88 Acts, ch 1226, §8; 96 Acts, ch 1213, §33, 34; 2009 Acts, ch 41, §263  
Referred to in §228.2

#### **228.6 Compulsory disclosures.**

1. A mental health professional or an employee of or agent for a mental health facility may disclose mental health information if and to the extent necessary, to meet the requirements of section 229.24, 229.25, 230.20, 230.21, 230.25, 230.26, 230A.108, 232.74, or 232.147, or to meet the compulsory reporting or disclosure requirements of other state or federal law relating to the protection of human health and safety.

2. Mental health information acquired by a mental health professional pursuant to a court-ordered examination may be disclosed pursuant to court rules.

3. Mental health information may be disclosed by a mental health professional if and to the extent necessary, to initiate or complete civil commitment proceedings under chapter 229.

4. *a.* Mental health information may be disclosed in a civil or administrative proceeding in which an individual eighteen years of age or older or an individual's legal representative or, in the case of a deceased individual, a party claiming or defending through a beneficiary of the individual, offers the individual's mental or emotional condition as an element of a claim or a defense.

*b.* Mental health information may be disclosed in a criminal proceeding pursuant to section 622.10, subsection 4.

5. An individual eighteen years of age or older or an individual's legal representative or any other party in a civil, criminal, or administrative action, in which mental health information has been or will be disclosed, may move the court to denominate, style, or caption the names of all parties as "JOHN OR JANE DOE" or otherwise protect the anonymity of all of the parties.

86 Acts, ch 1082, §6; 2011 Acts, ch 8, §1, 3; 2013 Acts, ch 90, §51

Referred to in §228.2, 237.21

Subsection 1 amended

#### **228.7 Disclosures for claims administration and peer review — safeguards — penalty.**

1. Mental health information may be disclosed, in accordance with the prior written consent of the patient or the patient's legal representative, by a mental health professional, data collector, or employee or agent of a mental health professional, a data collector, or a mental health facility to a third-party payor or to a peer review organization if the third-party payor or the peer review organization has filed a written statement with the commissioner of insurance in which the filer agrees to:

*a.* Instruct its employees and agents to maintain the confidentiality of mental health information and of the penalty for unauthorized disclosure.

*b.* Comply with the limitations on use and disclosure of the information specified in subsection 2 of this section.

*c.* Destroy the information when it is no longer needed for the purposes specified in subsection 2 of this section.

2. *a.* An employee or agent of a third-party payor or of a peer review organization shall not use mental health information or disclose mental health information to any person, except to the extent necessary to administer claims submitted or to be submitted for payment to the third-party payor, to conduct a utilization and quality control review of mental health care services provided or proposed to be provided, to conduct an audit of claims paid, or as otherwise authorized by law.

*b.* Employees of a self-insured employer, and agents of a self-insured employer which have not filed a statement with the commissioner of insurance pursuant to subsection 1, shall not be granted routine or ongoing access to mental health information unless the employees or agents have signed a statement indicating that they are aware that the information shall not be used or disclosed except as provided in this subsection and that they are aware of the penalty for unauthorized disclosure.

3. An employee or agent of a third-party payor or a peer review organization who willfully

uses or discloses mental health information in violation of subsection 2 of this section is guilty of a serious misdemeanor, and, notwithstanding section 903.1, the sentence for a person convicted under this subsection is a fine not to exceed five hundred dollars in the case of a first offense, and not to exceed five thousand dollars in the case of each subsequent offense.

88 Acts, ch 1226, §1; 2009 Acts, ch 41, §263  
 Referred to in §228.2

**228.8 Disclosures to family members.**

1. A mental health professional or an employee of or agent for a mental health facility may disclose mental health information to the spouse, parent, adult child, or adult sibling of an individual who has chronic mental illness, if all of the following conditions are met:

- a. The disclosure is necessary to assist in the provision of care or monitoring of the individual’s treatment.
- b. The spouse, parent, adult child, or adult sibling is directly involved in providing care to or monitoring the treatment of the individual.
- c. The involvement of the spouse, parent, adult child, or adult sibling is verified by the individual’s attending physician, attending mental health professional, or a person other than the spouse, parent, adult child, or adult sibling who is responsible for providing treatment to the individual.

2. A request for mental health information by a person authorized to receive such information under this section shall be in writing, except in an emergency as determined by the mental health professional verifying the involvement of the spouse, parent, adult child, or adult sibling.

3. Unless the individual has been adjudged incompetent, the person verifying the involvement of the spouse, parent, adult child, or adult sibling shall notify the individual of the disclosure of the individual’s mental health information under this section.

4. Mental health information disclosed under this section is limited to the following:

- a. A summary of the individual’s diagnosis and prognosis.
- b. A listing of the medication which the individual has received and is receiving and the individual’s record of compliance in taking medication prescribed for the previous six months.
- c. A description of the individual’s treatment plan.

90 Acts, ch 1079, §1  
 Referred to in §228.2

**228.9 Disclosure of psychological test material.**

Except as otherwise provided in this section, a person in possession of psychological test material shall not disclose the material to any other person, including the individual who is a subject of the test. In addition, the test material shall not be disclosed in any administrative, judicial, or legislative proceeding. However, upon the request of an individual who is the subject of a test, all records associated with a psychological test of that individual shall be disclosed to a psychologist licensed pursuant to chapter 154B designated by the individual. An individual’s request for the records shall be in writing and shall comply with the requirements of section 228.3, relating to voluntary disclosures of mental health information, except that the individual shall not have the right to inspect the test materials.

94 Acts, ch 1159, §1

**CHAPTER 229**

**HOSPITALIZATION OF PERSONS WITH MENTAL ILLNESS**

Referred to in §125.75, 228.6, 229A.1, 230.6, 230.7, 232.49, 232.51, 232.52, 235B.2, 235B.3, 235E.1, 235E.2, 237.15, 331.381, 331.394, 602.6306, 602.6405, 602.8102(41), 902.10

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229.20	Repealed by 84 Acts, ch 1323, §7.	229.45	Provision of summary of procedures to applicant in involuntary commitment.
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		229.50	through 229.53 Repealed by 82 Acts, ch 1212, §28.

### 229.1 Definitions.

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

1. "Administrator" means the administrator of the department of human services assigned, in accordance with section 218.1, to control the state mental health institutes, or that administrator's designee.
2. "Auditor" means the county auditor or the auditor's designee.
3. "Central point of coordination process" means the same as defined in section 331.440.\*
4. "Chemotherapy" means treatment of an individual by use of a drug or substance which cannot legally be delivered or administered to the ultimate user without a physician's prescription or medical order.
5. "Chief medical officer" means the medical director in charge of a public or private hospital, or that individual's physician-designee. This chapter does not negate the authority otherwise reposed by law in the respective superintendents of each of the state hospitals for persons with mental illness, established by chapter 226, to make decisions regarding the appropriateness of admissions or discharges of patients of that hospital, however it is the intent of this chapter that if the superintendent is not a licensed physician the decisions by the superintendent shall be corroborated by the chief medical officer of the hospital.
6. "Clerk" means the clerk of the district court.
7. "Hospital" means either a public hospital or a private hospital.

8. “*Licensed physician*” means an individual licensed under the provisions of chapter 148 to practice medicine and surgery or osteopathic medicine and surgery.

9. “*Mental health professional*” means the same as defined in section 228.1.

10. “*Mental illness*” means every type of mental disease or mental disorder, except that it does not refer to an intellectual disability as defined in section 4.1, or to insanity, diminished responsibility, or mental incompetency as the terms are defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules.

11. “*Patient*” means a person who has been hospitalized or ordered hospitalized to receive treatment pursuant to section 229.14.

12. “*Private hospital*” means any hospital or institution not directly supported by public funds, or a part thereof, which is equipped and staffed to provide inpatient care to persons with mental illness.

13. “*Psychiatric advanced registered nurse practitioner*” means an individual currently licensed as a registered nurse under chapter 152 or 152E who holds a national certification in psychiatric mental health care and who is registered with the board of nursing as an advanced registered nurse practitioner.

14. “*Public hospital*” means:

- a. A state mental health institute established by chapter 226; or
- b. The state psychiatric hospital established by chapter 225; or
- c. Any other publicly supported hospital or institution, or part of such hospital or institution, which is equipped and staffed to provide inpatient care to persons with mental illness, except the Iowa medical and classification center established by chapter 904.

15. “*Respondent*” means any person against whom an application has been filed under section 229.6, but who has not been finally ordered committed for full-time custody, care, and treatment in a hospital.

16. “*Serious emotional injury*” is an injury which does not necessarily exhibit any physical characteristics, but which can be recognized and diagnosed by a licensed physician or other mental health professional and which can be causally connected with the act or omission of a person who is, or is alleged to be, mentally ill.

17. “*Seriously mentally impaired*” or “*serious mental impairment*” describes the condition of a person with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person’s hospitalization or treatment, and who because of that illness meets any of the following criteria:

a. Is likely to physically injure the person’s self or others if allowed to remain at liberty without treatment.

b. Is likely to inflict serious emotional injury on members of the person’s family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with mental illness is allowed to remain at liberty without treatment.

c. Is unable to satisfy the person’s needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.

[R60, §1468; C73, §1434; C97, §2298; C24, 27, 31, 35, 39, §3580; C46, 50, 54, 58, 62, 66, §229.40; C71, 73, 75, §229.40, 229.44; C77, §229.1, 229.44; C79, 81, §229.1; 82 Acts, ch 1100, §7]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1323, §2; 85 Acts, ch 21, §35; 87 Acts, ch 90, §1; 89 Acts, ch 275, §1; 95 Acts, ch 24, §1; 96 Acts, ch 1035, §12; 96 Acts, ch 1129, §57, 113; 96 Acts, ch 1183, §18; 97 Acts, ch 169, §15; 2000 Acts, ch 1112, §37; 2002 Acts, ch 1119, §107; 2004 Acts, ch 1090, §33; 2008 Acts, ch 1082, §4; 2008 Acts, ch 1088, §112; 2011 Acts, ch 121, §52, 62; 2012 Acts, ch 1019, §80; 2012 Acts, ch 1079, §6 – 8

Referred to in §125.75, 229.6

\*Section 331.440 is repealed; corrective legislation is pending

Section not amended; footnote added

**229.1A Legislative intent.**

As mental illness is often a continuing condition which is subject to wide and unpredictable changes in condition and fluctuations in reoccurrence and remission, this chapter shall be liberally construed to give recognition to these medical facts.

89 Acts, ch 275, §2

**229.1B Central point of coordination process.\***

Notwithstanding any provision of this chapter to the contrary, any person whose hospitalization expenses are payable in whole or in part by a county shall be subject to all requirements of the central point of coordination process.\*

96 Acts, ch 1183, §19; 2004 Acts, ch 1090, §33

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending  
Section not amended; footnote added

**229.2 Application for voluntary admission — authority to receive voluntary patients.**

1. *a.* An application for admission to a public or private hospital for observation, diagnosis, care, and treatment as a voluntary patient may be made by any person who is mentally ill or has symptoms of mental illness.

*b.* In the case of a minor, the parent, guardian, or custodian may make application for admission of the minor as a voluntary patient.

(1) Upon receipt of an application for voluntary admission of a minor, the chief medical officer shall provide separate prescreening interviews and consultations with the parent, guardian or custodian and the minor to assess the family environment and the appropriateness of the application for admission.

(2) During the interview and consultation the chief medical officer shall inform the minor orally and in writing that the minor has a right to object to the admission. If the chief medical officer of the hospital to which application is made determines that the admission is appropriate but the minor objects to the admission, the parent, guardian or custodian must petition the juvenile court for approval of the admission before the minor is actually admitted.

(3) As soon as is practicable after the filing of a petition for juvenile court approval of the admission of the minor, the juvenile court shall determine whether the minor has an attorney to represent the minor in the hospitalization proceeding, and if not, the court shall assign to the minor an attorney. If the minor is financially unable to pay for an attorney, the attorney shall be compensated by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

(4) The juvenile court shall determine whether the admission is in the best interest of the minor and is consistent with the minor's rights.

(5) The juvenile court shall order hospitalization of a minor, over the minor's objections, only after a hearing in which it is shown by clear and convincing evidence that:

(a) The minor needs and will substantially benefit from treatment.

(b) No other setting which involves less restriction of the minor's liberties is feasible for the purposes of treatment.

(6) Upon approval of the admission of a minor over the minor's objections, the juvenile court shall appoint an individual to act as an advocate representing the interests of the minor in the same manner as an advocate representing the interests of patients involuntarily hospitalized pursuant to section 229.19.

2. Upon receiving an application for admission as a voluntary patient, made pursuant to subsection 1:

*a.* The chief medical officer of a public hospital shall receive and may admit the person whose admission is sought, subject in cases other than medical emergencies to availability of suitable accommodations and to the provisions of sections 229.41 and 229.42.

b. The chief medical officer of a private hospital may receive and may admit the person whose admission is sought.

[R60, §1480; C73, §1399; C97, §2264; C24, 27, 31, 35, 39, §3544; C46, §229.1; C50, 54, 58, 62, 66, 71, 73, 75, §229.1, 229.41; C77, 79, 81, §229.2]

87 Acts, ch 90, §2; 99 Acts, ch 135, §17; 2009 Acts, ch 41, §263

Referred to in §222.55, 229.4, 229.6A, 229.41

**229.2A Dual filings.** Repealed by 2013 Acts, ch 130, § 55.

### **229.3 Discharge of voluntary patients.**

Any voluntary patient who has recovered, or whose hospitalization the chief medical officer of the hospital determines is no longer advisable, shall be discharged. Any voluntary patient may be discharged if to do so would in the judgment of the chief medical officer contribute to the most effective use of the hospital in the care and treatment of that patient and of other persons with mental illness.

[C77, 79, 81, §229.3]

96 Acts, ch 1129, §113

Referred to in §222.55, 226.19

### **229.4 Right to release on application.**

A voluntary patient who requests release or whose release is requested, in writing, by the patient's legal guardian, parent, spouse or adult next of kin shall be released from the hospital forthwith, except that:

1. If the patient was admitted on the patient's own application and the request for release is made by some other person, release may be conditioned upon the agreement of the patient.

2. If the patient is a minor who was admitted on the application of the patient's parent, guardian or custodian pursuant to section 229.2, subsection 1, the patient's release prior to becoming eighteen years of age may be conditioned upon the consent of the parent, guardian or custodian, or upon the approval of the juvenile court if the admission was approved by the juvenile court; and

3. If the chief medical officer of the hospital, not later than the end of the next secular day on which the office of the clerk of the district court for the county in which the hospital is located is open and which follows the submission of the written request for release of the patient, files with that clerk a certification that in the chief medical officer's opinion the patient is seriously mentally impaired, the release may be postponed for the period of time the court determines is necessary to permit commencement of judicial procedure for involuntary hospitalization. That period of time may not exceed five days, exclusive of days on which the clerk's office is not open unless the period of time is extended by order of a district court judge for good cause shown. Until disposition of the application for involuntary hospitalization of the patient, if one is timely filed, the chief medical officer may detain the patient in the hospital and may provide treatment which is necessary to preserve the patient's life, or to appropriately control behavior by the patient which is likely to result in physical injury to the patient or to others if allowed to continue, but may not otherwise provide treatment to the patient without the patient's consent.

[C50, 54, 58, 62, 66, 71, 73, 75, §229.41; C77, 79, 81, §229.4]

Referred to in §222.55, 229.23

### **229.5 Departure without notice.**

If a voluntary patient departs from the hospital without notice, and in the opinion of the chief medical officer the patient is seriously mentally impaired, the chief medical officer may file an application on the departed voluntary patient pursuant to section 229.6, and request that an order for immediate custody be entered by the court pursuant to section 229.11.

[C77, 79, 81, §229.5]

2013 Acts, ch 130, §42

Referred to in §222.55

Section amended

**229.5A Preapplication screening assessment — program.**

Prior to filing an application pursuant to section 229.6, the clerk of the district court or the clerk's designee shall inform the interested person referred to in section 229.6, subsection 1, about the option of requesting a preapplication screening assessment through a preapplication screening assessment program, if available. The state court administrator shall prescribe practices and procedures for implementation of the preapplication screening assessment program.

2012 Acts, ch 1079, §9; 2013 Acts, ch 130, §43

Referred to in §222.55, 229.6, 602.1209

Section amended

**229.6 Application for order of involuntary hospitalization.**

1. Proceedings for the involuntary hospitalization of an individual pursuant to this chapter or for the involuntary commitment or treatment of a person with a substance-related disorder to a facility pursuant to chapter 125 may be commenced by any interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located, or which is the respondent's place of residence. The clerk, or the clerk's designee, shall assist the applicant in completing the application.

2. The application shall:

a. State the applicant's belief that the respondent is a person who presents a danger to self or others and lacks judgmental capacity due to either of the following:

(1) A substance-related disorder as defined in section 125.2.

(2) A serious mental impairment as defined in section 229.1.

b. State facts in support of each belief described in paragraph "a".

c. Be accompanied by any of the following:

(1) A written statement of a licensed physician in support of the application.

(2) One or more supporting affidavits otherwise corroborating the application.

(3) Corroborative information obtained and reduced to writing by the clerk or the clerk's designee, but only when circumstances make it infeasible to comply with, or when the clerk considers it appropriate to supplement the information supplied pursuant to, either subparagraph (1) or (2).

3. Prior to the filing of an application pursuant to this section, the clerk or the clerk's designee shall inform the interested person referred to in subsection 1 about the option of requesting a preapplication screening assessment pursuant to section 229.5A.

4. The supreme court shall prescribe rules and establish forms as necessary to carry out the provisions of this section.

[R60, §1480; C73, §1399; C97, §2264; C24, 27, 31, 35, 39, §3544; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.1; C77, 79, 81, §229.6]

2012 Acts, ch 1079, §10; 2013 Acts, ch 130, §44

Referred to in §218.92, 222.7, 222.55, 225.11, 226.31, 227.10, 227.15, 229.1, 229.5, 229.5A, 229.6A, 229.7, 229.8, 229.9, 229.19, 229.21, 229.22, 229.24, 229.26, 229.27, 229.38

Summary of involuntary commitment procedures available from clerk; see §229.45

Section amended

**229.6A Hospitalization of minors — jurisdiction — due process.**

1. Notwithstanding section 229.11, the juvenile court has exclusive original jurisdiction in proceedings concerning a minor for whom an application is filed under section 229.6 or for whom an application for voluntary admission is made under section 229.2, subsection 1, to which the minor objects. In proceedings under this chapter concerning a minor, notwithstanding section 229.11, the term "court", "judge", or "clerk" means the juvenile court, judge, or clerk.

2. The procedural requirements of this chapter are applicable to minors involved in hospitalization proceedings pursuant to subsection 1 and placement proceedings pursuant to section 229.14A.

3. It is the intent of this chapter that when a minor is involuntarily or voluntarily hospitalized or hospitalized with juvenile court approval over the minor's objection the minor's family shall be included in counseling sessions offered during the minor's stay in a hospital when feasible. Prior to the discharge of the minor the juvenile court may, after

a hearing, order that the minor's family be evaluated and therapy ordered if necessary to facilitate the return of the minor to the family setting.

87 Acts, ch 90, §3; 92 Acts, ch 1124, §2; 2001 Acts, ch 155, §29; 2013 Acts, ch 130, §45

Referred to in §218.92, 222.7, 222.55, 226.31, 227.10, 227.15, 229.19, 229.22, 229.24, 229.26, 229.38, 602.6405

Subsection 1 amended

#### **229.7 Service of notice upon respondent.**

Upon the filing of an application pursuant to section 229.6, the clerk shall docket the case and immediately notify a district court judge, district associate judge, or magistrate who is admitted to the practice of law in this state, who shall review the application and accompanying documentation. If the application is adequate as to form, the court may set a time and place for a hearing on the application, if feasible, but the hearing shall not be held less than forty-eight hours after notice to the respondent unless the respondent waives such minimum prior notice requirement. The court shall direct the clerk to send copies of the application and supporting documentation, together with a notice informing the respondent of the procedures required by this chapter, to the sheriff or the sheriff's deputy for immediate service upon the respondent. If the respondent is taken into custody under section 229.11, service of the application, documentation and notice upon the respondent shall be made at the time the respondent is taken into custody.

[R60, §1480; C73, §1400; C97, §2265; C24, 27, 31, 35, 39, § 3545; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.2; C77, 79, 81, §229.7]

91 Acts, ch 108, §4; 2013 Acts, ch 130, §46

Referred to in §218.92, 222.7, 222.55, 226.31, 227.10, 227.15, 229.19, 229.21, 229.22, 229.24, 229.26, 229.38, 229.45, 331.653

Section amended

#### **229.8 Procedure after application is filed.**

As soon as practicable after the filing of an application pursuant to section 229.6, the court shall:

1. Determine whether the respondent has an attorney who is able and willing to represent the respondent in the hospitalization proceeding, and if not, whether the respondent is financially able to employ an attorney and capable of meaningfully assisting in selecting one. In accordance with those determinations, the court shall if necessary allow the respondent to select, or shall assign to the respondent, an attorney. If the respondent is financially unable to pay an attorney, the attorney shall be compensated by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

2. Cause copies of the application and supporting documentation to be sent to the county attorney or the county attorney's attorney-designate for review.

3. Issue a written order which shall:

- a. If not previously done, set a time and place for a hospitalization hearing, which shall be at the earliest practicable time not less than forty-eight hours after notice to the respondent, unless the respondent waives such minimum prior notice requirement; and

- b. Order an examination of the respondent, prior to the hearing, by one or more licensed physicians who shall submit a written report on the examination to the court as required by section 229.10.

[C73, §1400; C97, §2265; C24, 27, 31, 35, 39, §3548, 3549; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.5, 229.6; C77, 79, 81, §229.8]

99 Acts, ch 135, §18; 2013 Acts, ch 130, §47

Referred to in §218.92, 222.7, 222.55, 225C.16, 226.31, 227.10, 227.15, 229.9, 229.9A, 229.14A, 229.19, 229.21, 229.22, 229.24, 229.26, 229.38

Unnumbered paragraph 1 amended

#### **229.9 Respondent's attorney informed.**

The court shall direct the clerk to furnish at once to the respondent's attorney copies of the application filed pursuant to section 229.6 and the supporting documentation, and of the court's order issued pursuant to section 229.8, subsection 3. If the respondent is taken into custody under section 229.11, the attorney shall also be advised of that fact. The respondent's

attorney shall represent the respondent at all stages of the proceedings, and shall attend the hospitalization hearing.

[C77, 79, 81, §229.9]

2013 Acts, ch 130, §48

Referred to in §218.92, 222.7, 222.55, 226.31, 227.10, 227.15, 229.19, 229.21, 229.22, 229.24, 229.26, 229.38  
Section amended

#### **229.9A Advocate informed.**

The court shall direct the clerk to furnish the advocate of the respondent's county of residence with a copy of application and any order issued pursuant to section 229.8, subsection 3. The advocate may attend the hospitalization hearing of any respondent for whom the advocate has received notice of a hospitalization hearing.

94 Acts, ch 1027, §1; 2012 Acts, ch 1120, §99, 130

Referred to in §218.92, 222.7, 222.55, 226.31, 227.10, 227.15, 229.19, 229.21, 229.22, 229.24, 229.26, 229.38  
2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

#### **229.10 Physicians' examination — report.**

1. *a.* An examination of the respondent shall be conducted by one or more licensed physicians, as required by the court's order, within a reasonable time. If the respondent is detained pursuant to section 229.11, subsection 1, paragraph "b", the examination shall be conducted within twenty-four hours. If the respondent is detained pursuant to section 229.11, subsection 1, paragraph "a" or "c", the examination shall be conducted within forty-eight hours. If the respondent so desires, the respondent shall be entitled to a separate examination by a licensed physician of the respondent's own choice. The reasonable cost of the examinations shall, if the respondent lacks sufficient funds to pay the cost, be paid from county funds upon order of the court.

*b.* Any licensed physician conducting an examination pursuant to this section may consult with or request the participation in the examination of any mental health professional, and may include with or attach to the written report of the examination any findings or observations by any mental health professional who has been so consulted or has so participated in the examination.

*c.* If the respondent is not taken into custody under section 229.11, but the court is subsequently informed that the respondent has declined to be examined by the licensed physician or physicians pursuant to the court order, the court may order such limited detention of the respondent as is necessary to facilitate the examination of the respondent by the licensed physician or physicians.

2. A written report of the examination by the court-designated physician or physicians shall be filed with the clerk prior to the time set for hearing. A written report of any examination by a physician chosen by the respondent may be similarly filed. The clerk shall immediately:

*a.* Cause the report or reports to be shown to the judge who issued the order; and

*b.* Cause the respondent's attorney to receive a copy of the report of the court-designated physician or physicians.

3. If the report of the court-designated physician or physicians is to the effect that the individual is not seriously mentally impaired, the court may without taking further action terminate the proceeding and dismiss the application on its own motion and without notice.

4. If the report of the court-designated physician or physicians is to the effect that the respondent is seriously mentally impaired, the court shall schedule a hearing on the application as soon as possible. The hearing shall be held not more than forty-eight hours after the report is filed, excluding Saturdays, Sundays and holidays, unless an extension for good cause is requested by the respondent, or as soon thereafter as possible if the court considers that sufficient grounds exist for delaying the hearing.

[C77, 79, 81, §229.10]

2006 Acts, ch 1116, §2; 2009 Acts, ch 41, §224; 2012 Acts, ch 1079, §11

Referred to in §218.92, 222.7, 222.55, 225.30, 226.31, 227.10, 227.15, 229.8, 229.14, 229.19, 229.21, 229.22, 229.24, 229.26, 229.38

### **229.11 Judge may order immediate custody.**

1. If the applicant requests that the respondent be taken into immediate custody and the judge, upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent has a serious mental impairment and is likely to injure the respondent or other persons if allowed to remain at liberty, the judge may enter a written order directing that the respondent be taken into immediate custody by the sheriff or the sheriff's deputy and be detained until the hospitalization hearing. The hospitalization hearing shall be held no more than five days after the date of the order, except that if the fifth day after the date of the order is a Saturday, Sunday, or a holiday, the hearing may be held on the next succeeding business day. If the expenses of a respondent are payable in whole or in part by a county, for a placement in accordance with paragraph "a", the judge shall give notice of the placement to the central point of coordination process,\* and for a placement in accordance with paragraph "b" or "c", the judge shall order the placement in a hospital or facility designated through the central point of coordination process.\* The judge may order the respondent detained for the period of time until the hearing is held, and no longer, in accordance with paragraph "a", if possible, and if not then in accordance with paragraph "b", or, only if neither of these alternatives is available, in accordance with paragraph "c". Detention may be:

a. In the custody of a relative, friend or other suitable person who is willing to accept responsibility for supervision of the respondent, and the respondent may be placed under such reasonable restrictions as the judge may order including but not limited to restrictions on or a prohibition of any expenditure, encumbrance or disposition of the respondent's funds or property; or

b. In a suitable hospital the chief medical officer of which shall be informed of the reasons why immediate custody has been ordered and may provide treatment which is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to the respondent or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or

c. In the nearest facility in the community which is licensed to care for persons with mental illness or substance abuse, provided that detention in a jail or other facility intended for confinement of those accused or convicted of crime shall not be ordered.

2. The clerk shall furnish copies of any orders to the respondent and to the applicant if the applicant files a written waiver signed by the respondent.

[C77, 79, 81, §229.11]

89 Acts, ch 275, §3; 92 Acts, ch 1072, §3; 92 Acts, ch 1165, §2; 96 Acts, ch 1183, §20; 2004 Acts, ch 1090, §33; 2009 Acts, ch 41, §225

Referred to in §218.92, 222.7, 222.55, 226.31, 227.10, 227.15, 229.5, 229.6A, 229.7, 229.9, 229.10, 229.12, 229.14, 229.17, 229.18, 229.19, 229.21, 229.22, 229.23, 229.24, 229.26, 229.38, 229.45, 331.653

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending  
Section not amended; footnote added

### **229.12 Hearing procedure.**

1. At the hospitalization hearing, evidence in support of the contentions made in the application shall be presented by the county attorney. During the hearing the applicant and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The respondent has the right to be present at the hearing. If the respondent exercises that right and has been medicated within twelve hours, or such longer period of time as the court may designate, prior to the beginning of the hearing or an adjourned session thereof, the judge shall be informed of that fact and of the probable effects of the medication upon convening of the hearing.

2. All persons not necessary for the conduct of the proceeding shall be excluded, except that the court may admit persons having a legitimate interest in the proceeding and shall permit the advocate from the respondent's county of residence to attend the hearing. Upon motion of the county attorney, the judge may exclude the respondent from the hearing during the testimony of any particular witness if the judge determines that witness's testimony is likely to cause the respondent severe emotional trauma.

3. a. The respondent's welfare shall be paramount and the hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, but consistent therewith the issue shall be tried as a civil matter. Such discovery as is permitted under the Iowa rules of civil procedure shall be available to the respondent. The court shall receive all relevant and material evidence which may be offered and need not be bound by the rules of evidence. There shall be a presumption in favor of the respondent, and the burden of evidence in support of the contentions made in the application shall be upon the applicant.

b. The licensed physician or mental health professional who examined the respondent shall be present at the hearing unless the court for good cause finds that the licensed physician's or mental health professional's presence or testimony is not necessary. The applicant, respondent, and the respondent's attorney may waive the presence or the telephonic appearance of the licensed physician or mental health professional who examined the respondent and agree to submit as evidence the written report of the licensed physician or mental health professional. The respondent's attorney shall inform the court if the respondent's attorney reasonably believes that the respondent, due to diminished capacity, cannot make an adequately considered waiver decision. "Good cause" for finding that the testimony of the licensed physician or mental health professional who examined the respondent is not necessary may include but is not limited to such a waiver. If the court determines that the testimony of the licensed physician or mental health professional is necessary, the court may allow the licensed physician or the mental health professional to testify by telephone.

c. If upon completion of the hearing the court finds that the contention that the respondent is seriously mentally impaired has not been sustained by clear and convincing evidence, it shall deny the application and terminate the proceeding.

4. If the respondent is not taken into custody under section 229.11, but the court subsequently finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order such limited detention of the respondent as is authorized by section 229.11 and is necessary to insure that the respondent will not depart from the jurisdiction of the court without the court's approval until the proceeding relative to the respondent has been concluded.

5. The clerk shall furnish copies of any orders to the respondent and to the applicant if the applicant files a written waiver signed by the respondent.

[R60, §1480; C73, §1400; C97, §2265; C24, 27, 31, 35, 39, §3547; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.4; C77, 79, 81, §229.12]

89 Acts, ch 275, §4; 94 Acts, ch 1027, §2; 2006 Acts, ch 1116, §3; 2006 Acts, ch 1159, §31; 2009 Acts, ch 41, §226; 2012 Acts, ch 1079, §12; 2012 Acts, ch 1120, §100, 130

Referred to in §218.92, 222.7, 222.55, 225.11, 226.31, 227.10, 227.15, 229.14, 229.19, 229.21, 229.22, 229.24, 229.26, 229.38, 331.756(46), 602.8103

2012 amendment to subsection 2, by 2012 Acts, ch 1120, §100, takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Subsection 2 amended

### **229.13 Evaluation order — treatment — unauthorized departure or failure to appear.**

1. If upon completion of the hospitalization hearing the court finds by clear and convincing evidence that the respondent has a serious mental impairment, the court shall order the respondent committed as expeditiously as possible for a complete psychiatric evaluation and appropriate treatment as follows:

a. The court shall order a respondent whose expenses are payable in whole or in part by a county placed under the care of an appropriate hospital or facility designated through the central point of coordination process\* on an inpatient or outpatient basis.

b. The court shall order any other respondent placed under the care of an appropriate hospital or facility licensed to care for persons with mental illness or substance abuse on an inpatient or outpatient basis.

2. The court shall provide notice to the respondent and the respondent's attorney of the placement order under subsection 1. The court shall advise the respondent and the respondent's attorney that the respondent has a right to request a placement hearing held in accordance with the requirements of section 229.14A.

3. If the respondent is ordered at a hearing to undergo outpatient treatment, the outpatient

treatment provider must be notified and agree to provide the treatment prior to placement of the respondent under the treatment provider's care.

4. The court shall furnish to the chief medical officer of the hospital or facility at the time the respondent arrives at the hospital or facility for inpatient or outpatient treatment a written finding of fact setting forth the evidence on which the finding is based. If the respondent is ordered to undergo outpatient treatment, the order shall also require the respondent to cooperate with the treatment provider and comply with the course of treatment.

5. The chief medical officer of the hospital or facility at which the respondent is placed shall report to the court no more than fifteen days after the respondent is placed, making a recommendation for disposition of the matter. An extension of time may be granted, not to exceed seven days upon a showing of cause. A copy of the report shall be sent to the respondent's attorney, who may contest the need for an extension of time if one is requested. An extension of time shall be granted upon request unless the request is contested, in which case the court shall make such inquiry as it deems appropriate and may either order the respondent's release from the hospital or facility or grant an extension of time for psychiatric evaluation. If the chief medical officer fails to report to the court within fifteen days after the individual is placed under the care of the hospital or facility, and an extension of time has not been requested, the chief medical officer is guilty of contempt and shall be punished under chapter 665. The court shall order a rehearing on the application to determine whether the respondent should continue to be detained at or placed under the care of the hospital or facility.

6. If, after placement of a respondent in or under the care of a hospital or other suitable facility for inpatient treatment, the respondent departs from the hospital or facility or fails to appear for treatment as ordered without prior proper authorization from the chief medical officer, upon receipt of notification of the respondent's departure or failure to appear by the chief medical officer, a peace officer of the state shall without further order of the court exercise all due diligence to take the respondent into protective custody and return the respondent to the hospital or facility.

[R60, §1479; C73, §1401; C97, §2266; C24, 27, 31, 35, 39, §3552, 3553; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.9, 229.10; C77, 79, 81, §229.13]

90 Acts, ch 1020, §3; 91 Acts, ch 108, §5; 92 Acts, ch 1165, §3; 96 Acts, ch 1183, §21; 2001 Acts, ch 155, §30; 2004 Acts, ch 1090, §33; 2013 Acts, ch 90, §52

Referred to in §218.92, 222.7, 222.55, 225.11, 225.15, 225.17, 226.9, 226.31, 227.10, 227.15, 229.14, 229.14A, 229.14B, 229.17, 229.18, 229.19, 229.21, 229.22, 229.23, 229.24, 229.26, 229.27, 229.38, 229.44, 229.45, 230.5

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

Subsection 5 amended

#### **229.14 Chief medical officer's report.**

1. The chief medical officer's report to the court on the psychiatric evaluation of the respondent shall be made not later than the expiration of the time specified in section 229.13. At least two copies of the report shall be filed with the clerk, who shall dispose of them in the manner prescribed by section 229.10, subsection 2. The report shall state one of the four following alternative findings:

a. That the respondent does not, as of the date of the report, require further treatment for serious mental impairment. If the report so states, the court shall order the respondent's immediate release from involuntary hospitalization and terminate the proceedings.

b. That the respondent is seriously mentally impaired and in need of full-time custody, care and inpatient treatment in a hospital, and is considered likely to benefit from treatment. The report shall include the chief medical officer's recommendation for further treatment.

c. That the respondent is seriously mentally impaired and in need of treatment, but does not require full-time hospitalization. If the report so states, it shall include the chief medical officer's recommendation for treatment of the respondent on an outpatient or other appropriate basis.

d. The respondent is seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further inpatient treatment in a hospital. The report shall include the chief medical officer's recommendation for an appropriate alternative placement for the respondent.

2. Following receipt of the chief medical officer's report under subsection 1, paragraph "b", "c", or "d", the court shall issue an order for appropriate treatment as follows:

a. For a respondent whose expenses are payable in whole or in part by a county, placement as designated through the central point of coordination process\* in the care of an appropriate hospital or facility on an inpatient or outpatient basis, or other appropriate treatment, or in an appropriate alternative placement.

b. For any other respondent, placement in the care of an appropriate hospital or facility on an inpatient or outpatient basis, or other appropriate treatment, or an appropriate alternative placement.

c. For a respondent who is an inmate in the custody of the department of corrections, the court may order the respondent to receive mental health services in a correctional program.

d. If the court orders treatment of the respondent on an outpatient or other appropriate basis as described in the chief medical officer's report pursuant to subsection 1, paragraph "c", the order shall provide that, should the respondent fail or refuse to submit to treatment in accordance with the court's order, the court may order that the respondent be taken into immediate custody as provided by section 229.11 and, following notice and hearing held in accordance with the procedures of section 229.12, may order the respondent treated on an inpatient basis requiring full-time custody, care, and treatment in a hospital until such time as the chief medical officer reports that the respondent does not require further treatment for serious mental impairment or has indicated the respondent is willing to submit to treatment on another basis as ordered by the court. If a patient is transferred for treatment to another provider under this paragraph, the treatment provider who will be providing the outpatient or other appropriate treatment shall be provided with copies of relevant court orders by the former treatment provider.

[C77, 79, 81, §229.14; 82 Acts, ch 1228, §1]

90 Acts, ch 1020, §4; 91 Acts, ch 219, §2; 92 Acts, ch 1165, §4; 2001 Acts, ch 155, §31; 2002 Acts, ch 1119, §32; 2004 Acts, ch 1090, §33

Referred to in §218.92, 222.7, 222.55, 225.15, 225.17, 225.27, 226.26, 226.31, 226.33, 227.15, 229.1, 229.14A, 229.14B, 229.15, 229.16, 229.17, 229.19, 229.21, 229.23, 229.26, 229.27, 229.28, 229.38, 229.44

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending  
Section not amended; footnote added

#### **229.14A Placement order — notice and hearing.**

1. With respect to a chief medical officer's report made pursuant to section 229.14, subsection 1, paragraph "b", "c", or "d", or any other provision of this chapter related to involuntary commitment for which the court issues a placement order or a transfer of placement is authorized, the court shall provide notice to the respondent and the respondent's attorney or mental health advocate pursuant to section 229.19 concerning the placement order and the respondent's right to request a placement hearing to determine if the order for placement or transfer of placement is appropriate.

2. The notice shall provide that a request for a placement hearing must be in writing and filed with the clerk within seven days of issuance of the placement order.

3. A request for a placement hearing may be signed by the respondent, the respondent's next friend, guardian, or attorney.

4. The court, on its own motion, may order a placement hearing to be held.

5. a. A placement hearing shall be held no sooner than four days and no later than seven days after the request for the placement hearing is filed unless otherwise agreed to by the parties.

b. The respondent may be transferred to the placement designated by the court's placement order and receive treatment unless a request for hearing is filed prior to the transfer. If the request for a placement hearing is filed prior to the transfer, the court shall determine where the respondent shall be detained and treated until the date of the hearing.

c. If the respondent's attorney has withdrawn pursuant to section 229.19, the court shall appoint an attorney for the respondent in the manner described in section 229.8, subsection 1.

6. Time periods shall be calculated for the purposes of this section excluding weekends and official holidays.

7. If a respondent's expenses are payable in whole or in part by a county through the central point of coordination process,\* notice of a placement hearing shall be provided to the county attorney and the county's central point of coordination process\* administrator. At the hearing, the county may present evidence regarding appropriate placement.

8. In a placement hearing, the court shall determine a placement for the respondent in accordance with the requirements of section 229.23, taking into consideration the evidence presented by all the parties.

9. A placement made pursuant to an order entered under section 229.13 or 229.14 or this section shall be considered to be authorized through the central point of coordination process.\*

2001 Acts, ch 155, §33, 40; 2004 Acts, ch 1090, §33

Referred to in §218.92, 222.7, 222.55, 225.15, 225.17, 226.31, 227.11, 227.15, 229.6A, 229.13, 229.15, 229.17, 229.21, 229.26, 229.38

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

Section not amended; footnote added

#### **229.14B Escape from custody.**

A person who is placed in a hospital or other suitable facility for evaluation under section 229.13 or who is required to remain hospitalized for treatment under section 229.14 shall remain at that hospital or facility unless discharged or otherwise permitted to leave by the court or the chief medical officer of the hospital or facility. If a person placed at a hospital or facility or required to remain at a hospital or facility leaves the facility without permission or without having been discharged, the chief medical officer may notify the sheriff of the person's absence and the sheriff shall take the person into custody and return the person promptly to the hospital or facility.

92 Acts, ch 1072, §4

C93, §229.14A

2001 Acts, ch 155, §32, 40

CS2001, §229.14B

Referred to in §218.92, 222.7, 222.55, 225.15, 225.17, 226.31, 227.15, 229.17, 229.21, 229.26, 229.38

#### **229.15 Periodic reports required.**

1. Not more than thirty days after entry of an order for continued hospitalization of a patient under section 229.14, subsection 1, paragraph "b", and thereafter at successive intervals of not more than sixty days continuing so long as involuntary hospitalization of the patient continues, the chief medical officer of the hospital shall report to the court which entered the order. The report shall be submitted in the manner required by section 229.14, shall state whether the patient's condition has improved, remains unchanged, or has deteriorated, and shall indicate if possible the further length of time the patient will be required to remain at the hospital. The chief medical officer may at any time report to the court a finding as stated in section 229.14, subsection 1, and the court shall act upon the finding as required by section 229.14, subsection 2.

2. Not more than sixty days after the entry of a court order for treatment of a patient pursuant to a report issued under section 229.14, subsection 1, paragraph "c", and thereafter at successive intervals as ordered by the court but not to exceed ninety days so long as that court order remains in effect, the medical director of the facility or the psychiatrist or psychiatric advanced registered nurse practitioner treating the patient shall report to the court which entered the order. The report shall state whether the patient's condition has improved, remains unchanged, or has deteriorated, and shall indicate if possible the further length of time the patient will require treatment by the facility. If at any time the patient without good cause fails or refuses to submit to treatment as ordered by the court, the medical director shall at once so notify the court, which shall order the patient hospitalized as provided by section 229.14, subsection 2, paragraph "d", unless the court finds that the failure or refusal was with good cause and that the patient is willing to receive treatment as provided in the court's order, or in a revised order if the court sees fit to enter one. If at any time the medical director reports to the court that in the director's opinion the patient requires full-time custody, care, and treatment in a hospital, and the patient is willing to be admitted voluntarily to the hospital for these purposes, the court may enter an order

approving hospitalization for appropriate treatment upon consultation with the chief medical officer of the hospital in which the patient is to be hospitalized. If the patient is unwilling to be admitted voluntarily to the hospital, the procedure for determining involuntary hospitalization, as set out in section 229.14, subsection 2, paragraph “d”, shall be followed.

3. *a.* A psychiatric advanced registered nurse practitioner treating a patient previously hospitalized under this chapter may complete periodic reports pursuant to this section on the patient if the patient has been recommended for treatment on an outpatient or other appropriate basis pursuant to section 229.14, subsection 1, paragraph “c”.

*b.* An advanced registered nurse practitioner who is not certified as a psychiatric advanced registered nurse practitioner but who meets the qualifications set forth in the definition of a mental health professional in section 228.1, may complete periodic reports pursuant to paragraph “a”.

4. When a patient has been placed in an alternative facility other than a hospital pursuant to a report issued under section 229.14, subsection 1, paragraph “d”, a report on the patient’s condition and prognosis shall be made to the court which placed the patient, at least once every six months, unless the court authorizes annual reports. If an evaluation of the patient is performed pursuant to section 227.2, subsection 4, a copy of the evaluation report shall be submitted to the court within fifteen days of the evaluation’s completion. The court may in its discretion waive the requirement of an additional report between the annual evaluations. If the administrator exercises the authority to remove residents from a county care facility or other county or private institution under section 227.6, the administrator shall promptly notify each court which placed in that facility any resident so removed.

5. *a.* When in the opinion of the chief medical officer the best interest of a patient would be served by a convalescent or limited leave, the chief medical officer may authorize the leave and, if authorized, shall promptly report the leave to the court. When in the opinion of the chief medical officer the best interest of a patient would be served by a transfer to a different hospital for continued full-time custody, care, and treatment, the chief medical officer shall promptly send a report to the court. The court shall act upon the report in accordance with section 229.14A.

*b.* This subsection shall not be construed to add to or restrict the authority otherwise provided by law for transfer of patients or residents among various state institutions administered by the department of human services. If a patient is transferred under this subsection, the treatment provider to whom the patient is transferred shall be provided with copies of relevant court orders by the former treatment provider.

6. Upon receipt of any report required or authorized by this section the court shall furnish a copy to the patient’s attorney, or alternatively to the advocate appointed as required by section 229.19. The court shall examine the report and take the action thereon which it deems appropriate. Should the court fail to receive any report required by this section or section 229.14 at the time the report is due, the court shall investigate the reason for the failure to report and take whatever action may be necessary in the matter.

[C77, 79, 81, §229.15; 81 Acts, ch 78, §20, 37; 82 Acts, ch 1228, §2]

83 Acts, ch 96, §157, 159; 92 Acts, ch 1165, §5; 2000 Acts, ch 1112, §38; 2001 Acts, ch 155, §34, 35; 2008 Acts, ch 1082, §5, 6; 2009 Acts, ch 133, §85; 2011 Acts, ch 121, §53, 62; 2013 Acts, ch 90, §53

Referred to in §218.92, 222.7, 222.55, 225.15, 225.17, 226.23, 226.31, 227.10, 227.11, 227.15, 229.17, 229.19, 229.21, 229.26, 229.29, 229.38, 229.43

Subsection 3, paragraph b amended

### **229.16 Discharge and termination of proceeding.**

When the condition of a patient who is hospitalized pursuant to a report issued under section 229.14, subsection 1, paragraph “b”, or is receiving treatment pursuant to a report issued under section 229.14, subsection 1, paragraph “c”, or is in full-time care and custody pursuant to a report issued under section 229.14, subsection 1, paragraph “d”, is such that in the opinion of the chief medical officer the patient no longer requires treatment or care for serious mental impairment, the chief medical officer shall tentatively discharge the patient and immediately report that fact to the court which ordered the patient’s hospitalization or care and custody. Upon receiving the report, the court shall issue an order confirming the

patient's discharge from the hospital or from care and custody, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. Copies of the order shall be sent by regular mail to the hospital, the patient, and the applicant if the applicant has filed a written waiver signed by the patient.

[C77, 79, 81, §229.16]

89 Acts, ch 275, §5; 99 Acts, ch 144, §2; 2001 Acts, ch 155, §36

Referred to in §225.15, 225.17, 225.27, 226.18, 226.19, 229.17, 229.21, 229.26

#### **229.17 Status of respondent during appeal.**

If a respondent appeals to the supreme court from a finding that the contention the respondent is seriously mentally impaired has been sustained, and the respondent was previously ordered taken into immediate custody under section 229.11 or has been hospitalized for psychiatric evaluation and appropriate treatment under section 229.13 before the court is informed of intent to appeal its finding, the respondent shall remain in custody as previously ordered by the court, the time limit stated in section 229.11 notwithstanding, or shall remain in the hospital subject to compliance by the hospital with sections 229.13 to 229.16, as the case may be, unless the supreme court orders otherwise. If a respondent appeals to the supreme court regarding a placement order, the respondent shall remain in placement unless the supreme court orders otherwise.

[C77, 79, 81, §229.17]

2001 Acts, ch 155, §37

Referred to in §229.21, 229.26

#### **229.18 Status of respondent if hospitalization is delayed.**

When the court directs that a respondent who was previously ordered taken into immediate custody under section 229.11 be placed in a hospital for psychiatric evaluation and appropriate treatment under section 229.13, and no suitable hospital can immediately admit the respondent, the respondent shall remain in custody as previously ordered by the court, the time limit stated in section 229.11 notwithstanding, until a suitable hospital can admit the respondent. The court shall take appropriate steps to expedite the admission of the respondent to a suitable hospital at the earliest feasible time.

[R60, §1436; C73, §1403; C97, §2271; S13, §2271; C24, 27, 31, 35, 39, §3564; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.24; C77, 79, 81, §229.18]

Referred to in §229.21, 229.26

#### **229.19 Advocates — duties — compensation — state and county liability.**

1. *a.* In each county with a population of three hundred thousand or more inhabitants the board of supervisors shall appoint an individual who has demonstrated by prior activities an informed concern for the welfare and rehabilitation of persons with mental illness, and who is not an officer or employee of the department of human services nor of any agency or facility providing care or treatment to persons with mental illness, to act as an advocate representing the interests of patients involuntarily hospitalized by the court, in any matter relating to the patients' hospitalization or treatment under section 229.14 or 229.15. In each county with a population of under three hundred thousand inhabitants, the chief judge of the judicial district encompassing the county shall appoint the advocate.

*b.* The court or, if the advocate is appointed by the county board of supervisors, the board shall assign the advocate appointed from a patient's county of residence to represent the interests of the patient. If a patient has no county of residence or the patient is a state case, the court or, if the advocate is appointed by the county board of supervisors, the board shall assign the advocate appointed from the county where the hospital or facility is located to represent the interests of the patient.

*c.* The advocate's responsibility with respect to any patient shall begin at whatever time the attorney employed or appointed to represent that patient as respondent in hospitalization proceedings, conducted under sections 229.6 to 229.13, reports to the court that the attorney's services are no longer required and requests the court's approval to withdraw as counsel for that patient. However, if the patient is found to be seriously mentally impaired at the hospitalization hearing, the attorney representing the patient shall automatically be relieved

of responsibility in the case and an advocate shall be assigned to the patient at the conclusion of the hearing unless the attorney indicates an intent to continue the attorney's services and the court so directs. If the court directs the attorney to remain on the case, the attorney shall assume all the duties of an advocate. The clerk shall furnish the advocate with a copy of the court's order approving the withdrawal and shall inform the patient of the name of the patient's advocate.

d. With regard to each patient whose interests the advocate is required to represent pursuant to this section, the advocate's duties shall include all of the following:

- (1) To review each report submitted pursuant to sections 229.14 and 229.15.
- (2) If the advocate is not an attorney, to advise the court at any time it appears that the services of an attorney are required to properly safeguard the patient's interests.
- (3) To be readily accessible to communications from the patient and to originate communications with the patient within five days of the patient's commitment.
- (4) To visit the patient within fifteen days of the patient's commitment and periodically thereafter.
- (5) To communicate with medical personnel treating the patient and to review the patient's medical records pursuant to section 229.25.
- (6) To file with the court quarterly reports, and additional reports as the advocate feels necessary or as required by the court, in a form prescribed by the court. The reports shall state what actions the advocate has taken with respect to each patient and the amount of time spent.
- (7) To utilize the related best practices for the duties identified in this paragraph "d" developed and promulgated by the judicial council.

e. An advocate may also be appointed pursuant to this section for an individual who has been diagnosed with a co-occurring mental illness and substance-related disorder.

2. The hospital or facility to which a patient is committed shall grant all reasonable requests of the advocate to visit the patient, to communicate with medical personnel treating the patient, and to review the patient's medical records pursuant to section 229.25. An advocate shall not disseminate information from a patient's medical records to any other person unless done for official purposes in connection with the advocate's duties pursuant to this chapter or when required by law.

3. The court or, if the advocate is appointed by the county board of supervisors, the board shall prescribe reasonable compensation for the services of the advocate. The compensation shall be based upon the reports filed by the advocate with the court. The advocate's compensation shall be paid by the county in which the court is located, either on order of the court or, if the advocate is appointed by the county board of supervisors, on the direction of the board. If the advocate is appointed by the court, the advocate is an employee of the state for purposes of chapter 669. If the advocate is appointed by the county board of supervisors, the advocate is an employee of the county for purposes of chapter 670. If the patient or the person who is legally liable for the patient's support is not indigent, the board shall recover the costs of compensating the advocate from that person. If that person has an income level as determined pursuant to section 815.9 greater than one hundred percent but not more than one hundred fifty percent of the poverty guidelines, at least one hundred dollars of the advocate's compensation shall be recovered in the manner prescribed by the county board of supervisors. If that person has an income level as determined pursuant to section 815.9 greater than one hundred fifty percent of the poverty guidelines, at least two hundred dollars of the advocate's compensation shall be recovered in substantially the same manner prescribed by the county board of supervisors as provided in section 815.9.

[C77, 79, 81, §229.19]

83 Acts, ch 96, §157, 159; 83 Acts, ch 123, §85, 209; 85 Acts, ch 62, §1; 87 Acts, ch 57, §1; 93 Acts, ch 83, §1; 94 Acts, ch 1173, §10; 96 Acts, ch 1129, §113; 99 Acts, ch 135, §19; 2006 Acts, ch 1030, §22; 2007 Acts, ch 22, §53, 54; 2007 Acts, ch 86, §3; 2012 Acts, ch 1079, §13, 14; 2012 Acts, ch 1120, §101, 130

Referred to in §225C.4, 226.31, 229.2, 229.14A, 229.15, 229.21, 229.26

2012 amendment to subsection 1, paragraph b, by 2012 Acts, ch 1120, §101, takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Subsection 1, paragraph b amended

**229.20** Repealed by 84 Acts, ch 1323, § 7.

**229.21 Judicial hospitalization referee — appeals to district court.**

1. The chief judge of each judicial district may appoint at least one judicial hospitalization referee for each county within the district. The judicial hospitalization referee shall be an attorney, licensed to practice law in this state, who shall be chosen with consideration to any training, experience, interest, or combination of those factors, which are pertinent to the duties of the office. The referee shall hold office at the pleasure of the chief judge of the judicial district and receive compensation at a rate fixed by the supreme court. If the referee expects to be absent for any significant length of time, the referee shall inform the chief judge who may appoint a temporary substitute judicial hospitalization referee having the qualifications set forth in this subsection.

2. When an application for involuntary hospitalization or for involuntary commitment or treatment of persons with substance-related disorders under section 229.6 or 125.75 is filed with the clerk of the district court in any county for which a judicial hospitalization referee has been appointed, and no district judge, district associate judge, or magistrate who is admitted to the practice of law in this state is accessible, the clerk shall immediately notify the referee in the manner required by section 229.7 or section 125.77. The referee shall discharge all of the duties imposed upon the court by sections 229.7 to 229.22 or sections 125.75 to 125.94 in the proceeding so initiated. Subject to the provisions of subsection 4, orders issued by a referee, in discharge of duties imposed under this section, shall have the same force and effect as if ordered by a district judge. However, any commitment to a facility regulated and operated under chapter 135C shall be in accordance with section 135C.23.

3. *a.* Any respondent with respect to whom the magistrate or judicial hospitalization referee has found the contention that the respondent is seriously mentally impaired or a person with a substance-related disorder sustained by clear and convincing evidence presented at a hearing held under section 229.12 or section 125.82, may appeal from the magistrate's or referee's finding to a judge of the district court by giving the clerk notice in writing, within ten days after the magistrate's or referee's finding is made, that an appeal is taken. The appeal may be signed by the respondent or by the respondent's next friend, guardian, or attorney.

*b.* An order of a magistrate or judicial hospitalization referee with a finding that the respondent is seriously mentally impaired or a person with a substance-related disorder shall include the following notice, located conspicuously on the face of the order:

NOTE: The respondent may appeal from this order to a judge of the district court by giving written notice of the appeal to the clerk of the district court within ten days after the date of this order. The appeal may be signed by the respondent or by the respondent's next friend, guardian, or attorney. For a more complete description of the respondent's appeal rights, consult section 229.21 of the Code of Iowa or an attorney.

*c.* When appealed, the matter shall stand for trial de novo. Upon appeal, the court shall schedule a hospitalization or commitment hearing before a district judge at the earliest practicable time.

*d.* Any respondent with respect to whom the magistrate or judicial hospitalization referee has held a placement hearing and has entered a placement order may appeal the order to a judge of the district court. The request for appeal must be given to the clerk in writing within ten days of the entry of the magistrate's or referee's order. The request for appeal shall be signed by the respondent, or the respondent's next friend, guardian, or attorney.

4. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, the appellant shall be discharged from custody unless an order that the appellant be taken into immediate custody has previously been issued under section 229.11 or section 125.81, in which case the appellant shall be detained as provided in that section until the hospitalization or commitment hearing before the district judge. If the appellant is in the custody of a hospital or facility at the time of service of the notice

of appeal, the appellant shall be discharged from custody pending disposition of the appeal unless the chief medical officer, not later than the end of the next secular day on which the office of the clerk is open and which follows service of the notice of appeal, files with the clerk a certification that in the chief medical officer's opinion the appellant is seriously mentally ill or a person with a substance-related disorder. In that case, the appellant shall remain in custody of the hospital or facility until the hospitalization or commitment hearing before the district court.

5. The hospitalization or commitment hearing before the district judge shall be held, and the judge's finding shall be made and an appropriate order entered, as prescribed by sections 229.12 and 229.13 or sections 125.82 and 125.83. If the judge orders the appellant hospitalized or committed for a complete psychiatric or substance abuse evaluation, jurisdiction of the matter shall revert to the judicial hospitalization referee.

[C97, §2267, 2268; C24, 27, 31, 35, 39, §3560, 3561; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.17, 229.18; C77, 79, 81, §229.21; 82 Acts, ch 1212, §27]

85 Acts, ch 195, §25; 87 Acts, ch 190, §2; 90 Acts, ch 1085, §20; 91 Acts, ch 108, §6; 92 Acts, ch 1165, §6; 98 Acts, ch 1181, §23; 99 Acts, ch 144, §3, 4; 2001 Acts, ch 155, §38; 2011 Acts, ch 121, §54 – 56, 62; 2013 Acts, ch 130, §49

Referred to in §97B.1A, 125.90, 222.16A  
Subsection 2 amended

#### **229.22 Hospitalization — emergency procedure.**

1. The procedure prescribed by this section shall be used when it appears that a person should be immediately detained due to serious mental impairment, but an application has not been filed naming the person as the respondent pursuant to section 229.6, and the person cannot be ordered into immediate custody and detained pursuant to section 229.11.

2. *a.* (1) In the circumstances described in subsection 1, any peace officer who has reasonable grounds to believe that a person is mentally ill, and because of that illness is likely to physically injure the person's self or others if not immediately detained, may without a warrant take or cause that person to be taken to the nearest available facility or hospital as defined in section 229.11, subsection 1, paragraphs "b" and "c". A person believed mentally ill, and likely to injure the person's self or others if not immediately detained, may be delivered to a facility or hospital by someone other than a peace officer.

(2) Upon delivery of the person believed mentally ill to the facility or hospital, the examining physician, examining physician assistant, or examining psychiatric advanced registered nurse practitioner may order treatment of that person, including chemotherapy, but only to the extent necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue.

(3) The peace officer who took the person into custody, or other party who brought the person to the facility or hospital, shall describe the circumstances of the matter to the examining physician, examining physician assistant, or examining psychiatric advanced registered nurse practitioner. If the person is a peace officer, the peace officer may do so either in person or by written report.

(4) If the examining physician, examining physician assistant, or examining psychiatric advanced registered nurse practitioner finds that there is reason to believe that the person is seriously mentally impaired, and because of that impairment is likely to physically injure the person's self or others if not immediately detained, the examining physician, examining physician assistant, or examining psychiatric advanced registered nurse practitioner shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 10. For purposes of this subparagraph, the findings of the examining physician assistant must be approved by the examining physician assistant's supervising physician before the examining physician assistant communicates with the nearest available magistrate.

(5) The magistrate shall, based upon the circumstances described by the examining physician, examining physician assistant, or examining psychiatric advanced registered nurse practitioner, give the examining physician, examining physician assistant, or

examining psychiatric advanced registered nurse practitioner oral instructions either directing that the person be released forthwith or authorizing the person's detention in an appropriate facility. A peace officer from the law enforcement agency that took the person into custody, if available, during the communication with the magistrate, may inform the magistrate that an arrest warrant has been issued for or charges are pending against the person and request that any oral or written order issued under this subsection require the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The magistrate may also give oral instructions and order that the detained person be transported to an appropriate facility.

b. If the magistrate orders that the person be detained, the magistrate shall, by the close of business on the next working day, file a written order with the clerk in the county where it is anticipated that an application may be filed under section 229.6. The order may be filed by facsimile if necessary. A peace officer from the law enforcement agency that took the person into custody, if no request was made under paragraph "a", may inform the magistrate that an arrest warrant has been issued for or charges are pending against the person and request that any written order issued under this paragraph require the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The order shall state the circumstances under which the person was taken into custody or otherwise brought to a facility or hospital, and the grounds supporting the finding of probable cause to believe that the person is seriously mentally impaired and likely to injure the person's self or others if not immediately detained. The order shall also include any law enforcement agency notification requirements if applicable. The order shall confirm the oral order authorizing the person's detention including any order given to transport the person to an appropriate facility or hospital. A peace officer from the law enforcement agency that took the person into custody may also request an order, separate from the written order, requiring the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The clerk shall provide a copy of the written order or any separate order to the chief medical officer of the facility or hospital to which the person was originally taken, to any subsequent facility to which the person was transported, and to any law enforcement department or ambulance service that transported the person pursuant to the magistrate's order.

c. If an arrest warrant has been issued for or charges are pending against the person, but no court order exists requiring notification to a law enforcement agency under paragraph "a" or "b", and if the peace officer delivers the person to a facility or hospital and the peace officer notifies the facility or hospital in writing on a form prescribed by the department of public safety that the facility or hospital notify the law enforcement agency about the discharge of the person prior to discharge, the facility or hospital shall do all of the following:

(1) Notify the dispatch of the law enforcement agency that employs the peace officer by telephone prior to the discharge of the person from the facility or hospital.

(2) Notify the law enforcement agency that employs the peace officer by electronic mail prior to the discharge of the person from the facility or hospital.

3. The chief medical officer of the facility or hospital shall examine and may detain and care for the person taken into custody under the magistrate's order for a period not to exceed forty-eight hours from the time such order is dated, excluding Saturdays, Sundays and holidays, unless the order is sooner dismissed by a magistrate. The facility or hospital may provide treatment which is necessary to preserve the person's life, or to appropriately control behavior by the person which is likely to result in physical injury to the person's self or others if allowed to continue, but may not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility or hospital and released from custody not later than the expiration of that period, unless an application is sooner filed with the clerk pursuant to section 229.6. Prior to such discharge the facility or hospital shall, if required by this section, notify the law enforcement agency requesting such notification about the discharge of the person. The law enforcement agency shall retrieve the person no later than six hours after notification from the facility or hospital but in no circumstances shall the detention of the person exceed the period of time prescribed for detention by this subsection. The detention of any person by the procedure and not in

excess of the period of time prescribed by this section shall not render the peace officer, physician, facility, or hospital so detaining that person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician, facility, or hospital had reasonable grounds to believe the person so detained was mentally ill and likely to physically injure the person's self or others if not immediately detained, or if the facility or hospital was required to notify a law enforcement agency by this section, and the law enforcement agency requesting notification prior to discharge retrieved the person no later than six hours after the notification, and the detention prior to the retrieval of the person did not exceed the period of time prescribed for detention by this subsection.

4. The cost of hospitalization at a public hospital of a person detained temporarily by the procedure prescribed in this section shall be paid in the same way as if the person had been admitted to the hospital by the procedure prescribed in sections 229.6 to 229.13.

5. The department of public safety shall prescribe the form to be used when a law enforcement agency desires notification under this section from a facility or hospital prior to discharge of a person admitted to the facility or hospital and for whom an arrest warrant has been issued or against whom charges are pending. The form shall be consistent with all laws, regulations, and rules relating to the confidentiality or privacy of personal information or medical records, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and regulations promulgated in accordance with that Act and published in 45 C.F.R. pts. 160-64.

6. A facility or hospital, which has been notified by a peace officer or a law enforcement agency by delivery of a form as prescribed by the department of public safety indicating that an arrest warrant has been issued for or charges are pending against a person admitted to the facility or hospital, that does not notify the law enforcement agency about the discharge of the person as required by subsection 2, paragraph "c", shall pay a civil penalty as provided in section 805.8C, subsection 8.

[C77, 79, 81, §229.22]

95 Acts, ch 24, §2; 2003 Acts, ch 68, §3, 4; 2009 Acts, ch 41, §227; 2010 Acts, ch 1103, §1, 2; 2011 Acts, ch 34, §55; 2012 Acts, ch 1079, §15; 2013 Acts, ch 90, §54; 2013 Acts, ch 130, §50, 51

Referred to in §229.21, 229.23, 229.24, 602.6405, 805.8C(8)  
Subsection 2, paragraphs a and b amended  
Subsection 3 amended

### **229.23 Rights and privileges of hospitalized persons.**

Every person who is hospitalized or detained under this chapter shall have the right to:

1. Prompt evaluation, necessary psychiatric services, and additional care and treatment as indicated by the patient's condition. A comprehensive, individualized treatment plan shall be timely developed following issuance of the court order requiring involuntary hospitalization. The plan shall be consistent with current standards appropriate to the facility to which the person has been committed and with currently accepted standards for psychiatric treatment of the patient's condition, including chemotherapy, psychotherapy, counseling and other modalities as may be appropriate.

2. The right to refuse treatment by shock therapy or chemotherapy, unless the use of these treatment modalities is specifically consented to by the patient's next of kin or guardian. The patient's right to refuse treatment by chemotherapy shall not apply during any period of custody authorized by section 229.4, subsection 3, section 229.11 or section 229.22, but this exception shall extend only to chemotherapy treatment which is, in the chief medical officer's judgment, necessary to preserve the patient's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The patient's right to refuse treatment by chemotherapy shall also not apply during any period of custody authorized by the court pursuant to section 229.13 or 229.14. In any other situation in which, in the chief medical officer's judgment, chemotherapy is appropriate for the patient but the patient refuses to consent thereto and there is no next of kin or guardian to give consent, the chief medical officer may request an order authorizing treatment of the patient by chemotherapy from the district court which ordered the patient's hospitalization.

3. In addition to protection of the person's constitutional rights, enjoyment of other legal,

medical, religious, social, political, personal and working rights and privileges which the person would enjoy if the person were not so hospitalized or detained, so far as is possible consistent with effective treatment of that person and of the other patients of the hospital. If the patient's rights are restricted, the physician's direction to that effect shall be noted on the patient's record. The department of human services shall, in accordance with chapter 17A establish rules setting forth the specific rights and privileges to which persons so hospitalized or detained are entitled under this section, and the exceptions provided by section 17A.2, subsection 11, paragraphs "a" and "k", shall not be applicable to the rules so established. The patient or the patient's next of kin or friend shall be advised of these rules and be provided a written copy upon the patient's admission to or arrival at the hospital.

[C77, 79, 81, §229.23]

83 Acts, ch 96, §157, 159; 89 Acts, ch 275, §6

Referred to in §229.14A

#### **229.24 Records of involuntary hospitalization proceeding to be confidential.**

1. All papers and records pertaining to any involuntary hospitalization or application pursuant to section 229.6 of any person under this chapter, whether part of the permanent record of the court or of a file in the department of human services, are subject to inspection only upon an order of the court for good cause shown.

2. If authorized in writing by a person who has been the subject of any proceeding or report under sections 229.6 to 229.13 or section 229.22, or by the parent or guardian of that person, information regarding that person which is confidential under subsection 1 may be released to any designated person.

3. If all or part of the costs associated with hospitalization of an individual under this chapter are chargeable to a county of residence, the clerk of the district court shall provide to the county of residence and to the county in which the hospitalization order is entered the following information pertaining to the individual which would be confidential under subsection 1:

a. Administrative information, as defined in section 228.1.

b. An evaluation order under this chapter and the location of the individual's placement under the order.

c. A hospitalization or placement order under this chapter and the location of the individual's placement under the order.

d. The date, location, and disposition of any hearing concerning the individual held under this chapter.

e. Any payment source available for the costs of the individual's care.

4. This section shall not prohibit any of the following:

a. A hospital from complying with the requirements of this chapter and of chapter 230 relative to financial responsibility for the cost of care and treatment provided a patient in that hospital or from properly billing any responsible relative or third-party payer for such care or treatment.

b. A court or the department of public safety from forwarding to the federal bureau of investigation information that a person has been disqualified from possessing, shipping, transporting, or receiving a firearm pursuant to section 724.31.

[C77, 79, 81, §229.24]

83 Acts, ch 96, §157, 159; 95 Acts, ch 120, §3; 96 Acts, ch 1183, §22; 2002 Acts, ch 1146, §4; 2004 Acts, ch 1090, §8; 2010 Acts, ch 1031, §362; 2010 Acts, ch 1178, §1, 2, 19; 2012 Acts, ch 1120, §102, 130; 2013 Acts, ch 130, §52

Referred to in §228.6, 230.20

2012 amendment to subsection 3, unnumbered paragraph 1, takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Subsection 1 amended

Subsection 3, unnumbered paragraph 1 amended

#### **229.25 Medical records to be confidential — exceptions.**

1. a. The records maintained by a hospital or other facility relating to the examination, custody, care and treatment of any person in that hospital or facility pursuant to this

chapter shall be confidential, except that the chief medical officer shall release appropriate information under any of the following circumstances:

(1) The information is requested by a licensed physician, attorney or advocate who provides the chief medical officer with a written waiver signed by the person about whom the information is sought.

(2) The information is sought by a court order.

(3) The person who is hospitalized or that person's guardian, if the person is a minor or is not legally competent to do so, signs an informed consent to release information. Each signed consent shall designate specifically the person or agency to whom the information is to be sent, and the information may be sent only to that person or agency.

b. Such records may be released by the chief medical officer when requested for the purpose of research into the causes, incidence, nature and treatment of mental illness, however information shall not be provided in a way that discloses patients' names or which otherwise discloses any patient's identity.

2. When the chief medical officer deems it to be in the best interest of the patient and the patient's next of kin to do so, the chief medical officer may release appropriate information during a consultation which the hospital or facility shall arrange with the next of kin of a voluntary or involuntary patient, if requested by the patient's next of kin.

[C77, 79, 81, §229.25; 82 Acts, ch 1135, §1]

89 Acts, ch 275, §7; 2009 Acts, ch 41, §263

Referred to in §228.6, 229.19

#### **229.26 Exclusive procedure for involuntary hospitalization.**

Sections 229.6 through 229.19 constitute the exclusive procedure for involuntary hospitalization of persons by reason of serious mental impairment in this state, except that this chapter does not negate the provisions of section 904.503 relating to transfer of prisoners with mental illness to state hospitals for persons with mental illness and does not apply to commitments of persons under chapter 812 or the rules of criminal procedure, Iowa court rules, or negate the provisions of section 232.51 relating to disposition of children with mental illness or an intellectual disability.

[C77, 79, 81, §229.26]

84 Acts, ch 1323, §3; 85 Acts, ch 21, §36; 87 Acts, ch 90, §4; 88 Acts, ch 1134, §45; 96 Acts, ch 1129, §58; 2002 Acts, ch 1119, §108; 2003 Acts, ch 108, §125, 132; 2012 Acts, ch 1019, §81

#### **229.27 Hospitalization not to equate with incompetency — procedure for finding incompetency due to mental illness.**

1. Hospitalization of a person under this chapter, either voluntarily or involuntarily, does not constitute a finding of nor equate with nor raise a presumption of incompetency, nor cause the person so hospitalized to be deemed a person of unsound mind nor a person under legal disability for any purpose, including but not limited to any circumstances to which sections 6B.15, 447.7, section 488.603, subsection 6, paragraph "c", sections 488.704, 597.6, 600B.21, 614.8, 614.19, 614.22, 614.24, 614.27, and 633.244 are applicable.

2. The applicant may, in initiating a petition under section 229.6 or at any subsequent time prior to conclusion of the involuntary hospitalization proceeding, also petition the court for a finding that the person is incompetent by reason of mental illness. The test of competence for the purpose of this section shall be whether the person possesses sufficient mind to understand in a reasonable manner the nature and effect of the act in which the person is engaged; the fact that a person is mentally ill and in need of treatment for that illness but because of the illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment does not necessarily mean that that person is incapable of transacting business on any subject.

3. A hearing limited to the question of the person's competence and conducted in substantially the manner prescribed in sections 633.552 to 633.556 shall be held when:

a. The court is petitioned or proposes upon its own motion to find incompetent by reason of mental illness a person whose involuntary hospitalization has been ordered under section 229.13 or 229.14, and who contends that the person is not incompetent; or

*b.* A person previously found incompetent by reason of mental illness under subsection 2 petitions the court for a finding that the person is no longer incompetent and, after notice to the applicant who initiated the petition for hospitalization of the person and to any other party as directed by the court, an objection is filed with the court. The court may order a hearing on its own motion before acting on a petition filed under this paragraph. A petition by a person for a finding that the person is no longer incompetent may be filed at any time without regard to whether the person is at that time hospitalized for treatment of mental illness.

4. Nothing in this chapter shall preclude use of any other procedure authorized by law for declaring any person legally incompetent for reasons which may include mental illness, without regard to whether that person is or has been hospitalized for treatment of mental illness.

[C77, 79, 81, §229.27; 82 Acts, ch 1103, §1109]

91 Acts, ch 93, §1; 96 Acts, ch 1034, §9; 98 Acts, ch 1181, §24; 2004 Acts, ch 1175, §368, 400; 2004 Acts, ch 1021, §118, 119; 2004 Acts, ch 1175, §369, 400; 2013 Acts, ch 130, §53

Referred to in §4.1, 218.95, 229.39  
Subsection 2 amended

### **229.28 Hospitalization in certain federal facilities.**

1. When a court finds that the contention that a respondent is seriously mentally impaired has been sustained or proposes to order continued hospitalization of any person, or an alternative placement, as described under section 229.14, subsection 1, paragraph “*b*” or “*d*”, and the court is furnished evidence that the respondent or patient is eligible for care and treatment in a facility operated by the United States department of veterans affairs or another agency of the United States government and that the facility is willing to receive the respondent or patient, the court may so order.

*a.* The respondent or patient, when so hospitalized or placed in a facility operated by the United States department of veterans affairs or another agency of the United States government within or outside of this state, shall be subject to the rules of the United States department of veterans affairs or other agency, but shall not thereby lose any procedural rights afforded the respondent or patient by this chapter.

*b.* The chief officer of the facility shall have, with respect to the person so hospitalized or placed, the same powers and duties as the chief medical officer of a hospital in this state would have in regard to submission of reports to the court, retention of custody, transfer, convalescent leave or discharge.

2. Jurisdiction is retained in the court to maintain surveillance of the person’s treatment and care, and at any time to inquire into that person’s mental condition and the need for continued hospitalization or care and custody.

[C27, 31, 35, §3562-b1; C39, §3562.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.20; C77, 79, 81, §229.28]

2001 Acts, ch 155, §39; 2009 Acts, ch 26, §10

Referred to in §229.30

### **229.29 Transfer to certain federal facilities.**

1. Upon receipt of a certificate stating that any person involuntarily hospitalized under this chapter is eligible for care and treatment in a facility operated by the United States department of veterans affairs or another agency of the United States government which is willing to receive the person without charge to the state of Iowa or any county in the state, the chief medical officer may transfer the person to that facility. Upon so doing, the chief medical officer shall notify the court which ordered the person’s hospitalization in the same manner as would be required in the case of a transfer under section 229.15, subsection 5, and the person transferred shall be entitled to the same rights as the person would have under that subsection.

2. No person shall be transferred under this section who is confined pursuant to conviction of a public offense or whose hospitalization was ordered upon contention of incompetence

to stand trial by reason of mental illness, without prior approval of the court which ordered that person's hospitalization.

[C27, 31, 35, §3562-b1; C39, §3562.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.20; C77, 79, 81, §229.29]

2009 Acts, ch 26, §11

### **229.30 Orders of courts in other states.**

A judgment or order of hospitalization or commitment by a court of competent jurisdiction of another state or the District of Columbia, under which any person is hospitalized or placed in a facility operated by the United States department of veterans affairs or another agency of the United States government, shall have the same force and effect with respect to that person while the person is in this state as the judgment or order would have if the person were in the jurisdiction of the court which issued it. That court shall be deemed to have retained jurisdiction of the person so hospitalized or placed for the purpose of inquiring into that person's mental condition and the need for continued hospitalization or care and custody, as do courts in this state under section 229.28. Consent is hereby given to the application of the law of the state or district in which is situated the court which issued the judgment or order as regards authority of the chief officer of any facility, operated in this state by the United States department of veterans affairs or another agency of the United States government, to retain custody, transfer, place on convalescent leave or discharge the person so hospitalized or committed.

[C27, 31, 35, §3562-b1; C39, §3562.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.20; C77, 79, 81, §229.30]

2009 Acts, ch 26, §12

### **229.31 Commission of inquiry.**

A sworn complaint, alleging that a named person is not seriously mentally impaired and is unjustly deprived of liberty in any hospital in the state, may be filed by any person with the clerk of the district court of the county in which such named person is so confined, or of the county in which such named person is a resident. Upon receiving the complaint, a judge of that court shall appoint a commission of not more than three persons to inquire into the truth of the allegations. One of the commissioners shall be a physician and if additional commissioners are appointed, one of the additional commissioners shall be a lawyer.

[C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §3571; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.31]

2012 Acts, ch 1120, §103, 130

Referred to in §229.36

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

### **229.32 Duty of commission.**

Said commission shall at once proceed to the place where said person is confined and make a thorough and discreet examination for the purpose of determining the truth of said allegations and shall promptly report its findings to said judge in writing. Said report shall be accompanied by a written statement of the case signed by the chief medical officer of the hospital in which the person is confined.

[C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §3572; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.32]

Referred to in §229.36

### **229.33 Hearing.**

If, on such report and statement, and the hearing of testimony if any is offered, the judge shall find that such person is not seriously mentally impaired, the judge shall order the

person's discharge; if the contrary, the judge shall so state, and authorize the continued detention of the person, subject to all applicable requirements of this chapter.

[C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §3573; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.33]

97 Acts, ch 23, §17

Referred to in §229.36

#### **229.34 Finding and order filed.**

The finding and order of the judge, with the report and other papers, shall be filed in the office of the clerk of the court where the complaint was filed. Said clerk shall enter a memorandum thereof on the appropriate record, and forthwith notify the chief medical officer of the hospital of the finding and order of the judge, and the chief medical officer shall carry out the order.

[C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §3574; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.34]

Referred to in §229.36

#### **229.35 Compensation — payment.**

Said commissioners shall be entitled to their necessary expenses and a reasonable compensation, to be allowed by the judge, who shall certify the same to the director of the department of administrative services who shall thereupon draw the proper warrants on any funds in the state treasury not otherwise appropriated. The applicant shall pay said costs and expenses if the judge shall so order on a finding that the complaint was filed without probable cause.

[C73, §1442; C97, §2304; C24, 27, 31, 35, 39, §3575; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.35]

2003 Acts, ch 145, §286

Referred to in §8.59, 229.36

Appropriation limited for fiscal years beginning on or after July 1, 1993; see §8.59

#### **229.36 Limitation on proceedings.**

The proceeding authorized in sections 229.31 to 229.35, inclusive, shall not be had more often than once in six months regarding the same person; nor regarding any patient within six months after the patient's admission to the hospital.

[C73, §1443; C97, §2305; C24, 27, 31, 35, 39, §3576; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.36]

2005 Acts, ch 3, §52

#### **229.37 Habeas corpus.**

All persons confined as seriously mentally impaired shall be entitled to the benefit of the writ of habeas corpus, and the question of serious mental impairment shall be decided at the hearing. If the judge shall decide that the person is seriously mentally impaired, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person is no longer seriously mentally impaired.

[R60, §1441; C73, §1444; C97, §2306; C24, 27, 31, 35, 39, §3577; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.37]

Constitutional provision, Iowa Constitution, Art. I, §13

Habeas corpus, chapter 663

#### **229.38 Cruelty or official misconduct.**

If any person having the care of a person with mental illness who has voluntarily entered a hospital or other facility for treatment or care, or who is responsible for psychiatric examination care, treatment, and maintenance of any person involuntarily hospitalized under sections 229.6 to 229.15, whether in a hospital or elsewhere, with or without proper authority, shall treat such patient with unnecessary severity, harshness, or cruelty, or in any way abuse the patient or if any person unlawfully detains or deprives of liberty any person with mental illness or any person who is alleged to have mental illness, or if any officer required by the provisions of this chapter and chapters 226 and 227, to perform any act shall

willfully refuse or neglect to perform the same, the offending person shall, unless otherwise provided, be guilty of a serious misdemeanor.

[C73, §1415, 1416, 1440, 1445; C97, §2307; C24, 27, 31, 35, 39, §3578; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.38]

96 Acts, ch 1129, §59

#### **229.39 Status of persons hospitalized under former law.**

1. Each person admitted or committed to a hospital for treatment of mental illness on or before December 31, 1975 who remained so hospitalized, or was on convalescent leave or was receiving care in another facility on transfer from such hospitalization, on or after January 1, 1976 shall be considered to have been hospitalized under this chapter, and its provisions shall apply to each such person on and after the effective date of this section, except as otherwise provided by subsection 3.

2. Hospitalization of a person for treatment of mental illness, either voluntary or involuntary, on or before December 31, 1975 does not constitute a finding nor equate with nor raise a presumption of incompetency, nor cause the person hospitalized to be deemed a person of unsound mind nor a person under legal disability for any purpose, including but not limited to the circumstances enumerated in section 229.27, subsection 1. This subsection does not invalidate any specific declaration of incompetence of a person hospitalized if the declaration was made pursuant to a separate procedure authorized by law for that purpose, and did not result automatically from the person's hospitalization.

3. Where a person was hospitalized involuntarily for treatment of mental illness on or before December 31, 1975 and remained so hospitalized, or was on convalescent leave or was receiving care in another facility on transfer from such hospitalization, on or after January 1, 1976, but was subsequently discharged prior to July 1, 1978, this section shall not be construed to require:

a. The filing after July 1, 1978, of any report relative to that person's status which would have been required to be filed prior to said date if that person had initially been hospitalized under this chapter as amended by 1975 Iowa Acts, ch. 139, sections 1 to 30.

b. That legal proceedings be taken under this chapter, as so amended, to clarify the status of the person so hospitalized, unless that person or the district court considers such proceedings necessary in a particular case to appropriately conclude the matter.

[C79, 81, §229.39]

2011 Acts, ch 34, §56

#### **229.40 Rules for proceedings.**

Proceedings under this chapter are subject to rules prescribed by the supreme court under section 602.4201.

[C79, 81, §229.40]

83 Acts, ch 186, §10053, 10201

Rules adopted by the Supreme Court are published in the compilation "Iowa Court Rules"

#### **229.41 Voluntary admission.**

Persons making application pursuant to section 229.2 on their own behalf or on behalf of another person who is under eighteen years of age, if the person whose admission is sought is received for observation and treatment on the application, shall be required to pay the costs of hospitalization at rates established by the administrator. The costs may be collected weekly in advance and shall be payable at the business office of the hospital. The collections shall be remitted to the department of human services monthly to be credited to the general fund of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.41]

2000 Acts, ch 1112, §39; 2001 Acts, ch 155, §21

Referred to in §225C.16, 229.2, 229.42

#### **229.42 Costs paid by county.**

1. If a person wishing to make application for voluntary admission to a mental hospital established by chapter 226 is unable to pay the costs of hospitalization or those responsible

for the person are unable to pay the costs, application for authorization of voluntary admission must be made through a central point of coordination process\* before application for admission is made to the hospital. The person's county of residence shall be determined through the central point of coordination process\* and if the admission is approved through the central point of coordination process,\* the person's admission to a mental health hospital shall be authorized as a voluntary case. The authorization shall be issued on forms provided by the administrator. The costs of the hospitalization shall be paid by the county of residence to the department of human services and credited to the general fund of the state, provided that the mental health hospital rendering the services has certified to the county auditor of the county of residence the amount chargeable to the county and has sent a duplicate statement of the charges to the department of human services. A county shall not be billed for the cost of a patient unless the patient's admission is authorized through the central point of coordination process.\* The mental health institute and the county shall work together to locate appropriate alternative placements and services, and to educate patients and family members of patients regarding such alternatives.

2. All the provisions of chapter 230 shall apply to such voluntary patients so far as is applicable.

3. The provisions of this section and of section 229.41 shall apply to all voluntary inpatients or outpatients receiving mental health services either away from or at the institution.

4. If a county fails to pay the billed charges within forty-five days from the date the county auditor received the certification statement from the superintendent, the department of human services shall charge the delinquent county the penalty of one percent per month on and after forty-five days from the date the county received the certification statement until paid. The penalties received shall be credited to the general fund of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §229.42]

96 Acts, ch 1183, §23; 97 Acts, ch 169, §6; 98 Acts, ch 1218, §73; 2001 Acts, ch 155, §22; 2002 Acts, ch 1050, §21; 2004 Acts, ch 1090, §33; 2012 Acts, ch 1120, §104, 130

Referred to in §225C.16, 229.2, 331.381, 331.502

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

#### **229.43 Nonresident patients.**

The administrator may place patients of mental health institutes who are nonresidents on convalescent leave to a private sponsor or in a health care facility licensed under chapter 135C, when in the opinion of the administrator the placement is in the best interests of the patient and the state of Iowa. If the patient was involuntarily hospitalized, the district court which ordered hospitalization of the patient must be informed when the patient is placed on convalescent leave, as required by section 229.15, subsection 5.

[C24, 27, 31, 35, 39, §3446; C46, 50, 54, 58, 62, §222.36; C66, 71, 73, 75, 77, 79, 81, §229.43]

2000 Acts, ch 1112, §40; 2012 Acts, ch 1120, §105, 130

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

#### **229.44 Venue.**

1. Venue for hospitalization proceedings shall be in the county where the respondent is found, unless the matter is transferred pursuant to Iowa court rule 12.15 for the involuntary hospitalization of persons with mental illness, in which case venue shall be in the county where the matter is transferred for hearing.

2. After an order is entered pursuant to section 229.13 or 229.14, the court may transfer proceedings to the court of any county having venue at any further stage in the proceeding as follows:

a. When it appears that the best interests of the respondent or the convenience of the parties will be served by a transfer, the court may transfer the case to the court of the county of the respondent's residence.

b. When it appears that the best interests of the respondent or the convenience of the

parties will be served by a transfer, the court may transfer the case to the court of the county where the respondent is found.

3. If a proceeding is transferred, the court shall contact the court in the county which is to be the recipient of the transfer before entering the order to transfer the case. The court shall then transfer the case by ordering a transfer of the matter to the recipient county, by ordering a continuance of the matter in the transferring county, and by forwarding to the clerk of the receiving court a certified copy of all papers filed, together with the order of transfer. The referee of the receiving court may accept the filings of the transferring court or may direct the filing of a new application and may hear the case anew.

92 Acts, ch 1165, §7; 96 Acts, ch 1079, §9; 96 Acts, ch 1129, §113

**229.45 Provision of summary of procedures to applicant in involuntary commitment.**

The department of human services, in consultation with the office of attorney general, shall develop a summary of the procedures involved in an involuntary commitment and information concerning the participation of an applicant in the proceedings. The summary shall be provided by the department, at the department’s expense, to the clerks of the district court who shall make the summary available to all applicants prior to the filing of a verified application, or to any other person upon request, and who shall attach a copy of the summary to the notice of hearing which is served upon the respondent under section 125.77 or 229.7. The summary may include, but is not limited to, the following:

1. The statutory criteria for ordering that a person be involuntarily committed under chapter 125 or sections 229.11 and 229.13.
  2. A description of the hearing process.
  3. An explanation of the applicant’s right to testify and examples of the kinds of relevant information which may be introduced at the hearing.
  4. An explanation of the duties of the county attorney in civil commitment proceedings.
- 94 Acts, ch 1024, §1

**229.46 through 229.49** Reserved.

**229.50 through 229.53** Repealed by 82 Acts, ch 1212, § 28.

## CHAPTER 229A

### COMMITMENT OF SEXUALLY VIOLENT PREDATORS

Referred to in §13B.4, 81.2, 158.2, 226.1, 235A.15, 235A.18, 692A.114, 811.1, 815.9, 815.10, 815.11, 901A.2, 915.45

Notice to victims of discharge of committed person, see §915.45

229A.1	Legislative findings.	229A.5C	Criminal offenses committed while detained or subject to an order of commitment.
229A.2	Definitions.		
229A.3	Notice of discharge of sexually violent predator — immunity from liability — multidisciplinary team — prosecutor’s review committee — assessment of person.	229A.5D 229A.6	Medical treatment. Counsel and experts, indigent persons.
229A.4	Petition, time, contents.	229A.6A 229A.7	Transport orders. Trial, determination, commitment procedure, chapter 28E agreements, mistrials.
229A.5	Person taken into custody, determination of probable cause, hearing, evaluation.	229A.8	Annual examinations and review — discharge or transitional release petitions by persons committed.
229A.5A	Powers of investigative personnel before a petition is filed.	229A.8A	Transitional release.
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229A.9	Detention and commitment to conform to constitutional requirements.	229A.12A	Director of the department of corrections — responsibility for safekeeper.
229A.9A	Release with or without supervision.	229A.13	Severability.
229A.9B	Violations of release with or without supervision.	229A.14	Release of confidential or privileged information and records.
229A.10	Petition for discharge — procedure.	229A.15	Court records — sealed and opened by court order.
229A.11	Subsequent discharge or transitional release petitions — limitations.	229A.15A	Civil protective order.
229A.12	Director of human services — responsibility for costs — reimbursement.	229A.15B	Rulemaking authority.
		229A.16	Short title.

### 229A.1 Legislative findings.

The general assembly finds that a small but extremely dangerous group of sexually violent predators exists which is made up of persons who do not have a mental disease or defect that renders them appropriate for involuntary treatment pursuant to the treatment provisions for mentally ill persons under chapter 229, since that chapter is intended to provide short-term treatment to persons with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under chapter 229, sexually violent predators generally have antisocial personality features that are unamenable to existing mental illness treatment modalities and that render them likely to engage in sexually violent behavior. The general assembly finds that sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high and that the existing involuntary commitment procedure under chapter 229 is inadequate to address the risk these sexually violent predators pose to society.

The general assembly further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, because the treatment needs of this population are very long-term, and the treatment modalities for this population are very different from the traditional treatment modalities available in a prison setting or for persons appropriate for commitment under chapter 229. Therefore, the general assembly finds that a civil commitment procedure for the long-term care and treatment of the sexually violent predator is necessary. The procedures regarding sexually violent predators should reflect legitimate public safety concerns, while providing treatment services designed to benefit sexually violent predators who are civilly committed. The procedures should also reflect the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full, meaningful participation of sexually violent predators in treatment programs.

98 Acts, ch 1171, §1; 2002 Acts, ch 1139, §1, 27

### 229A.2 Definitions.

As used in this chapter:

1. *“Agency with jurisdiction”* means an agency which has custody of or releases a person serving a sentence or term of confinement or is otherwise in confinement based upon a lawful order or authority, and includes but is not limited to the department of corrections, the department of human services, a judicial district department of correctional services, and the Iowa board of parole.

2. *“Appropriate secure facility”* means a state facility that is designed to confine but not necessarily to treat a sexually violent predator.

3. *“Discharge”* means an unconditional discharge from the sexually violent predator program. A person released from a secure facility into a transitional release program or released with or without supervision is not considered to be discharged.

4. *“Likely to engage in predatory acts of sexual violence”* means that the person more likely than not will engage in acts of a sexually violent nature. If a person is not confined at the time that a petition is filed, a person is *“likely to engage in predatory acts of sexual violence”* only if the person commits a recent overt act.

5. “*Mental abnormality*” means a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to commit sexually violent offenses to a degree which would constitute a menace to the health and safety of others.

6. “*Predatory*” means acts directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization.

7. “*Recent overt act*” means any act that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm.

8. “*Safekeeper*” means a person who is confined in an appropriate secure facility pursuant to this chapter but who is not subject to an order of commitment pursuant to this chapter.

9. “*Sexually motivated*” means that one of the purposes for commission of a crime is the purpose of sexual gratification of the perpetrator of the crime.

10. “*Sexually violent offense*” means:

a. A violation of any provision of chapter 709.

b. A violation of any of the following if the offense involves sexual abuse, attempted sexual abuse, or intent to commit sexual abuse:

(1) Murder as defined in section 707.1.

(2) Kidnapping as defined in section 710.1.

(3) Burglary as defined in section 713.1.

(4) Child endangerment under section 726.6, subsection 1, paragraph “e”.

c. Sexual exploitation of a minor in violation of section 728.12, subsection 1.

d. Pandering involving a minor in violation of section 725.3, subsection 2.

e. An offense involving an attempt or conspiracy to commit any offense referred to in this subsection.

f. An offense under prior law of this state or an offense committed in another jurisdiction which would constitute an equivalent offense under paragraphs “a” through “e”.

g. Any act which, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated.

11. “*Sexually violent predator*” means a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility.

12. “*Transitional release*” means a conditional release from a secure facility operated by the department of human services with the conditions of such release set by the court or the department of human services.

98 Acts, ch 1171, §2; 99 Acts, ch 61, §1, 14; 2002 Acts, ch 1139, §2, 27; 2007 Acts, ch 91, §1; 2010 Acts, ch 1074, §1

Referred to in §692A.101, 901A.1

### **229A.3 Notice of discharge of sexually violent predator — immunity from liability — multidisciplinary team — prosecutor’s review committee — assessment of person.**

1. When it appears that a person who is confined may meet the definition of a sexually violent predator, the agency with jurisdiction shall give written notice to the attorney general and the multidisciplinary team established in subsection 4, no later than ninety days prior to any of the following events:

a. The anticipated discharge of a person who has been convicted of a sexually violent offense from total confinement, except that in the case of a person who is returned to prison for no more than ninety days as a result of revocation of parole, written notice shall be given as soon as practicable following the person’s readmission to prison.

b. The discharge of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to chapter 812.

c. The discharge of a person who has been found not guilty by reason of insanity of a sexually violent offense.

2. If notice is given under subsection 1, the agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection 4, of both of the following:

a. The person's name, identifying factors, anticipated future residence, and offense history.

b. Documentation of any institutional evaluation and any treatment received.

3. The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection 4, members of the prosecutor's review committee appointed as provided in subsection 5, and individuals contracting, appointed, or volunteering to perform services under this section shall be immune from liability for any good-faith conduct under this section.

4. The director of the department of corrections shall establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection 1. The team, within thirty days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator. The team shall notify the attorney general of its assessment.

5. The attorney general shall appoint a prosecutor's review committee to review the records of each person referred to the attorney general pursuant to subsection 1. The prosecutor's review committee shall assist the attorney general in the determination of whether or not the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.

98 Acts, ch 1171, §3

Referred to in §229A.5A, 229A.14

#### **229A.4 Petition, time, contents.**

1. If it appears that a person presently confined may be a sexually violent predator and the prosecutor's review committee has determined that the person meets the definition of a sexually violent predator, the attorney general may file a petition alleging that the person is a sexually violent predator and stating sufficient facts to support such an allegation.

2. A prosecuting attorney of the county in which the person was convicted or charged, or the attorney general if requested by the prosecuting attorney, may file a petition alleging that a person is a sexually violent predator and stating sufficient facts to support such an allegation, if it appears that a person who has committed a recent overt act meets any of the following criteria:

a. The person was convicted of a sexually violent offense and has been discharged after the completion of the sentence imposed for the offense.

b. The person was charged with, but was acquitted of, a sexually violent offense by reason of insanity and has been released from confinement or any supervision.

c. The person was charged with, but was found to be incompetent to stand trial for, a sexually violent offense and has been released from confinement or any supervision.

98 Acts, ch 1171, §4; 99 Acts, ch 61, §2, 14

Referred to in §229A.5, 229A.6

#### **229A.5 Person taken into custody, determination of probable cause, hearing, evaluation.**

1. Upon filing of a petition under section 229A.4, the court shall make a preliminary determination as to whether probable cause exists to believe that the person named in the petition is a sexually violent predator. Upon a preliminary finding of probable cause, the court shall direct that the person named in the petition be taken into custody and that the person be served with a copy of the petition and any supporting documentation and notice of the procedures required by this chapter. If the person is in custody at the time of the filing of the petition, the court shall determine whether a transfer of the person to an appropriate secure facility is appropriate pending the outcome of the proceedings or whether the custody order should be delayed until the date of release of the person.

2. Within seventy-two hours after being taken into custody or being transferred to an appropriate secure facility, a hearing shall be held to determine whether probable cause exists to believe the detained person is a sexually violent predator. The hearing may be waived by the respondent. The hearing may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and if

the respondent is not substantially prejudiced. At the probable cause hearing, the detained person shall have the following rights:

- a. To be provided with prior notice of date, time, and location of the probable cause hearing.
  - b. To respond to the preliminary finding of probable cause.
  - c. To appear in person at the hearing.
  - d. To be represented by counsel.
  - e. To present evidence on the respondent's own behalf.
  - f. To cross-examine witnesses who testify against the respondent.
  - g. To view and copy all petitions and reports in the possession of the court.
3. At the hearing, the rules of evidence do not apply, and the state may rely solely upon the petition filed under subsection 1, but the state may also supplement the petition with additional documentary evidence or live testimony.
4. At the conclusion of the hearing, the court shall enter an order which does both of the following:
- a. Verifies the respondent's identity.
  - b. Determines whether probable cause exists to believe that the respondent is a sexually violent predator.
5. If the court determines that probable cause does exist, the court shall direct that the respondent be transferred to an appropriate secure facility for an evaluation as to whether the respondent is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

98 Acts, ch 1171, §5; 99 Acts, ch 61, §3, 4, 14; 2002 Acts, ch 1139, §3, 27

Referred to in §229A.5B, 229A.5C, 229A.6A, 229A.7, 229A.12A, 811.1

#### **229A.5A Powers of investigative personnel before a petition is filed.**

1. The prosecuting attorney or attorney general is authorized upon the occurrence of a recent overt act, or upon receiving written notice pursuant to section 229A.3, or before the filing of a petition under this chapter, to subpoena and compel the attendance of witnesses, examine the witnesses under oath, and require the production of documentary evidence for inspection, reproduction, or copying. Except as otherwise provided by this section, the prosecuting attorney or attorney general shall have the same powers and limitations, subject to judicial oversight and enforcement, as provided by this chapter and by the Iowa rules of civil procedure. Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel at the person's own expense.

2. The examination of all witnesses under this section shall be conducted by the prosecuting attorney or attorney general before an officer authorized to administer oaths under section 63A.1. The testimony shall be taken by a certified shorthand reporter or by a sound recording device and shall be transcribed or otherwise preserved in the same manner as provided for the preservation of depositions under the Iowa rules of civil procedure. The prosecuting attorney or attorney general may exclude from the examination all persons except the witness, witness's counsel, the officer before whom the testimony is to be taken, law enforcement officials, and a certified shorthand reporter. Prior to oral examination, the person shall be advised by the prosecuting attorney or attorney general of the person's right to refuse to answer any questions on the basis of the privilege against self-incrimination. The examination shall be conducted in a manner consistent with the rules dealing with the taking of depositions.

99 Acts, ch 61, §5, 14; 2000 Acts, ch 1058, §23

#### **229A.5B Escape from custody — penalty.**

1. A person who is detained pursuant to section 229A.5 or is subject to an order of civil commitment under this chapter shall remain in custody unless released by court order or discharged under section 229A.8 or 229A.10. A person who has been placed in a transitional release program or who is under release with or without supervision is considered to be in custody. A person in custody under this chapter shall not do any of the following:

a. Leave or attempt to leave a facility without the accompaniment of authorized personnel or leave or attempt to leave a facility without authorization.

b. Knowingly and voluntarily be absent from a place where the person is required to be present.

c. Leave or attempt to leave the custody of personnel transporting or guarding the person while the person is away from a facility.

2. A person who violates subsection 1 commits a simple misdemeanor or may be subject to punishment for contempt.

3. If a person commits a violation of subsection 1 and remains unconfined, the attorney general or the chief law enforcement officer of the political subdivision where the violation occurs may make a public announcement that the person is unconfined and may provide relevant information about the person to the community. The attorney general may also notify a victim or the family of a victim of the person that the person is unconfined.

4. This section shall not be construed to prohibit the use of other lawful means for the return of the person.

2001 Acts, ch 27, §1; 2002 Acts, ch 1139, §4, 27

Referred to in §229A.8A

#### **229A.5C Criminal offenses committed while detained or subject to an order of commitment.**

1. If a person who is detained pursuant to section 229A.5 or who is subject to an order of civil commitment under this chapter commits a public offense, the civil commitment proceedings or treatment process shall be suspended until the criminal proceedings, including any term of confinement, are completed. The person shall also not be eligible for bail pursuant to section 811.1.

2. Upon the filing of a complaint, indictment, or information, the person shall be transferred to the county jail in the county where the public offense occurred until the criminal proceedings have been completed. If the person is sentenced to a term of confinement in a county jail, the person shall serve the sentence at the county jail. If the person is sentenced to the custody of the director of the department of corrections, the person shall serve the sentence at a correctional institution.

3. A person who is subject to an order of civil commitment under this chapter shall not be released from jail or paroled or released to a facility or program located outside the county jail or correctional institution other than to a secure facility operated by the department of human services.

4. A person who committed a public offense while in a transitional release program or on release with or without supervision may be returned to a secure facility operated by the department of human services upon completion of any term of confinement that resulted from the commission of the public offense.

5. If the civil commitment proceedings for a person are suspended due to the commission of a public offense by the person, the ninety-day trial demand lapses. Upon completion of any term of confinement that resulted from the commission of the public offense, a new ninety-day trial demand automatically begins.

2002 Acts, ch 1139, §5, 27

#### **229A.5D Medical treatment.**

A safekeeper is entitled to necessary medical treatment.

2002 Acts, ch 1139, §6, 27

#### **229A.6 Counsel and experts, indigent persons.**

1. A respondent to a petition alleging the person to be a sexually violent predator shall be entitled to the assistance of counsel upon the filing of the petition under section 229A.4 and, if the respondent is indigent, the court shall appoint counsel to assist the respondent at state expense.

2. If a respondent is subjected to an examination under this chapter, the respondent may retain experts or professional persons to perform an independent examination on

the respondent's behalf. If the respondent wishes to be examined by a qualified expert or professional person of the respondent's own choice, the examiner of the respondent's choice shall be given reasonable access to the respondent for the purpose of the examination, as well as access to all relevant medical and psychological records and reports. If the respondent is indigent, the court, upon the respondent's request, shall determine whether the services are necessary and the reasonable compensation for the services. If the court determines that the services are necessary and the requested compensation for the services is reasonable, the court shall assist the respondent in obtaining an expert or professional person to perform an examination or participate in the trial on the respondent's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the respondent, and compensation received in the same case or for the same services from any other source.

98 Acts, ch 1171, §6

#### **229A.6A Transport orders.**

1. A person who has been detained prior to trial pursuant to section 229A.5 or who has been civilly committed may be transported for the following purposes:

a. To trial and any other court proceedings if the court has authorized a transport order. A transport order may only be requested by the court, the person's attorney, or the attorney general. Transportation shall be provided by the sheriff of the county in which the action has been brought, unless the court specifies otherwise or the parties agree to a different transportation arrangement. If a transport order is not authorized, the person may appear at any court proceedings other than trial by telephone or electronic means.

b. To a medical facility for medical treatment, if necessary medical treatment is not available at the facility where the person is confined. A transport order is not required to transport the person for medical treatment. However, the person is not entitled to choose the medical facility where treatment is to be obtained or the medical personnel to provide the treatment. Transportation of a committed person shall be provided by the sheriff of the county in which the person is confined if requested by the department of human services.

c. To a medical, psychological, or psychiatric evaluation. A person shall not be transported to another facility for evaluation without a court order. When a transportation order is requested under this paragraph, notice must be provided to the opposing party, and the opposing party must be given a reasonable amount of time to object to the issuance of such an order. The cost of the transportation shall be paid by the party who requests the order.

d. To a facility for placement or treatment in a transitional release program or for release with or without supervision. A transport order is not required under this paragraph.

2. This section shall not be construed to grant a person the right to personally appear at all court proceedings under this chapter.

2002 Acts, ch 1139, §7, 27

#### **229A.7 Trial, determination, commitment procedure, chapter 28E agreements, mistrials.**

1. If the person charged with a sexually violent offense has been found incompetent to stand trial and the person is about to be released pursuant to chapter 812, or if a petition has been filed seeking the person's commitment under this chapter, the court shall first hear evidence and determine whether the person did commit the act or acts charged. At the hearing on this issue, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on

this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

2. If a person has been found not guilty by reason of insanity, the court shall determine whether the acts charged were proven as a matter of law. If as a matter of law the finding of not guilty by reason of insanity requires a finding that the underlying elements of the charged offense were proven, then no further fact-finding is required. If as a matter of law the finding of not guilty by reason of insanity does not require a finding that the underlying elements of the charged offense be proven, the case shall proceed in the same manner as if the person were found to be incompetent to stand trial as provided in subsection 1.

3. Within ninety days after either the entry of the order waiving the probable cause hearing or completion of the probable cause hearing held under section 229A.5, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. The respondent or the attorney for the respondent may waive the ninety-day trial requirement as provided in this section; however, the respondent or the attorney for the respondent may reassert a demand and the trial shall be held within ninety days from the date of filing the demand with the clerk of court. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. In determining what constitutes good cause, the court shall consider the length of the pretrial detention of the respondent.

4. The respondent, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least ten days prior to trial. If no demand is made, the trial shall be before the court. Except as otherwise provided, the Iowa rules of evidence and the Iowa rules of civil procedure shall apply to all civil commitment proceedings initiated pursuant to this chapter.

5. a. At trial, the court or jury shall determine whether, beyond a reasonable doubt, the respondent is a sexually violent predator. If the case is before a jury, the verdict shall be unanimous that the respondent is a sexually violent predator.

b. If the court or jury determines that the respondent is a sexually violent predator, the respondent shall be committed to the custody of the director of the department of human services for control, care, and treatment until such time as the person's mental abnormality has so changed that the person is safe to be placed in a transitional release program or discharged. The determination may be appealed.

6. If the court or jury determines that the respondent is a sexually violent predator, the court shall order the respondent to submit a DNA sample for DNA profiling pursuant to section 81.4.

7. The control, care, and treatment of a person determined to be a sexually violent predator shall be provided at a facility operated by the department of human services. At all times prior to placement in a transitional release program or release with or without supervision, persons committed for control, care, and treatment by the department of human services pursuant to this chapter shall be kept in a secure facility and those patients shall be segregated at all times from any other patient under the supervision of the department of human services. A person committed pursuant to this chapter to the custody of the department of human services may be kept in a facility or building separate from any other patient under the supervision of the department of human services. The department of human services may enter into a chapter 28E agreement with the department of corrections or other appropriate agency in this state or another state for the confinement of patients who have been determined to be sexually violent predators. Patients who are in the custody of the director of the department of corrections pursuant to a chapter 28E agreement and who have not been placed in a transitional release program or released with or without supervision shall be housed and managed separately from criminal offenders in the custody of the director of the department of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from those offenders.

8. If the court makes the determination or the jury determines that the respondent is not a sexually violent predator, the court shall direct the respondent's release. Upon release,

the respondent shall comply with any requirements to register as a sex offender as provided in chapter 692A. Upon a mistrial, the court shall direct that the respondent be held at an appropriate secure facility until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued or the ninety days are waived as provided in subsection 3.

98 Acts, ch 1171, §7; 99 Acts, ch 61, §6, 7, 14; 2000 Acts, ch 1058, §24; 2002 Acts, ch 1139, §8, 9, 27; 2004 Acts, ch 1060, §1, 2; 2004 Acts, ch 1084, §2; 2005 Acts, ch 158, §11, 19; 2009 Acts, ch 41, §228

Referred to in §81.1

#### **229A.8 Annual examinations and review — discharge or transitional release petitions by persons committed.**

1. Upon civil commitment of a person pursuant to this chapter, a rebuttable presumption exists that the commitment should continue. The presumption may be rebutted when facts exist to warrant a hearing to determine whether a committed person no longer suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses if discharged, or the committed person is suitable for placement in a transitional release program.

2. A person committed under this chapter shall have a current examination of the person's mental abnormality made once every year. The person may retain, or if the person is indigent and so requests, the court may appoint a qualified expert or professional person to examine such person, and such expert or professional person shall be given access to all records concerning the person.

3. The annual report shall be provided to the court that committed the person under this chapter. The court shall conduct an annual review and, if warranted, set a final hearing on the status of the committed person. The annual review may be based only on written records.

4. Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for discharge or placement in a transitional release program at the annual review. The director of human services shall provide the committed person with an annual written notice of the person's right to petition the court for discharge or placement in a transitional release program without authorization from the director. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report.

5. The following provisions apply to an annual review:

a. The committed person shall have a right to have an attorney represent the person but the person is not entitled to be present at the hearing, if a hearing is held.

b. The Iowa rules of evidence do not apply.

c. The committed person may waive an annual review or may stipulate that the commitment should continue for another year.

d. The court shall review the annual report of the state and the report of any qualified expert or professional person retained by or appointed for the committed person and may receive arguments from the attorney general and the attorney for the committed person if either requests a hearing. The request for a hearing must be in writing, within thirty days of the notice of annual review being provided to counsel for the committed person, or on motion by the court. Such a hearing may be conducted in writing without any attorneys present.

e. (1) The court shall consider all evidence presented by both parties at the annual review. The burden is on the committed person to prove by a preponderance of the evidence that there is relevant and reliable evidence to rebut the presumption of continued commitment, which would lead a reasonable person to believe a final hearing should be held to determine either of the following:

(a) The mental abnormality of the committed person has so changed that the person is not likely to engage in predatory acts constituting sexually violent offenses if discharged.

(b) The committed person is suitable for placement in a transitional release program pursuant to section 229A.8A.

(2) If the committed person shows by a preponderance of the evidence that a final hearing should be held on either determination under subparagraph (1), subparagraph division (a)

or (b), or both, the court shall set a final hearing within sixty days of the determination that a final hearing be held.

f. If at the time for the annual review the committed person has filed a petition for discharge or placement in a transitional release program with authorization from the director of human services, the court shall set a final hearing within ninety days of the authorization by the director, and no annual review shall be held.

g. If the committed person has not filed a petition, or has filed a petition for discharge or for placement in a transitional release program without authorization from the director of human services, the court shall first conduct the annual review as provided in this subsection.

h. Any petition can summarily be dismissed by the court as provided in section 229A.11.

i. If at the time of the annual review the committed person is in a secure facility and not in the transitional release program, the state shall have the right to demand that both determinations in paragraph "e" be submitted to the court or jury.

6. The following provisions shall apply to a final hearing:

a. The committed person shall be entitled to an attorney and is entitled to the benefit of all constitutional protections that were afforded the person at the original commitment proceeding. The committed person shall be entitled to a jury trial, if such a demand is made in writing and filed with the clerk of court at least ten days prior to the final hearing.

b. The committed person shall have the right to have experts evaluate the person on the person's behalf. The court shall appoint an expert if the person is indigent and requests an appointment.

c. The attorney general shall represent the state and shall have a right to demand a jury trial. The jury demand shall be filed, in writing, at least ten days prior to the final hearing.

d. The burden of proof at the final hearing shall be upon the state to prove beyond a reasonable doubt either of the following:

(1) The committed person's mental abnormality remains such that the person is likely to engage in predatory acts that constitute sexually violent offenses if discharged.

(2) The committed person is not suitable for placement in a transitional release program pursuant to section 229A.8A.

e. If the director of human services has authorized the committed person to petition for discharge or for placement in a transitional release program and the case is before a jury, testimony by a victim of a prior sexually violent offense committed by the person is not admissible. If the director has not authorized the petition or the case is before the court, testimony by a victim of a sexually violent offense committed by the person may be admitted.

f. If a mistrial is declared, the confinement or placement status of the committed person shall not change. After a mistrial has been declared, a new trial must be held within ninety days of the mistrial.

7. The state and the committed person may stipulate to a transfer to a transitional release program if the court approves the stipulation.

98 Acts, ch 1171, §8; 2002 Acts, ch 1139, §10, 27; 2009 Acts, ch 41, §229; 2009 Acts, ch 116, §1

Referred to in §229A.5B, 229A.9A

### **229A.8A Transitional release.**

1. The department of human services is authorized to establish a transitional release program and provide control, care, and treatment, and supervision of committed persons placed in such a program.

2. A committed person is suitable for placement in the transitional release program if the court finds that all of the following apply:

a. The committed person's mental abnormality is no longer such that the person is a high risk to reoffend.

b. The committed person has achieved and demonstrated significant insights into the person's sex offending cycle.

c. The committed person has accepted responsibility for past behavior and understands the impact sexually violent crimes have upon a victim.

d. A detailed relapse prevention plan has been developed and accepted by the treatment

provider which is appropriate for the committed person's mental abnormality and sex offending history.

e. No major discipline reports have been issued for the committed person for a period of six months.

f. The committed person is not likely to escape or attempt to escape custody pursuant to section 229A.5B.

g. The committed person is not likely to engage in predatory acts constituting sexually violent offenses while in the program.

h. The placement is in the best interest of the committed person.

i. The committed person has demonstrated a willingness to agree to and abide by all rules of the program.

3. If the committed person does not agree to the conditions of release, the person is not eligible for the transitional release program.

4. A committed person who refuses to register as a sex offender is not eligible for placement in a transitional release program.

5. Committed persons in the transitional release program are not necessarily required to be segregated from other persons.

6. The department of human services shall be responsible for establishing and implementing the rules and directives regarding the location of the transitional release program, staffing needs, restrictions on confinement and the movement of committed persons, and for assessing the progress of committed persons in the program. The court may also impose conditions on a committed person placed in the program.

7. The department of human services may contract with other government or private agencies, including the department of corrections, to implement and administer the transitional release program.

2002 Acts, ch 1139, §11, 27; 2003 Acts, ch 44, §47; 2004 Acts, ch 1175, §463, 468

Referred to in §229A.8

#### **229A.8B Violations of transitional release.**

1. The treatment staff in a transitional release program may remove the committed person from the program for a violation of any rule or directive, and return the person to a secure facility. The treatment staff may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the committed person into custody so that the person can be returned to a secure facility. The request for an ex parte order may be made orally or by telephone, but the original written request or a facsimile copy of the original request shall be filed with the clerk of court no later than four-thirty p.m. on the next business day the office of the clerk of court is open.

2. If a committed person absconds from a transitional release program in violation of the rules or directives, a presumption arises that the person poses a risk to public safety. The department of human services, in cooperation with local law enforcement agencies, may make a public announcement about the absconder. The public announcement may include a description of the committed person, that the person is in transitional release from the sexually violent predator program, and any other information important to public safety.

3. Upon the return of the committed person to a secure facility, the director of human services or the director's designee shall notify the court that issued the ex parte order that the absconder has been returned to a secure facility, and the court shall set a hearing within five days to determine if a violation occurred. If a court order was not issued, the director or the director's designee shall contact the nearest district court with jurisdiction to set a hearing to determine whether a violation of the rules or directives occurred. The court shall schedule a hearing within five days of receiving notice that the committed person has been returned from the transitional release program to a secure facility.

4. At the hearing, the burden shall be upon the attorney general to show by a preponderance of the evidence that a violation of the rules or directives occurred. The hearing shall be to the court.

5. If the court determines a violation occurred, the court shall either order the committed person to be returned to the transitional release program or to be confined in a secure

facility. The court may impose further conditions upon the committed person if returned to the transitional release program. If the court determines no violation occurred, the committed person shall be returned to the transitional release program.

2002 Acts, ch 1139, §12, 27

**229A.9 Detention and commitment to conform to constitutional requirements.**

The involuntary detention or commitment of persons under this chapter shall conform to constitutional requirements for care and treatment.

98 Acts, ch 1171, §9

**229A.9A Release with or without supervision.**

1. In any proceeding under section 229A.8, the court may order the committed person released with or without supervision if any of the following apply:

a. The attorney general stipulates to the release with or without supervision.

b. The court or jury has determined that the person should be discharged from the program, but the court has determined it is in the best interest of the community to order release with or without supervision before the committed person is discharged.

2. If release with or without supervision is ordered, the department of human services shall prepare within thirty days of the order of the court a release plan addressing the person's needs for counseling, medication, community support services, residential services, vocational services, alcohol or other drug abuse treatment, sex offender treatment, or any other treatment or supervision necessary.

3. The court shall set a hearing on the release plan prepared by the department of human services before the committed person is released from a secure facility or a transitional release program.

4. If the court orders release with supervision, the court shall order supervision by an agency with jurisdiction that is familiar with the placement of criminal offenders in the community. The agency with jurisdiction shall be responsible for initiating proceedings for violations of the release plan as provided in section 229A.9B. If the court orders release without supervision, the agency with jurisdiction shall also be responsible for initiating proceedings for any violations of the release plan as provided in section 229A.9B.

5. A committed person may not petition the court for release with or without supervision.

6. A committed person released with or without supervision is not considered discharged from civil commitment under this chapter.

7. After being released with or without supervision, the person may petition the court for discharge as provided in section 229A.8.

8. The court shall retain jurisdiction over the committed person who has been released with or without supervision until the person is discharged from the program. The department of human services shall not be held liable for any acts committed by a committed person who has been ordered released with or without supervision.

2002 Acts, ch 1139, §13, 27

**229A.9B Violations of release with or without supervision.**

1. If a committed person violates the release plan, the agency with jurisdiction over the person may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody so that the person can be returned to a secure facility. The request for an ex parte order may be made orally or by telephone, but the original written request or a facsimile copy of the request shall be filed with the clerk of court no later than four-thirty p.m. on the next business day the office of the clerk of court is open.

2. If a committed person has absconded in violation of the conditions of the person's release plan, a presumption arises that the person poses a risk to public safety. The department of human services or contracting agency, in cooperation with local law enforcement agencies, may make a public announcement about the absconder. The public announcement may include a description of the committed person, that the committed person is on release with or without supervision from the sexually violent predator program, and any other information pertinent to public safety.

3. Upon the return of the committed person to a secure facility, the director of human services or the director's designee shall notify the court that issued the ex parte order that the committed person has been returned to a secure facility, and the court shall set hearing within five days to determine if a violation occurred. If a court order was not issued, the director or the director's designee shall contact the nearest district court with jurisdiction to set a hearing to determine whether a violation of the conditions of the release plan occurred. The court shall schedule a hearing within five days of receiving notice that the committed person has been returned to a secure facility.

4. At the hearing, the burden shall be upon the attorney general to show by a preponderance of the evidence that a violation of the release plan occurred.

5. If the court determines a violation occurred, the court shall receive release recommendations from the department of human services and either order that the committed person be returned to release with or without supervision or placed in a transitional release program, or be confined in a secure facility. The court may impose further conditions upon the committed person if returned to release with or without supervision or placed in the transitional release program. If the court determines no violation occurred, the committed person shall be returned to release with or without supervision.

2002 Acts, ch 1139, §14, 27

Referred to in §229A.9A

#### **229A.10 Petition for discharge — procedure.**

1. If the director of human services determines that the person's mental abnormality has so changed that the person is not likely to engage in predatory acts that constitute sexually violent offenses if discharged, the director shall authorize the person to petition the court for discharge. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for discharge, shall order a hearing within thirty days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the attorney general's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. If the attorney general objects to the petition for discharge, the burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is likely to engage in predatory acts that constitute sexually violent offenses if discharged.

2. Upon a finding that the state has failed to meet its burden of proof under this section, the court shall authorize the committed person to be discharged.

98 Acts, ch 1171, §10; 99 Acts, ch 61, §8, 14; 2002 Acts, ch 1139, §15, 27; 2003 Acts, ch 44, §48

Referred to in §229A.5B

#### **229A.11 Subsequent discharge or transitional release petitions — limitations.**

Nothing in this chapter shall prohibit a person from filing a petition for discharge or placement in a transitional release program, pursuant to this chapter. However, if a person has previously filed a petition for discharge or for placement in a transitional release program without the authorization of the director of human services, and the court determines either upon review of the petition or following a hearing that the petition was frivolous or that the petitioner's condition had not so changed that the person was not likely to engage in predatory acts constituting sexually violent offenses if discharged, or was not suitable for placement in the transitional release program, then the court shall summarily deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the director's authorization, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds. If the court determines that a petition is frivolous, the court shall dismiss the petition without a hearing.

98 Acts, ch 1171, §11; 2002 Acts, ch 1139, §16, 27

Referred to in §229A.8

**229A.12 Director of human services — responsibility for costs — reimbursement.**

The director of human services shall be responsible for all costs relating to the evaluation, treatment, and services provided to a person that are incurred after the person is committed to the director's custody after the court or jury determines that the respondent is a sexually violent predator and pursuant to commitment under any provision of this chapter. If placement in a transitional release program or supervision is ordered, the director shall also be responsible for all costs related to the transitional release program or to the supervision and treatment of any person. Reimbursement may be obtained by the director from the patient and any person legally liable or bound by contract for the support of the patient for the cost of confinement or of care and treatment provided. To the extent allowed by the United States social security administration, any benefit payments received by the person pursuant to the federal Social Security Act shall be used for the costs incurred. As used in this section, "*any person legally liable*" does not include a political subdivision.

98 Acts, ch 1171, §12; 98 Acts, ch 1181, §26; 99 Acts, ch 61, §9, 14; 2002 Acts, ch 1139, §17, 27; 2005 Acts, ch 175, §99

**229A.12A Director of the department of corrections — responsibility for safekeeper.**

The director of the department of corrections shall have authority, once a person is detained pursuant to section 229A.5, to make a determination as to the appropriate secure facility within the department of corrections in which the safekeeper is to be placed, taking into consideration the safekeeper's medical needs and ability to interact with offenders who have been committed to the custody of the director of the department of corrections. The director has authority to determine the safekeeper's degree of segregation from offenders, including whether total segregation is appropriate under the circumstances or whether the safekeeper should be permitted to participate in normal confinement activities in the presence of offenders.

2002 Acts, ch 1139, §18, 27

**229A.13 Severability.**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application and, to this end, the provisions of this chapter are severable.

98 Acts, ch 1171, §14

**229A.14 Release of confidential or privileged information and records.**

Notwithstanding any provision in the Code regarding confidentiality to the contrary, any relevant information and records which would otherwise be confidential or privileged, except information subject to attorney-client privilege and attorney work product, shall be released to the agency with jurisdiction or the attorney general for the purpose of meeting the notice requirement provided in section 229A.3 and determining whether a person is or continues to be a sexually violent predator.

98 Acts, ch 1171, §15; 2002 Acts, ch 1139, §19, 27

**229A.15 Court records — sealed and opened by court order.**

Any psychological reports, drug and alcohol reports, treatment records, reports of any diagnostic center, medical records, or victim impact statements which have been submitted to the court or admitted into evidence under this chapter shall be part of the record but shall be sealed and opened only on order of the court.

98 Acts, ch 1171, §16

**229A.15A Civil protective order.**

A victim of a crime that was committed before the filing of a petition under this chapter by a safekeeper or by a person subjected to an order of civil commitment pursuant to this chapter,

may obtain a protective order against the safekeeper or person using the procedures set out in section 915.22.

2002 Acts, ch 1139, §20, 27

**229A.15B Rulemaking authority.**

The department of human services shall adopt rules pursuant to chapter 17A necessary to administer this chapter.

2002 Acts, ch 1139, §21, 27

**229A.16 Short title.**

This chapter shall be known and may be cited as the “*Sexually Violent Predator Act*”.

98 Acts, ch 1171, §17

## CHAPTER 230

### SUPPORT OF PERSONS WITH MENTAL ILLNESS

Referred to in §125.43, 226.8, 229.24, 229.42, 252.23, 331.381, 331.394, 904.201

230.1	Liability of county and state.	230.20	Billing of patient charges — computation of actual costs — cost settlement.
230.2	Finding of residence.		
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230.5	Nonresidents.		
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230.13	and 230.14 Repealed by 2004 Acts, ch 1090, §55.	230.30	Claim against estate.
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230.16	Presumption.	230.32	Support of nonresident patients on leave.
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**230.1 Liability of county and state.**

1. The necessary and legal costs and expenses attending the taking into custody, care, investigation, admission, commitment, and support of a person with mental illness admitted or committed to a state hospital shall be paid by a county or by the state as follows:

a. If the person is eighteen years of age or older, by the person’s county of residence.

b. By the state as a state case if such person has no residence in this state, if the person’s residence is unknown, or if the person is under eighteen years of age.

2. The county of residence of any person with mental illness who is a patient of any state institution shall be the person’s county of residence existing at the time of admission to the institution.

3. A county of residence is not liable for costs and expenses associated with a person with mental illness unless the costs and expenses are for services and other support authorized for the person through the central point of coordination process.\* For the purposes of

this chapter, “*central point of coordination process*” means the same as defined in section 331.440.\*

[C73, §1402; C97, §2270; S13, §2270; C24, 27, 31, 35, 39, §3581; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.1]

96 Acts, ch 1129, §113; 96 Acts, ch 1183, §24; 98 Acts, ch 1181, §6, 7, 10; 2004 Acts, ch 1090, §33; 2012 Acts, ch 1120, §106, 130

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending  
2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

### **230.2 Finding of residence.**

If a person’s residency status is disputed, the residency shall be determined in accordance with section 331.394. Otherwise, the district court may, when the person is ordered placed in a hospital for psychiatric examination and appropriate treatment, or as soon thereafter as the court obtains the proper information, determine and enter of record whether the residence of the person is in a county or the person is deemed to be a state case, as follows:

1. In the county from which the person was placed in the hospital.
2. In another county of the state.
3. In a foreign state or country and deemed to be a state case.
4. Unknown and deemed to be a state case.

[C24, 27, 31, 35, 39, §3582; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.2]

2004 Acts, ch 1090, §44; 2012 Acts, ch 1120, §107, 130

Referred to in §230.4, 230.5

Acquisition of legal settlement; see §252.16

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

### **230.3 Certification of residence.**

If a person’s county of residence is determined by the county’s central point of coordination process\* to be in another county of this state, the county making the determination shall certify the determination to the superintendent of the hospital to which the person is admitted or committed. The certification shall be accompanied by a copy of the evidence supporting the determination. Upon receiving the certification, the superintendent shall charge the expenses already incurred and unadjusted, and all future expenses of the person, to the county determined to be the county of residence.

[C73, §1417; C97, §2281; C24, 27, 31, 35, 39, §3583; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.3]

2004 Acts, ch 1090, §33, 45; 2012 Acts, ch 1120, §108, 130

Referred to in §230.4, 230.5, 331.502

\*Section 331.440, implementing the central point of coordination process, is repealed; corrective legislation is pending

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

### **230.4 Certification to debtor county.**

A determination of a person’s county of residence made in accordance with section 230.2 or 230.3 shall be sent by the court or the county to the county auditor of the county of residence. The certification shall be accompanied by a copy of the evidence supporting the determination. The auditor shall provide the certification to the board of supervisors of the auditor’s county, and it shall be conclusively presumed that the person has residence in the notified county unless that county disputes the finding of residence as provided in section 331.394.

[C73, §1402; C97, §2270; S13, §2270; C24, 27, 31, 35, 39, §3584; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.4]

2004 Acts, ch 1090, §46; 2012 Acts, ch 1120, §109, 130

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

### **230.5 Nonresidents.**

If a person’s residence is determined in accordance with section 230.2 or 230.3 to be in a foreign state or country, or is unknown, the court or the county shall immediately certify the

determination to the department's administrator. The certification shall be accompanied by a copy of the evidence supporting the determination. A court order issued pursuant to section 229.13 shall direct that the patient be hospitalized at the appropriate state hospital for persons with mental illness.

[C73, §1402; C97, §2270; S13, §2270, 2727-a28a; C24, 27, 31, 35, 39, §3585; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.5]

96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §41; 2004 Acts, ch 1090, §47; 2012 Acts, ch 1120, §110, 130

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

### **230.6 Investigation by administrator.**

The administrator shall immediately investigate the residency of a patient and proceed as follows:

1. If the administrator concurs with a certified determination of residency concerning the patient, the administrator shall cause the patient either to be transferred to a state hospital for persons with mental illness at the expense of the state, or to be transferred, with approval of the court as required by chapter 229 to the place of foreign residence.

2. If the administrator disputes a certified legal residency determination, the administrator shall order the patient to be maintained at a state hospital for persons with mental illness at the expense of the state until the dispute is resolved.

3. If the administrator disputes a residency determination, the administrator shall utilize the procedure provided in section 331.394 to resolve the dispute. A determination of the person's residency status made pursuant to section 331.394 is conclusive.

[S13, §2727-a28a; C24, 27, 31, 35, 39, §3586; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.6]

96 Acts, ch 1129, §113; 97 Acts, ch 23, §18; 2004 Acts, ch 1090, §48; 2012 Acts, ch 1120, §111, 130

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

### **230.7 Transfer of nonresidents.**

Upon determining that a patient in a state hospital who has been involuntarily hospitalized under chapter 229 or admitted voluntarily at public expense was not a resident of this state at the time of the involuntary hospitalization or admission, the administrator may cause that patient to be conveyed to the patient's place of residence. However, a transfer under this section may be made only if the patient's condition so permits and other reasons do not render the transfer inadvisable. If the patient was involuntarily hospitalized, prior approval of the transfer must be obtained from the court which ordered the patient hospitalized.

[C73, §1419; C97, §2283; S13, §2283, 2727-a28a; C24, 27, 31, 35, 39, §3587; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.7]

97 Acts, ch 23, §19

### **230.8 Transfers of persons with mental illness — expenses.**

The transfer to any state hospitals or to the places of their residence of persons with mental illness who have no residence in this state or whose residence is unknown and deemed to be a state case, shall be made according to the directions of the administrator, and when practicable by employees of the state hospitals. The actual and necessary expenses of such transfers shall be paid on itemized vouchers sworn to by the claimants and approved by the administrator, and the amount of the expenses is appropriated to the department from any funds in the state treasury not otherwise appropriated.

[S13, §2308-a, 2727-a28b; C24, 27, 31, 35, 39, §3588; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.8]

96 Acts, ch 1129, §113; 2012 Acts, ch 1120, §112, 130

Referred to in §8.59, 230.31

Appropriation limited for fiscal years beginning on or after July 1, 1993; see §8.59

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

**230.9 Subsequent discovery of residence.**

If, after a person has been received by a state hospital for persons with mental illness as a state case patient whose residence is supposed to be outside this state, the administrator determines that the residence of the person was, at the time of admission or commitment, in a county of this state, the administrator shall certify the determination and charge all legal costs and expenses pertaining to the admission or commitment and support of the person to the county of residence. The certification shall be sent to the county of residence. The certification shall be accompanied by a copy of the evidence supporting the determination. The costs and expenses shall be collected as provided by law in other cases. If the person's residency status has been determined in accordance with section 331.394, the legal costs and expenses shall be charged to the county of residence or as a state case in accordance with that determination.

[S13, §2727-a28a; C24, 27, 31, 35, 39, §3589; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.9]

96 Acts, ch 1129, §113; 2004 Acts, ch 1090, §49; 2012 Acts, ch 1120, §113, 130

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**230.10 Payment of costs.**

All legal costs and expenses attending the taking into custody, care, investigation, and admission or commitment of a person to a state hospital for persons with mental illness under a finding that the person has residency in another county of this state shall be charged against the county of residence.

[S13, §2308-a; C24, 27, 31, 35, 39, §3590; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.10]

87 Acts, ch 36, §1; 96 Acts, ch 1129, §113; 2012 Acts, ch 1120, §114, 130

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**230.11 Recovery of costs from state.**

Costs and expenses attending the taking into custody, care, and investigation of a person who has been admitted or committed to a state hospital, United States department of veterans affairs hospital, or other agency of the United States government, for persons with mental illness and who has no residence in this state or whose residence is unknown, including cost of commitment, if any, shall be paid as a state case as approved by the administrator. The amount of the costs and expenses approved by the administrator is appropriated to the department from any money in the state treasury not otherwise appropriated, on itemized vouchers executed by the auditor of the county which has paid them, and approved by the administrator.

[S13, §2308-a; C24, 27, 31, 35, 39, §3591; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.11]

96 Acts, ch 1129, §113; 2009 Acts, ch 26, §13; 2012 Acts, ch 1120, §115, 130

Referred to in §8.59, 331.502

Appropriation limited for fiscal years beginning on or after July 1, 1993; see §8.59

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**230.12 Residency disputes.**

If a dispute arises between different counties or between the administrator and a county as to the residence of a person admitted or committed to a state hospital for persons with mental illness, the dispute shall be resolved as provided in section 331.394.

[C73, §1418; C97, §2270, 2282; S13, §2270; C24, 27, 31, 35, 39, §3592; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.12]

91 Acts, ch 267, §141; 94 Acts, ch 1170, §4; 95 Acts, ch 119, §1, 5; 96 Acts, ch 1129, §113; 2004 Acts, ch 1090, §50; 2012 Acts, ch 1120, §116, 130

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**230.13 and 230.14** Repealed by 2004 Acts, ch 1090, § 55.

**230.15 Personal liability.**

1. A person with mental illness and a person legally liable for the person's support remain liable for the support of the person with mental illness as provided in this section. Persons legally liable for the support of a person with mental illness include the spouse of the person, any person bound by contract for support of the person, and, with respect to persons with mental illness under eighteen years of age only, the father and mother of the person. The county auditor, subject to the direction of the board of supervisors, shall enforce the obligation created in this section as to all sums advanced by the county. The liability to the county incurred by a person with mental illness or a person legally liable for the person's support under this section is limited to an amount equal to one hundred percent of the cost of care and treatment of the person with mental illness at a state mental health institute for one hundred twenty days of hospitalization. This limit of liability may be reached by payment of the cost of care and treatment of the person with mental illness subsequent to a single admission or multiple admissions to a state mental health institute or, if the person is not discharged as cured, subsequent to a single transfer or multiple transfers to a county care facility pursuant to section 227.11. After reaching this limit of liability, a person with mental illness or a person legally liable for the person's support is liable to the county for the care and treatment of the person with mental illness at a state mental health institute or, if transferred but not discharged as cured, at a county care facility in an amount not in excess of the average minimum cost of the maintenance of an individual who is physically and mentally healthy residing in the individual's own home, which standard shall be established and may from time to time be revised by the department of human services. A lien imposed by section 230.25 shall not exceed the amount of the liability which may be incurred under this section on account of a person with mental illness.

2. A person with a substance-related disorder is legally liable for the total amount of the cost of providing care, maintenance, and treatment for the person with a substance-related disorder while a voluntary or committed patient. When a portion of the cost is paid by a county, the person with a substance-related disorder is legally liable to the county for the amount paid. The person with a substance-related disorder shall assign any claim for reimbursement under any contract of indemnity, by insurance or otherwise, providing for the person's care, maintenance, and treatment in a state hospital to the state. Any payments received by the state from or on behalf of a person with a substance-related disorder shall be in part credited to the county in proportion to the share of the costs paid by the county.

3. Nothing in this section shall be construed to prevent a relative or other person from voluntarily paying the full actual cost or any portion of the care and treatment of any person with mental illness or a substance-related disorder as established by the department of human services.

[R60, §1488; C73, §1433; C97, §2297; C24, 27, 31, 35, 39, §3595; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.15; 82 Acts, ch 1260, §114 – 116]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1001, §17; 90 Acts, ch 1085, §21; 96 Acts, ch 1129, §60; 2011 Acts, ch 121, §57, 62; 2013 Acts, ch 30, §43

Referred to in §230.16, 230.25, 234.39, 331.502

Section amended

**230.16 Presumption.**

In actions to enforce the liability imposed by section 230.15, the certificate from the superintendent to the county auditor stating the sums charged in such cases, shall be presumptively correct.

[R60, §1488; C73, §1433; C97, §2297; C24, 27, 31, 35, 39, §3596; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.16]

**230.17 Board may compromise lien.**

The board of supervisors is hereby empowered to compromise any and all liabilities to the county, created by this chapter, when such compromise is deemed to be for the best interests of the county.

[C73, §1433; C97, §2297; C24, 27, 31, 35, 39, §3597; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.17]

**230.18 Expense in county or private hospitals.**

The estates of persons with mental illness who may be treated or confined in any county hospital or home, or in any private hospital or sanatorium, and the estates of persons legally bound for their support, shall be liable to the county for the reasonable cost of such support.

[R60, §1488; C73, §1433; C97, §2297; C24, 27, 31, 35, 39, §3598; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.18]

96 Acts, ch 1129, §113

**230.19 Nonresidents liable to state — presumption.**

The estates of all nonresident patients provided for and treated in state hospitals for persons with mental illness in this state, and all persons legally bound for the support of such patients, shall be liable to the state for the reasonable value of the care, maintenance, and treatment of such patients while in such hospitals. The certificate of the superintendent of the state hospital in which any nonresident is or has been a patient, showing the amounts drawn from the state treasury or due therefrom as provided by law on account of such nonresident patient, shall be presumptive evidence of the reasonable value of the care, maintenance, and treatment furnished such patient.

[S13, §2297-a; C24, 27, 31, 35, 39, §3599; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.19]

96 Acts, ch 1129, §113

**230.20 Billing of patient charges — computation of actual costs — cost settlement.**

1. The superintendent of each mental health institute shall compute by February 1 the average daily patient charges and other service charges for which each county will be billed for services provided to patients chargeable to the county during the fiscal year beginning the following July 1. The department shall certify the amount of the charges and notify the counties of the billing charges.

a. The superintendent shall separately compute by program the average daily patient charge for a mental health institute for services provided in the following fiscal year, in accordance with generally accepted accounting procedures, by totaling the expenditures of the program for the immediately preceding calendar year, by adjusting the expenditures by a percentage not to exceed the percentage increase in the consumer price index for all urban consumers for the immediately preceding calendar year, and by dividing the adjusted expenditures by the total inpatient days of service provided in the program during the immediately preceding calendar year. However, the superintendent shall not include the following in the computation of the average daily patient charge:

(1) The costs of food, lodging, and other maintenance provided to persons not patients of the hospital.

(2) The costs of certain direct medical services identified in administrative rule, which may include but need not be limited to X-ray, laboratory, and dental services.

(3) The costs of outpatient and state placement services.

(4) The costs of the psychiatric residency program.

(5) The costs of the chaplain intern program.

b. The department shall compute the direct medical services, outpatient, and state placement services charges, in accordance with generally accepted accounting procedures, on the basis of the actual cost of the services provided during the immediately preceding calendar year. The direct medical services, outpatient, and state placement services shall be billed directly against the patient who received the services.

2. a. The superintendent shall certify to the department the billings to each county for

services provided to patients chargeable to the county during the preceding calendar quarter. The county billings shall be based on the average daily patient charge and other service charges computed pursuant to subsection 1, and the number of inpatient days and other service units chargeable to the county. However, a county billing shall be decreased by an amount equal to reimbursement by a third party payor or estimation of such reimbursement from a claim submitted by the superintendent to the third party payor for the preceding calendar quarter. When the actual third party payor reimbursement is greater or less than estimated, the difference shall be reflected in the county billing in the calendar quarter the actual third party payor reimbursement is determined.

b. The per diem costs billed to each county shall not exceed the per diem costs billed to the county in the fiscal year beginning July 1, 1996. However, the per diem costs billed to a county may be adjusted annually to reflect increased costs to the extent of the percentage increase in the total of county fixed budgets pursuant to the allowed growth factor adjustment authorized by the general assembly for the fiscal year in accordance with section 331.439.\*

3. The superintendent shall compute in January the actual per-patient-per-day cost for each mental health institute for the immediately preceding calendar year, in accordance with generally accepted accounting procedures, by totaling the actual expenditures of the mental health institute for the calendar year and by dividing the total actual expenditures by the total inpatient days of service provided during the calendar year.

4. The department shall certify to the counties by February 1 the actual per-patient-per-day costs, as computed pursuant to subsection 3, and the actual costs owed by each county for the immediately preceding calendar year for patients chargeable to the county. If the actual costs owed by the county are greater than the charges billed to the county pursuant to subsection 2, the department shall bill the county for the difference with the billing for the quarter ending June 30. If the actual costs owed by the county are less than the charges billed to the county pursuant to subsection 2, the department shall credit the county for the difference starting with the billing for the quarter ending June 30.

5. An individual statement shall be prepared for a patient on or before the fifteenth day of the month following the month in which the patient leaves the mental health institute, and a general statement shall be prepared at least quarterly for each county to which charges are made under this section. Except as otherwise required by sections 125.33 and 125.34, the general statement shall list the name of each patient chargeable to that county who was served by the mental health institute during the preceding month or calendar quarter, the amount due on account of each patient, and the specific dates for which any third party payor reimbursement received by the state is applied to the statement and billing, and the county shall be billed for eighty percent of the stated charge for each patient specified in this subsection. The statement prepared for each county shall be certified by the department and a duplicate statement shall be mailed to the auditor of that county.

6. All or any reasonable portion of the charges incurred for services provided to a patient, to the most recent date for which the charges have been computed, may be paid at any time by the patient or by any other person on the patient's behalf. Any payment made by the patient or other person, and any federal financial assistance received pursuant to Tit. XVIII or XIX of the federal Social Security Act for services rendered to a patient, shall be credited against the patient's account and, if the charges paid as described in this subsection have previously been billed to a county, reflected in the mental health institute's next general statement to that county.

7. A superintendent of a mental health institute may request that the director of human services enter into a contract with a person for the mental health institute to provide consultation or treatment services or for fulfilling other purposes which are consistent with the purposes stated in section 226.1. The contract provisions shall include charges which reflect the actual cost of providing the services or fulfilling the other purposes. Any income from a contract authorized under this subsection may be retained by the mental health institute to defray the costs of providing the services. Except for a contract voluntarily entered into by a county under this subsection, the costs or income associated with a contract authorized under this subsection shall not be considered in computing charges and per diem costs in accordance with the provisions of subsections 1 through 6 of this section.

8. The department shall provide a county with information, which is not otherwise confidential under law, in the department's possession concerning a patient whose cost of care is chargeable to the county, including but not limited to the information specified in section 229.24, subsection 3.

[R60, §1487; C73, §1428; C97, §2292; S13, §2292; C24, 27, 31, 35, 39, §3600; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §230.20; 81 Acts, ch 78, §20, 38, 39]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1169, §2; 87 Acts, ch 37, §1; 88 Acts, ch 1249, §9; 88 Acts, ch 1276, §39; 95 Acts, ch 82, §5; 95 Acts, ch 120, §4; 96 Acts, ch 1183, §25, 26; 98 Acts, ch 1155, §11; 2001 Acts, ch 155, §23 – 25; 2005 Acts, ch 167, §31, 32, 66; 2010 Acts, ch 1061, §180; 2010 Acts, ch 1141, §25, 26

Referred to in §218.78, 226.9C, 228.6, 230.21, 230.22, 904.201

\*Section 331.439 is repealed; corrective legislation is pending

Section not amended; footnote added

### **230.21 Duty of county auditor and treasurer.**

The county auditor, upon receipt of the duplicate statement required by section 230.20, shall enter it to the credit of the state in the ledger of state accounts, shall furnish to the board of supervisors a list of the names of the persons so certified, and at once issue a notice authorizing the county treasurer to transfer the amount billed to the county by the statement, from the county to the general state revenue, which notice shall be filed by the treasurer as authority for making the transfer. The auditor shall promptly remit the amount so transferred to the treasurer of state, designating the fund to which it belongs.

[R60, §1487; C73, §1428; C97, §2292; S13, §2292; C24, 27, 31, 35, 39, §3601; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.21]

83 Acts, ch 123, §86, 209

Referred to in §228.6, 230.25, 331.502, 331.552

### **230.22 Penalty.**

Should any county fail to pay the amount billed by a statement submitted pursuant to section 230.20 within forty-five days from the date the statement is received by the county, the department shall charge the delinquent county the penalty of one percent per month on and after forty-five days from the date the statement is received by the county until paid. Provided, however, that the penalty shall not be imposed if the county has notified the department of error or questionable items in the billing, in which event, the department shall suspend the penalty only during the period of negotiation.

[C97, §2292; S13, §2292; C24, 27, 31, 35, 39, §3602; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.22]

98 Acts, ch 1218, §74; 2001 Acts, ch 155, §26

Referred to in §331.502

**230.23 and 230.24** Repealed by 81 Acts, ch 117, § 1097.

### **230.25 Financial investigation by supervisors.**

1. Upon receipt from the county auditor of the list of names furnished pursuant to section 230.21, the board of supervisors shall make an investigation to determine the ability of each person whose name appears on the list, and also the ability of any person liable under section 230.15 for the support of that person, to pay the expenses of that person's hospitalization. If the board finds that neither the hospitalized person nor any person legally liable for the person's support is able to pay those expenses, they shall direct the county auditor not to index the names of any of those persons as would otherwise be required by section 230.26. However the board may review its finding with respect to any person at any subsequent time at which another list is furnished by the auditor upon which that person's name appears. If the board finds upon review that that person or those legally liable for the person's support are presently able to pay the expenses of that person's hospitalization, that finding shall apply only to charges stated upon the certificate from which the list was drawn up and any subsequent charges similarly certified, unless and until the board again changes its finding.

2. All liens created under section 230.25, as that section appeared in the Code of 1975

and prior editions of the Code, are abolished effective January 1, 1977, except as otherwise provided by subsection 1. The board of supervisors of each county shall, as soon as practicable after July 1, 1976, review all liens resulting from the operation of said section 230.25, Code 1975, and make a determination as to the ability of the person against whom the lien exists to pay the charges represented by the lien, and if they find that the person is able to pay those charges they shall direct the county attorney of that county to take immediate action to enforce the lien. If action is commenced under this section on any lien prior to the effective date of the abolition thereof, that lien shall not be abolished but shall continue until the action is completed. The board of supervisors shall release any such lien when the charge on which the lien is based is fully paid or is compromised and settled by the board in such manner as its members deem to be in the best interest of the county, or when the estate affected by the lien has been probated and the proceeds allowable have been applied on the lien.

[C39, §3604.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.25]  
 Referred to in §228.6, 230.15, 230.30, 331.381, 331.502, 331.756(47)

### **230.26 Auditor to keep record.**

The auditor of each county shall keep an accurate account of the cost of the maintenance of any patient kept in any institution as provided for in this chapter and keep an index of the names of the persons admitted or committed from such county. The name of the husband or the wife of such person designating such party as the spouse of the person admitted or committed shall also be indexed in the same manner as the names of the persons admitted or committed are indexed. The book shall be designated as an account book or index, and shall have no reference in any place to a lien.

[C39, §3604.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.26]  
 Referred to in §228.6, 230.25, 331.502, 331.508

### **230.27 Board and county attorney to collect.**

It shall be the duty of the board of supervisors to collect said claims and direct the county attorney to proceed with the collection of said claims as a part of the duties of the county attorney's office.

[C39, §3604.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.27]  
 Referred to in §331.381, 331.756(47)

### **230.28 and 230.29** Repealed by 76 Acts, ch 1104, § 17.

### **230.30 Claim against estate.**

On the death of a person receiving or who has received assistance under the provisions of this chapter, and whom the board has previously found, under section 230.25, is able to pay there shall be allowed against the estate of such decedent a claim of the sixth class for that portion of the total amount paid for that person's care which exceeds the total amount of all claims of the first through the fifth classes, inclusive, as defined in section 633.425, which are allowed against that estate.

[C39, §3604.6; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §230.30]

### **230.31 Departers from other states.**

If a person with mental illness departs without proper authority from an institution in another state and is found in this state, a peace officer in the county in which the patient is found may take and detain the patient without order and shall report the detention to the administrator who shall provide for the return of the patient to the authorities of the state where the unauthorized leave was made. Pending such return, the patient may be detained temporarily at one of the institutions of this state under the control of the administrator or any other administrator of the department of human services. Expenses incurred under this section shall be paid in the same manner as is provided for transfers in section 230.8.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §230.31]  
 83 Acts, ch 96, §157, 159; 96 Acts, ch 1129, §113; 2000 Acts, ch 1112, §42

**230.32 Support of nonresident patients on leave.**

The cost of support of patients without residence in this state, who are placed on convalescent leave or removed from a state mental institute to any health care facility licensed under chapter 135C for rehabilitation purposes, shall be paid from the hospital support fund and shall be charged on abstract in the same manner as state inpatients, until such time as the patient becomes self-supporting or qualifies for support under existing statutes.

[C66, 71, 73, 75, 77, 79, 81, §230.32]

2012 Acts, ch 1120, §117, 130

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130  
Section amended

**230.33 Reciprocal agreements.**

The administrator may enter into agreements with other states, through their duly constituted authorities, to effect the reciprocal return of persons with mental illness and persons with an intellectual disability to the contracting states, and to effect the reciprocal supervision of persons on convalescent leave.

However, in the case of a proposed transfer of a person with mental illness or an intellectual disability from this state, final action shall not be taken without the approval either of the commission of hospitalization, or of the district court, of the county of admission or commitment.

[C66, 71, 73, 75, 77, 79, 81, §230.33]

96 Acts, ch 1129, §61; 2000 Acts, ch 1112, §43; 2012 Acts, ch 1019, §82; 2013 Acts, ch 90, §55

Unnumbered paragraph 2 amended

**230.34 Definitions.**

1. As used in this chapter, “*administrator*” means the administrator of the department of human services assigned, in accordance with section 218.1, to control the state mental health institutes, or that administrator’s designee.

2. As used in this chapter, “*auditor*” means the county auditor or the auditor’s designee.

3. As used in this chapter, unless the context otherwise requires, “*book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

4. As used in this chapter, unless the context otherwise requires, “*department*” means the department of human services.

[C71, 73, 75, 77, 79, 81, §230.34; 81 Acts, ch 78, §20, 40]

83 Acts, ch 96, §157, 159; 94 Acts, ch 1170, §39; 97 Acts, ch 169, §16; 2000 Acts, ch 1112, §44; 2000 Acts, ch 1148, §1; 2001 Acts, ch 155, §27

**230.35 Releasing liens.**

A lien obtained pursuant to an action to collect any claim arising under this chapter shall be released by the board of supervisors when the claim or claims on which the lien is based have been fully paid or compromised and settled by the board, or when the estate of which the real estate subject to the lien is a part has been probated and the proceeds allowable have been applied to the claim or claims on which the lien is based.

[C79, 81, §230.35]

Referred to in §331.381

## CHAPTER 230A

## COMMUNITY MENTAL HEALTH CENTERS

Referred to in §11.6, 225C.4, 225C.7, 232.78, 232.83, 235A.15, 331.382

For provisions concerning the continuing operation of community mental health centers under requirements of this chapter, Code 2011, until rules adoption process and related transition provisions are completed, see 2011 Acts, ch 121, §23

230A.1	through 230A.18 Repealed by 2011 Acts, ch 121, §22, 23.	230A.106	Services offered.
230A.101	Services system roles.	230A.107	Form of organization.
230A.102	Definitions.	230A.108	Administrative, diagnostic, and demographic information.
230A.103	Designation of community mental health centers.	230A.109	Funding — legislative intent.
230A.104	Catchment areas.	230A.110	Standards.
230A.105	Target population — eligibility.	230A.111	Review and evaluation.

**230A.1 through 230A.18** Repealed by 2011 Acts, ch 121, § 22, 23.

**230A.101 Services system roles.**

1. The role of the department of human services, through the division of the department designated as the state mental health authority with responsibility for state policy concerning mental health and disability services, is to develop and maintain policies for the mental health and disability services system. The policies shall address the service needs of individuals of all ages with disabilities in this state, regardless of the individuals' places of residence or economic circumstances, and shall be consistent with the requirements of chapter 225C and other applicable law.

2. The role of community mental health centers in the mental health and disability services system is to provide an organized set of services in order to adequately meet the mental health needs of this state's citizens based on organized catchment areas.

2011 Acts, ch 121, §11, 23

**230A.102 Definitions.**

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

1. "Administrator", "commission", "department", "disability services", and "division" mean the same as defined in section 225C.2.

2. "Catchment area" means a community mental health center catchment area identified in accordance with this chapter.

3. "Community mental health center" or "center" means a community mental health center designated in accordance with this chapter.

2011 Acts, ch 121, §12, 23

**230A.103 Designation of community mental health centers.**

1. The division, subject to agreement by any community mental health center that would provide services for the catchment area and approval by the commission, shall designate at least one community mental health center under this chapter for addressing the mental health needs of the county or counties comprising the catchment area. The designation process shall provide for the input of potential service providers regarding designation of the initial catchment area or a change in the designation.

2. The division shall utilize objective criteria for designating a community mental health center to serve a catchment area and for withdrawing such designation. The commission shall adopt rules outlining the criteria. The criteria shall include but are not limited to provisions for meeting all of the following requirements:

a. An appropriate means shall be used for determining which prospective designee is best able to serve all ages of the targeted population within the catchment area with minimal or no service denials.

b. An effective means shall be used for determining the relative ability of a prospective

designee to appropriately provide mental health services and other support to consumers residing within a catchment area as well as consumers residing outside the catchment area. The criteria shall address the duty for a prospective designee to arrange placements outside the catchment area when such placements best meet consumer needs and to provide services within the catchment area to consumers who reside outside the catchment area when the services are necessary and appropriate.

3. The board of directors for a designated community mental health center shall enter into an agreement with the division. The terms of the agreement shall include but are not limited to all of the following:

- a. The period of time the agreement will be in force.
- b. The services and other support the center will offer or provide for the residents of the catchment area.
- c. The standards to be followed by the center in determining whether and to what extent the persons seeking services from the center shall be considered to be able to pay the costs of the services.
- d. The policies regarding availability of the services offered by the center to the residents of the catchment area as well as consumers residing outside the catchment area.
- e. The requirements for preparation and submission to the division of annual audits, cost reports, program reports, performance measures, and other financial and service accountability information.

4. This section does not limit the authority of the board or the boards of supervisors of any county or group of counties to continue to expend money to support operation of a center.

2011 Acts, ch 121, §13, 23

#### **230A.104 Catchment areas.**

1. The division shall collaborate with affected counties in identifying community mental health center catchment areas in accordance with this section.

2. a. Unless the division has determined that exceptional circumstances exist, a catchment area shall be served by one community mental health center. The purpose of this general limitation is to clearly designate the center responsible and accountable for providing core mental health services to the target population in the catchment area and to protect the financial viability of the centers comprising the mental health services system in the state.

b. A formal review process shall be used in determining whether exceptional circumstances exist that justify designating more than one center to serve a catchment area. The criteria for the review process shall include but are not limited to a means of determining whether the catchment area can support more than one center.

c. Criteria shall be provided that would allow the designation of more than one center for all or a portion of a catchment area if designation or approval for more than one center was provided by the division as of October 1, 2010. The criteria shall require a determination that all such centers would be financially viable if designation is provided for all.

2011 Acts, ch 121, §14, 23

#### **230A.105 Target population — eligibility.**

1. The target population residing in a catchment area to be served by a community mental health center shall include but is not limited to all of the following:

- a. Individuals of any age who are experiencing a mental health crisis.
- b. Individuals of any age who have a mental health disorder.
- c. Adults who have a serious mental illness or chronic mental illness.
- d. Children and youth who are experiencing a serious emotional disturbance.
- e. Individuals described in paragraph “a”, “b”, “c”, or “d” who have a co-occurring disorder, including but not limited to substance abuse, intellectual disability, a developmental disability, brain injury, autism spectrum disorder, or another disability or special health care need.

2. Specific eligibility criteria for members of the target population shall be identified in

administrative rules adopted by the commission. The eligibility criteria shall address both clinical and financial eligibility.

2011 Acts, ch 121, §15, 23; 2013 Acts, ch 90, §56  
Subsection 1, paragraph e amended

### **230A.106 Services offered.**

1. A community mental health center designated in accordance with this chapter shall offer core services and support addressing the basic mental health and safety needs of the target population and other residents of the catchment area served by the center and may offer other services and support. The core services shall be identified in administrative rules adopted by the commission for this purpose.

2. The initial core services identified shall include all of the following:

a. *Outpatient services.* Outpatient services shall consist of evaluation and treatment services provided on an ambulatory basis for the target population. Outpatient services include psychiatric evaluations, medication management, and individual, family, and group therapy. In addition, outpatient services shall include specialized outpatient services directed to the following segments of the target population: children, elderly, individuals who have serious and persistent mental illness, and residents of the service area who have been discharged from inpatient treatment at a mental health facility. Outpatient services shall provide elements of diagnosis, treatment, and appropriate follow-up. The provision of only screening and referral services does not constitute outpatient services.

b. *Twenty-four-hour emergency services.* Twenty-four-hour emergency services shall be provided through a system that provides access to a clinician and appropriate disposition with follow-up documentation of the emergency service provided. A patient shall have access to evaluation and stabilization services after normal business hours. The range of emergency services that shall be available to a patient may include but are not limited to direct contact with a clinician, medication evaluation, and hospitalization. The emergency services may be provided directly by the center or in collaboration or affiliation with other appropriately accredited providers.

c. *Day treatment, partial hospitalization, or psychosocial rehabilitation services.* Day treatment, partial hospitalization, or psychosocial rehabilitation services shall be provided as structured day programs in segments of less than twenty-four hours using a multidisciplinary team approach to develop treatment plans that vary in intensity of services and the frequency and duration of services based on the needs of the patient. These services may be provided directly by the center or in collaboration or affiliation with other appropriately accredited providers.

d. *Admission screening for voluntary patients.* Admission screening services shall be available for patients considered for voluntary admission to a state mental health institute to determine the patient's appropriateness for admission.

e. *Community support services.* Community support services shall consist of support and treatment services focused on enhancing independent functioning and assisting persons in the target population who have a serious and persistent mental illness to live and work in their community setting, by reducing or managing mental illness symptoms and the associated functional disabilities that negatively impact such persons' community integration and stability.

f. *Consultation services.* Consultation services may include provision of professional assistance and information about mental health and mental illness to individuals, service providers, or groups to increase such persons' effectiveness in carrying out their responsibilities for providing services. Consultations may be case-specific or program-specific.

g. *Education services.* Education services may include information and referral services regarding available resources and information and training concerning mental health, mental illness, availability of services and other support, the promotion of mental health, and the prevention of mental illness. Education services may be made available to individuals, groups, organizations, and the community in general.

3. A community mental health center shall be responsible for coordinating with associated

services provided by other unaffiliated agencies to members of the target population in the catchment area and to integrate services in the community with services provided to the target population in residential or inpatient settings.

2011 Acts, ch 121, §16, 23; 2012 Acts, ch 1021, §50

**230A.107 Form of organization.**

1. Except as authorized in subsection 2, a community mental health center designated in accordance with this chapter shall be organized and administered as a nonprofit corporation.

2. A for-profit corporation, nonprofit corporation, or county hospital providing mental health services to county residents pursuant to a waiver approved under section 225C.7, subsection 3, Code 2011, as of October 1, 2010, may also be designated as a community mental health center.

2011 Acts, ch 121, §17, 23

**230A.108 Administrative, diagnostic, and demographic information.**

Release of administrative and diagnostic information, as defined in section 228.1, and demographic information necessary for aggregated reporting to meet the data requirements established by the division, relating to an individual who receives services from a community mental health center, may be made a condition of support of that center by the division.

2011 Acts, ch 121, §18, 23

Referred to in §228.6

**230A.109 Funding — legislative intent.**

1. It is the intent of the general assembly that public funding for community mental health centers designated in accordance with this chapter shall be provided as a combination of all funding sources.

2. It is the intent of the general assembly that the state funding provided to centers be a sufficient amount for the core services and support addressing the basic mental health and safety needs of the residents of the catchment area served by each center to be provided regardless of individual ability to pay for the services and support.

3. While a community mental health center must comply with the core services requirements and other standards associated with designation, provision of services is subject to the availability of a payment source for the services.

2011 Acts, ch 121, §19, 23

**230A.110 Standards.**

1. The division shall recommend and the commission shall adopt standards for designated community mental health centers and comprehensive community mental health programs, with the overall objective of ensuring that each center and each affiliate providing services under contract with a center furnishes high-quality mental health services within a framework of accountability to the community it serves. The standards adopted shall conform with federal standards applicable to community mental health centers and shall be in substantial conformity with the applicable behavioral health standards adopted by the joint commission, formerly known as the joint commission on accreditation of health care organizations, or other recognized national standards for evaluation of psychiatric facilities unless in the judgment of the division, with approval of the commission, there are sound reasons for departing from the standards.

2. When recommending standards under this section, the division shall designate an advisory committee representing boards of directors and professional staff of designated community mental health centers to assist in the formulation or revision of standards. The membership of the advisory committee shall include representatives of professional and nonprofessional staff and other appropriate individuals.

3. The standards recommended under this section shall include requirements that each community mental health center designated under this chapter do all of the following:

a. Maintain and make available to the public a written statement of the services the center offers to residents of the catchment area being served. The center shall employ or contract

for services with affiliates to employ staff who are appropriately credentialed or meet other qualifications in order to provide services.

b. If organized as a nonprofit corporation, be governed by a board of directors which adequately represents interested professions, consumers of the center's services, socioeconomic, cultural, and age groups, and various geographical areas in the catchment area served by the center. If organized as a for-profit corporation, the corporation's policy structure shall incorporate such representation.

c. Arrange for the financial condition and transactions of the community mental health center to be audited once each year by the auditor of state. However, in lieu of an audit by the auditor of state, the local governing body of a community mental health center organized under this chapter may contract with or employ certified public accountants to conduct the audit, pursuant to the applicable terms and conditions prescribed by sections 11.6 and 11.19 and audit format prescribed by the auditor of state. Copies of each audit shall be furnished by the auditor or accountant to the administrator of the division of mental health and disability services.

d. Comply with the accreditation standards applicable to the center.

2011 Acts, ch 121, §20, 23; 2012 Acts, ch 1120, §29; 2013 Acts, ch 90, §57

Referred to in §225C.4, 225C.6, 331.321  
Subsection 3, paragraph c amended

#### **230A.111 Review and evaluation.**

1. The review and evaluation of designated centers shall be performed through a formal accreditation review process as recommended by the division and approved by the commission. The accreditation process shall include all of the following:

a. Specific time intervals for full accreditation reviews based upon levels of accreditation.

b. Use of random or complaint-specific, on-site limited accreditation reviews in the interim between full accreditation reviews, as a quality review approach. The results of such reviews shall be presented to the commission.

c. Use of center accreditation self-assessment tools to gather data regarding quality of care and outcomes, whether used during full or limited reviews or at other times.

2. The accreditation process shall include but is not limited to addressing all of the following:

a. Measures to address centers that do not meet standards, including authority to revoke accreditation.

b. Measures to address noncompliant centers that do not develop a corrective action plan or fail to implement steps included in a corrective action plan accepted by the division.

c. Measures to appropriately recognize centers that successfully complete a corrective action plan.

d. Criteria to determine when a center's accreditation should be denied, revoked, suspended, or made provisional.

2011 Acts, ch 121, §21, 23

Referred to in §225C.4

**SUBTITLE 4**

**ELDERS**

Referred to in §714.8

**CHAPTER 231**

**DEPARTMENT ON AGING — OLDER IOWANS**

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SUBCHAPTER I  
FINDINGS, POLICY, AND DEFINITIONS

**231.1 Short title.**

This chapter, entitled the “*Older Iowans Act*”, sets forth the state’s commitment to its older individuals, their dignity, independence, and rights.

86 Acts, ch 1245, §1001

C87, §249D.1

C93, §231.1

2009 Acts, ch 23, §12

**231.2 Legislative findings and declaration.**

The general assembly finds and declares that:

1. Iowa’s older individuals constitute a fundamental resource which has been undervalued, and the means must be found to recognize and use the competence, wisdom, and experience of such older individuals for the benefit of all Iowans.

2. The number of persons in this state age sixty and older is increasing rapidly, and of these older individuals, the number of women, minorities, and persons eighty-five years of age or older is increasing at an even greater rate.

3. The social and health problems of older individuals and their caregivers are compounded by a lack of access to existing services and by the unavailability of a complete range of services in all areas of the state.

4. The ability of older individuals to maintain self-sufficiency and to live their lives with dignity, productivity, and creativity is a matter of profound importance and concern for this state.

86 Acts, ch 1245, §1002

C87, §249D.2

C93, §231.2

2009 Acts, ch 23, §13

**231.3 State policy and objectives.**

The general assembly declares that it is the policy of the state to work toward attainment of the following objectives for Iowa’s older individuals:

1. An adequate income.

2. Access to physical and mental health care without regard to economic status.

3. Suitable housing that reflects the needs of older people.

4. Full restorative services for those who require institutional care, and a comprehensive array of home and community-based, long-term care services adequate to sustain older people in their communities and, whenever possible, in their homes, including support for caregivers.

5. Pursuit of meaningful activity within the widest range of civic, cultural, educational, recreational, and employment opportunities.

6. Suitable community transportation systems to assist in the attainment of independent movement.

7. Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives.

8. Freedom from abuse, neglect, and exploitation.

86 Acts, ch 1245, §1003

C87, §249D.3

C93, §231.3

2003 Acts, ch 141, §1; 2005 Acts, ch 45, §2; 2009 Acts, ch 23, §14

Referred to in §16.183

**231.4 Definitions.**

1. For purposes of this chapter, unless the context otherwise requires:

a. “*Administrative action*” means an action or decision made by an owner, employee, or agent of a long-term care facility, assisted living program, elder group home, or by a governmental agency, which affects the service provided to residents or tenants covered in this chapter.

b. “*Assisted living program*” means a program which provides assisted living as defined pursuant to section 231C.2 and which is certified under chapter 231C.

c. “*Certified volunteer long-term care ombudsman*” or “*certified volunteer*” means a volunteer long-term care ombudsman certified pursuant to section 231.45.

d. “*Commission*” means the commission on aging.

e. “*Department*” means the department on aging.

f. “*Director*” means the director of the department on aging.

g. “*Elder group home*” means elder group home as defined in section 231B.1 which is certified under chapter 231B.

h. “*Equivalent support*” means in-kind contributions of services, goods, volunteer support time, administrative support, or other support reasonably determined by the department as equivalent to a dollar amount.

i. “*Federal Act*” means the Older Americans Act of 1965, 42 U.S.C. § 3001 et seq., as amended.

j. “*Home and community-based services*” means a continua of services available in an individual’s home or community which include but are not limited to case management, homemaking, home health aide, personal care, adult day, respite, home delivered meals, nutrition counseling, and other medical and social services which contribute to the health and well-being of individuals and their ability to reside in a home or community-based care setting.

k. “*Legal representative*” means a tenant’s legal representative as defined in section 231B.1 or 231C.2, or a guardian, conservator, or attorney in fact of a resident.

l. “*Long-term care facility*” means a long-term care unit of a hospital or a facility licensed under section 135C.1 whether the facility is public or private.

m. “*Long-term care ombudsman*” means an advocate for residents and tenants of long-term care facilities, assisted living programs, and elder group homes who carries out duties as specified in this chapter.

n. “*Older individual*” means an individual who is sixty years of age or older.

o. “*Options counseling*” means a service involving an interactive process, which may include a needs assessment, directed by the recipient individual and which may include other participants of the individual’s choosing and the individual’s legal representative, in which the individual receives guidance to make informed choices about long-term living services and supports in order to sustain independent living.

p. “*Resident*” means an individual residing in a long-term care facility, excluding facilities licensed primarily to serve persons with an intellectual disability or mental illness.

q. “*Tenant*” means an individual who receives assisted living services through an assisted living program or an individual who receives elder group home services through an elder group home.

r. “*Unit of general purpose local government*” means the governing body of a city, county, township, metropolitan area, or region within the state that has a population of one hundred thousand or more, that is recognized for areawide planning, and that functions as a political subdivision of the state whose authority is general and not limited to only one function or combination of related functions, or a tribal organization.

2. For the purposes of this chapter, “*aging and disability resource center*”, “*area agency on aging*”, “*focal point*”, “*greatest economic need*”, “*greatest social need*”, “*planning and service area*”, and “*tribal organization*” mean as those terms are defined in the federal Act.

86 Acts, ch 1245, §1004

C87, §249D.4

C93, §231.4

2003 Acts, ch 141, §2; 2005 Acts, ch 45, §3; 2009 Acts, ch 23, §15; 2010 Acts, ch 1062, §3, 4; 2011 Acts, ch 25, §143; 2012 Acts, ch 1019, §83; 2012 Acts, ch 1086, §2, 3; 2013 Acts, ch 18, §18

Referred to in §235B.6  
Subsection 1 amended

**231.5 through 231.10** Reserved.

## SUBCHAPTER II COMMISSION ON AGING

### **231.11 Commission established.**

The commission on aging is established which shall consist of eleven members. One member each shall be appointed by the president of the senate, after consultation with the majority leader of the senate, and by the minority leader of the senate, from the members of the senate to serve as ex officio, nonvoting members. One member each shall be appointed by the speaker of the house of representatives and by the minority leader of the house of representatives, from the members of the house of representatives to serve as ex officio, nonvoting members. Seven members shall be appointed by the governor subject to confirmation by the senate. Not more than a simple majority of the governor's appointees shall belong to the same political party. At least four of the seven members appointed by the governor shall be fifty-five years of age or older when appointed.

86 Acts, ch 1245, §1005

C87, §249D.11

90 Acts, ch 1223, §22

C93, §231.11

2008 Acts, ch 1156, §32, 58; 2009 Acts, ch 23, §16

Confirmation, see §2.32

### **231.12 Terms.**

All members of the commission appointed by the governor shall be appointed for terms of four years, with staggered expiration dates. The terms of office of members appointed by the governor shall commence and end as provided by section 69.19. Legislative members of the commission shall serve terms of office as provided in section 69.16B. A vacancy on the commission shall be filled for the unexpired term of the vacancy in the same manner as the original appointment was made. If a legislative member ceases to be a member of the general assembly the legislative member may continue to serve until a successor is appointed.

86 Acts, ch 1245, §1006

C87, §249D.12

88 Acts, ch 1134, §59

C93, §231.12

2008 Acts, ch 1156, §33, 58

### **231.13 Meetings — officers.**

Members of the commission shall elect from the commission's membership a chairperson, and other officers as commission members deem necessary, who shall serve for a period of two years. The commission shall meet at regular intervals at least four times each year and may hold special meetings at the call of the chairperson or at the request of a majority of the commission membership. The commission shall meet at the seat of government or such other place as the commission may designate. Members shall be paid a per diem as specified in section 7E.6 and shall receive reimbursement for actual expenses for their official duties.

86 Acts, ch 1245, §1007

C87, §249D.13

90 Acts, ch 1256, §42

C93, §231.13  
2003 Acts, ch 141, §3

**231.14 Commission duties and authority.**

1. The commission is the policymaking body of the sole state agency responsible for administration of the federal Act. The commission shall:

- a. Approve state and area plans on aging.
- b. Adopt policies to coordinate state activities related to the purposes of this chapter.
- c. Serve as an effective and visible advocate for older individuals by establishing policies for reviewing and commenting upon all state plans, budgets, and policies which affect older individuals and for providing technical assistance to any agency, organization, association, or individual representing the needs of older individuals.
- d. Divide the state into distinct planning and service areas after considering the geographical distribution of older individuals in the state, the incidence of the need for supportive services, nutrition services, multipurpose senior centers, and legal services, the distribution of older individuals who have low incomes residing in such areas, the distribution of resources available to provide such services or centers, the boundaries of existing areas within the state which are drawn for the planning or administration of supportive services programs, the location of units of general purpose, local government within the state, and any other relevant factors.
- e. Designate for each planning and service area a public or private nonprofit agency or organization as the area agency on aging for that area. The commission may revoke the designation of an area agency on aging pursuant to section 231.32.
- f. Adopt policies to assure that the department will take into account the views of older individuals in the development of policy.
- g. Adopt a formula for the distribution of federal Act and state funds taking into account, to the maximum extent feasible, the best available data on the geographic distribution of older individuals in the state, and publish the formula for review and comment.
- h. Adopt policies and measures to assure that preference will be given to providing services to older individuals with the greatest economic or social needs, with particular attention to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas.
- i. Adopt policies to administer state programs authorized by this chapter.
- j. Adopt policies and administrative rules pursuant to chapter 17A that support the capabilities of the area agencies on aging and the aging and disabilities resource centers to serve older individuals and persons with disabilities experiencing Alzheimer's disease or related dementias.

2. The commission shall adopt administrative rules pursuant to chapter 17A to administer the duties specified in this chapter and in all other chapters under the department's jurisdiction.

86 Acts, ch 1245, §1008  
C87, §249D.14  
88 Acts, ch 1073, §1  
C93, §231.14  
2003 Acts, ch 141, §4; 2005 Acts, ch 45, §4, 5; 2009 Acts, ch 23, §17; 2009 Acts, ch 41, §263;  
2012 Acts, ch 1086, §4, 5

**231.15 through 231.20** Reserved.

SUBCHAPTER III  
DEPARTMENT ON AGING

**231.21 Department on aging.**

An Iowa department on aging is established which shall administer this chapter under the policy direction of the commission on aging. The department on aging shall be administered by a director.

86 Acts, ch 1245, §1009

C87, §249D.21

C93, §231.21

2009 Acts, ch 23, §18

Referred to in §7E.5, 231E.3

**231.22 Director — assistant director.**

1. The governor, subject to confirmation by the senate, shall appoint a director of the department on aging who shall, subject to chapter 8A, subchapter IV, employ and direct staff as necessary to carry out the powers and duties created by this chapter. The director shall serve at the pleasure of the governor. However, the director is subject to reconfirmation by the senate as provided in section 2.32, subsection 4. The governor shall set the salary for the director within the range set by the general assembly.

2. The director shall have the following qualifications and training:

a. Training in the field of gerontology, social work, public health, public administration, or other related fields.

b. Direct experience or extensive knowledge of programs and services related to older individuals.

c. Demonstrated understanding and concern for the welfare of older individuals.

d. Demonstrated competency and recent working experience in an administrative, supervisory, or management position.

3. The director may appoint an assistant director who shall be in charge of the department in the absence of the director. The appointment shall be based on the appointee's training, experience, and capabilities.

86 Acts, ch 1245, §1010

C87, §249D.22

C93, §231.22

2003 Acts, ch 145, §214; 2008 Acts, ch 1031, §107; 2009 Acts, ch 23, §19; 2012 Acts, ch 1086, §6

**231.23 Department on aging — duties and authority.**

The department on aging director shall:

1. Develop and administer a state plan on aging.

2. Assist the commission in the review and approval of area plans.

3. Pursuant to commission policy, coordinate state activities related to the purposes of this chapter and all other chapters under the department's jurisdiction.

4. Advocate for older individuals by reviewing and commenting upon all state plans, budgets, laws, rules, regulations, and policies which affect older individuals and by providing technical assistance to any agency, organization, association, or individual representing the needs of older individuals.

5. Assist the commission in dividing the state into distinct planning and service areas.

6. Assist the commission in designating for each area a public or private nonprofit agency or organization as the area agency on aging for that area.

7. Pursuant to commission policy, take into account the views of older Iowans.

8. Assist the commission in adopting a formula for the distribution of funds available from the federal Act and state appropriations and allocations.

9. Assist the commission in assuring that preference will be given to providing services to older individuals with the greatest economic or social needs, with particular attention to

low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas.

10. Assist the commission in developing, adopting, and enforcing administrative rules, by issuing necessary forms and procedures.

11. Apply for, receive, and administer grants, devises, donations, gifts, or bequests of real or personal property from any source to conduct projects consistent with the purposes of the department. Notwithstanding section 8.33, moneys received by the department pursuant to this section are not subject to reversion to the general fund of the state.

12. Administer state authorized programs.

13. Establish a procedure for an area agency on aging to use in selection of members of the agency's board of directors. The selection procedure shall be incorporated into the bylaws of the board of directors.

86 Acts, ch 1245, §1011

C87, §249D.23

C93, §231.23

2003 Acts, ch 141, §5; 2005 Acts, ch 45, §6; 2006 Acts, ch 1184, §106; 2007 Acts, ch 81, §1; 2009 Acts, ch 23, §20, 21; 2012 Acts, ch 1086, §7

Referred to in §231.33

Three-year pilot project to train, recruit, and oversee volunteers to assist courts in monitoring guardianships and conservatorships and to provide assistance to guardians and conservators; 2013 Acts, ch 138, §52

Section not amended; footnote added

### **231.23A Programs and services.**

The department on aging shall provide or administer, but is not limited to providing or administering, all of the following programs and services:

1. Services for older individuals including but not limited to home and community-based services such as adult day, assessment and intervention, transportation, chore, counseling, homemaker, material aid, personal care, reassurance, respite, visitation, caregiver support, emergency response system, mental health outreach, and home repair as defined by the department in the most current version of the department's reporting manual and pursuant to the federal Act and regulations.

2. The older American community service employment program.

3. The case management program for frail elders.

4. The aging and disability resource center program.

5. The legal assistance development program.

6. The nutrition and health promotion program.

7. Administration relating to the area agencies on aging.

8. Elder abuse prevention, detection, intervention, and awareness including neglect and exploitation.

9. Other programs and services authorized by law.

2003 Acts, ch 141, §6; 2005 Acts, ch 42, §5; 2005 Acts, ch 45, §7; 2006 Acts, ch 1010, §69; 2009 Acts, ch 23, §22; 2010 Acts, ch 1062, §5; 2012 Acts, ch 1086, §8; 2013 Acts, ch 18, §19, 20

Prevention of elder abuse, neglect, and exploitation program, see §231.56A

Subsection 2 amended

Subsection 7 stricken and former subsections 8 – 10 renumbered as 7 – 9

**231.24 Certified retirement communities.** Repealed by 2012 Acts, ch 1086, § 16.

**231.25 through 231.30** Reserved.

SUBCHAPTER IV  
PLANNING AND SERVICE DELIVERY

**231.31 State plan on aging.**

The department on aging shall develop, and submit to the commission on aging for approval, a multiyear state plan on aging. The state plan on aging shall meet all applicable federal requirements.

86 Acts, ch 1245, §1012

C87, §249D.31

C93, §231.31

2003 Acts, ch 141, §7; 2009 Acts, ch 23, §23

**231.32 Criteria for designation of area agencies on aging.**

1. The commission shall designate an area agency on aging for each planning and service area. The commission shall continue the designation until an area agency on aging's designation is removed for cause as determined by the commission, until the agency voluntarily withdraws as an area agency on aging, or until a change in the designation of planning and service areas or area agencies on aging is required by state or federal law. In that event, the commission shall proceed in accordance with subsections 2, 3, and 4. Designated area agencies on aging shall comply with the requirements of the federal Act.

2. The commission shall designate an area agency to serve each planning and service area, after consideration of the views offered by units of general purpose local government. An area agency may be:

a. An established office of aging which is operating within a planning and service area designated by the commission.

b. Any office or agency of a unit of general purpose local government, which is designated to function only for the purpose of serving as an area agency on aging by the chief elected official of such unit.

c. Any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act only on behalf of such combination for such purpose.

d. Any public or nonprofit private agency in a planning and service area or any separate organizational unit within such agency which is under the supervision or direction for this purpose of the department on aging and which can and will engage only in the planning or provision of a broad range of supportive services or nutrition services within the planning and service area.

3. When the commission designates a new area agency on aging the commission shall give the right of first refusal to a unit of general purpose local government if:

a. Such unit can meet the requirements of subsection 1.

b. The boundaries of such a unit and the boundaries of the area are reasonably contiguous.

4. Each area agency shall provide assurance, determined adequate by the commission, that the area agency has the ability to develop an area plan and to carry out, directly or through contractual or other arrangements, a program in accordance with the plan within the planning and service area. In designating an area agency on aging within the planning and service area, the commission shall give preference to an established office of aging, unless the commission finds that no such office within the planning and service area has the capacity to carry out the area plan.

5. Upon designation, an area agency on aging shall be considered an instrumentality of the state and shall adhere to all state and federal mandates applicable to an instrumentality of the state.

86 Acts, ch 1245, §1013

C87, §249D.32

C93, §231.32

2003 Acts, ch 141, §8; 2009 Acts, ch 23, §24; 2009 Acts, ch 41, §230; 2009 Acts, ch 133, §218, 219; 2010 Acts, ch 1069, §66, 147; 2012 Acts, ch 1028, §1, 3; 2013 Acts, ch 18, §21

Referred to in §231.14

NEW subsection 5

### **231.33 Area agencies on aging duties.**

Each area agency on aging shall:

1. Develop and administer an area plan on aging.
2. Assess the types and levels of services needed by older individuals and their caregivers in the planning and service area, and the effectiveness of other public or private programs serving those needs.
3. Enter into subgrants or contracts to provide services under the plan.
4. Provide technical assistance as needed, document quarterly monitoring, and provide a written report of an annual on-site assessment of all service providers funded by the area agency.
5. Coordinate the administration of its plan with federal programs and with other federal, state, and local resources in order to develop a comprehensive and coordinated service system.
6. Establish an advisory council.
7. Give preference in the delivery of services under the area plan to older individuals with the greatest economic or social need, with particular attention to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas.
8. Assure that older individuals and their caregivers in the planning and service area have reasonably convenient access to information and assistance services.
9. Provide adequate and effective opportunities for older individuals to express their views to the area agency on policy development and program implementation under the area plan.
10. Designate community focal points.
11. Conduct outreach efforts to identify older individuals with the greatest economic or social needs, with particular attention to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas, and inform them of the availability of services under the area plan.
12. Develop and publish the methods that the agency uses to establish preferences and priorities for services.
13. Submit all fiscal and performance reports in accordance with the policies of the commission.
14. Monitor, evaluate, and comment on laws, rules, regulations, policies, programs, hearings, levies, and community actions which significantly affect the lives of older individuals.
15. Conduct public hearings on the needs of older individuals and their caregivers.
16. Represent the interests of older individuals and their caregivers to public officials, public and private agencies, or organizations.
17. Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for older individuals.
18. Coordinate planning with other agencies for assuring the safety of older individuals in a natural disaster or other safety threatening situation.
19. Incorporate into the bylaws of the area agency's board of directors and comply with the procedure established by the department for selection of members to the board of directors as provided in section 231.23.
20. Provide the opportunity for older individuals residing in the planning and service area to offer substantive suggestions regarding the employment practices of the area agency on aging.
21. Comply with all applicable requirements of the Iowa public employees' retirement system established pursuant to chapter 97B. Notwithstanding any provision to the contrary, an employee of an area agency on aging that was enrolled in an alternative qualified plan

prior to July 1, 2012, may continue participation in that alternative qualified plan in lieu of mandatory participation in the Iowa public employees' retirement system.

86 Acts, ch 1245, §1014

C87, §249D.33

89 Acts, ch 241, §6

C93, §231.33

99 Acts, ch 129, §12; 2003 Acts, ch 141, §9; 2005 Acts, ch 45, §8, 9; 2006 Acts, ch 1184, §107; 2007 Acts, ch 218, §38; 2009 Acts, ch 23, §25; 2010 Acts, ch 1192, §51, 73; 2012 Acts, ch 1086, §9; 2013 Acts, ch 18, §22; 2013 Acts, ch 138, §48, 54, 55

The portion of subsection 21 relating to employees enrolled in alternative qualified plans prior to July 1, 2012, takes effect June 20, 2013, and applies retroactively to July 1, 2012; 2013 Acts, ch 138, §54, 55

NEW subsection 21

#### **231.34 Limitation of funds used for administrative purposes.**

Of the state funds appropriated or allocated to the department for programs of the area agencies on aging, not more than seven and one-half percent of the total amount shall be used for area agencies on aging administrative purposes.

2005 Acts, ch 175, §100

**231.35 through 231.40** Reserved.

## SUBCHAPTER V

### LONG-TERM CARE OMBUDSMAN

#### **231.41 Purpose.**

The purpose of this subchapter is to establish and provide for the operation of the office of long-term care ombudsman; to carry out, through the office, a state long-term care ombudsman program within the department in accordance with the requirements of the federal Act; and to adopt the supporting federal regulations and guidelines for its operation.

86 Acts, ch 1245, §1015

C87, §249D.41

C93, §231.41

2003 Acts, ch 141, §10; 2009 Acts, ch 23, §26; 2010 Acts, ch 1062, §6; 2013 Acts, ch 18, §23  
Section amended

#### **231.42 Office of long-term care ombudsman — duties — penalties for violations.**

1. *Office established.* The office of long-term care ombudsman is established within the department, in accordance with the federal Act, and state law. The office shall consist of the state long-term care ombudsman, any local long-term care ombudsmen, and any certified volunteer long-term care ombudsmen.

2. *State long-term care ombudsman.* The director of the department shall appoint the state long-term care ombudsman who shall do all of the following:

a. Establish and implement a statewide confidential uniform reporting system for receiving, analyzing, referring, investigating, and resolving complaints about administrative actions and the health, safety, welfare, and rights of residents or tenants of long-term care facilities, assisted living programs, and elder group homes, excluding facilities licensed primarily to serve persons with an intellectual disability or mental illness.

b. Publicize the office of long-term care ombudsman and provide information and education to consumers, the public, and other agencies about issues related to long-term care in Iowa.

c. Monitor the development and implementation of federal, state, and local laws, regulations, and policies that relate to long-term care in Iowa.

d. Annually report to the governor and general assembly on the activities of the office and make recommendations for improving the health, safety, welfare, and rights of residents and tenants.

e. Cooperate with persons and public or private agencies with regard to, and participate in, inquiries, meetings, or studies that may lead to improvements in the health, safety, welfare, and rights of residents and tenants.

3. *Local long-term care ombudsmen.* The local long-term care ombudsmen established pursuant to this section shall do all of the following:

a. Accept, investigate, verify, and work to resolve complaints relating to any action or inaction that may adversely affect the health, safety, welfare, or rights of residents or tenants.

b. Provide information about long-term care, the rights of residents and tenants, payment sources for care, and selection of a long-term care facility, assisted living program, or elder group home to providers, consumers, family members, volunteers, and the public.

c. Make referrals to appropriate licensing, certifying, and enforcement agencies to assure appropriate investigation of abuse complaints and corrective actions.

d. Assist in the training and education of certified volunteers associated with the office of long-term care ombudsman.

e. Make noncomplaint-related visits to long-term care facilities, assisted living programs, and elder group homes to observe daily routines, meals, and activities, and work to resolve complaints if any are identified during these visits.

4. *Referrals of abuse, neglect, or exploitation.*

a. If abuse, neglect, or exploitation of a resident or tenant is suspected, the state or a local long-term care ombudsman shall, with the permission of the resident or tenant as applicable under federal law, make an immediate referral to the department of inspections and appeals, the department of human services, the department on aging, or the appropriate law enforcement agency, as applicable. The state or a local long-term care ombudsman shall cooperate, if requested, with the department of inspections and appeals, department of human services, department on aging, or any law enforcement agency pursuant to any investigation of such abuse, neglect, or exploitation.

b. If the department of inspections and appeals responds to a complaint referred by the state or a local long-term care ombudsman against a long-term care facility, assisted living program, elder group home, or an employee of such entity, copies of related inspection reports, plans of correction, and notice of any citations and sanctions levied against the facility, program, or home shall be forwarded to the office of long-term care ombudsman.

5. *Access to long-term care facility, assisted living program, or elder group home and residents and tenants.* The state or a local long-term care ombudsman or a certified volunteer may enter any long-term care facility, assisted living program, or elder group home at any time with or without prior notice or complaint and shall be granted access to residents and tenants at all times for the purpose of carrying out the duties specified in this section. As used in this section, “access” means the right to do all of the following:

a. Enter any long-term care facility, assisted living program, or elder group home and provide identification.

b. Seek consent from the resident, tenant, or legal representative to communicate privately and without restriction with any resident, tenant, or legal representative.

c. Communicate privately and without restriction with any resident, tenant, or legal representative.

d. Review the medical, social, or other records of a resident or tenant.

e. Observe all resident or tenant areas of a long-term care facility, assisted living program, or elder group home except the living area of any resident or tenant who protests the observation.

6. *Access to medical and social records.*

a. The state or a local long-term care ombudsman shall have access to the medical and social records of a resident or tenant, if any of the following applies:

(1) The state or local long-term care ombudsman or certified volunteer long-term care ombudsman has the permission of the resident or tenant, or the legal representative of the resident or tenant.

(2) The resident or tenant is unable to consent to the access and has no legal representative.

(3) Access to the records is necessary to investigate a complaint if all of the following apply:

(a) A legal representative of the resident or tenant refuses to give the permission.

(b) The state or local long-term care ombudsman or a certified volunteer long-term care ombudsman has reasonable cause to believe that the legal representative is not acting in the best interest of the resident or tenant.

(c) The local long-term care ombudsman or a certified volunteer long-term care ombudsman obtains the approval of the state long-term care ombudsman.

b. Records may be reproduced by the state or a local long-term care ombudsman.

c. Upon request of the state or a local long-term care ombudsman, a long-term care facility, assisted living program, or elder group home shall provide the name, address, and telephone number of the legal representative or next of kin of any resident or tenant.

d. A long-term care facility, assisted living program, or elder group home or personnel of such a facility, program, or home who discloses records in compliance with this section and the procedures adopted pursuant to this section shall not be liable for such disclosure.

7. *Access to administrative records.*

a. Pursuant to the federal Act, the state or a local long-term care ombudsman or a certified volunteer shall have access to the administrative records, policies, and documents of the long-term care facility, assisted living program, or elder group home, which are accessible to residents, tenants, or the general public.

b. Pursuant to the federal Act, the state or a local long-term care ombudsman or a certified volunteer shall have access to, and upon request, copies of, all licensing and certification records maintained by the state with respect to a long-term care facility, assisted living program, or elder group home.

8. *Interference prohibited — penalties.*

a. An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the work of the state or a local long-term care ombudsman or a certified volunteer is subject to a penalty imposed by the director of not more than one thousand five hundred dollars for each violation. If the director imposes a penalty for a violation under this paragraph, no other state agency shall impose a penalty for the same interference violation. Any moneys collected pursuant to this subsection shall be deposited in the general fund of the state.

b. The office of long-term care ombudsman shall adopt rules specifying procedures for notice and appeal of penalties imposed pursuant to this subsection.

c. The director, in consultation with the office of long-term care ombudsman, shall notify the county attorney of the county in which the long-term care facility, assisted living program, or elder group home is located, or the attorney general, of any violation of this subsection.

9. *Retaliation prohibited — penalties.* An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home shall not retaliate against any person for having filed a complaint with, or provided information to, the state or a local long-term care ombudsman or a certified volunteer. A person who retaliates or discriminates in violation of this subsection is guilty of a simple misdemeanor.

10. *Change in operations.* A long-term care facility, assisted living program, or elder group home shall inform the office of long-term care ombudsman in writing at least thirty days prior to any change in operations, programs, services, licensure, or certification that affects residents or tenants, including but not limited to the intention to close, decertify, or change ownership. In an emergency situation, or when a long-term care facility, assisted living program, or elder group home is evacuated, the department of inspections and appeals shall notify the office of long-term care ombudsman.

11. *Immunity.* The state or a local long-term care ombudsman, certified volunteer, or any representative of the office participating in the good faith performance of their official duties shall have immunity from any civil or criminal liability that otherwise might result by reason of taking, investigating, or pursuing a complaint under this section.

12. *Confidentiality.*

a. Information relating to any complaint made to or investigation by the state or a local

long-term care ombudsman or certified volunteer that discloses the identity of a complainant, resident, or tenant; information related to a resident's or tenant's social or medical records; or files maintained by the state long-term care ombudsman program that disclose the identity of a complainant, resident, or tenant, shall remain confidential and shall not be disclosed unless any of the following applies:

(1) The complainant, resident, tenant, or a legal representative consents to the disclosure and the consent is given in writing.

(2) The complainant, resident, or tenant gives consent orally and the consent is documented contemporaneously in a writing made by the state long-term care ombudsman or a local long-term care ombudsman.

(3) The disclosure is required by a court order.

*b.* The department shall adopt rules pursuant to chapter 17A to administer this subsection.

13. *Posting of state long-term care ombudsman information.* Every long-term care facility, assisted living program, and elder group home shall post information in a prominent location that includes the name, address, and telephone number, and a brief description of the services provided by the office of long-term care ombudsman. The information posted shall be approved or provided by the office of long-term care ombudsman.

86 Acts, ch 1245, §1016

C87, §249D.42

C93, §231.42

99 Acts, ch 129, §13; 2003 Acts, ch 141, §11; 2005 Acts, ch 45, §10; 2009 Acts, ch 23, §27 – 29; 2009 Acts, ch 41, §93; 2010 Acts, ch 1062, §7; 2012 Acts, ch 1019, §84; 2013 Acts, ch 18, §24

Referred to in §22.7, 135C.1, 231.45, 231B.1, 231C.2

Section amended

**231.43 Authority and responsibilities of the commission.** Repealed by 2010 Acts, ch 1062, § 10.

**231.44 Resident advocate committee — duties — disclosure — liability.** Repealed by 2013 Acts, ch 18, § 34.

**231.45 Certified volunteer long-term care ombudsman program.**

1. The department shall establish a certified volunteer long-term care ombudsman program in accordance with the federal Act to provide assistance to the state and local long-term care ombudsmen.

2. The department shall develop and implement a certification process for volunteer long-term care ombudsmen including but not limited to an application process, provision for background checks, classroom or on-site training, orientation, and continuing education.

3. Unless specifically excluded, the provisions of section 231.42 relating to local long-term care ombudsmen shall apply to certified volunteer long-term care ombudsmen.

4. The department shall adopt rules pursuant to chapter 17A to administer this section.

2012 Acts, ch 1133, §97; 2013 Acts, ch 18, §25

Referred to in §135C.1, 225C.4, 231.4

Section amended

**231.46 through 231.50** Reserved.

## SUBCHAPTER VI

### PROGRAMS

**231.51 Older American community service employment program.**

1. The department shall direct and administer the older American community service employment program as authorized by the federal Act in coordination with the department of workforce development.

2. The purpose of the program is to foster individual economic self-sufficiency and to increase the number of participants placed in unsubsidized employment in the public and private sectors while maintaining the community service focus of the program.

3. Funds appropriated to the department from the United States department of labor shall be distributed to subgrantees in accordance with federal requirements.

4. The department shall require such uniform reporting and financial accounting by subgrantees as may be necessary to fulfill the purposes of this section.

86 Acts, ch 1245, §1019

C87, §249D.51

C93, §231.51

96 Acts, ch 1186, §23; 2002 Acts, ch 1058, §1; 2005 Acts, ch 45, §13; 2011 Acts, ch 118, §85, 89; 2013 Acts, ch 18, §26

Subsections 1, 3, and 4 amended

**231.52 Senior internship program.** Repealed by 2013 Acts, ch 18, § 34.

**231.53 Coordination with Workforce Investment Act.**

The older American community service employment program shall be coordinated with the federal Workforce Investment Act administered by the department of workforce development.

2002 Acts, ch 1058, §3; 2009 Acts, ch 23, §33; 2013 Acts, ch 18, §27

Section amended

**231.54** Repealed by 2003 Acts, ch 141, § 16.

**231.55** Repealed by 2005 Acts, ch 42, § 6. See § 15H.2.

**231.56 Services and programs.**

The department shall administer services and programs that allow older individuals to secure and maintain maximum independence and dignity in a home environment that provides for self-care with appropriate supportive services, assist in removing individual and social barriers to economic and personal independence for older individuals, provide a continuum of care for older individuals and individuals with disabilities, and secure the opportunity for older individuals to receive managed in-home and community-based long-term care services. Funds appropriated for this purpose shall be allocated based on administrative rules adopted by the commission. The department shall require such records as needed to administer this section.

86 Acts, ch 1245, §1024

C87, §249D.56

C93, §231.56

2005 Acts, ch 45, §14; 2009 Acts, ch 23, §34; 2012 Acts, ch 1086, §11; 2013 Acts, ch 90, §58

Section amended

**231.56A Prevention of elder abuse, neglect, and exploitation program.**

1. The department shall administer the prevention of elder abuse, neglect, and exploitation program in accordance with the requirements of the federal Act. The purpose of the program is to carry out activities for intervention in, investigation of, and response to elder abuse, neglect, and exploitation including financial exploitation.

2. The department shall adopt rules to implement this section.

2003 Acts, ch 98, §1; 2003 Acts, ch 179, §67; 2009 Acts, ch 23, §35; 2012 Acts, ch 1086, §12; 2013 Acts, ch 18, §28

Section amended

**231.57 Coordination of advocacy.**

The department shall administer a program for the coordination of information and assistance provided within the state to assist older individuals and their caregivers in obtaining and protecting their rights and benefits. State and local agencies providing

information and assistance to older individuals and their caregivers in seeking their rights and benefits shall cooperate with the department in administering this program.

86 Acts, ch 1245, §1025

C87, §249D.57

C93, §231.57

2003 Acts, ch 141, §13; 2009 Acts, ch 23, §36

**231.58 Long-term living coordination.**

The director may convene meetings, as necessary, of the director and the directors of human services, public health, and inspections and appeals, to assist in the coordination of policy, service delivery, and long-range planning relating to the long-term living system and older Iowans in the state. The group may consult with individuals, institutions and entities with expertise in the area of the long-term living system and older Iowans, as necessary, to facilitate the group's efforts.

86 Acts, ch 1245, §1026

C87, §249D.58

89 Acts, ch 52, §1

C93, §231.58

2000 Acts, ch 1004, §13, 22; 2003 Acts, ch 141, §14; 2003 Acts, ch 145, §215; 2005 Acts, ch 45, §15; 2008 Acts, ch 1156, §34, 58; 2009 Acts, ch 23, §37, 38; 2009 Acts, ch 182, §90

**231.59 and 231.60** Repealed by 2003 Acts, ch 141, § 16.

**231.61** Repealed by 2003 Acts, ch 165, § 20. See chapter 231D.

**231.62 Alzheimer's disease services and assistance.**

Pursuant to the federal Act, the department shall direct the area agencies on aging to use outreach efforts to identify older individuals with Alzheimer's disease and related disorders and to establish supportive services for those individuals and their families. The department shall regularly review trends and initiatives to address the long-term living needs of Iowans to determine how the needs of persons with Alzheimer's disease and related disorders can be appropriately met.

2008 Acts, ch 1140, §2; 2011 Acts, ch 34, §57; 2012 Acts, ch 1086, §13

**231.63 End-of-life care information.** Repealed by 2012 Acts, ch 1086, § 16.

**231.64 Aging and disability resource center.**

1. The aging and disability resource center shall be administered by the department consistent with the federal Act. The department shall designate area agencies on aging to establish, in consultation with other stakeholders including organizations representing the disability community, a coordinated system for providing all of the following:

a. Comprehensive information, referral, and assistance regarding the full range of available public and private long-term care programs, options, service providers, and resources within a community, including information on the availability of integrated long-term care.

b. Options counseling to assist individuals in assessing their existing or anticipated long-term care needs and developing and implementing a plan for long-term care designed to meet their specific needs and circumstances. The plan for long-term care may include support with person-centered care transitions to assist consumers and family caregivers with transitions between home and care settings.

c. Consumer access to the range of publicly-supported long-term care programs for which consumers may be eligible, by serving as a convenient point of entry for such programs.

2. The aging and disability resource center shall assist older individuals, persons with disabilities age eighteen or older, family caregivers, and people who inquire about or request

assistance on behalf of members of these groups, as they seek long-term care living services and community supports.

2009 Acts, ch 23, §39; 2012 Acts, ch 1086, §14; 2013 Acts, ch 18, §29; 2013 Acts, ch 140, §19

See Code editor's note on simple harmonization  
Section amended

**231.65 Legal assistance development program.**

A legal assistance development program shall be administered by the department in accordance with the requirements of the federal Act. The purpose of the program is to provide leadership for improving the quality and quantity of legal advocacy assistance as a means of ensuring a comprehensive elder rights system for Iowa's older individuals. The extent of implementation of this program shall be based on available resources.

2009 Acts, ch 23, §40

**231.66 Nutrition and health promotion program.**

A nutrition and health promotion program shall be administered by the department, in accordance with the requirements of the federal Act, including congregate and home-delivered nutrition programs, nutrition screening, nutrition education, nutrition counseling, and evidence-based health promotion programs to promote health and well-being, reduce food insecurity, promote socialization, and maximize independence of older individuals.

2009 Acts, ch 23, §41; 2012 Acts, ch 1086, §15

**CHAPTER 231A**

**ELDER FAMILY HOMES**

Repealed by 2003 Acts, ch 166, §28

**CHAPTER 231B**

**ELDER GROUP HOMES**

Referred to in §135C.33, 231.4, 235E.2, 483A.24

231B.1	Definitions.	231B.13	Retaliation by elder group home prohibited.
231B.1A	Findings — purpose.	231B.14	Civil penalties.
231B.2	Certification of elder group homes — rules.	231B.15	Criminal penalties and injunctive relief.
231B.3	Referral to uncertified elder group home prohibited.	231B.16	Coordination of the long-term care system — transitional provisions.
231B.4	Zoning — fire and safety standards.	231B.17	Iowa elder group home fees.
231B.5	Written occupancy agreement required.	231B.18	Application of landlord and tenant Act.
231B.6	Involuntary transfer.	231B.19	Resident advocate committees. Repealed by 2013 Acts, ch 18, §34.
231B.7	Complaints.	231B.20	Nursing assistant and medication aide — certification.
231B.8	Informal review.	231B.21	Medication setup — administration and storage of medications.
231B.9	Public disclosure of findings.		
231B.10	Denial, suspension, or revocation — conditional operation.		
231B.11	Notice — appeal — emergency provisions.		
231B.12	Department notified of casualties.		

**231B.1 Definitions.**

1. “*Department*” means the department of inspections and appeals or the department’s designee.

2. “*Elder*” means a person sixty years of age or older.

3. “*Elder group home*” means a single-family residence that is operated by a person who is providing room, board, and personal care and may provide health-related services to three through five elders who are not related to the person providing the service within the third degree of consanguinity or affinity, and which is staffed by an on-site manager twenty-four hours per day, seven days per week.

4. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of these entities.

5. “*Health-related care*” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis.

6. “*Medication setup*” means assistance with various steps of medication administration to support a tenant’s autonomy, which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original container into suitable medication dispensing containers, reminder containers, or medication cups.

7. “*Occupancy agreement*” means a written agreement entered into between an elder group home and a tenant that clearly describes the rights and responsibilities of the elder group home and the tenant, and other information required by rule. “*Occupancy agreement*” may include a separate signed lease and signed service agreement.

8. “*Personal care*” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, and housekeeping that are essential to the health and welfare of a tenant.

9. “*Tenant*” means an individual who receives elder group home services through a certified elder group home.

10. “*Tenant advocate*” means the office of long-term care ombudsman established in section 231.42.

11. “*Tenant’s legal representative*” means a person appointed by the court to act on behalf of a tenant, or a person acting pursuant to a power of attorney.

93 Acts, ch 72, §2; 2003 Acts, ch 166, §3; 2005 Acts, ch 62, §1; 2007 Acts, ch 215, §135; 2013 Acts, ch 18, §30

Referred to in §142D.2, 144C.2, 144D.1, 231.4, 235E.1

Subsection 10 amended

**231B.1A Findings — purpose.**

1. The general assembly finds that elder group homes are an important part of the long-term care continua in this state. Elder group homes emphasize the independence and dignity of the individual while providing housing in a cost-effective manner.

2. The purposes of establishing and regulating elder group homes include all of the following:

a. To encourage the establishment and maintenance of a safe and homelike environment for individuals of all income levels who require assistance with personal care to live independently but who require health-related care only on a part-time or intermittent basis.

b. To establish standards for elder group homes that allow flexibility in design, which promotes a model of service delivery by focusing on individual independence, needs and desires, and consumer-driven quality of service.

c. To encourage public participation in the development of elder group home programs for individuals of all income levels.

2005 Acts, ch 62, §2; 2007 Acts, ch 215, §136

**231B.2 Certification of elder group homes — rules.**

1. The department shall establish by rule, in accordance with chapter 17A, minimum

standards for certification and monitoring of elder group homes. The department may adopt by reference, with or without amendment, nationally recognized standards and rules for elder group homes. The standards and rules shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups; shall be designed to accomplish the purposes of this chapter; and shall include but not be limited to rules relating to all of the following:

a. Provisions to ensure, to the greatest extent possible, the health, safety, well-being, and appropriate treatment of tenants.

b. Requirements that elder group homes furnish the department with specified information necessary to administer this chapter. All information related to the provider application for an elder group home presented to the department shall be considered a public record pursuant to chapter 22.

c. Standards for tenant evaluation or assessment, which may vary in accordance with the nature of the services provided or the status of the tenant.

d. Provisions for granting short-term waivers for tenants who exceed occupancy criteria.

2. Each elder group home operating in this state shall be certified by the department.

3. The owner or manager of a certified elder group home shall comply with the rules adopted by the department for an elder group home. A person, including a governmental unit, shall not represent an elder group home to the public as an elder group home or as a certified elder group home unless and until the program is certified pursuant to this chapter.

4. a. Services provided by a certified elder group home may be provided directly by staff of the elder group home, by individuals contracting with the elder group home to provide services, or by individuals employed by the tenant or with whom the tenant contracts if the tenant agrees to assume the responsibility and risk of the employment or the contractual relationship.

b. If a tenant is terminally ill and has elected to receive hospice services under the federal Medicare program from a Medicare-certified hospice program, the elder group home and the Medicare-certified hospice program shall enter into a written agreement under which the hospice program retains professional management responsibility for those services.

5. The department may enter into contracts to provide certification and monitoring of elder group homes. The department shall:

a. Have full access at reasonable times to all records, materials, and common areas pertaining to the provision of services and care to the tenants of a program during certification, monitoring, and complaint investigations of programs seeking certification, currently certified, or alleged to be uncertified.

b. With the consent of the tenant, visit the tenant's unit.

6. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an elder group home for an actual or prospective tenant, unless the program holds a current certificate issued by the department and meets all current requirements for certification.

7. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the elder group home is operated, if the business or activity serves persons who are not tenants. The rules shall be developed in consultation with affected state agencies and affected industry, professional, and consumer groups.

8. An elder group home shall comply with section 135C.33.

9. The department shall conduct training sessions for personnel responsible for conducting monitoring evaluations and complaint investigations of elder group homes.

10. Certification shall be for two years unless revoked for good cause by the department.

93 Acts, ch 72, §3; 99 Acts, ch 129, §16; 2003 Acts, ch 166, §4, 5; 2005 Acts, ch 62, §3; 2006 Acts, ch 1010, §70; 2007 Acts, ch 215, §137 – 141

### **231B.3 Referral to uncertified elder group home prohibited.**

1. A person shall not place, refer, or recommend the placement of another person in an elder group home that is not certified pursuant to this chapter.

2. A person who has knowledge that an elder group home is operating without

certification shall report the name and address of the home to the department. The department shall investigate a report made pursuant to this section.

93 Acts, ch 72, §4; 2003 Acts, ch 166, §6; 2007 Acts, ch 215, §142

#### **231B.4 Zoning — fire and safety standards.**

An elder group home shall be located in an area zoned for single-family or multiple-family housing or in an unincorporated area and shall be constructed in compliance with applicable local housing codes and the rules adopted for the special classification by the state fire marshal. In the absence of local building codes, the facility shall comply with the state plumbing code established pursuant to section 135.11 and the state building code established pursuant to section 103A.7 and the rules adopted for the special classification by the state fire marshal. The rules adopted for the special classification by the state fire marshal regarding second floor occupancy shall be adopted in consultation with the department and shall take into consideration the mobility of the tenants.

93 Acts, ch 72, §5; 2005 Acts, ch 62, §4; 2007 Acts, ch 215, §143

Referred to in §335.33, 414.31

#### **231B.5 Written occupancy agreement required.**

1. An elder group home shall not operate in this state unless a written occupancy agreement, as prescribed in subsection 2, is executed between the elder group home and each tenant or the tenant's legal representative prior to the tenant's occupancy, and unless the elder group home operates in accordance with the terms of the occupancy agreement. The elder group home shall deliver to the tenant or the tenant's legal representative a complete copy of the occupancy agreement and all supporting documents and attachments and shall deliver, at least thirty days prior to any changes, a written copy of changes to the occupancy agreement if any changes to the copy originally delivered are subsequently made, unless otherwise provided in this section.

2. An elder group home occupancy agreement shall clearly describe the rights and responsibilities of the tenant and the elder group home. The occupancy agreement shall also include but is not limited to inclusion of all of the following information in the body of the agreement or in the supporting documents and attachments:

a. A description of all fees, charges, and rates describing tenancy and basic services covered, and any additional and optional services and their related costs.

b. A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the elder group home.

c. The procedure followed for nonpayment of fees.

d. Identification of the party responsible for payment of fees and identification of the tenant's legal representative, if any.

e. The term of the occupancy agreement.

f. A statement that the elder group home shall notify the tenant or the tenant's legal representative, as applicable, in writing at least thirty days prior to any change being made in the occupancy agreement with the following exceptions:

(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the elder group home.

g. A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer.

i. The internal appeals process provided relative to an involuntary transfer.

j. The program's policies and procedures for addressing grievances between the elder group home and the tenants, including grievances relating to transfer and occupancy.

- k.* A statement of the prohibition against retaliation as prescribed in section 231B.13.
  - l.* The emergency response policy.
  - m.* The staffing policy which specifies if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.
  - n.* The refund policy.
  - o.* A statement regarding billing and payment procedures.
3. Occupancy agreements and related documents executed by each tenant or tenant's legal representative shall be maintained by the elder group home from the date of execution until three years from the date the occupancy agreement is terminated. A copy of the most current occupancy agreement shall be provided to members of the general public, upon request. Occupancy agreements and related documents shall be made available for on-site inspection to the department upon request and at reasonable times.

2005 Acts, ch 62, §5; 2007 Acts, ch 215, §144

### **231B.6 Involuntary transfer.**

1. If an elder group home initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by the department, and if the tenant or tenant's legal representative contests the transfer, the following procedure shall apply:

*a.* The elder group home shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information of the tenant advocate.

*b.* The elder group home shall provide the tenant advocate with a copy of the notification to the tenant.

*c.* The tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeals process. The tenant is not required to accept the assistance of the tenant advocate.

*d.* If, following the internal appeals process, the elder group home upholds the transfer decision, the tenant or the tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

2. The department, in consultation with affected state agencies and affected industry, professional, and consumer groups, shall establish by rule, in accordance with chapter 17A, procedures to be followed, including the opportunity for hearing, when the transfer of a tenant results from a monitoring evaluation or complaint investigation conducted by the department.

2005 Acts, ch 62, §6; 2007 Acts, ch 215, §145, 146

### **231B.7 Complaints.**

1. Any person with concerns regarding the operations or service delivery of an elder group home may file a complaint with the department. The name of the person who files a complaint with the department and any personal identifying information of the person or any tenant identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved with the complaint.

2. The department shall establish procedures for the disposition of complaints received in accordance with this section.

2005 Acts, ch 62, §7; 2007 Acts, ch 215, §147

### **231B.8 Informal review.**

1. If an elder group home contests the findings of regulatory insufficiencies of a monitoring evaluation or complaint investigation, the program shall submit written information, demonstrating that the program was in compliance with the applicable requirement at the time of the monitoring evaluation or complaint investigation of the regulatory insufficiencies, to the department for review.

2. The department shall review the written information submitted within ten working days of the receipt of the information. At the conclusion of the review, the department may affirm,

modify, or dismiss the regulatory insufficiencies. The department shall notify the program in writing of the decision to affirm, modify, or dismiss the regulatory insufficiencies, and the reasons for the decision.

3. In the case of a complaint investigation, the department shall also notify the complainant, if known, of the decision and the reasons for the decision.

2005 Acts, ch 62, §8; 2007 Acts, ch 215, §148

#### **231B.9 Public disclosure of findings.**

Upon completion of a monitoring evaluation or complaint investigation of an elder group home by the department pursuant to this chapter, including the conclusion of informal review, the department's final findings with respect to compliance by the elder group home with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an elder group home that is obtained by the department which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the elder group home shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

2005 Acts, ch 62, §9; 2007 Acts, ch 215, §149; 2008 Acts, ch 1048, §1, 4

#### **231B.10 Denial, suspension, or revocation — conditional operation.**

1. The department may deny, suspend, or revoke a certificate in any case where the department finds that there has been a substantial or repeated failure on the part of the elder group home to comply with this chapter or minimum standards adopted under this chapter or for any of the following reasons:

a. Appropriation or conversion of the property of an elder group home tenant without the tenant's written consent or the written consent of the tenant's legal representative.

b. Permitting, aiding, or abetting the commission of any illegal act in the elder group home.

c. Obtaining or attempting to obtain or retain a certificate by fraudulent means, misrepresentation, or by submitting false information.

d. Habitual intoxication or addiction to the use of drugs by the applicant, administrator, executive director, manager, or supervisor of the elder group home.

e. Securing the devise or bequest of the property of a tenant of an elder group home by undue influence.

f. Founded dependent adult abuse as defined in section 235B.2.

g. In the case of any officer, member of the board of directors, trustee, or designated manager of the elder group home or any stockholder, partner, or individual who has greater than a five percent equity interest in the elder group home, having or having had an ownership interest in an elder group home, assisted living or adult day services program, home health agency, residential care facility, or licensed nursing facility in this or any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the medical assistance or Medicare programs, or having been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

h. In the case of a certificate applicant or an existing certified owner or operator who is an entity other than an individual, the person is in a position of control or is an officer of the entity and engages in any act or omission proscribed by this chapter.

i. For any other reason as provided by law or administrative rule.

2. The department may as an alternative to denial, suspension, or revocation conditionally issue or continue a certificate dependent upon the performance by the elder group home of reasonable conditions within a reasonable period of time as set by the department so as to permit the program to commence or continue the operation of the elder group home pending full compliance with this chapter or the rules adopted pursuant to this chapter. If the elder group home does not make diligent efforts to comply with the conditions prescribed, the department may, under the proceedings prescribed by this chapter, deny, suspend, or revoke

the certificate. An elder group home shall not be operated on a conditional certificate for more than one year.

2005 Acts, ch 62, §10; 2006 Acts, ch 1030, §23; 2007 Acts, ch 215, §150, 151

**231B.11 Notice — appeal — emergency provisions.**

1. The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or certificate holder, within such thirty-day period, requests a hearing, in writing, of the department, in which case the notice shall be deemed to be suspended.

2. The denial, suspension, or revocation of a certificate may be appealed in accordance with rules adopted by the department in accordance with chapter 17A.

3. When the department finds that an imminent danger to the health or safety of a tenant of an elder group home exists which requires action on an emergency basis, the department may direct removal of all tenants of the elder group home and suspend the certificate prior to a hearing.

2005 Acts, ch 62, §11; 2007 Acts, ch 215, §152

**231B.12 Department notified of casualties.**

The department shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing substantial injury or death to a tenant, and any substantial fire or natural or other disaster occurring at or near an elder group home.

2005 Acts, ch 62, §12; 2007 Acts, ch 215, §153

**231B.13 Retaliation by elder group home prohibited.**

An elder group home shall not discriminate or retaliate in any way against a tenant, a tenant's family, or an employee of the elder group home who has initiated or participated in any proceeding authorized by this chapter. An elder group home that violates this section is subject to a penalty as established by administrative rule in accordance with chapter 17A, to be assessed and collected by the department, paid into the state treasury, and credited to the general fund of the state.

2005 Acts, ch 62, §13; 2006 Acts, ch 1010, §71; 2007 Acts, ch 215, §154

Referred to in §231B.5

**231B.14 Civil penalties.**

The department may establish by rule, in accordance with chapter 17A, civil penalties for the following violations by an elder group home:

1. Noncompliance with any regulatory requirements which presents an imminent danger or a substantial probability of resultant death or physical harm to a tenant.

2. Following receipt of notice from the department, continued failure or refusal to comply within a prescribed time frame with regulatory requirements that have a direct relationship to the health, safety, or security of elder group home tenants.

3. Preventing or interfering with or attempting to impede in any way any duly authorized representative of the department in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this subsection, "lawful enforcement" includes but is not limited to:

a. Contacting or interviewing any tenant of an elder group home in private at any reasonable hour and without advance notice.

b. Examining any relevant records of an elder group home.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

2005 Acts, ch 62, §14; 2007 Acts, ch 215, §155, 156

**231B.15 Criminal penalties and injunctive relief.**

A person establishing, conducting, managing, or operating an elder group home without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense. A person establishing, conducting, managing, or operating an elder group home without a certificate may be temporarily or permanently restrained by a court of competent jurisdiction from such activity in an action brought by the state.

2005 Acts, ch 62, §15; 2007 Acts, ch 215, §157

**231B.16 Coordination of the long-term care system — transitional provisions.**

1. A hospital licensed pursuant to chapter 135B, a health care facility licensed pursuant to chapter 135C, an assisted living program certified pursuant to chapter 231C, or an adult day services program certified pursuant to chapter 231D may operate an elder group home, if the elder group home is certified pursuant to this chapter.

2. This chapter shall not be construed to require that a facility licensed as a different type of facility also comply with the requirements of this chapter, unless the facility is represented to the public as an elder group home.

3. A certified elder group home that complies with the requirements of this chapter shall not be required to be licensed or certified as a different type of facility, unless the elder group home is represented to the public as another type of facility.

2005 Acts, ch 62, §16

**231B.17 Iowa elder group home fees.**

1. The department shall collect elder group home certification and related fees. Fees collected and retained pursuant to this section shall be deposited in the general fund of the state.

2. The following certification and related fees shall apply to elder group homes:

- a. For a two-year initial certification, seven hundred fifty dollars.
- b. For a two-year recertification, one thousand dollars.
- c. For a blueprint plan review, nine hundred dollars.
- d. For an optional preliminary plan review, five hundred dollars.

2005 Acts, ch 62, §17; 2007 Acts, ch 215, §158

**231B.18 Application of landlord and tenant Act.**

Chapter 562A, the uniform residential landlord and tenant Act, shall apply to elder group homes under this chapter.

2005 Acts, ch 62, §18

**231B.19 Resident advocate committees.** Repealed by 2013 Acts, ch 18, § 34.**231B.20 Nursing assistant and medication aide — certification.**

The department, in cooperation with other appropriate agencies, shall establish a procedure to allow nursing assistants or medication aides to claim work within an elder group home as credit toward sustaining the nursing assistant's or medication aide's certification.

2005 Acts, ch 62, §20; 2007 Acts, ch 215, §159

**231B.21 Medication setup — administration and storage of medications.**

1. An elder group home may provide for medication setup if requested by a tenant or the tenant's legal representative. If medication setup is provided following such request, the elder group home shall be responsible for the specific task requested and the tenant shall retain responsibility for those tasks not requested to be provided.

2. If medications are administered or stored by an elder group home, or if the elder group home provides for medication setup, all of the following shall apply:

a. If administration of medications is delegated to the elder group home by the tenant or tenant's legal representative, the medications shall be administered by a registered nurse,

licensed practical nurse, or advanced registered nurse practitioner licensed or registered in Iowa or by the individual to whom such licensed or registered individuals may properly delegate administration of medications.

b. Medications, other than those self-administered by the tenant or provided through medication setup, shall be stored in locked storage that is not accessible to persons other than employees responsible for administration or storage of medications.

c. Medications shall be labeled and maintained in compliance with label instructions and state and federal law.

d. A person, other than a person authorized to prescribe prescription drugs under state and federal law, shall not alter the prescription of a tenant.

e. Medications shall be stored in their originally received containers.

f. If medication setup is provided by the elder group home at the request of the tenant or tenant’s legal representative, or if medication administration is delegated to the elder group home by the tenant or tenant’s legal representative, appropriate staff of the elder group home may transfer the medications in the tenant’s presence from the original prescription container to medication dispensing containers, reminder containers, or medication cups.

g. Elder group home assistance with medication administration as specified in the occupancy agreement shall not require the elder group home to provide assistance with the storage of medications.

2005 Acts, ch 62, §21

## CHAPTER 231C

### ASSISTED LIVING PROGRAMS

Referred to in §105.11, 135C.33, 144C.2, 231.4, 231B.16, 231D.16, 235E.2, 483A.24, 514H.1

Retirement facilities, see chapter 523D

231C.1	Findings, purpose, and intent.	231C.11A	Voluntary cessation of program operations — decertification.
231C.2	Definitions.	231C.12	Department notified of casualties.
231C.3	Certification of assisted living programs.	231C.13	Retaliation by assisted living program prohibited.
231C.3A	Monitoring — conflicts of interest.	231C.14	Civil penalties.
231C.4	Fire and safety standards.	231C.15	Criminal penalties and injunctive relief.
231C.5	Written occupancy agreement required.	231C.16	Nursing assistant and medication aide — certification.
231C.5A	Assessment of tenants — program eligibility.	231C.16A	Medication setup — administration and storage of medications.
231C.6	Involuntary transfer.	231C.17	Coordination of the long-term care system — transitional provisions.
231C.7	Complaints.	231C.18	Iowa assisted living fees.
231C.8	Exit interview — issuance of findings.	231C.19	Application of landlord and tenant Act.
231C.9	Public disclosure of findings.	231C.20	Limitation on penalties.
231C.9A	Informal conference — formal contest — judicial review.		
231C.10	Denial, suspension, or revocation — conditional operation.		
231C.11	Notice — appeal — emergency provisions.		

#### 231C.1 Findings, purpose, and intent.

1. The general assembly finds that assisted living is an important part of the long-term care continua in this state. Assisted living emphasizes the independence and dignity of the individual while providing services in a cost-effective manner.

2. The purposes of establishing an assisted living program include all of the following:

a. To encourage the establishment and maintenance of a safe and homelike environment

for individuals of all income levels who require assistance to live independently but who do not require health-related care on a continuous twenty-four-hour per day basis.

b. To establish standards for assisted living programs that allow flexibility in design which promotes a social model of service delivery by focusing on independence, individual needs and desires, and consumer-driven quality of service.

c. To encourage public participation in the development of assisted living programs for individuals of all income levels.

3. It is the intent of the general assembly that the department promote a social model for assisted living programs and a consultative process to assist with compliance by assisted living programs.

96 Acts, ch 1192, §1; 2003 Acts, ch 166, §7; 2005 Acts, ch 60, §1, 2, 21; 2007 Acts, ch 215, §160

### **231C.2 Definitions.**

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

1. “*Adult day services*” means adult day services as defined in section 231D.1.
2. “*Assisted living*” means provision of housing with services which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living to three or more tenants in a physical structure which provides a homelike environment. “*Assisted living*” also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. “*Assisted living*” includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included. “*Assisted living*” includes twenty-four hours per day response staff to meet scheduled and unscheduled or unpredictable needs in a manner that promotes maximum dignity and independence and provides supervision, safety, and security.
3. “*Assisted living program*” or “*program*” means an entity that provides assisted living.
4. “*Department*” means the department of inspections and appeals or the department’s designee.
5. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of these entities.
6. “*Health-related care*” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis.
7. “*Instrumental activities of daily living*” means those activities that reflect the tenant’s ability to perform household and other tasks necessary to meet the tenant’s needs within the community, which may include but are not limited to shopping, cooking, housekeeping, chores, and traveling within the community.
8. “*Medication setup*” means assistance with various steps of medication administration to support a tenant’s autonomy, which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original container into suitable medication dispensing containers, reminder containers, or medication cups.
9. “*Occupancy agreement*” means a written agreement entered into between an assisted living program and a tenant that clearly describes the rights and responsibilities of the assisted living program and a tenant, and other information required by rule. “*Occupancy agreement*” may include a separate signed lease and signed service agreement.
10. “*Personal care*” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, and housekeeping that are essential to the health and welfare of the tenant.
11. “*Recognized accrediting entity*” means a nationally recognized accrediting entity that the department recognizes as having specific assisted living program standards equivalent to the standards established by the department for assisted living programs.
12. “*Significant change*” means a major decline or improvement in the tenant’s status which does not normally resolve itself without further interventions by staff or by

implementing standard disease-related clinical interventions that have an impact on the tenant's mental, physical, or functional health status.

13. “*Substantial compliance*” means a level of compliance with this chapter and rules adopted pursuant to this chapter such that any identified insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm. “*Substantial compliance*” constitutes compliance with the rules of this chapter.

14. “*Tenant*” means an individual who receives assisted living services through a certified assisted living program.

15. “*Tenant advocate*” means the office of long-term care ombudsman established in section 231.42.

16. “*Tenant's legal representative*” means a person appointed by the court to act on behalf of a tenant or a person acting pursuant to a power of attorney.

96 Acts, ch 1192, §2; 2000 Acts, ch 1004, §14, 22; 2003 Acts, ch 165, §19; 2003 Acts, ch 166, §8, 9; 2005 Acts, ch 60, §3 – 5, 21; 2005 Acts, ch 179, §121; 2007 Acts, ch 215, §161; 2009 Acts, ch 156, §11; 2011 Acts, ch 83, §1; 2013 Acts, ch 18, §31

Referred to in §142D.2, 144D.1, 231.4, 231C.11A  
Subsection 15 amended

### **231C.3 Certification of assisted living programs.**

1. The department shall establish by rule in accordance with chapter 17A minimum standards for certification and monitoring of assisted living programs. The department may adopt by reference with or without amendment, nationally recognized standards and rules for assisted living programs. The rules shall include specification of recognized accrediting entities and provisions related to dementia-specific programs. The standards and rules shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups; shall be designed to accomplish the purposes of this chapter; and shall include but are not limited to rules relating to all of the following:

a. Provisions to ensure, to the greatest extent possible, the health, safety, and well-being and appropriate treatment of tenants.

b. Requirements that assisted living programs furnish the department with specified information necessary to administer this chapter. All information related to a provider application for an assisted living program submitted to the department shall be considered a public record pursuant to chapter 22.

c. Standards for tenant evaluation or assessment, and service plans, which may vary in accordance with the nature of the services provided or the status of the tenant. When a tenant needs personal care or health-related care, the service plan shall be updated within thirty days of occupancy and as needed with significant change, but not less than annually.

d. Provisions for granting short-term waivers for tenants who exceed occupancy criteria.

2. Each assisted living program operating in this state shall be certified by the department. If an assisted living program is voluntarily accredited by a recognized accrediting entity, the department shall certify the assisted living program on the basis of the voluntary accreditation. An assisted living program that is certified by the department on the basis of voluntary accreditation shall not be subject to payment of the certification fee prescribed in section 231C.18, but shall be subject to an administrative fee as prescribed by rule. An assisted living program certified under this section is exempt from the requirements of section 135.63 relating to certificate of need requirements.

3. The owner or manager of a certified assisted living program shall comply with the rules adopted by the department for an assisted living program. A person including a governmental unit shall not represent an assisted living program to the public as an assisted living program or as a certified assisted living program unless and until the program is certified pursuant to this chapter.

4. a. Services provided by a certified assisted living program may be provided directly by staff of the assisted living program, by individuals contracting with the assisted living program to provide services, or by individuals employed by the tenant or with whom the tenant contracts if the tenant agrees to assume the responsibility and risk of the employment or the contractual relationship.

b. If a tenant is terminally ill and has elected to receive hospice services under the federal Medicare program from a Medicare-certified hospice program, the assisted living program and the Medicare-certified hospice program shall enter into a written agreement under which the hospice program retains professional management responsibility for those services.

5. The department may enter into contracts to provide certification and monitoring of assisted living programs. The department shall:

a. Have full access at reasonable times to all records, materials, and common areas pertaining to the provision of services and care to the tenants of a program during certification, monitoring, and complaint investigations of programs seeking certification, currently certified, or alleged to be uncertified.

b. With the consent of the tenant, visit the tenant's unit.

c. Require that the recognized accrediting entity providing accreditation for a program provide copies to the department of all materials related to the accreditation, monitoring, and complaint process.

6. The department may also establish by rule in accordance with chapter 17A minimum standards for subsidized and dementia-specific assisted living programs. The rules shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups.

7. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an assisted living program for an actual or prospective tenant, unless the program holds a current certificate issued by the department and meets all current requirements for certification.

8. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the assisted living program is provided, if the business or activity serves nontenants. The rules shall be developed in consultation with affected state agencies and affected industry, professional, and consumer groups.

9. An assisted living program shall comply with section 135C.33.

10. The department shall conduct training sessions for personnel responsible for conducting monitoring evaluations and complaint investigations of assisted living programs.

11. Certification of an assisted living program shall be for two years unless certification is revoked for good cause by the department.

96 Acts, ch 1192, §3; 2003 Acts, ch 166, §10; 2005 Acts, ch 60, §6 – 10, 21; 2006 Acts, ch 1010, §72; 2007 Acts, ch 215, §162 – 166; 2009 Acts, ch 156, §12

Referred to in §235E.1

### **231C.3A Monitoring — conflicts of interest.**

1. Any of the following circumstances disqualifies a monitor from inspecting a particular assisted living program under this chapter:

a. The monitor currently works or, within the past two years, has worked as an employee or employment agency staff at the program, or as an officer, consultant, or agent for the program to be monitored.

b. The monitor has any financial interest or any ownership interest in the program. For purposes of this paragraph, indirect ownership, such as through a broad-based mutual fund, does not constitute financial or ownership interest.

c. The monitor has an immediate family member who has a relationship with the program as described in paragraph "a" or "b".

d. The monitor has an immediate family member who currently resides in the program.

2. For purposes of this section, "immediate family member" means a husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, or stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; or grandparent or grandchild.

2009 Acts, ch 156, §13

**231C.4 Fire and safety standards.**

The state fire marshal shall adopt rules, in coordination with the department, relating to the certification and monitoring of the fire and safety standards of certified assisted living programs.

96 Acts, ch 1192, §4; 97 Acts, ch 23, §21; 2003 Acts, ch 166, §11; 2007 Acts, ch 215, §167

**231C.5 Written occupancy agreement required.**

1. An assisted living program shall not operate in this state unless a written occupancy agreement, as prescribed in subsection 2, is executed between the assisted living program and each tenant or the tenant's legal representative, prior to the tenant's occupancy, and unless the assisted living program operates in accordance with the terms of the occupancy agreement. The assisted living program shall deliver to the tenant or the tenant's legal representative a complete copy of the occupancy agreement and all supporting documents and attachments and shall deliver, at least thirty days prior to any changes, a written copy of changes to the occupancy agreement if any changes to the copy originally delivered are subsequently made.

2. An assisted living program occupancy agreement shall clearly describe the rights and responsibilities of the tenant and the program. The occupancy agreement shall also include but is not limited to inclusion of all of the following information in the body of the agreement or in the supporting documents and attachments:

a. A description of all fees, charges, and rates describing tenancy and basic services covered, and any additional and optional services and their related costs.

b. (1) A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the assisted living program.

(2) The occupancy agreement shall specifically include a statement regarding each of the following:

(a) Whether the program requires disclosure of a tenant's personal financial information for occupancy or continued occupancy.

(b) The program's policy regarding the continued tenancy of a tenant following exhaustion of private resources.

(c) Contact information for the department of human services and the senior health insurance information program to assist tenants in accessing third-party payment sources.

c. The procedure followed for nonpayment of fees.

d. Identification of the party responsible for payment of fees and identification of the tenant's legal representative, if any.

e. The term of the occupancy agreement.

f. A statement that the assisted living program shall notify the tenant or the tenant's legal representative, as applicable, in writing at least thirty days prior to any change being made in the occupancy agreement with the following exceptions:

(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the assisted living program.

g. A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer.

i. The internal appeals process provided relative to an involuntary transfer.

j. The program's policies and procedures for addressing grievances between the assisted living program and the tenants, including grievances relating to transfer and occupancy.

k. A statement of the prohibition against retaliation as prescribed in section 231C.13.

l. The emergency response policy.

*m.* The staffing policy which specifies if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

*n.* In dementia-specific assisted living programs, a description of the services and programming provided to meet the life skills and social activities of tenants.

*o.* The refund policy.

*p.* A statement regarding billing and payment procedures.

3. Occupancy agreements and related documents executed by each tenant or the tenant's legal representative shall be maintained by the assisted living program in program files from the date of execution until three years from the date the occupancy agreement is terminated. A copy of the most current occupancy agreement shall be provided to members of the general public, upon request. Occupancy agreements and related documents shall be made available for on-site inspection to the department upon request and at reasonable times.

96 Acts, ch 1192, §5; 2003 Acts, ch 166, §12; 2005 Acts, ch 60, §11, 21; 2007 Acts, ch 215, §168; 2011 Acts, ch 83, §2

#### **231C.5A Assessment of tenants — program eligibility.**

An assisted living program receiving reimbursement through the medical assistance program under chapter 249A shall assist the department of veterans affairs in identifying, upon admission of a tenant, the tenant's eligibility for benefits through the United States department of veterans affairs. The assisted living program shall also assist the commission of veterans affairs in determining such eligibility for tenants residing in the program on July 1, 2009. The department of inspections and appeals, in cooperation with the department of human services, shall adopt rules to administer this section, including a provision that ensures that if a tenant is eligible for benefits through the United States department of veterans affairs or other third-party payor, the payor of last resort for reimbursement to the assisted living program is the medical assistance program. The rules shall also require the assisted living program to request information from a tenant or tenant's personal representative regarding the tenant's veteran status and to report to the department of veterans affairs only the names of tenants identified as potential veterans along with the names of their spouses and any dependents. Information reported by the assisted living program shall be verified by the department of veterans affairs.

2009 Acts, ch 84, §1

#### **231C.6 Involuntary transfer.**

1. If an assisted living program initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by the department, and if the tenant or the tenant's legal representative contests the transfer, the following procedure shall apply:

*a.* The assisted living program shall notify the tenant or the tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information of the tenant advocate.

*b.* The assisted living program shall provide the tenant advocate with a copy of the notification to the tenant.

*c.* The tenant advocate shall offer the notified tenant or the tenant's legal representative assistance with the program's internal appeals process. The tenant is not required to accept the assistance of the tenant advocate.

*d.* If, following the internal appeals process, the assisted living program upholds the transfer decision, the tenant or the tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

2. The department, in consultation with affected state agencies and affected industry, professional, and consumer groups, shall establish, by rule in accordance with chapter 17A, procedures to be followed, including the opportunity for hearing, when the transfer of a tenant results from a monitoring evaluation or complaint investigation conducted by the department.

2000 Acts, ch 1222, §13, 17; 2003 Acts, ch 166, §13; 2005 Acts, ch 60, §12, 21; 2007 Acts, ch 215, §169, 170

**231C.7 Complaints.**

1. Any person with concerns regarding the operations or service delivery of an assisted living program may file a complaint with the department. The name of the person who files a complaint with the department and any personal identifying information of the person or any tenant identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved with the complaint.

2. The department shall establish procedures for the disposition of complaints received in accordance with this section.

2003 Acts, ch 166, §14; 2007 Acts, ch 215, §171

**231C.8 Exit interview — issuance of findings.**

1. The department shall provide an assisted living program an exit interview at the conclusion of a monitoring evaluation or complaint investigation, and the department shall inform the program's representative of all issues and areas of concern related to the insufficient practices. The department may conduct the exit interview in person or by telephone, and the department shall provide a second exit interview if any additional issues or areas of concern are identified. The program shall have two working days from the date of the exit interview to submit additional or rebuttal information to the department.

2. The department shall issue the final findings of a monitoring evaluation or complaint investigation within ten working days after completion of the on-site monitoring evaluation or complaint investigation. The final findings shall be served upon the program personally, by electronic mail, or by certified mail.

2003 Acts, ch 166, §15; 2005 Acts, ch 60, §13, 21; 2007 Acts, ch 215, §172; 2013 Acts, ch 26, §4, 7

2013 amendment takes effect July 1, 2013, and applies to assisted living programs desiring to request an informal conference on or after January 1, 2014; 2013 Acts, ch 26, §7

Section stricken and rewritten

**231C.9 Public disclosure of findings.**

Upon completion of a monitoring evaluation or complaint investigation of an assisted living program by the department pursuant to this chapter, the department's final findings with respect to compliance by the assisted living program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an assisted living program that is obtained by the department which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the assisted living program shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

2003 Acts, ch 166, §16; 2005 Acts, ch 60, §14, 21; 2007 Acts, ch 215, §173; 2008 Acts, ch 1048, §2, 4; 2013 Acts, ch 26, §5, 7

2013 amendment takes effect July 1, 2013, and applies to assisted living facilities desiring to request an informal conference on or after January 1, 2014; 2013 Acts, ch 26, §7

Section amended

**231C.9A Informal conference — formal contest — judicial review.**

1. Within twenty business days after issuance of the final findings, the assisted living program shall notify the director if the program desires to contest the findings and request an informal conference.

2. The department shall provide an independent reviewer to hold an informal conference with an assisted living program within ten working days after receiving a request from the program pursuant to subsection 1. At the conclusion of the informal conference, the independent reviewer may affirm, modify, or dismiss a contested regulatory insufficiency. The independent reviewer shall state in writing the specific reasons for the affirmation, modification, or dismissal and immediately transmit copies of the statement to the department and to the program.

3. An independent reviewer shall be licensed as an attorney in the state of Iowa and shall not be employed or have been employed by the department in the past eight years or have

appeared in front of the department on behalf of an assisted living program in the past eight years. Preference shall be given to an attorney with background knowledge, experience, or training in long-term care. The department may issue a request for proposals to enter into a contract for the purpose of providing one or more independent reviewers for informal conferences.

4. An assisted living program that desires to further contest an affirmed or modified regulatory insufficiency may do so in the manner provided by chapter 17A for contested cases. The program shall give notice of intent to formally contest a regulatory insufficiency, in writing, to the department within five days after receipt of the written decision of the independent reviewer. The formal hearing shall be conducted in accordance with chapter 17A and rules adopted by the department.

5. An assisted living program that has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A.

2013 Acts, ch 26, §6, 7

Section takes effect July 1, 2013, and applies to assisted living facilities desiring to request an informal conference on or after January 1, 2014; 2013 Acts, ch 26, §7

NEW section

### **231C.10 Denial, suspension, or revocation — conditional operation.**

1. The department may deny, suspend, or revoke a certificate in any case where the department finds that there has been a substantial or repeated failure on the part of the assisted living program to comply with this chapter or the rules, or minimum standards adopted under this chapter, or for any of the following reasons:

a. Appropriation or conversion of the property of an assisted living program tenant without the tenant's written consent or the written consent of the tenant's legal representative.

b. Permitting, aiding, or abetting the commission of any illegal act in the assisted living program.

c. Obtaining or attempting to obtain or retain a certificate by fraudulent means, misrepresentation, or by submitting false information.

d. Habitual intoxication or addiction to the use of drugs by the applicant, administrator, executive director, manager, or supervisor of the assisted living program.

e. Securing the devise or bequest of the property of a tenant of an assisted living program by undue influence.

f. Failure to protect tenants from dependent adult abuse as defined in section 235E.1.

g. In the case of any officer, member of the board of directors, trustee, or designated manager of the program or any stockholder, partner, or individual who has greater than a five percent equity interest in the program, having or having had an ownership interest in an assisted living program, adult day services program, elder group home, home health agency, residential care facility, or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the medical assistance or Medicare programs, or having been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

h. In the case of a certificate applicant or an existing certified owner or operator who is an entity other than an individual, the person is in a position of control or is an officer of the entity and engages in any act or omission proscribed by this chapter.

i. For any other reason as provided by law or administrative rule.

2. The department may as an alternative to denial, suspension, or revocation conditionally issue or continue a certificate dependent upon the performance by the assisted living program of reasonable conditions within a reasonable period of time as set by the department so as to permit the program to commence or continue the operation of the program pending substantial compliance with this chapter or the rules adopted pursuant to this chapter. If the assisted living program does not make diligent efforts to comply with the conditions prescribed, the department may, under the proceedings prescribed by this chapter, suspend

or revoke the certificate. An assisted living program shall not be operated on a conditional certificate for more than one year.

2003 Acts, ch 166, §17; 2005 Acts, ch 60, §15, 21; 2006 Acts, ch 1030, §24; 2007 Acts, ch 215, §174, 175; 2009 Acts, ch 156, §14, 15

**231C.11 Notice — appeal — emergency provisions.**

1. The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or certificate holder, within such thirty-day period, requests a hearing, in writing, of the department, in which case the notice shall be deemed to be suspended.

2. The denial, suspension, or revocation of a certificate may be appealed in accordance with rules adopted by the department in accordance with chapter 17A.

3. When the department finds that an imminent danger to the health or safety of tenants of an assisted living program exists which requires action on an emergency basis, the department may direct removal of all tenants of an assisted living program and suspend the certificate prior to a hearing.

2003 Acts, ch 166, §18; 2007 Acts, ch 215, §176

**231C.11A Voluntary cessation of program operations — decertification.**

1. The department shall adopt rules regarding the voluntary cessation of program operations of an assisted living program, including decertification. The rules shall address notification of the tenants, tenant legal representatives, the department, and the tenant advocate at least ninety days prior to the anticipated date of cessation of program operations; the requirements for the safe and orderly transfer or transition of all tenants; and monitoring of the program during the process and after cessation of program operations.

2. Within seven days following provision of notice of cessation of program operations, the assisted living program shall hold a meeting and invite all tenants, tenant legal representatives, families of tenants, representatives of the department, and the tenant advocate to discuss the pending cessation of the program and to answer any questions. The department and the tenant advocate shall have access to attend the meeting and provide information to the tenants regarding their legal rights.

3. The tenant advocate shall monitor the decertification process and shall undertake any investigations necessary to ensure that the rights of tenants are protected during the process and after cessation of program operations. The tenant advocate shall assist tenants during the transition, including assisting tenants in finding necessary and appropriate service providers if the assisted living program is unable to provide such necessary and appropriate services during the transition period. The assisted living program shall cooperate with the tenant advocate by providing contact information for service providers within a thirty-mile radius of the program.

4. Following cessation of program operations and decertification, the department shall retain authority to monitor the decertified program to ensure that the entity does not continue to act as an uncertified assisted living program or other unlicensed, uncertified, or unregistered entity otherwise regulated by the state following decertification. If a decertified assisted living program continues to or subsequently acts in a manner that meets the definition of assisted living pursuant to section 231C.2, the decertified program is subject to the criminal penalties and injunctive relief provisions of section 231C.15, and any other penalties applicable by law.

2011 Acts, ch 83, §3

**231C.12 Department notified of casualties.**

The department shall be notified no later than the next working day, by the most expeditious means available, of any accident causing major injury or death, and any substantial fire or natural or other disaster occurring at or near an assisted living program.

2003 Acts, ch 166, §19; 2007 Acts, ch 215, §177; 2009 Acts, ch 156, §16

**231C.13 Retaliation by assisted living program prohibited.**

An assisted living program shall not discriminate or retaliate in any way against a tenant, tenant's family, or an employee of the program who has initiated or participated in any proceeding authorized by this chapter. An assisted living program that violates this section is subject to a penalty as established by administrative rule in accordance with chapter 17A, to be assessed and collected by the department, paid into the state treasury, and credited to the general fund of the state.

2003 Acts, ch 166, §20; 2006 Acts, ch 1010, §73; 2007 Acts, ch 215, §178

Referred to in §231C.5

**231C.14 Civil penalties.**

1. The department may establish by rule, in accordance with chapter 17A, civil penalties for the following violations by an assisted living program:

a. Noncompliance with any regulatory requirements which presents an imminent danger or a substantial probability of resultant death or physical harm to a tenant.

b. Following receipt of notice from the department, continued failure or refusal to comply within a prescribed time frame with regulatory requirements that have a direct relationship to the health, safety, or security of program tenants.

c. Preventing or interfering with or attempting to impede in any way any duly authorized representative of the department in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this paragraph, "lawful enforcement" includes but is not limited to:

(1) Contacting or interviewing any tenant of an assisted living program in private at any reasonable hour and without advance notice.

(2) Examining any relevant records of an assisted living program.

(3) Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

2. If a program assessed a penalty does not request a formal hearing pursuant to chapter 17A or withdraws its request for a formal hearing within thirty days of the date the penalty was assessed, the penalty shall be reduced by thirty-five percent, if the penalty is paid within thirty days of the issuance of a demand letter issued by the department. The demand letter, which includes the civil penalty, shall include a statement to this effect.

2003 Acts, ch 166, §21; 2005 Acts, ch 60, §16, 21; 2007 Acts, ch 215, §179, 180; 2009 Acts, ch 156, §17

**231C.15 Criminal penalties and injunctive relief.**

A person establishing, conducting, managing, or operating any assisted living program without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing, or operating an assisted living program without a certificate may be temporarily or permanently restrained by a court of competent jurisdiction from such activity in an action brought by the state.

2003 Acts, ch 166, §22; 2005 Acts, ch 60, §17, 21; 2007 Acts, ch 215, §181

Referred to in §231C.11A

**231C.16 Nursing assistant and medication aide — certification.**

The department, in cooperation with other appropriate agencies, shall establish a procedure to allow nursing assistants or medication aides to claim work within an assisted living program as credit toward sustaining the nursing assistant's or medication aide's certification.

2003 Acts, ch 166, §23; 2007 Acts, ch 215, §182

**231C.16A Medication setup — administration and storage of medications.**

1. An assisted living program may provide for medication setup if requested by a tenant or the tenant's legal representative. If medication setup is provided following such request,

the program shall be responsible for the specific task requested and the tenant shall retain responsibility for those tasks not requested to be provided.

2. If medications are administered or stored by an assisted living program, or if the assisted living program provides for medication setup, all of the following shall apply:

a. If administration of medications is delegated to the program by the tenant or tenant's legal representative, the medications shall be administered by a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed or registered in Iowa or by the individual to whom such licensed or registered individuals may properly delegate administration of medications.

b. Medications, other than those self-administered by the tenant or provided through medication setup, shall be stored in locked storage that is not accessible to persons other than employees responsible for administration or storage of medications.

c. Medications shall be labeled and maintained in compliance with label instructions and state and federal law.

d. A person, other than a person authorized to prescribe prescription drugs under state and federal law, shall not alter the prescription of a tenant.

e. Medications shall be stored in their originally received containers.

f. If medication setup is provided by the program at the request of the tenant or tenant's legal representative, or if medication administration is delegated to the program by the tenant or tenant's legal representative, appropriate staff of the program may transfer the medications in the tenant's presence from the original prescription container to medication dispensing containers, reminder containers, or medication cups.

g. Program assistance with medication administration as specified in the occupancy agreement shall not require the program to provide assistance with the storage of medications.

2005 Acts, ch 60, §18, 21

### **231C.17 Coordination of the long-term care system — transitional provisions.**

1. A hospital licensed pursuant to chapter 135B, a health care facility licensed pursuant to chapter 135C, or an adult day services program certified pursuant to chapter 231D may operate an assisted living program if the assisted living program is certified pursuant to this chapter.

2. This chapter shall not be construed to require that a facility licensed as a different type of facility also comply with the requirements of this chapter, unless the facility is represented to the public as a certified assisted living program.

3. A certified assisted living program that complies with the requirements of this chapter shall not be required to be licensed or certified as a different type of facility, unless the facility is represented to the public as another type of facility.

4. a. A continuing care retirement community, as defined in section 523D.1, may provide limited personal care services and emergency response services to its independent living tenants if all of the following conditions are met:

(1) The provision of such personal care services or emergency response services does not result in inadequate staff coverage to meet the service needs of all tenants of the continuing care retirement community.

(2) The staff providing the personal care or emergency response services is trained or qualified to the extent necessary to provide such services.

(3) The continuing care retirement community documents the date, time, and nature of the personal care or emergency response services provided.

(4) Emergency response services are only provided in situations which constitute an urgent need for immediate action or assistance due to unforeseen circumstances.

b. This subsection shall not be construed to prohibit an independent living tenant of a continuing care retirement community from contracting with a third party for personal care or emergency response services.

2003 Acts, ch 166, §24; 2003 Acts, 1st Ex, ch 2, §17, 33; 2005 Acts, ch 60, §19, 21; 2009 Acts, ch 41, §263

**231C.18 Iowa assisted living fees.**

1. The department shall collect assisted living program certification and related fees. An assisted living program that is certified by the department on the basis of voluntary accreditation by a recognized accrediting entity shall not be subject to payment of the certification fee, but shall be subject to an administrative fee as prescribed by rule. Fees collected and retained pursuant to this section shall be deposited in the general fund of the state.

2. The following certification and related fees shall apply to assisted living programs:

- a. For a two-year initial certification, seven hundred fifty dollars.
- b. For a two-year recertification, one thousand dollars.
- c. For a blueprint plan review, nine hundred dollars.
- d. For an optional preliminary plan review, five hundred dollars.
- e. For accreditation via a national body of accreditation, one hundred twenty-five dollars.

2003 Acts, ch 166, §25; 2005 Acts, ch 60, §20, 21; 2007 Acts, ch 215, §183

Referred to in §231C.3

**231C.19 Application of landlord and tenant Act.**

Chapter 562A, the uniform residential landlord and tenant Act, shall apply to assisted living programs under this chapter.

2003 Acts, ch 166, §26

**231C.20 Limitation on penalties.**

The department shall not impose duplicate civil penalties for the same set of facts and circumstances. All monitoring revisits by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

2009 Acts, ch 156, §18

## CHAPTER 231D

### ADULT DAY SERVICES

Referred to in §105.11, 231B.16, 231C.17, 235E.2, 483A.24

231D.1	Definitions.	231D.12	Retaliation by adult day services program prohibited.
231D.2	Purpose — rules.	231D.13	Nursing assistant and medication aide — certification.
231D.3	Certification required.	231D.13A	Medication setup — administration and storage of medications.
231D.3A	Exception.	231D.14	Criminal records investigation check.
231D.4	Application and fees.	231D.15	Fire and safety standards.
231D.5	Denial, suspension, or revocation.	231D.16	Transition provision.
231D.6	Notice — appeal — emergency provisions.	231D.17	Written contractual agreement required.
231D.7	Conditional operation.	231D.18	Involuntary transfer.
231D.8	Department notified of casualties.		
231D.9	Complaints and confidentiality.		
231D.9A	Informal review.		
231D.10	Public disclosure of findings.		
231D.11	Penalties.		

**231D.1 Definitions.**

For the purposes of this chapter, unless the context otherwise requires:

1. “*Adult day services*”, “*adult day services program*”, or “*program*” means an organized program providing a variety of health-related care, social services, and other related support services for sixteen hours or less in a twenty-four-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.

2. “*Contractual agreement*” means a written agreement entered into between an adult day services program and a participant that clearly describes the rights and responsibilities of the adult day services program and the participant, and other information required by rule.

3. “*Department*” means the department of inspections and appeals.
4. “*Functional impairment*” means a psychological, cognitive, or physical impairment creating the inability to perform personal and instrumental activities of daily living and associated tasks necessitating some form of supervision or assistance or both.
5. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of these entities.
6. “*Health-related care*” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis.
7. “*Medication setup*” means assistance with various steps of medication administration to support a participant’s autonomy, which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the participant, reading instructions or other label information, or transferring medications from the original container into suitable medication dispensing containers, reminder containers, or medication cups.
8. “*Participant*” means an individual who is the recipient of services provided by an adult day services program.
9. “*Participant’s legal representative*” means a person appointed by the court to act on behalf of a participant, or a person acting pursuant to a power of attorney.
10. “*Personal care*” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, and housekeeping that are essential to the health and welfare of a participant.
11. “*Recognized accrediting entity*” means a nationally recognized accrediting entity that the department recognizes as having specific adult day services program standards equivalent to the standards established by the department for adult day services.
12. “*Social services*” means services relating to the psychological and social needs of the individual in adjusting to participating in an adult day services program, and minimizing the stress arising from that circumstance.
13. “*Supervision*” means direct oversight and inspection of the act of accomplishing a function or activity.

2003 Acts, ch 165, §1; 2005 Acts, ch 61, §1, 17; 2007 Acts, ch 215, §184

Referred to in §135C.1, 142D.2, 144C.2, 231C.2, 231D.3A, 235E.1

### **231D.2 Purpose — rules.**

1. The purpose of this chapter is to promote and encourage adequate and safe care for adults with functional impairments.
2. The department shall establish, by rule in accordance with chapter 17A, a program for certification and monitoring of and complaint investigations related to adult day services programs. The department, in establishing minimum standards for adult day services programs, may adopt by rule in accordance with chapter 17A, nationally recognized standards for adult day services programs. The rules shall include specification of recognized accrediting entities. The rules shall include a requirement that sufficient staffing be available at all times to fully meet a participant’s identified needs. The rules shall include a requirement that no fewer than two staff persons who monitor participants as indicated in each participant’s service plan shall be awake and on duty during the hours of operation when two or more participants are present. The rules and minimum standards adopted shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups and shall be designed to accomplish the purpose of this chapter.
3. The department may establish by administrative rule, in accordance with chapter 17A, specific rules related to minimum standards for dementia-specific adult day services programs. The rules shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups.

2003 Acts, ch 165, §2; 2005 Acts, ch 61, §2, 17; 2007 Acts, ch 215, §185, 186

**231D.3 Certification required.**

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate an adult day services program and shall not represent an adult day services program to the public as certified unless and until the program is certified pursuant to this chapter. If an adult day services program is voluntarily accredited by a recognized accrediting entity with specific adult day services standards, the department shall accept voluntary accreditation as the basis for certification by the department. The owner or manager of a certified adult day services program shall comply with the rules adopted by the department for an adult day services program.

2. An adult day services program may provide any type of adult day services for which the program is certified. An adult day services program shall provide services and supervision commensurate with the needs of the participants. An adult day services program shall not provide services to individuals requiring a level or type of services for which the program is not certified and services provided shall not exceed the level or type of services for which the program is certified.

3. An adult day services program that has been certified by the department shall not alter the program, operation, or adult day services for which the program is certified in a manner that affects continuing certification without prior approval of the department. The department shall specify, by rule, alterations that are subject to prior approval.

4. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an adult day services program for an actual or prospective participant, unless the program holds a current certificate issued by the department and meets all current requirements for certification.

5. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the adult day services program is provided, if the business or activity serves persons who are not participants. The rules shall be developed in consultation with affected state agencies and affected industry, professional, and consumer groups.

6. The department shall conduct training sessions for personnel responsible for conducting monitoring evaluations and complaint investigations of adult day services programs.

7. Beginning January 1, 2013, certification of an adult day services program shall be for three years unless revoked for good cause by the department.

2003 Acts, ch 165, §3; 2005 Acts, ch 61, §3, 4, 17; 2007 Acts, ch 215, §187; 2013 Acts, ch 55, §1, 3, 4

2013 amendment to subsection 7 takes effect April 24, 2013, and applies retroactively to January 1, 2013; any initial certification or recertification issued on or after January 1, 2013, and prior to April 24, 2013, shall be extended to reflect a three-year period; 2013 Acts, ch 55, §3, 4

Subsection 7 amended

**231D.3A Exception.**

An entity certified by the centers for Medicare and Medicaid services of the United States department of health and human services as a federal program of all-inclusive care for the elderly shall not be required to be certified as an adult day services program under this chapter. A program of all-inclusive care for the elderly, as used in this section, shall not identify itself or hold itself out to be an adult day services program as defined in section 231D.1.

2012 Acts, ch 1035, §1; 2013 Acts, ch 30, §44

Section amended

**231D.4 Application and fees.**

1. Certificates for adult day services programs shall be obtained from the department. Applications shall be upon such forms and shall include such information as the department may reasonably require, which may include affirmative evidence of compliance with applicable statutes and local ordinances. Each application for certification shall be accompanied by the appropriate fee.

2. *a.* The department shall collect adult day services certification fees. The fees shall be deposited in the general fund of the state.

*b.* The following certification and related fees shall apply to adult day services programs:

(1) Beginning January 1, 2013, for a three-year initial certification, seven hundred fifty dollars.

(2) Beginning January 1, 2013, for a three-year recertification, one thousand dollars.

(3) For a blueprint review, nine hundred dollars.

(4) For an optional preliminary plan review, five hundred dollars.

(5) For certification via a national body of accreditation, one hundred twenty-five dollars.

2003 Acts, ch 165, §4; 2005 Acts, ch 61, §5, 17; 2007 Acts, ch 215, §188, 189; 2013 Acts, ch 55, §2, 3, 4

2013 amendments to subsection 2, paragraph b, subparagraphs (1) and (2), take effect April 24, 2013, and apply retroactively to January 1, 2013; any initial certification or recertification issued on or after January 1, 2013, and prior to April 24, 2013, shall be extended to reflect a three-year period; 2013 Acts, ch 55, §3, 4

Subsection 2, paragraph b, subparagraphs (1) and (2) amended

### **231D.5 Denial, suspension, or revocation.**

1. The department may deny, suspend, or revoke certification if the department finds that there has been a substantial or repeated failure on the part of the adult day services program to comply with this chapter or the rules or minimum standards adopted pursuant to this chapter, or for any of the following reasons:

*a.* Appropriation or conversion of the property of a participant without the participant's written consent or the written consent of the participant's legal representative.

*b.* Permitting, aiding, or abetting the commission of any illegal act in the adult day services program.

*c.* Obtaining or attempting to obtain or retain certification by fraudulent means, misrepresentation, or by submitting false information.

*d.* Habitual intoxication or addiction to the use of drugs by the applicant, owner, manager, or supervisor of the adult day services program.

*e.* Securing the devise or bequest of the property of a participant by undue influence.

*f.* Failure or neglect to maintain a required continuing education and training program for all personnel employed in the adult day services program.

*g.* Founded dependent adult abuse as defined in section 235B.2.

*h.* In the case of any officer, member of the board of directors, trustee, or designated manager of the program or any stockholder, partner, or individual who has greater than a five percent equity interest in the program, having or having had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, residential care facility, or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the medical assistance or Medicare programs, or having been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

*i.* In the case of a certificate applicant or an existing certified owner or operator who is an entity other than an individual, the person is in a position of control or is an officer of the entity and engages in any act or omission proscribed by this chapter.

*j.* In the case of an application by an existing certificate holder for a new or newly acquired adult day services program, the department may deny certification on the basis of continuing or repeated failure of the certificate holder to operate any previously certified adult day services program in compliance with this chapter or of the rules adopted pursuant to this chapter.

*k.* For any other reason as provided by law or administrative rule.

2. In the case of a certificate applicant or existing certificate holder which is an entity other than an individual, the department may deny, suspend, or revoke a certificate if any

individual who is in a position of control or is an officer of the entity engages in any act or omission proscribed by this section.

2003 Acts, ch 165, §5; 2005 Acts, ch 61, §6, 17; 2006 Acts, ch 1030, §25; 2007 Acts, ch 215, §190, 191; 2008 Acts, ch 1031, § 41; 2008 Acts, ch 1032, §37

Referred to in §231D.7

#### **231D.6 Notice — appeal — emergency provisions.**

1. The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for the action. The denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or certificate holder, within the thirty-day period, requests a hearing, in writing, of the department, in which case the notice shall be deemed to be suspended.

2. The denial, suspension, or revocation of a certificate may be appealed in accordance with rules adopted by the department in accordance with chapter 17A.

3. When the department finds that an immediate danger to the health or safety of participants in an adult day services program exists which requires action on an emergency basis, the department may direct the removal of all participants in the adult day services program and suspend the certificate prior to a hearing.

2003 Acts, ch 165, §6; 2005 Acts, ch 61, §7, 17; 2007 Acts, ch 215, §192

#### **231D.7 Conditional operation.**

The department may, as an alternative to denial, suspension, or revocation of certification under section 231D.5, conditionally issue or continue certification dependent upon the performance by the adult day services program of reasonable conditions within a reasonable period of time as prescribed by the department so as to permit the program to commence or continue the operation of the program pending full compliance with this chapter or the rules adopted pursuant to this chapter. If the adult day services program does not make diligent efforts to comply with the conditions prescribed, the department may, under the proceedings prescribed by this chapter, suspend or revoke the certificate. An adult day services program shall not be operated under conditional certification for more than one year.

2003 Acts, ch 165, §7; 2007 Acts, ch 215, §193

#### **231D.8 Department notified of casualties.**

The department shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing substantial injury or death, and any substantial fire or natural or other disaster occurring at or near an adult day services program.

2003 Acts, ch 165, §8; 2007 Acts, ch 215, §194

#### **231D.9 Complaints and confidentiality.**

1. A person with concerns regarding the operations or service delivery of an adult day services program may file a complaint with the department. The name of the person who files a complaint with the department and any personal identifying information of the person or any participant identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than employees of the department involved in the investigation of the complaint.

2. The department shall establish procedures for the disposition of complaints received in accordance with this section.

2003 Acts, ch 165, §9; 2005 Acts, ch 61, §8, 17; 2007 Acts, ch 215, §195

Referred to in §231D.12

#### **231D.9A Informal review.**

1. If an adult day services program contests the findings of regulatory insufficiencies of a monitoring evaluation or complaint investigation, the program shall submit written information, demonstrating that the program was in compliance with the applicable requirement at the time of the monitoring evaluation or complaint investigation, to the department for review.

2. The department shall review the written information submitted within ten working days of the receipt of the information. At the conclusion of the review, the department may affirm, modify, or dismiss the regulatory insufficiencies. The department shall notify the program in writing of the decision to affirm, modify, or dismiss the regulatory insufficiencies, and the reasons for the decision.

3. In the case of a complaint investigation, the department shall also notify the complainant, if known, of the decision and the reasons for the decision.

2005 Acts, ch 61, §9, 17; 2007 Acts, ch 215, §196

#### **231D.10 Public disclosure of findings.**

Upon completion of a monitoring evaluation or complaint investigation of an adult day services program by the department pursuant to this chapter, including the conclusion of informal review, the department's final findings with respect to compliance by the adult day services program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an adult day services program that is obtained by the department which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the adult day services program shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

2003 Acts, ch 165, §10; 2005 Acts, ch 61, §10, 17; 2007 Acts, ch 215, §197; 2008 Acts, ch 1048, §3, 4

#### **231D.11 Penalties.**

1. A person establishing, conducting, managing, or operating an adult day services program without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing, or operating an adult day services program without a certificate may be temporarily or permanently restrained by a court of competent jurisdiction from such activity in an action brought by the state.

2. A civil penalty, as established by rule, may apply in any of the following situations:

a. Program noncompliance with one or more regulatory requirements has caused or is likely to cause harm, serious injury, threat, or death to a participant.

b. Program failure or refusal to comply with regulatory requirements within prescribed time frames.

c. Preventing or interfering with or attempting to impede in any way any duly authorized representative of the department in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this paragraph, "*lawful enforcement*" includes but is not limited to:

(1) Contacting or interviewing any participant in an adult day services program in private at any reasonable hour and without advance notice.

(2) Examining any relevant records of an adult day services program.

(3) Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

2003 Acts, ch 165, §11; 2005 Acts, ch 61, §11, 17; 2007 Acts, ch 215, §198, 199

#### **231D.12 Retaliation by adult day services program prohibited.**

1. An adult day services program shall not discriminate or retaliate in any way against a participant, participant's family, or an employee of the program who has initiated or participated in any proceeding authorized by this chapter. An adult day services program that violates this section is subject to a penalty as established by administrative rule, to be assessed and collected by the department, paid into the state treasury, and credited to the general fund of the state.

2. Any attempt to discharge a participant from an adult day services program by whom or upon whose behalf a complaint has been submitted to the department under section 231D.9, within ninety days after the filing of the complaint or the conclusion of any proceeding

resulting from the complaint, shall raise a rebuttable presumption that the action was taken by the program in retaliation for the filing of the complaint, except in situations in which the participant is discharged due to changes in health status which exceed the level of care offered by the adult day services program or in other situations as specified by rule.

2003 Acts, ch 165, §12; 2005 Acts, ch 61, §12, 17; 2006 Acts, ch 1010, §74; 2007 Acts, ch 215, §200

Referred to in §231D.17

### **231D.13 Nursing assistant and medication aide — certification.**

The department, in cooperation with other appropriate agencies, shall establish a procedure to allow nursing assistants or medication aides to claim work within adult day services programs as credit toward sustaining the nursing assistant's or medication aide's certification.

2003 Acts, ch 165, §13; 2007 Acts, ch 215, §201

### **231D.13A Medication setup — administration and storage of medications.**

1. An adult day services program may provide for medication setup if requested by a participant or the participant's legal representative. If medication setup is provided following such request, the program shall be responsible for the specific task requested and the participant shall retain responsibility for those tasks not requested to be provided.

2. If medications are administered or stored by an adult day services program, or if the adult day services program provides for medication setup, all of the following shall apply:

a. If administration of medications is delegated to the program by the participant or the participant's legal representative, the medications shall be administered by a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed or registered in Iowa or by the individual to whom such licensed or registered individuals may properly delegate administration of medications.

b. Medications, other than those self-administered by the participant or provided through medication setup, shall be stored in locked storage that is not accessible to persons other than employees responsible for administration or storage of medications.

c. Medications shall be labeled and maintained in compliance with label instructions and state and federal law.

d. A person, other than a person authorized to prescribe prescription drugs under state and federal law, shall not alter the prescription of a participant.

e. Medications shall be stored in their originally received containers.

f. If medication setup is provided by the program at the request of the participant or the participant's legal representative, or if medication administration is delegated to the program by the participant or the participant's legal representative, appropriate staff of the program may transfer the medications in the participant's presence from the original prescription container to medication dispensing containers, reminder containers, or medication cups.

g. Program assistance with medication administration as specified in the contractual agreement shall not require the program to provide assistance with the storage of medications.

2005 Acts, ch 61, §13, 17

### **231D.14 Criminal records investigation check.**

An adult day services program shall comply with section 135C.33.

2003 Acts, ch 165, §14

### **231D.15 Fire and safety standards.**

The state fire marshal shall adopt rules, in coordination with the department, relating to the certification and monitoring of the fire and safety standards of adult day services programs.

2003 Acts, ch 165, §15; 2007 Acts, ch 215, §202

### **231D.16 Transition provision.**

1. Adult day services programs that are serving at least two but not more than five persons

and that are not voluntarily accredited by a recognized accrediting entity prior to July 1, 2003, shall comply with this chapter by June 30, 2005.

2. A hospital licensed pursuant to chapter 135B, a health care facility licensed pursuant to chapter 135C, or an assisted living program certified pursuant to chapter 231C may operate an adult day services program if the adult day services program is certified pursuant to this chapter.

3. A certified adult day services program that complies with the requirements of this chapter shall not be required to be licensed or certified as another type of facility, unless the facility is represented to the public as another type of facility.

2003 Acts, ch 165, §16; 2005 Acts, ch 61, §14, 17

### **231D.17 Written contractual agreement required.**

1. An adult day services program shall not operate in this state unless a written contractual agreement is executed between the adult day services program and each participant or the participant's legal representative prior to the participant's admission to the program, and unless the adult day services program operates in accordance with the terms of the written contractual agreement. The adult day services program shall deliver to the participant or the participant's legal representative a complete copy of the written contractual agreement and all supporting documents and attachments, prior to the participant's admission to the program, and shall also deliver a written copy of changes to the written contractual agreement, if any changes to the copy originally delivered are subsequently made, at least thirty days prior to any changes, unless otherwise provided in this section.

2. An adult day services program written contractual agreement shall clearly describe the rights and responsibilities of the participant and the program. The written contractual agreement shall also include but is not limited to inclusion of all of the following information in the body of the agreement or in the supporting documents and attachments:

a. A description of all fees, charges, and rates describing admission and basic services covered, and any additional and optional services and their related costs.

b. A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the adult day services program.

c. The procedure followed for nonpayment of fees.

d. Identification of the party responsible for payment of fees and identification of the participant's legal representative, if any.

e. The term of the written contractual agreement.

f. A statement that the adult day services program shall notify the participant or the participant's legal representative, as applicable, in writing at least thirty days prior to any change being made in the written contractual agreement, with the following exceptions:

(1) When the participant's health status or behavior constitutes a substantial threat to the health or safety of the participant, other participants, or others, including when the participant refuses to consent to discharge.

(2) When an emergency or a significant change in the participant's condition results in the need for the provision of services that exceed the type or level of services included in the written contractual agreement and the necessary services cannot be safely provided by the adult day services program.

g. A statement that all participant information shall be maintained in a confidential manner to the extent required under state and federal law.

h. Discharge, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer.

i. The internal appeals process provided relative to an involuntary transfer.

j. The program's policies and procedures for addressing grievances between the adult day services program and the participants, including grievances relating to transfer and occupancy.

k. A statement of the prohibition against retaliation as prescribed in section 231D.12.

l. The emergency response policy.

m. The staffing policy which specifies staff is available during all times of program

operation, if nurse delegation will be used, and how staffing will be adapted to meet changing participant needs.

n. In dementia-specific adult day services programs, a description of the services and programming provided to meet the life skills and social activities of participants.

o. The refund policy.

p. A statement regarding billing and payment procedures.

3. Written contractual agreements and related documents executed by each participant or participant’s legal representative shall be maintained by the adult day services program in program files from the date of execution until three years from the date the written contractual agreement is terminated. A copy of the most current written contractual agreement shall be provided to members of the general public, upon request. Written contractual agreements and related documents shall be made available for on-site inspection to the department upon request and at reasonable times.

2005 Acts, ch 61, §15, 17; 2007 Acts, ch 215, §203

**231D.18 Involuntary transfer.**

1. If an adult day services program initiates the involuntary transfer of a participant and the action is not a result of a monitoring evaluation or complaint investigation by the department, and if the participant or participant’s legal representative contests the transfer, the following procedure shall apply:

a. The adult day services program shall notify the participant or participant’s legal representative, in accordance with the written contractual agreement, of the need to transfer and the reason for the transfer.

b. If, following the internal appeals process, the adult day services program upholds the transfer decision, the participant or participant’s legal representative may utilize other remedies authorized by law to contest the transfer.

2. The department, in consultation with affected state agencies and affected industry, professional, and consumer groups, shall establish by rule, in accordance with chapter 17A, procedures to be followed, including the opportunity for hearing, when the transfer of a participant results from a monitoring evaluation or complaint investigation conducted by the department.

2005 Acts, ch 61, §16, 17; 2007 Acts, ch 215, §204, 205

**CHAPTER 231E**

**SUBSTITUTE DECISION MAKER ACT**

Referred to in §633.63

Appropriation of funds for continuation of program; 2008 Acts, ch 1187, §1

231E.1	Title.	231E.7	Substitute decision maker-initiated appointment — interventions.
231E.2	Office of substitute decision maker — findings and intent.		
231E.3	Definitions.	231E.8	Provisions applicable to all appointments and designations — discharge.
231E.4	State office of substitute decision maker — established — duties — department rules.		
231E.5	Local office of substitute decision maker — requirements for state and local substitute decision makers.	231E.9	Fees — appropriated.
		231E.10	Conflicts of interest — limitations.
231E.6	Court-initiated or petition-initiated appointment of state or local substitute decision maker — guardianship or conservatorship — discharge.	231E.11	Duty of attorney general, county attorney, or other counsel.
		231E.12	Liability.
		231E.13	Implementation.

**231E.1 Title.**

This chapter shall be known and may be cited as the “*Iowa Substitute Decision Maker Act*”. 2005 Acts, ch 175, §130

**231E.2 Office of substitute decision maker — findings and intent.**

1. *a.* The general assembly finds that many adults in this state are unable to meet essential requirements to maintain their physical health or to manage essential aspects of their financial resources and are in need of substitute decision-making services. However, a willing and responsible person may not be available to serve as a private substitute decision maker or the adult may not have adequate income or resources to compensate a private substitute decision maker.

*b.* The general assembly further finds that a process should exist to assist individuals in finding alternatives to substitute decision-making services and less intrusive means of assistance before an individual’s independence or rights are limited.

*c.* The general assembly further finds that a substitute decision maker may be necessary to finalize a person’s affairs after death when there is no willing and appropriate person available to serve as the person’s personal representative.

2. *a.* It is, therefore, the intent of the general assembly to establish a state office of substitute decision maker and authorize the establishment of local offices of substitute decision maker to provide substitute decision-making services to adults and their estates after their deaths, when no private substitute decision maker is available.

*b.* It is also the intent of the general assembly that the office of substitute decision maker provide assistance to both public and private substitute decision makers throughout the state in securing necessary services for their wards, principals, clients, and decedents and to assist substitute decision makers, wards, principals, clients, courts, and attorneys in the orderly and expeditious handling of substitute decision-making proceedings.

2005 Acts, ch 175, §131

**231E.3 Definitions.**

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

1. “*Client*” means an individual for whom a representative payee is appointed.
2. “*Commission*” means the commission on aging.
3. “*Conservator*” means conservator as defined in section 633.3.
4. “*Court*” means court as defined in section 633.3.
5. “*Decedent*” means the individual for whom an estate is administered or executed.
6. “*Department*” means the department on aging established in section 231.21.
7. “*Director*” means the director of the department on aging.
8. “*Estate*” means estate as defined in section 633.3.
9. “*Guardian*” means guardian as defined in section 633.3.
10. “*Incompetent*” means incompetent as defined in section 633.3.
11. “*Local office*” means a local office of substitute decision maker.
12. “*Local substitute decision maker*” means an individual under contract with the department to act as a substitute decision maker.
13. “*Personal representative*” means personal representative as defined in section 633.3.
14. “*Planning and service area*” means a geographic area of the state designated by the commission for the purpose of planning, developing, delivering, and administering services for elders.
15. “*Power of attorney*” means a durable power of attorney for health care as defined in section 144B.1 or a power of attorney that becomes effective upon the disability of the principal as described in section 633B.1.
16. “*Principal*” means an individual for whom a power of attorney is established.
17. “*Representative payee*” means an individual appointed by a government entity to receive funds on behalf of a client pursuant to federal regulation.
18. “*State agency*” means any executive department, commission, board, institution, division, bureau, office, agency, or other executive entity of state government.
19. “*State office*” means the state office of substitute decision maker.

20. “*State substitute decision maker*” means the administrator of the state office of substitute decision maker.

21. “*Substitute decision maker*” means a guardian, conservator, representative payee, attorney in fact under a power of attorney, or personal representative.

22. “*Substitute decision making*” or “*substitute decision-making services*” means the provision of services of a guardian, conservator, representative payee, attorney in fact under a power of attorney, or personal representative.

23. “*Ward*” means the individual for whom a guardianship or conservatorship is established.

2005 Acts, ch 38, §54; 2005 Acts, ch 175, §132; 2009 Acts, ch 23, §43

Referred to in §235B.6, 633.63

### **231E.4 State office of substitute decision maker — established — duties — department rules.**

1. A state office of substitute decision maker is established within the department to create and administer a statewide network of substitute decision makers who provide substitute decision-making services if other substitute decision makers are not available to provide the services.

2. The director shall appoint an administrator of the state office who shall serve as the state substitute decision maker. The state substitute decision maker shall be qualified for the position by training and expertise in substitute decision-making law and shall be licensed to practice law in Iowa. The state substitute decision maker shall also have knowledge of social services available to meet the needs of persons adjudicated incompetent or in need of substitute decision making.

3. The state office shall do all of the following:

a. Select persons through a request for proposals process to establish local offices of substitute decision maker in each of the planning and service areas. Local offices shall be established statewide on or before July 1, 2015.

b. Monitor and terminate contracts with local offices based on criteria established by rule of the department.

c. Retain oversight responsibilities for all local substitute decision makers.

d. Act as substitute decision maker if a local office is not available to so act.

e. Work with the department of human services, the Iowa department of public health, the Iowa developmental disabilities council, and other agencies to establish a referral system for the provision of substitute decision-making services.

f. Develop and maintain a current listing of public and private services and programs available to assist wards, principals, clients, personal representatives, and their families and establish and maintain relationships with public and private entities to assure the availability of effective substitute decision-making services for wards, principals, clients, and estates.

g. Provide information and referrals to the public regarding substitute decision-making services.

h. Provide personal representatives for estates where a person is not available for that purpose.

i. Maintain statistical data on the local offices including various methods of funding, the types of services provided, and the demographics of the wards, principals, clients, and decedents and report to the general assembly on or before November 1, annually, regarding the local offices and recommend any appropriate legislative action.

j. Develop, in cooperation with the judicial council as established in section 602.1202, a substitute decision-maker education and training program. The program may be offered to both public and private substitute decision makers. The state office shall establish a curriculum committee, which includes but is not limited to probate judges, to develop the education and training program. The state office shall be the sole authority for certifying additional curriculum trainers.

4. The state office may do any of the following:

a. Accept and receive gifts, grants, or donations from any public or private entity in support of the state office. Such gifts, grants, or donations shall be appropriated pursuant to

section 231E.9. Notwithstanding section 8.33, moneys retained by the department pursuant to this section shall not be subject to reversion to the general fund of the state.

b. Accept the services of individual volunteers and volunteer organizations. Volunteers and volunteer organizations utilized by the state office shall not provide direct substitute decision-making services.

c. Employ staff necessary to administer the state office and enter into contracts as necessary.

5. The department shall provide administrative support to the state office.

6. The department shall adopt rules in accordance with chapter 17A necessary to create and administer the state and local offices, relating to but not limited to all of the following:

a. An application and intake process and standards for receipt of substitute decision-making services from the state or a local office.

b. A process for the removal or termination of the state or a local substitute decision maker.

c. An ideal range of staff-to-client ratios for the state and local substitute decision makers.

d. Minimum training and experience requirements for professional staff and volunteers.

e. A fee schedule. The department may establish by rule a schedule of reasonable fees for the costs of substitute decision-making services provided under this chapter. The fee schedule established may be based upon the ability of the ward, principal, client, or estate to pay for the services but shall not exceed the actual cost of providing the services. The state office or a local office may waive collection of a fee upon a finding that collection is not economically feasible. The rules may provide that the state office or a local office may investigate the financial status of a ward, principal, client, or estate that requests substitute decision-making services or for whom or which the state or a local substitute decision maker has been appointed for the purpose of determining the fee to be charged by requiring the ward, principal, client, or estate to provide any written authorizations necessary to provide access to records of public or private sources, otherwise confidential, needed to evaluate the individual's or estate's financial eligibility. The rules may also provide that the state or a local substitute decision maker may, upon request and without payment of fees otherwise required by law, obtain information necessary to evaluate the individual's or estate's financial eligibility from any office of the state or of a political subdivision or agency of the state that possesses public records. In estate proceedings, the state or local decision maker shall be compensated pursuant to chapter 633, division III, part 8.

f. Standards and performance measures for evaluation of local offices.

g. Recordkeeping and accounting procedures to ensure that the state office and local offices maintain confidential, accurate, and up-to-date financial, case, and statistical records. The rules shall require each local office to file with the state office, on an annual basis, an account of all public and private funds received and a report regarding the operations of the local office for the preceding fiscal year.

h. Procedures for the sharing of records held by the court or a state agency with the state office, which are necessary to evaluate the state office or local offices, to assess the need for additional substitute decision makers, or to develop required reports.

2005 Acts, ch 175, §133; 2009 Acts, ch 23, §44 – 46; 2012 Acts, ch 1023, §30

#### **231E.5 Local office of substitute decision maker — requirements for state and local substitute decision makers.**

1. The state substitute decision maker shall select persons to provide local substitute decision-making services in each of the planning and service areas, based upon a request for proposals process developed by the department.

2. The local office shall comply with all requirements established for the local office by the department and shall do all of the following:

a. Maintain a staff of professionally qualified individuals to carry out the substitute decision-making functions.

b. Identify client needs and local resources to provide necessary support services to recipients of substitute decision-making services.

c. Collect program data as required by the state office.

- d. Meet standards established for the local office.
- e. Comply with minimum staffing requirements and caseload restrictions.
- f. Conduct background checks on employees and volunteers.
- g. With regard to a proposed ward, the local office shall do all of the following:
  - (1) Determine the most appropriate form of substitute decision making needed, if any, giving preference to the least restrictive alternative.
  - (2) Determine whether the needs of the proposed ward require the appointment of a guardian or conservator.
  - (3) Assess the financial resources of the proposed ward based on the information supplied to the local office at the time of the determination.
  - (4) Inquire and, if appropriate, search to determine whether any other person may be willing and able to serve as the proposed ward's guardian or conservator.
  - (5) Determine the form of guardianship or conservatorship to request of a court, if any, giving preference to the least restrictive form.
  - (6) If determined necessary, file a petition for the appointment of a guardian or conservator pursuant to chapter 633.
- h. With regard to an estate, the local office may appoint a personal representative to file a petition to open an estate who shall do all of the following:
  - (1) Retain legal counsel as described in section 231E.11 to be compensated from the proceeds of the estate pursuant to chapter 633, division III, part 8.
  - (2) Liquidate all assets of the estate.
  - (3) Distribute the assets of the estate pursuant to chapter 633, division VII, parts 7 and 8, and other applicable provisions of law.
- 3. A local office may do any of the following:
  - a. Contract for or arrange for provision of services necessary to carry out the duties of a local substitute decision maker.
  - b. Accept the services of volunteers or consultants and reimburse them for necessary expenses.
  - c. Employ staff and delegate to members of the staff the powers and duties of the local substitute decision maker. However, the local office shall retain responsibility for the proper performance of the delegated powers and duties. All delegations shall be to persons who meet the eligibility requirements of the specific type of substitute decision maker.
- 4. An individual acting as the state or a local substitute decision maker shall comply with applicable requirements for guardians, conservators, or personal representatives pursuant to chapter 633, attorneys in fact under a power of attorney pursuant to chapter 633 or a durable power of attorney for health care pursuant to chapter 144B, or representative payees pursuant to federal law and regulations.
- 5. Notwithstanding any provision to the contrary, an individual acting as the state or a local substitute decision maker shall not be subject to the posting of a bond pursuant to chapter 633. An individual acting as the state or a local substitute decision maker shall complete at least eight hours of training annually as certified by the department.

2005 Acts, ch 175, §134

**231E.6 Court-initiated or petition-initiated appointment of state or local substitute decision maker — guardianship or conservatorship — discharge.**

- 1. The court may appoint on its own motion or upon petition of any person, the state office or local office of substitute decision maker, to serve as guardian or conservator for any proposed ward in cases in which the court determines that the proceeding will establish the least restrictive form of substitute decision making suitable for the proposed ward and if the proposed ward meets all of the following criteria:
  - a. Is a resident of the planning and service area in which the local office is located from which services would be provided or is a resident of the state, if the state office would provide the services.
  - b. Is eighteen years of age or older.
  - c. Does not have suitable family or another appropriate entity willing and able to serve as guardian or conservator.

d. Is incompetent.

e. Is an individual for whom guardianship or conservatorship services are the least restrictive means of meeting the individual's needs.

2. For all appointments made pursuant to this section, notice shall be provided to the state office or local office of substitute decision maker prior to appointment. For appointments made pursuant to this section, the state office or local office of substitute decision maker shall only accept appointments made pursuant to the filing of an involuntary petition for appointment of a conservator or guardianship pursuant to chapter 633.

2005 Acts, ch 175, §135; 2009 Acts, ch 23, §47

Referred to in §231E.8

### **231E.7 Substitute decision maker-initiated appointment — interventions.**

The state office or local office may on its own motion or at the request of the court intervene in a guardianship or conservatorship proceeding if the state office or local office or the court considers the intervention to be justified because of any of the following:

1. An appointed guardian or conservator is not fulfilling prescribed duties or is subject to removal under section 633.65.

2. A willing and qualified guardian or conservator is not available.

3. The best interests of the ward require the intervention.

2005 Acts, ch 175, §136; 2009 Acts, ch 23, §48

Referred to in §231E.8

### **231E.8 Provisions applicable to all appointments and designations — discharge.**

1. The court shall only appoint or intervene on its own motion or act upon the petition of any person under section 231E.6 or 231E.7 if such appointment or intervention would comply with staffing ratios established by the department and if sufficient resources are available to the state office or local office. Notice of the proposed appointment shall be provided to the state office or local office prior to the granting of such appointment.

2. The state office or local office shall maintain reasonable personal contact with each ward, principal, or client for whom the state office or local office is appointed or designated in order to monitor the ward's, principal's, or client's care and progress. For any estates in which the state office or local office is involved, the state office or local office shall move estate proceedings forward in a reasonable and expeditious manner and shall monitor the progress of any legal counsel retained on a regular basis.

3. Notwithstanding any provision of law to the contrary, the state office or local office appointed by the court or designated under a power of attorney document may access all confidential records concerning the ward or principal for whom the state office or local office is appointed or designated, including medical records and abuse reports.

4. In any proceeding in which the state or local office is appointed or is acting as guardian or conservator, the court shall waive court costs or filing fees, if the state office or local office certifies to the court that the state office or local office has waived its fees in their entirety based upon the ability of the ward to pay for the services of the state office or local office. In any estate proceeding, the court costs shall be paid in accordance with chapter 633, division VII, part 7.

5. The state or a local substitute decision maker shall be subject to discharge or removal, by the court, on the grounds and in the manner in which other guardians, conservators, or personal representatives are discharged or removed pursuant to chapter 633.

6. The state or a local substitute decision maker may petition to be removed as guardian or conservator. A petition for removal shall be granted for any of the following reasons:

a. The ward displays assaultive or aggressive behavior that causes the substitute decision maker to fear for their personal safety.

b. The ward refuses the services of the substitute decision maker.

c. The ward refuses to have contact with the substitute decision maker.

d. The ward moves out of Iowa.

7. An appointment nominating the state office or a local office under a power of

attorney shall not take effect unless the nominated state or local office has consented to the appointment in writing.

2005 Acts, ch 175, §137; 2009 Acts, ch 23, §49

**231E.9 Fees — appropriated.**

Fees received by the state office and by local offices for services provided as state or local substitute decision maker shall be deposited in the general fund of the state and the amounts received are appropriated to the department for the purposes of administering this chapter.

2005 Acts, ch 175, §138

Referred to in §231E.4

**231E.10 Conflicts of interest — limitations.**

Notwithstanding section 633.63 or any other provision to the contrary, a local substitute decision maker shall not provide direct services to or have an actual or the appearance of any conflict of interest relating to any individual for whom the local substitute decision maker acts in a substitute decision-making capacity unless such provision of direct services or the appearance of a conflict of interest is approved and monitored by the state office in accordance with rules adopted by the department.

2005 Acts, ch 175, §139

**231E.11 Duty of attorney general, county attorney, or other counsel.**

1. The attorney general shall advise the state office on legal matters and represent the state office in legal proceedings.

2. Upon the request of the attorney general, a county attorney may represent the state office or a local office in connection with the filing of a petition for appointment as guardian or conservator and with routine, subsequent appearances.

3. A local attorney experienced in probate matters may represent the personal representative for all routine matters associated with probating an estate.

2005 Acts, ch 175, §140

Referred to in §231E.5

**231E.12 Liability.**

All employees and volunteers of the state office and local offices operating under this chapter and other applicable chapters and pursuant to rules adopted under this and other applicable chapters are considered employees of the state and state volunteers for the purposes of chapter 669 and shall be afforded protection under section 669.21 or 669.24, as applicable. This section does not relieve a guardian or conservator from performing duties prescribed under chapter 633.

2005 Acts, ch 175, §141

**231E.13 Implementation.**

Implementation of this chapter is subject to availability of funding as determined by the department. The department shall notify the Code editor upon implementation of this chapter.

2005 Acts, ch 175, §142

Code editor notified by director of department regarding use of funds contained in 2007 Acts, ch 218, §1, for proposed implementation of chapter on October 1, 2007; continuation of program funding, see 2008 Acts, ch 1187, §1

## CHAPTER 231F

### LONG-TERM LIVING SYSTEM

231F.1 Intent for Iowa's long-term living system.

**231F.1 Intent for Iowa's long-term living system.**

1. The general assembly finds and declares that the intent for Iowa's long-term living system is to ensure all Iowans access to an extensive range of high-quality, affordable, and cost-effective long-term living options that maximize independence, choice, and dignity for consumers.

2. The long-term living system should be comprehensive, offering multiple services and support in home, community-based, and facility-based settings; should utilize a uniform assessment process to ensure that such services and support are delivered in the most integrated and life-enhancing setting; and should ensure that such services and support are provided by a well-trained, motivated workforce.

3. The long-term living system should exist in a regulatory climate that appropriately ensures the health, safety, and welfare of consumers, while not being overly restrictive or inflexible.

4. The long-term living system should sustain existing informal care systems including family, friends, volunteers, and community resources; should encourage innovation through the use of technology and new delivery and financing models, including housing; should provide incentives to consumers for private financing of long-term living services and support; and should allow Iowans to live independently as long as they desire.

5. Information regarding all components of the long-term living system should be effectively communicated to all persons potentially impacted by the need for long-term living services and support in order to empower consumers to plan, evaluate, and make decisions about how best to meet their own long-term living needs.

2005 Acts, ch 175, §146

**SUBTITLE 5**

**JUVENILES**

Referred to in §714.8

**CHAPTER 232**

**JUVENILE JUSTICE**

Referred to in §13B.9, 85.59, 123.47, 135.108, 135H.6, 135L.3, 232B.3, 232B.6, 233.2, 233A.5, 233B.4, 235A.13, 236.11, 237.20, 238.32, 252D.1, 252D.16, 252D.16A, 252H.2, 252I.2, 252J.1, 261.2, 261.6, 299.8, 321.180B, 321.184, 321.482, 321G.14, 321I.15, 331.427, 331.756(48), 356.3, 462A.13, 483A.24, 598.21C, 602.6110, 602.7101, 602.7202, 602.8102(42), 664A.1, 664A.2, 664A.5, 664A.7, 709.12, 709A.1, 814.11, 815.9, 915.25, 915.37

For provisions concerning court orders under this chapter which impose terms and conditions on the parent, guardian, or custodian of a child, see §232.106

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DIVISION I  
CONSTRUCTION AND DEFINITIONS

**232.1 Rules of construction.**

This chapter shall be liberally construed to the end that each child under the jurisdiction of the court shall receive, preferably in the child's own home, the care, guidance and control that will best serve the child's welfare and the best interest of the state. When a child is removed from the control of the child's parents, the court shall secure for the child care as nearly as possible equivalent to that which should have been given by the parents.

[S13, §254-a14; C24, 27, 31, 35, 39, §3617; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §232.1]

**232.1A Foster care placement — annual goal.**

The annual state goal for children placed in foster care that is funded under the federal Social Security Act, Tit. IV-E, is that not more than fifteen percent of the children will be in a foster care placement for a period of more than twenty-four months.

2005 Acts, ch 175, §101; 2010 Acts, ch 1061, §180

**232.2 Definitions.**

As used in this chapter unless the context otherwise requires:

1. "Abandonment of a child" means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

2. "Adjudicatory hearing" means a hearing to determine if the allegations of a petition are true.

3. "Adult" means a person other than a child.

4. "Case permanency plan" means the plan, mandated by Pub. L. No. 96-272 and Pub. L. No. 105-89, as codified in 42 U.S.C. § 622(b)(10), 671(a)(16), and 675(1),(5), which is designed to achieve placement in the most appropriate, least restrictive, and most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall be developed by the department or agency involved and the child's parent, guardian, or custodian. The plan shall specifically include all of the following:

a. Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.

b. The type and appropriateness of the placement and services to be provided to the child.

c. The care and services that will be provided to the child, biological parents, and foster parents.

d. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.

e. The most recent information available regarding the child's health and education records, including the date the records were supplied to the agency or individual who is the child's foster care provider. If the child remains in foster care until the age of majority, the child is entitled to receive prior to discharge the most recent information available regarding the child's health and educational records.

f. (1) When a child is sixteen years of age or older, a written transition plan of services which, based upon an assessment of the child's needs, would assist the child in preparing for the transition from foster care to adulthood. The transition plan and needs assessment shall be developed with a focus on the services, other support, and actions necessary to facilitate the child's successful entry into adulthood. The transition plan shall be personalized at the direction of the child and shall be developed with the child present, honoring the goals and

concerns of the child, and shall address the following areas of need when the child becomes an adult, including but not limited to all of the following:

- (a) Education.
- (b) Employment services and other workforce support.
- (c) Health and health care coverage.
- (d) Housing.
- (e) Relationships, including local opportunities to have a mentor.

(f) If the needs assessment indicates the child is reasonably likely to need or be eligible for services or other support from the adult service system upon reaching age eighteen, the transition plan shall provide for the child's application for adult services.

(2) The transition plan shall be considered a working document and shall be reviewed and updated for each permanency hearing by the court or other formal case permanency plan review. The transition plan shall also be reviewed and updated during the ninety calendar-day period preceding the child's eighteenth birthday and during the ninety calendar-day period immediately preceding the date the child is expected to exit foster care, if the child remains in foster care after the child's eighteenth birthday. The transition plan may be reviewed and updated more frequently.

(3) The transition plan shall be developed and reviewed by the department in collaboration with a child-centered transition team. The transition team shall be comprised of the child's caseworker and persons selected by the child, persons who have knowledge of services available to the child, and any person who may reasonably be expected to be a service provider for the child when the child becomes an adult or to become responsible for the costs of services at that time. If the child is reasonably likely to need or be eligible for adult services, the transition team membership shall include representatives from the adult services system. The adult services system representatives may include but are not limited to the administrator of county general relief under chapter 251 or 252 or of the central point of coordination process implemented under section 331.440.\* The membership of the transition team and the meeting dates for the team shall be documented in the transition plan.

(4) The final transition plan shall specifically identify how the need for housing will be addressed.

(5) If the child is interested in pursuing higher education, the transition plan shall provide for the child's participation in the college student aid commission's program of assistance in applying for federal and state aid under section 261.2.

(6) If the needs assessment indicates the child is reasonably likely to need or be eligible for services or other support from the adult service system upon reaching age eighteen, the transition plan shall be reviewed and approved by the transition committee for the area in which the child resides, in accordance with section 235.7, before the child reaches age seventeen and one-half. The transition committee's review and approval shall be indicated in the case permanency plan.

(7) Provision for the department or a designee of the department on or before the date the child reaches age eighteen to provide to the child a certified copy of the child's birth certificate and to facilitate securing a federal social security card. The fee for the certified copy that is otherwise chargeable under section 144.13A, 144.46, or 331.605 shall be waived by the state or county registrar.

g. The actions expected of the parent, guardian, or custodian in order for the department or agency to recommend that the court terminate a dispositional order for the child's out-of-home placement and for the department or agency to end its involvement with the child and the child's family.

h. If reasonable efforts to place a child for adoption or with a guardian are made concurrently with reasonable efforts as defined in section 232.102, the concurrent goals and timelines may be identified. Concurrent case permanency plan goals for reunification, and for adoption or for other permanent out-of-home placement of a child shall not be considered inconsistent in that the goals reflect divergent possible outcomes for a child in an out-of-home placement.

i. A provision that a designee of the department or other person responsible for placement of a child out-of-state shall visit the child at least once every six months.

j. If it has been determined that the child cannot return to the child's home, documentation of the steps taken to make and finalize an adoption or other permanent placement.

k. If it is part of the child's records or it is otherwise known that the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse, that information shall be addressed in the plan and shall be provided to the child's parent, guardian, or foster parent or other person with custody of the child. The information shall be provided whether the child's placement is voluntary or made pursuant to a court determination. The information shall be provided at the time it is learned by the department or agency developing the plan and, if possible, at the time of the child's placement. The information shall only be withheld if ordered by the court or it is determined by the department or agency developing the plan that providing the information would be detrimental to the child or to the family with whom the child is living. In determining whether providing the information would be detrimental, the court, department, or agency shall consider any history of abuse within the child's family or toward the child.

l. The provisions involving sibling visitation or interaction required under section 232.108.

m. Documentation of the educational stability of the child while in foster care. The documentation shall include but is not limited to all of the following:

(1) Evidence there was an evaluation of the appropriateness of the child's educational setting while in placement and of the setting's proximity to the educational setting in which the child was enrolled at the time of placement.

(2) An assurance either that the department coordinated with appropriate local educational agencies to identify how the child could remain in the educational setting in which the child was enrolled at the time of placement or, if it was determined it was not in the child's best interest to remain in that setting, that the affected educational agencies would immediately and appropriately enroll the child in another educational setting during the child's placement and ensure that the child's educational records were provided for use in the new educational setting. For the purposes of this subparagraph, "*local educational agencies*" means the same as defined in the federal Elementary and Secondary Education Act of 1965, § 9101, as codified in 20 U.S.C. § 7801(26).

5. "*Child*" means a person under eighteen years of age.

6. "*Child in need of assistance*" means an unmarried child:

a. Whose parent, guardian, or other custodian has abandoned or deserted the child.

b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of any of the following:

(1) Mental injury caused by the acts of the child's parent, guardian, or custodian.

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

(3) The child's parent, guardian, or custodian, or person responsible for the care of the child, as defined in section 232.68, has knowingly disseminated or exhibited obscene material as defined in section 728.1 to the child.

d. Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian, or other member of the household in which the child resides.

e. Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

f. Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling to provide such treatment.

g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in

supplying the child with adequate food, clothing, or shelter and refuses other means made available to provide such essentials.

h. Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, custodian, or other member of the household in which the child resides.

i. Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political, or artistic value.

j. Who is without a parent, guardian, or other custodian.

k. Whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody.

l. Who for good cause desires to have the child's parents relieved of the child's care and custody.

m. Who is in need of treatment to cure or alleviate chemical dependency and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

o. In whose body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.

p. Whose parent, guardian, or custodian does any of the following: unlawfully manufactures a dangerous substance in the presence of a child, knowingly allows such manufacture by another person in the presence of a child, or in the presence of a child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

(1) For the purposes of this paragraph, "*in the presence of a child*" means the physical presence of a child during the manufacture or possession, the manufacture or possession occurred in a child's home, on the premises, or in a motor vehicle located on the premises, or the manufacture or possession occurred under other circumstances in which a reasonably prudent person would know that the manufacture or possession may be seen, smelled, or heard by a child.

(2) For the purposes of this paragraph, "*dangerous substance*" means any of the following:

(a) Amphetamine, its salts, isomers, or salts of its isomers.

(b) Methamphetamine, its salts, isomers, or salts of its isomers.

(c) A chemical or combination of chemicals that poses a reasonable risk of causing an explosion, fire, or other danger to the life or health of persons who are in the vicinity while the chemical or combination of chemicals is used or is intended to be used in any of the following:

(i) The process of manufacturing an illegal or controlled substance.

(ii) As a precursor in the manufacturing of an illegal or controlled substance.

(iii) As an intermediary in the manufacturing of an illegal or controlled substance.

q. Who is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

6A. "*Chronic runaway*" means a child who is reported to law enforcement as a runaway more than once in any thirty-day period or three or more times in any year.

7. "*Complaint*" means an oral or written report which is made to the juvenile court by any person and alleges that a child is within the jurisdiction of the court.

8. "*Court*" means the juvenile court established under section 602.7101.

9. "*Court appointed special advocate*" means a person duly certified by the child advocacy board created in section 237.16 for participation in the court appointed special advocate program and appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from such proceeding.

10. "*Criminal or juvenile justice agency*" means any agency which has as its primary

responsibility the enforcement of the state's criminal laws or of local ordinances made pursuant to state law.

11. *a. "Custodian"* means a stepparent or a relative within the fourth degree of consanguinity to a child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division IV, or a person appointed by a court or juvenile court having jurisdiction over a child.

*b.* The rights and duties of a custodian with respect to a child are as follows:

- (1) To maintain or transfer to another the physical possession of that child.
- (2) To protect, train, and discipline that child.
- (3) To provide food, clothing, housing, and medical care for that child.
- (4) To consent to emergency medical care, including surgery.
- (5) To sign a release of medical information to a health professional.

*c.* All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

12. *"Delinquent act"* means:

*a.* The violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.

*b.* The violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.

*c.* The violation of section 123.47 which is committed by a child.

13. *"Department"* means the department of human services and includes the local, county, and service area officers of the department.

14. *"Desertion"* means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.

15. *"Detention"* means the temporary care of a child in a physically restricting facility designed to ensure the continued custody of the child at any point between the child's initial contact with the juvenile authorities and the final disposition of the child's case.

16. *"Detention hearing"* means a hearing at which the court determines whether it is necessary to place or retain a child in detention.

17. *"Director"* means the director of the department of human services or that person's designee.

18. *"Dismissal of complaint"* means the termination of all proceedings against a child.

19. *"Dispositional hearing"* means a hearing held after an adjudication to determine what dispositional order should be made.

20. *"Family in need of assistance"* means a family in which there has been a breakdown in the relationship between a child and the child's parent, guardian, or custodian.

21. *a. "Guardian"* means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to have a permanent self-sustaining relationship with the child and to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

*b.* Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the rights and duties of a guardian with respect to a child shall be as follows:

- (1) To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric, or surgical treatment.
- (2) To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the child or unless another person has been appointed guardian ad litem.
- (3) To serve as custodian, unless another person has been appointed custodian.
- (4) To make periodic visitations if the guardian does not have physical possession or custody of the child.

(5) To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

(6) To make other decisions involving protection, education, and care and control of the child.

22. *a.* “*Guardian ad litem*” means a person appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party, and includes a court appointed special advocate, except that a court appointed special advocate shall not file motions or petitions pursuant to section 232.54, subsection 1, paragraphs “*a*” and “*d*”, section 232.103, subsection 2, paragraph “*c*”, and section 232.111.

*b.* Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a guardian ad litem with respect to a child shall include the following:

(1) Conducting in-person interviews with the child, if the child’s age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, if authorized by counsel.

(2) Conducting interviews with the child, if the child’s age is appropriate for the interview, prior to any court-ordered hearing.

(3) Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including each time placement is changed.

(4) Interviewing any person providing medical, mental health, social, educational, or other services to the child, before any hearing referred to in subparagraph (2).

(5) Obtaining firsthand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.

(6) Attending any hearings in the matter in which the person is appointed as the guardian ad litem.

(7) If the child is required to have a transition plan developed in accordance with the child’s case permanency plan and subject to review and approval of a transition committee under section 235.7, assisting the transition committee in development of the transition plan.

*c.* The order appointing the guardian ad litem shall grant authorization to the guardian ad litem to interview any relevant person and inspect and copy any records relevant to the proceedings, if not prohibited by federal law. The order shall specify that the guardian ad litem may interview any person providing medical, mental health, social, educational, or other services to the child, may attend any departmental staff meeting, case conference, or meeting with medical or mental health providers, service providers, organizations, or educational institutions regarding the child, if deemed necessary by the guardian ad litem, and may inspect and copy any records relevant to the proceedings.

*d.* If authorized by the court, a guardian ad litem may continue a relationship with and provide advice to a child for a period of time beyond the child’s eighteenth birthday.

23. “*Health practitioner*” means a licensed physician or surgeon, osteopathic physician or surgeon, dentist, optometrist, podiatric physician, or chiropractor, a resident or intern of any such profession, and any registered nurse or licensed practical nurse.

24. “*Informal adjustment*” means the disposition of a complaint without the filing of a petition and may include but is not limited to the following:

*a.* Placement of the child on nonjudicial probation.

*b.* Provision of intake services.

*c.* Referral of the child to a public or private agency other than the court for services.

25. “*Informal adjustment agreement*” means an agreement between an intake officer, a child who is the subject of a complaint, and the child’s parent, guardian, or custodian providing for the informal adjustment of the complaint.

26. “*Intake*” means the preliminary screening of complaints by an intake officer to determine whether the court should take some action and if so, what action.

27. “*Intake officer*” means a juvenile court officer or other officer appointed by the court to perform the intake function.

28. “*Judge*” means the judge of a juvenile court.

29. “*Juvenile*” means the same as “*child*”. However, in the interstate compact for juveniles, section 232.173, “*juvenile*” means a person defined as a juvenile in the compact.

30. “*Juvenile court officer*” means a person appointed as a juvenile court officer under section 602.7202 and a chief juvenile court officer appointed under section 602.1217.

31. “*Juvenile court social records*” or “*social records*” means all records made with respect to a child in connection with proceedings over which the court has jurisdiction under this chapter other than official records and includes but is not limited to the records made and compiled by intake officers, predisposition reports, and reports of physical and mental examinations.

32. “*Juvenile detention home*” means a physically restricting facility used only for the detention of children.

33. “*Juvenile parole officer*” means a person representing an agency which retains jurisdiction over the case of a child adjudicated to have committed a delinquent act, placed in a secure facility and subsequently released, who supervises the activities of the child until the case is dismissed.

34. “*Juvenile shelter care home*” means a physically unrestricting facility used only for the shelter care of children.

35. “*Mental injury*” means a nonorganic injury to a child’s intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child’s ability to function within the child’s normal range of performance and behavior, considering the child’s cultural origin.

36. “*Nonjudicial probation*” means the informal adjustment of a complaint which involves the supervision of the child who is the subject of the complaint by an intake officer or juvenile court officer for a period during which the child may be required to comply with specified conditions concerning the child’s conduct and activities.

37. “*Nonsecure facility*” means a physically unrestricting facility in which children may be placed pursuant to a dispositional order of the court made in accordance with the provisions of this chapter.

38. “*Official juvenile court records*” or “*official records*” means official records of the court of proceedings over which the court has jurisdiction under this chapter which includes but is not limited to the following:

- a. The docket of the court and entries therein.
- b. Complaints, petitions, other pleadings, motions, and applications filed with a court.
- c. Any summons, notice, subpoena, or other process and proofs of publication.
- d. Transcripts of proceedings before the court.
- e. Findings, judgments, decrees, and orders of the court.

39. “*Parent*” means a biological or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

40. “*Peace officer*” means a law enforcement officer or a person designated as a peace officer by a provision of the Code.

41. “*Petition*” means a pleading the filing of which initiates formal judicial proceedings in the juvenile court.

42. “*Physical abuse or neglect*” or “*abuse or neglect*” means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child’s parent, guardian, or custodian or other person legally responsible for the child.

42A. “*Preadoptive care*” means the provision of parental nurturing on a full-time basis to a child in foster care by a person who has signed a preadoptive placement agreement with the department for the purposes of proceeding with a legal adoption of the child. Parental nurturing includes but is not limited to furnishing of food, lodging, training, education, treatment, and other care.

43. “*Predisposition investigation*” means an investigation conducted for the purpose of collecting information relevant to the court’s fashioning of an appropriate disposition of a delinquency case over which the court has jurisdiction.

44. “*Predisposition report*” is a report furnished to the court which contains the information collected during a predisposition investigation.

45. “*Probation*” means a legal status which is created by a dispositional order of the court in a case where a child has been adjudicated to have committed a delinquent act, which exists for a specified period of time, and which places the child under the supervision of a juvenile

court officer or other person or agency designated by the court. The probation order may require a child to comply with specified conditions imposed by the court concerning conduct and activities, subject to being returned to the court for violation of those conditions.

46. “Registry” means the central registry for child abuse information as established under chapter 235A.

46A. “Relative” for purposes of divisions III and IV of this chapter includes the parent of a sibling.

47. “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person of the child. These include but are not limited to the right of visitation, the right to consent to adoption, and the responsibility for support.

48. “Secure facility” means a physically restricting facility in which children adjudicated to have committed a delinquent act may be placed pursuant to a dispositional order of the court.

49. “Sexual abuse” means the commission of a sex offense as defined by the penal law.

50. “Shelter care” means the temporary care of a child in a physically unrestricting facility at any time between a child’s initial contact with juvenile authorities and the final judicial disposition of the child’s case.

51. “Shelter care hearing” means a hearing at which the court determines whether it is necessary to place or retain a child in shelter care.

52. “Sibling” means an individual who is related to another individual by blood, adoption, or affinity through a common legal or biological parent.

53. “Social investigation” means an investigation conducted for the purpose of collecting information relevant to the court’s fashioning of an appropriate disposition of a child in need of assistance case over which the court has jurisdiction.

54. “Social report” means a report furnished to the court which contains the information collected during a social investigation.

55. “Taking into custody” means an act which would be governed by the laws of arrest under the criminal code if the subject of the act were an adult. The taking into custody of a child is subject to all constitutional and statutory protections which are afforded an adult upon arrest.

56. “Termination hearing” means a hearing held to determine whether the court should terminate a parent-child relationship.

57. “Termination of the parent-child relationship” means the divestment by the court of the parent’s and child’s privileges, duties, and powers with respect to each other.

58. “Voluntary placement” means a foster care placement in which the department provides foster care services to a child according to a signed placement agreement between the department and the child’s parent or guardian.

59. “Waiver hearing” means a hearing at which the court determines whether it shall waive its jurisdiction over a child alleged to have committed a delinquent act so that the state may prosecute the child as if the child were an adult.

[S13, §254-a14, -a21; C24, 27, 31, 35, 39, §3618, 3619, 3620, 3638; C46, 50, 54, 58, 62, §232.2, 232.3, 232.4, 232.22; C66, 71, 73, 75, 77, 79, 81, §232.2; 82 Acts, ch 1209, §1]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10054, 10055, 10201; 84 Acts, ch 1279, §1, 2; 87 Acts, ch 121, §1, 2; 88 Acts, ch 1134, §46, 47; 89 Acts, ch 169, §1; 89 Acts, ch 229, §1 – 4; 89 Acts, ch 230, §1, 2; 90 Acts, ch 1251, §22; 91 Acts, ch 232, §1; 92 Acts, ch 1231, §10; 93 Acts, ch 93, §1; 94 Acts, ch 1046, §1, 2; 94 Acts, ch 1172, §12; 95 Acts, ch 108, §16; 95 Acts, ch 147, §3; 95 Acts, ch 182, §1, 2, 6; 95 Acts, ch 191, §7; 96 Acts, ch 1092, §1; 97 Acts, ch 90, §1; 97 Acts, ch 126, §10; 97 Acts, ch 164, §1; 98 Acts, ch 1019, §1; 98 Acts, ch 1047, §21; 98 Acts, ch 1190, §1 – 3; 99 Acts, ch 164, §1; 99 Acts, ch 208, §33, 34; 2000 Acts, ch 1067, §4, 5; 2000 Acts, ch 1232, §56; 2001 Acts, ch 46, §1; 2001 Acts, ch 67, §7, 13; 2002 Acts, ch 1081, §1; 2002 Acts, ch 1162, §16; 2003 Acts, ch 117, §1 – 3; 2004 Acts, ch 1090, §33; 2004 Acts, ch 1116, §3; 2005 Acts, ch 117, §2, 4; 2005 Acts, ch 124, §1; 2007 Acts, ch 67, §1, 2; 2007 Acts, ch 172, §2, 3; 2008 Acts, ch 1088, §141; 2008 Acts, ch 1112, §1; 2008 Acts, ch 1187, § 131; 2009 Acts, ch

41, §231, 232; 2009 Acts, ch 120, §1, 2; 2010 Acts, ch 1151, §1; 2010 Acts, ch 1192, §74; 2013 Acts, ch 50, §1

Referred to in §13B.9, 135.119, 232.68, 232.71B, 232.82, 232.83, 232.98, 232.102, 232.117, 232.147, 232.149, 235.7, 235A.15, 237.3, 237.15, 282.30, 709A.5, 915.37

\*Section 331.440 is repealed; corrective legislation is pending  
NEW subsection 46A

### **232.3 Concurrent court proceedings.**

1. During the pendency of an action under this chapter, a party to the action is estopped from litigating concurrently the custody, guardianship, or placement of a child who is the subject of the action, in a court other than the juvenile court. A district judge, district associate judge, magistrate, or judicial hospitalization referee, upon notice of the pendency of an action under this chapter, shall not issue an order, finding, or decision relating to the custody, guardianship, or placement of the child who is the subject of the action, under any law, including but not limited to chapter 598, 598B, or 633.

2. The juvenile court with jurisdiction of the pending action under this chapter, however, may, upon the request of a party to the action or on its own motion, authorize the party to litigate concurrently in another court a specific issue relating to the custody, guardianship, or placement of the child who is the subject of the action. Before authorizing a party to litigate a specific issue in another court, the juvenile court shall give all parties to the action an opportunity to be heard on the proposed authorization. The juvenile court may request but shall not require another court to exercise jurisdiction and adjudicate a specific issue relating to the custody, guardianship, or placement of the child.

83 Acts, ch 21, §2; 83 Acts, ch 186, §10056, 10201; 99 Acts, ch 103, §42

### **232.4 Jurisdiction — support obligation.**

Notwithstanding any other provision of this chapter, and for the purposes of establishing a parental liability obligation for a child under the jurisdiction of the juvenile court, a support obligation shall be established pursuant to section 234.39.

92 Acts, ch 1195, §302; 94 Acts, ch 1171, §7

### **232.5 Abortion performed on a minor — waiver of notification proceedings.**

The court shall have exclusive jurisdiction over the proceedings for the granting of an order for waiver of the notification requirements relating to the performance of an abortion on a minor pursuant to section 135L.3.

96 Acts, ch 1011, §10; 96 Acts, ch 1174, §6

### **232.6 Jurisdiction — adoptions and terminations of parental rights.**

The court may exercise jurisdiction over adoption and termination of parental rights proceedings under chapters 600 and 600A.

2000 Acts, ch 1145, §1

### **232.7 Iowa Indian child welfare Act.**

1. If a proceeding held under this chapter involves an Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa Indian child welfare Act under chapter 232B, the proceeding and other actions taken in connection with the proceeding or this chapter shall comply with chapter 232B.

2. In any proceeding held or action taken under this chapter involving an Indian child, the applicable requirements of the federal Adoption and Safe Families Act of 1999, Pub. L. No. 105-89, shall be applied to the proceeding or action in a manner that complies with chapter 232B and the federal Indian Child Welfare Act, Pub. L. No. 95-608.

2003 Acts, ch 153, §1

DIVISION II  
JUVENILE DELINQUENCY PROCEEDINGS

Referred to in §232.89, 232.108, 232.147

PART 1  
GENERAL PROVISIONS

**232.8 Jurisdiction.**

1. *a.* The juvenile court has exclusive original jurisdiction in proceedings concerning a child who is alleged to have committed a delinquent act unless otherwise provided by law, and has exclusive original jurisdiction in proceedings concerning an adult who is alleged to have committed a delinquent act prior to having become an adult, and who has been transferred to the jurisdiction of the juvenile court pursuant to an order under section 803.5.

*b.* Violations by a child of provisions of chapter 321, 321G, 321I, 453A, 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B, which would be simple misdemeanors if committed by an adult, and violations by a child of county or municipal curfew or traffic ordinances, are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law. A child convicted of a violation excluded from the jurisdiction of the juvenile court under this paragraph shall be sentenced pursuant to section 805.8, where applicable, and pursuant to section 903.1, subsection 3, for all other violations.

*c.* Violations by a child, aged sixteen or older, which subject the child to the provisions of section 124.401, subsection 1, paragraph “e” or “f”, or violations of section 723A.2 which involve a violation of chapter 724, or violation of chapter 724 which constitutes a felony, or violations which constitute a forcible felony are excluded from the jurisdiction of the juvenile court and shall be prosecuted as otherwise provided by law unless the district court transfers jurisdiction of the child to the juvenile court upon motion and for good cause pursuant to section 803.6. Notwithstanding any other provision of the Code to the contrary, the district court may accept from a child in district court a plea of guilty, or may instruct the jury on a lesser included offense to the offense excluded from the jurisdiction of the juvenile court under this paragraph, in the same manner as regarding an adult. The judgment and sentence of a child in district court shall be as provided in section 901.5. However, the juvenile court shall have exclusive original jurisdiction in a proceeding concerning an offense of animal torture as provided in section 717B.3A alleged to have been committed by a child under the age of seventeen.

*d.* The juvenile court shall have jurisdiction in proceedings commenced against a child pursuant to section 236.3 over which the district court has waived its jurisdiction. The juvenile court shall hear the action in the manner of an adjudicatory hearing under section 232.47, subject to the following:

(1) The juvenile court shall abide by the provisions of sections 236.4 and 236.6 in holding hearings and making a disposition.

(2) The plaintiff is entitled to proceed pro se under sections 236.3A and 236.3B.

2. A case involving a person charged in a court other than the juvenile court with the commission of a public offense not exempted by law from the jurisdiction of the juvenile court and who is within the provisions of subsection 1 of this section shall immediately be transferred to the juvenile court. The transferring court shall order a transfer and shall forward the transfer order together with all papers, documents and a transcript of all testimony filed or admitted into evidence in connection with the case to the clerk of the juvenile court. The jurisdiction of the juvenile court shall attach immediately upon the signing of an order of transfer. From the time of transfer, the custody, shelter care and detention of the person alleged to have committed a delinquent act shall be in accordance with the provisions of this chapter and the case shall be processed in accordance with the provisions of this chapter.

3. *a.* The juvenile court, after a hearing and in accordance with the provisions of section

232.45, may waive jurisdiction of a child alleged to have committed a public offense so that the child may be prosecuted as an adult or youthful offender for such offense in another court. If the child pleads guilty or is found guilty of a public offense other than a class “A” felony in another court of this state, that court may suspend the sentence or, with the consent of the child, defer judgment or sentence and, without regard to restrictions placed upon deferred judgments or sentences for adults, place the child on probation for a period of not less than one year upon such conditions as it may require. Upon fulfillment of the conditions of probation, a child who receives a deferred judgment shall be discharged without entry of judgment. A child prosecuted as a youthful offender shall be sentenced pursuant to section 907.3A.

b. This subsection does not apply in a proceeding concerning an offense of animal torture as provided in section 717B.3A alleged to have been committed by a child under the age of seventeen.

4. In a proceeding concerning a child who is alleged to have committed a second delinquent act or a second violation excluded from the jurisdiction of the juvenile court, the court or the juvenile court shall determine whether there is reason to believe that the child regularly abuses alcohol or other controlled substance and may be in need of treatment. If the court so determines, the court shall advise appropriate juvenile authorities and refer such offenders to the juvenile court for disposition pursuant to section 232.52A.

5. Nothing in this chapter shall be interpreted as affecting the statutory limitations on prosecutions for murder in the first or second degree.

6. The supreme court shall prescribe rules under section 602.4202 to resolve jurisdictional and venue issues when juveniles who are placed in another court’s jurisdiction are alleged to have committed subsequent delinquent acts.

[C71, 73, 75, 77, §232.63 – 232.67, 232.72; C79, 81, §232.8]

84 Acts, ch 1275, §6; 86 Acts, ch 1186, §1, 2; 87 Acts, ch 149, §1; 88 Acts, ch 1134, §48; 88 Acts, ch 1167, §1; 90 Acts, ch 1251, §23, 24; 91 Acts, ch 240, §9; 92 Acts, ch 1160, §21; 92 Acts, ch 1231, §12; 95 Acts, ch 180, §2; 95 Acts, ch 191, §8; 96 Acts, ch 1134, §1; 97 Acts, ch 126, §11; 2000 Acts, ch 1056, §1; 2000 Acts, ch 1152, §1, 2; 2000 Acts, ch 1232, §57, 58; 2004 Acts, ch 1132, §79; 2009 Acts, ch 41, §263; 2013 Acts, ch 42, §1, 2

Referred to in §232.22, 232.45, 232.45A, 232.52A, 232.53, 232C.4, 717B.3A, 803.5, 803.6

Subsection 1, paragraph c amended

Subsection 3, paragraph a amended

### **232.9 Motion for change of judge.**

Prior to a hearing pursuant to sections 232.44 to 232.47, 232.50 or 232.54, the child may file a motion with the district court for the appointment of a new judge. The chief judge of the district court for cause shown shall appoint a new judge.

[C79, 81, §232.9]

### **232.10 Venue.**

1. Venue for delinquency proceedings shall be in the judicial district where the child is found, where the child resides or where the alleged delinquent act occurred.

2. The court may transfer delinquency proceedings to the court of any county having venue at any stage in the proceeding as follows:

a. When it appears that the best interests of the child or society or the convenience of the parties will be served by a transfer, the court may transfer the case to the court of the county of the child’s residence.

b. With the consent of the receiving court, the court may transfer the case to the court of the county where the child is found.

c. The court may transfer the case to the county where the alleged delinquent act occurred.

3. The court shall transfer the case by ordering the transfer and a continuance and by forwarding to the clerk of the receiving court a certified copy of all papers filed together with an order of transfer. The judge of the receiving court may accept the filings of the transferring court or may direct the filing of a new petition and hear the case anew.

[C71, 73, 75, 77, §232.68 – 232.70; C79, 81, §232.10]

88 Acts, ch 1134, §49

**232.11 Right to assistance of counsel.**

1. A child shall have the right to be represented by counsel at the following stages of the proceedings within the jurisdiction of the juvenile court under division II:

a. From the time the child is taken into custody for any alleged delinquent act that constitutes a serious or aggravated misdemeanor or felony under the Iowa criminal code, and during any questioning thereafter by a peace officer or probation officer.

b. A detention or shelter care hearing as required by section 232.44.

c. A waiver hearing as required by section 232.45.

d. An adjudicatory hearing required by section 232.47.

e. A dispositional hearing as required by section 232.50.

f. Hearings to review and modify a dispositional order as required by section 232.54.

2. The child's right to be represented by counsel under subsection 1, paragraphs "b" to "f" of this section shall not be waived by a child of any age. The child's right to be represented by counsel under subsection 1, paragraph "a" shall not be waived by a child less than sixteen years of age without the written consent of the child's parent, guardian, or custodian. The waiver by a child who is at least sixteen years of age is valid only if a good faith effort has been made to notify the child's parent, guardian, or custodian that the child has been taken into custody and of the alleged delinquent act for which the child has been taken into custody, the location of the child, and the right of the parent, guardian, or custodian to visit and confer with the child.

3. If the child is not represented by counsel as required under subsection 1, counsel shall be provided as follows:

a. If the court determines, after giving the child's parent, guardian or custodian an opportunity to be heard, that such person has the ability in whole or in part to pay for the employment of counsel, it shall either order that person to retain an attorney to represent the child or shall appoint counsel for the child and order the parent, guardian or custodian to pay for that counsel as provided in subsection 5.

b. If the court determines that the parent, guardian, or custodian cannot pay any part of the expenses of counsel to represent the child, it shall appoint counsel, who shall be reimbursed according to section 232.141, subsection 2, paragraph "b".

c. The court may appoint counsel to represent the child and reserve the determination of payment until the parent, guardian or custodian has an opportunity to be heard.

4. If the child is represented by counsel and the court determines that there is a conflict of interest between the child and the child's parent, guardian or custodian and that the retained counsel could not properly represent the child as a result of the conflict, the court shall appoint other counsel to represent the child and order the parent, guardian or custodian to pay for such counsel as provided in subsection 5.

5. If the court determines, after an inquiry which includes notice and reasonable opportunity to be heard that the parent, guardian or custodian has the ability to pay in whole or in part for the attorney appointed for the child, the court may order that person to pay such sums as the court finds appropriate in the manner and to whom the court directs. If the person so ordered fails to comply with the order without good reason, the court shall enter judgment against the person.

6. Nothing in this section shall be construed to prevent the child or the child's parent, guardian or custodian from retaining counsel to represent the child in proceedings under this division II of this chapter in which the alleged delinquent act constitutes a simple misdemeanor under the Iowa Code.

[C24, 27, 31, 35, 39, §3631; C46, 50, 54, 58, 62, §232.15; C66, 71, 73, 75, 77, §232.28; C79, 81, §232.11; 82 Acts, ch 1209, §2]

90 Acts, ch 1168, §34

Referred to in §232.28, 232.37, 232.52, 815.9

**232.12 Duties of county attorney.**

Upon the filing of a petition the county attorney shall represent the state in all adversary proceedings arising under this division and shall present evidence in support of the petition.

[C66, 71, 73, 75, 77, §232.19; C79, 81, §232.12]

**232.13 State liability.**

1. For purposes of chapter 669, the following persons shall be considered state employees:
  - a. A child given a work assignment of value to the state or the public or a community work assignment under this chapter.
  - b. A court appointed special advocate and the members of the child advocacy board created in section 237.16 or a local citizen foster care review board created in accordance with section 237.19.
2. The state of Iowa is exclusively liable for and shall pay any compensation becoming due a person under section 85.59.
 

84 Acts, ch 1280, §2; 85 Acts, ch 177, §2; 87 Acts, ch 24, §1; 87 Acts, ch 121, §3; 2005 Acts, ch 55, §1

**232.14 through 232.18** Reserved.

## PART 2

## CHILD CUSTODY

**232.19 Taking a child into custody.**

1. A child may be taken into custody:
  - a. By order of the court.
  - b. For a delinquent act pursuant to the laws relating to arrest.
  - c. By a peace officer, when the peace officer has reasonable grounds to believe the child has run away from the child's parents, guardian, or custodian, for the purposes of determining whether the child shall be reunited with the child's parents, guardian, or custodian, placed in shelter care, or, if the child is a chronic runaway and the county has an approved county runaway treatment plan, placed in a runaway assessment center under section 232.196.
  - d. By a peace officer, juvenile court officer, or juvenile parole officer when the officer has reasonable grounds to believe the child has committed a material violation of a dispositional order.
2. When a child is taken into custody as provided in subsection 1 the person taking the child into custody shall notify the child's parent, guardian, or custodian as soon as possible. The person may place bodily restraints, such as handcuffs, on the child if the child physically resists; threatens physical violence when being taken into custody; is being taken into custody for an alleged delinquent act of violence against a person; or when, in the reasonable judgment of the officer, the child presents a risk of injury to the child or others. The child may also be restrained by handcuffs or other restraints at any time after the child is taken into custody if the child has a known history of physical violence to others. Unless the child is placed in shelter care or detention in accordance with the provisions of section 232.21 or 232.22, the child shall be released to the child's parent, guardian, custodian, responsible adult relative, or other adult approved by the court upon the promise of such person to produce the child in court at such time as the court may direct.
3. Notwithstanding any other provision of this chapter, a child shall not be placed in detention as a result of a violation by that child of section 123.47.
4. Information pertaining to a child who is at least ten years of age and who is taken into custody for a delinquent act which would be a public offense is a public record and is not confidential under section 232.147.

[SS15, §254-a16; C24, 27, 31, 35, 39, §3630; C46, 50, 54, 58, 62, §232.14; C66, 71, 73, 75, 77, §232.15, 232.16; C79, 81, §232.19]

83 Acts, ch 186, §10055, 10201; 90 Acts, ch 1251, §25; 94 Acts, ch 1172, §13; 97 Acts, ch 90, §2; 97 Acts, ch 126, §12, 13; 98 Acts, ch 1100, §24

Referred to in §123.46, 232.20, 232.21, 232.149, 232.196, 321J.1, 692.1

**232.20 Admission of child to shelter care or detention.**

1. If a child is taken into custody and not released as provided in section 232.19, subsection

2, the child shall immediately be taken to a detention or shelter care facility as specified in sections 232.21 or 232.22.

2. When a child is admitted to a detention or shelter care facility the person in charge of the facility or the person's designated representative shall notify the court, the child's attorney, and the child's parent, guardian, or custodian as soon as possible of the admission and the reasons for that admission.

[C66, 71, 73, 75, 77, §232.17; C79, 81, §232.20]

Referred to in §234.35

### **232.21 Placement in shelter care.**

1. No child shall be placed in shelter care unless one of the following circumstances applies:

a. The child has no parent, guardian, custodian, responsible adult relative or other adult approved by the court who will provide proper shelter, care and supervision.

b. The child desires to be placed in shelter care.

c. It is necessary to hold the child until the child's parent, guardian, or custodian has been contacted and has taken custody of the child.

d. It is necessary to hold the child for transfer to another jurisdiction.

e. The child is being placed pursuant to an order of the court.

2. a. A child may be placed in shelter care as provided in this section only in one of the following facilities:

(1) A juvenile shelter care home.

(2) A licensed foster home.

(3) An institution or other facility operated by the department of human services, or one which is licensed or otherwise authorized by law to receive and provide care for the child.

(4) Any other suitable place designated by the court provided that no place used for the detention of a child may be so designated.

b. Placement shall be made in the least restrictive facility available consistent with the best interests and special needs of the child. Foster family care shall be used for a child unless the child has problems requiring specialized service or supervision which cannot be provided in a family living arrangement.

3. When there is reason to believe that a child placed in shelter care pursuant to section 232.19, subsection 1, paragraph "c", would not voluntarily remain in the shelter care facility, the shelter care facility shall impose reasonable restrictions necessary to ensure the child's continued custody.

4. A child placed in a shelter care facility under this section shall not be held for a period in excess of forty-eight hours without an oral or written court order authorizing the shelter care. When the action is authorized by an oral court order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order. A child placed in shelter care pursuant to section 232.19, subsection 1, paragraph "c", shall not be held in excess of seventy-two hours in any event. If deemed appropriate by the court, an order authorizing shelter care placement may include a determination that continuation of the child in the child's home is contrary to the child's welfare and that reasonable efforts as defined in section 232.57 have been made. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may be used by the department to assist in obtaining federal funding for the child's placement.

5. If no satisfactory provision is made for uniting a child placed in shelter care pursuant to section 232.19, subsection 1, paragraph "c", with the child's family, a child in need of assistance complaint may be filed pursuant to section 232.81. Nothing in this subsection shall limit the right of a child to file a family in need of assistance petition under section 232.125.

6. A child twelve years of age or younger shall not be placed in a group shelter care home, unless there have been reasonable but unsuccessful efforts to place the child in an

emergency foster family home which is able to meet the needs of the child. The efforts shall be documented at the shelter care hearing.

[S13, §254-a24; SS15, §254-a16; C24, 27, 31, 35, 39, §3633; C46, 50, 54, 58, 62, §232.17; C66, 71, 73, 75, 77, §232.17, 232.18; C79, 81, §232.21; 82 Acts, ch 1209, §3]

83 Acts, ch 96, §157, 159; 88 Acts, ch 1249, §10, 11; 2001 Acts, ch 135, §5; 2001 Acts, ch 176, §64; 2002 Acts, ch 1050, §22; 2009 Acts, ch 41, §263

Referred to in §232.19, 232.20, 232.44, 232.196, 234.35

### **232.22 Placement in detention.**

1. A child shall not be placed in detention unless one of the following conditions is met:
  - a. The child is being held under warrant for another jurisdiction.
  - b. The child is an escapee from a juvenile correctional or penal institution.
  - c. There is probable cause to believe that the child has violated conditions of release imposed under section 232.44, subsection 5, paragraph “b”, or section 232.52 or 232.54, and there is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance.
  - d. There is probable cause to believe the child has committed a delinquent act, and one of the following conditions is met:
    - (1) There is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance.
    - (2) There is a serious risk that the child if released may commit an act which would inflict serious bodily harm on the child or on another.
    - (3) There is a serious risk that the child if released may commit serious damage to the property of others.
  - e. There is probable cause to believe that the child has committed a delinquent act involving possession with intent to deliver any of the following controlled substances:
    - (1) A mixture or substance containing cocaine base, also known as crack cocaine, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1, paragraph “a”, subparagraph (3), paragraph “b”, subparagraph (3), or paragraph “c”, subparagraph (3).
    - (2) A mixture or substance containing cocaine, its salts, optical and geometric isomers, and salts of isomers, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1, paragraph “a”, subparagraph (2), subparagraph division (b), paragraph “b”, subparagraph (2), subparagraph division (b), or paragraph “c”, subparagraph (2), subparagraph division (b).
    - (3) A mixture or substance containing methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1.
  - f. A dispositional order has been entered under section 232.52 placing the child in secure custody in a facility defined in subsection 3, paragraph “a” or “b”.
  - g. There is probable cause to believe that the child has committed a delinquent act which would be domestic abuse under chapter 236 or a domestic abuse assault under section 708.2A if committed by an adult.
2. If deemed appropriate by the court, an order for placement of a child in detention may include a determination that continuation of the child in the child’s home is contrary to the child’s welfare and that reasonable efforts as defined in section 232.57 have been made. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may assist the department in obtaining federal funding for the child’s placement.
3. Except as provided in subsection 7, a child may be placed in detention as provided in this section in one of the following facilities only:
  - a. A juvenile detention home.
  - b. Any other suitable place designated by the court other than a facility under paragraph “c”.
  - c. (1) A room in a facility intended or used for the detention of adults if there is probable

cause to believe that the child has committed a delinquent act which if committed by an adult would be a felony, or aggravated misdemeanor under section 708.2 or 709.11, a serious or aggravated misdemeanor under section 321J.2, or a violation of section 123.46, and if all of the following apply:

(a) The child is at least fourteen years of age.

(b) The child has shown by the child's conduct, habits, or condition that the child constitutes an immediate and serious danger to another or to the property of another, and a facility or place enumerated in paragraph "a" or "b" is unavailable, or the court determines that the child's conduct or condition endangers the safety of others in the facility.

(c) The facility has an adequate staff to supervise and monitor the child's activities at all times.

(d) The child is confined in a room entirely separated from detained adults, is confined in a manner which prohibits communication with detained adults, and is permitted to use common areas of the facility only when no contact with detained adults is possible.

(2) However, if the child is to be detained for a violation of section 123.46 or section 321J.2, placement in a facility pursuant to this paragraph "c" shall be made only after an attempt has been made to notify the parents or legal guardians of the child and request that the parents or legal guardians take custody of the child. If the parents or legal guardians cannot be contacted, or refuse to take custody of the child, an attempt shall be made to place the child in another facility, including but not limited to a local hospital or shelter care facility. Also, a child detained for a violation of section 123.46 or section 321J.2 pursuant to this paragraph "c" shall only be detained in a facility with adequate staff to provide continuous visual supervision of the child.

d. A place used for the detention of children prior to an adjudicatory hearing may also be used for the detention of a child awaiting disposition to a placement under section 232.52, subsection 2, paragraph "e", while the adjudicated child is awaiting transfer to the disposition placement.

4. A child shall not be held in a facility under subsection 3, paragraph "a" or "b", for a period in excess of twenty-four hours without an oral or written court order authorizing the detention. When the detention is authorized by an oral court order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order.

5. a. A child shall not be detained in a facility under subsection 3, paragraph "c", for a period of time in excess of six hours without the oral or written order of a judge or a magistrate authorizing the detention. A judge or magistrate may authorize detention in a facility under subsection 3, paragraph "c", for a period of time in excess of six hours but less than twenty-four hours, excluding weekends and legal holidays, but only if all of the following occur or exist:

(1) The facility serves a geographic area outside a standard metropolitan statistical area as determined by the United States census bureau.

(2) The court determines that an acceptable alternative placement does not exist pursuant to criteria developed by the department of human services.

(3) The facility has been certified by the department of corrections as being capable of sight and sound separation pursuant to this section and section 356.3.

(4) The child is awaiting an initial hearing before the court pursuant to section 232.44.

b. The restrictions contained in this subsection relating to the detention of a child in a facility under subsection 3, paragraph "c", do not apply if the court has waived its jurisdiction over the child for the alleged commission of a felony offense pursuant to section 232.45.

6. An adult within the jurisdiction of the court under section 232.8, subsection 1, who has been placed in detention, is not bailable under chapter 811. If such an adult is detained in a room in a facility intended or used for the detention of adults, the adult shall be confined in a room entirely separated from adults not within the jurisdiction of the court under section 232.8, subsection 1.

7. If the court has waived its jurisdiction over the child for the alleged commission of a forcible felony offense pursuant to section 232.45 or 232.45A, and there is a serious risk that the child may commit an act which would inflict serious bodily harm on another person,

the child may be held in the county jail, notwithstanding section 356.3. However, wherever possible the child shall be held in sight and sound separation from adult offenders. A child held in the county jail under this subsection shall have all the rights of adult postarrest or pretrial detainees.

8. Notwithstanding any other provision of the Code to the contrary, a child shall not be placed in detention for a violation of section 123.47, or for failure to comply with a dispositional order which provides for performance of community service for a violation of section 123.47.

[S13, §254-a24; SS15, §254-a16; C24, 27, 31, 35, 39, §3633; C46, 50, 54, 58, 62, §232.17; C66, 71, 73, 75, 77, §232.17 – 232.19; C79, 81, §232.22; 82 Acts, ch 1209, §4, 5]

86 Acts, ch 1186, §3; 87 Acts, ch 149, §2 – 4; 88 Acts, ch 1167, §2, 3; 91 Acts, ch 232, §2, 3; 92 Acts, ch 1231, §14, 15; 95 Acts, ch 180, §3; 95 Acts, ch 191, §9; 96 Acts, ch 1164, §7; 97 Acts, ch 126, §14; 2001 Acts, ch 135, §6; 2009 Acts, ch 41, §233, 234, 263

Referred to in §232.19, 232.20, 232.23, 232.29, 232.44, 232.46, 232.52, 232.149, 803.6

### **232.23 Detention — youthful offenders.**

1. After waiver of a child who will be prosecuted as a youthful offender, the child shall be held in a facility under section 232.22, subsection 3, paragraph “a” or “b”, unless released in accordance with subsection 2.

2. a. The court shall determine, at the detention hearing under section 232.44, the amount of bail, appearance bond, or other conditions necessary for a child who has been waived for prosecution as a youthful offender to be released from detention or that the child should not be released from detention.

b. A child placed in detention or released under this subsection shall be supervised by a juvenile court officer or juvenile court services personnel.

c. An order under this section may be reviewed by the court upon motion of either party.

97 Acts, ch 126, §15

Referred to in §232.44, 232.45, 602.1211

**232.24 through 232.27** Reserved.

## PART 3

### INTAKE

### **232.28 Intake.**

1. Any person having knowledge of the facts may file a complaint with the court or its designee alleging that a child has committed a delinquent act. A written record shall be maintained of any oral complaint received.

2. The court or its designee shall refer the complaint to an intake officer who shall consult with law enforcement authorities having knowledge of the facts and conduct a preliminary inquiry to determine what action should be taken.

3. In the course of a preliminary inquiry, the intake officer may:

a. Interview the complainant, victim or witnesses of the alleged delinquent act.

b. Check existing records of the court, law enforcement agencies, public records of other agencies, and child abuse records as provided in section 235A.15, subsection 2, paragraph “e”.

c. Hold conferences with the child and the child’s parent or parents, guardian or custodian for the purpose of interviewing them and discussing the disposition of the complaint in accordance with the requirements set forth in subsection 8.

d. Examine any physical evidence pertinent to the complaint.

e. Interview such persons as are necessary to determine whether the filing of a petition would be in the best interests of the child and the community as provided in section 232.35, subsections 2 and 3.

4. Any additional inquiries may be made only with the consent of the child and the child's parent or parents, guardian or custodian.

5. Participation of the child and the child's parent or parents, guardian or custodian in a conference with an intake officer shall be voluntary, and they shall have the right to refuse to participate in such conference. At such conference the child shall have the right to the assistance of counsel in accordance with section 232.11 and the right to remain silent when questioned by the intake officer.

6. The intake officer, after consultation with the county attorney when necessary, shall determine whether the complaint is legally sufficient for the filing of a petition. A complaint shall be deemed legally sufficient for the filing of a petition if the facts as alleged are sufficient to establish the jurisdiction of the court and probable cause to believe that the child has committed a delinquent act. If the intake officer determines that the complaint is legally sufficient to support the filing of a petition, the officer shall determine whether the interests of the child and the public will best be served by the dismissal of the complaint, the informal adjustment of the complaint, or the filing of a petition.

7. If the intake officer determines that the complaint is not legally sufficient for the filing of a petition or that further proceedings are not in the best interests of the child or the public, the intake officer shall dismiss the complaint.

8. If the intake officer determines that the complaint is legally sufficient for the filing of a petition and that an informal adjustment of the complaint is in the best interests of the child and the community, the officer may make an informal adjustment of the complaint in accordance with section 232.29.

9. If the intake officer determines that the complaint is legally sufficient for the filing of a petition and that the filing of a petition is in the best interests of the child and the public, the officer shall request the county attorney to file a petition in accordance with section 232.35.

[SS15, §254-a15; C24, 27, 31, 35, 39, §3621; C46, 50, 54, 58, 62, §232.5; C66, 71, 73, 75, 77, §232.3; C79, 81, §232.28; 82 Acts, ch 1209, §6, 7]

88 Acts, ch 1134, §50; 95 Acts, ch 191, §10; 96 Acts, ch 1110, §1; 97 Acts, ch 126, §16, 17; 98 Acts, ch 1090, §61, 84; 2013 Acts, ch 42, §3

Referred to in §232.147, 235A.15, 915.26  
Subsection 3, paragraph b amended

**232.28A** Repealed by 98 Acts, ch 1090, § 81, 84.

**232.29 Informal adjustment.**

1. The informal adjustment of a complaint is a permissible disposition of a complaint at intake subject to the following conditions:

a. The child has admitted the child's involvement in a delinquent act.

b. The intake officer shall advise the child and the child's parent, guardian or custodian that they have the right to refuse an informal adjustment of the complaint and demand the filing of a petition and a formal adjudication.

c. Any informal adjustment agreement shall be entered into voluntarily and intelligently by the child with the advice of the child's attorney, or by the child with the consent of a parent, guardian, or custodian if the child is not represented by counsel.

d. The terms of such agreement shall be clearly stated in writing and signed by all parties to the agreement and a copy of this agreement shall be given to the child; the counsel for the child; the parent, guardian or custodian; and the intake officer, who shall retain the copy in the case file.

e. An agreement providing for the supervision of a child by a juvenile court officer or the provision of intake services shall not exceed six months.

f. An agreement providing for the referral of a child to a public or private agency for services shall not exceed six months.

g. The child and the child's parent, guardian or custodian shall have the right to terminate such agreement at any time and to request the filing of a petition and a formal adjudication.

h. If an informal adjustment of a complaint has been made, a petition based upon the events out of which the original complaint arose may be filed only during the period of six

months from the date the informal adjustment agreement was entered into. If a petition is filed within this period the child’s compliance with all proper and reasonable terms of the agreement shall be grounds for dismissal of the petition by the court.

i. The person performing the duties of intake officer shall file a report at least annually with the court listing the number of informal adjustments made during the reporting time, the conditions imposed in each case, the number of informal adjustments resulting in dismissal without the filing of a petition, and the number of informal adjustments resulting in the filing of a petition upon the original complaint.

2. An informal adjustment agreement may prohibit a child from driving a motor vehicle for a specified period of time or under specific circumstances, require the child to perform a work assignment of value to the state or to the public, or require the child to make restitution consisting of a monetary payment to the victim or a work assignment directly of value to the victim. The juvenile court officer shall notify the state department of transportation of the informal adjustment prohibiting the child from driving.

3. The person performing the duties of intake officer shall notify the superintendent of the school district or the superintendent’s designee, or the authorities in charge of the nonpublic school which the child attends, of any informal adjustment regarding the child, fourteen years of age or older, for an act which would be an aggravated misdemeanor or felony if committed by an adult.

4. An informal adjustment agreement regarding a child who has been placed in detention under section 232.22, subsection 1, paragraph “g”, may include a provision that the child voluntarily participate in a batterers’ treatment program under section 708.2B.

[C79, 81, §232.29; 82 Acts, ch 1209, §8]

83 Acts, ch 186, §10055, 10201; 94 Acts, ch 1172, §14; 95 Acts, ch 180, §4; 95 Acts, ch 191,

§11

Referred to in §232.28, 232.147, 915.28

Juvenile victim restitution; see chapter 232A and §915.24 – 915.29

**232.30 through 232.34** Reserved.

PART 4

JUDICIAL PROCEEDINGS

**232.35 Filing of petition.**

1. A formal judicial proceeding to determine whether a child has committed a delinquent act shall be initiated by the filing by the county attorney of a petition alleging that a child has committed a delinquent act. After a petition has been filed, service of a summons requiring the child to appear before the court or service of a notice shall be made as provided in section 232.37.

2. If the intake officer determines that a complaint is legally sufficient for the filing of a petition alleging that a child has committed a delinquent act and that the filing of a petition would be in the best interests of the child and the community, the officer shall submit a written request for the filing of a petition to the county attorney. The county attorney may grant or deny the request of the intake officer for the filing of a petition. A determination by the county attorney that a petition should not be filed shall be final.

3. If the intake officer determines that a complaint is not legally sufficient for the filing of a petition or that the filing of a petition would not be in the best interests of the child and the community, the officer shall notify the complainant of the officer’s determination and the reasons for such determination, and shall advise the complainant that the complainant may submit the complaint to the county attorney for review. Upon receiving a request for review, the county attorney shall consider the facts presented by the complainant, consult with the intake officer and make the final determination as to whether a petition should be filed. In the absence of a request by the complainant for a review of the intake officer’s determination that a petition should not be filed, the officer’s determination shall be final, and the intake officer

shall inform the county attorney of this decision concerning complaints involving allegations of acts which, if committed by an adult, would constitute an aggravated misdemeanor or a felony.

[SS15, §254-a15; C24, 27, 31, 35, 39, §3621; C46, 50, 54, 58, 62, §232.5; C66, 71, 73, 75, 77, §232.3; C79, 81, §232.35]

92 Acts, ch 1231, §16; 2003 Acts, ch 151, §4

Referred to in §232.28, 331.653, 692.1, 692.8, 692.15

### **232.36 Contents of petition.**

1. The petition and subsequent court documents shall be entitled “In the interests of ....., a child”.

2. The petition shall be verified and any statements in the petition may be made upon information and belief.

3. The petition shall set forth plainly:

a. The name, age, and residence of the child who is the subject of the petition.

b. The names and residences of any:

(1) Living parent of the child.

(2) Guardian of the child.

(3) Legal custodian of the child.

(4) Guardian ad litem.

c. With reasonable particularity, the time, place and manner of the delinquent act alleged and the penal law allegedly violated by such act.

4. If any of the facts required under subsection 3, paragraphs “a” and “b” are not known by the petitioner, the petition shall so state.

5. The petition shall set forth plainly the nearest known relative of the child if no parent or guardian can be found.

[SS15, §254-a15; C24, 27, 31, 35, 39, §3621, 3622; C46, 50, 54, 58, 62, §232.5, 232.6; C66, 71, 73, 75, 77, §232.3; C79, 81, §232.36]

Referred to in §232.87

### **232.37 Summons, notice, subpoenas, and service — order for removal.**

1. After a petition has been filed the court shall set a time for an adjudicatory hearing and unless the parties named in subsection 2 voluntarily appear, shall issue a summons requiring the child to appear before the court at a time and place stated and requiring the person who has custody or control of the child to appear before the court and to bring the child with the person at that time. The summons shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11.

2. Notice of the pendency of the case shall be served upon the known parents, guardians or legal custodians of a child if these persons are not summoned to appear as provided in subsection 1. Notice shall also be served upon the child and upon the child’s guardian ad litem, if any. The notice shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11.

3. Upon request of the child who is identified in the petition as a party to the proceeding, the child’s parent, guardian or custodian, a county attorney or on the court’s own motion, the court or the clerk of the court shall issue subpoenas requiring the attendance and testimony of witnesses and production of papers at any hearing under this division.

4. Service of summons or notice shall be made personally by the sheriff by delivering a copy of the summons or notice to the person being served. If the court determines that personal service of a summons or notice is impracticable, the court may order service by certified mail addressed to the last known address. Service of summons or notice shall be made not less than five days before the time fixed for hearing. Service of summons, notice, subpoenas or other process, after an initial valid summons or notice, shall be made in accordance with the rules of the court governing such service in civil actions.

5. If a person personally served with a summons or subpoena fails without reasonable cause to appear or to bring the child, the person may be proceeded against for contempt of

court or the court may issue an order for the arrest of such person or both the arrest of the person and the taking into custody of the child.

6. The court may issue an order for the removal of the child from the custody of the child's parent, guardian or custodian when there exists an immediate threat that the parent, guardian or custodian will flee the state with the child, or when it appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health.

[SS15, 254-a16; C24, 27, 31, 35, 39, §3623 – 3628, 3630; C46, 50, 54, 58, 62, §232.7 – 232.12, 232.14; C66, 71, 73, 75, 77, §232.4 – 232.10; C79, 81, §232.37]

84 Acts, ch 1279, §3; 85 Acts, ch 195, §26; 95 Acts, ch 92, §1; 2003 Acts, ch 151, §5

Referred to in §232.35, 232.45, 232.54, 232.88, 331.653

### **232.38 Presence of parents at hearings.**

1. Any hearings or proceedings under this division subsequent to the filing of a petition shall not take place without the presence of one or both of the child's parents, guardian or custodian except that a hearing or proceeding may take place without such presence if the parent, guardian or custodian fails to appear after reasonable notification, or if the court finds that a reasonably diligent effort has been made to notify the child's parent, guardian, or custodian, and the effort was unavailing.

2. In any such hearings or proceedings the court may temporarily excuse the presence of the parent, guardian or custodian when the court deems it in the best interests of the child. Counsel for the parent, guardian or custodian shall have the right to participate in a hearing or proceeding during the absence of the parent, guardian or custodian.

[SS15, §254-a16; C24, 27, 31, 35, 39, §3631; C46, 50, 54, 58, 62, §232.15; C66, 71, 73, 75, 77, §232.11, 232.30; C79, 81, §232.38]

Referred to in §232.91

### **232.39 Exclusion of public from hearings.**

At any time during the proceedings, the court, on the motion of any of the parties or upon the court's own motion, may exclude the public from hearings under this division if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

[C24, 27, 31, 35, 39, §3635; C46, 50, 54, 58, 62, §232.19; C66, 71, 73, 75, 77, §232.27; C79, 81, §232.39]

88 Acts, ch 1134, §51

### **232.40 Other issues adjudicated.**

When it appears during the course of any hearing or proceeding that some action or remedy other than those indicated by the application or pleading is appropriate, the court, with the consent of all necessary parties, may proceed to hear and determine the additional or other issues as though originally properly sought and pleaded.

[C66, 71, 73, 75, 77, §232.12; C79, 81, §232.40]

### **232.41 Reporter required.**

Stenographic notes or mechanical or electronic recordings shall be taken of all court hearings held pursuant to this division unless waived by the parties. The child shall not be competent to waive the reporting requirement, but waiver may be made for the child by the child's counsel or guardian ad litem. Matters which must be reported under the provisions of this section shall be reported in the same manner as required in section 624.9.

[C66, 71, 73, 75, 77, §232.32; C79, 81, §232.41]

### **232.42 Continuances.**

1. Continuances in juvenile delinquency proceedings may be granted by the court only for good cause shown on the record if the child is being held in detention.

2. Where the child requests a continuance of proceedings, the court, in an order granting the continuance, may suspend the time limitations imposed on the state by this division for a period of time not to exceed the length of the continuance.

3. Proceedings may be continued for up to one year upon the request of the county attorney and the child to permit the making of probation arrangements prior to the adjudicatory hearing. If either the child or the county attorney requests that the adjudicatory hearing be held at any time during the period of the continuance, the court shall set the matter for hearing.

[S13, §254-a23; C24, 27, 31, 35, 39, §3637; C46, 50, 54, 58, 62, §232.21; C66, 71, 73, 75, 77, §232.34; C79, §232.13, 232.42; C81, §232.42]

94 Acts, ch 1172, §15

**232.43 Answer — plea agreement — acceptance of plea admitting allegations of petition.**

1. A written answer to a delinquency petition need not be filed by the child, but any matters which might be set forth in an answer or other pleading may be filed in writing or pleaded orally before the court.

2. The county attorney and the child's counsel may mutually consider a plea agreement which contemplates entry of a plea admitting the allegations of the petition in the expectation that other charges will be dismissed or not filed or that a specific disposition will be recommended by the county attorney and granted by the court. Any plea discussion shall be open to the child and the child's parent, guardian or custodian.

3. The court shall not accept a plea admitting the allegations of the petition without first addressing the child personally in court, determining that the plea is voluntary and not the result of any force or threats or promises other than promises made in connection with a plea agreement and informing the child of and determining that the child understands the following:

- a. The nature of the allegations of the petition to which the plea is offered.
- b. The severest possible disposition and the maximum length of such disposition which the court may order if the court accepts the plea.
- c. The child has the right to deny the allegations of the petition.
- d. If the child admits the allegations of the petition the child waives the right to a further adjudicatory hearing.

4. The court shall not accept a plea admitting the allegations of the petition without first addressing the county attorney and the child's counsel in court and making an inquiry into whether such a plea is the result of a plea agreement. The court shall require the disclosure of the terms of any such agreement in court. If a plea agreement has been reached which contemplates entry of the plea in the expectation that the court will order a specific disposition or dismiss other charges against the child before the court, the court shall state to the parties whether the court will concur in the proposed disposition or dismissal of charges. If the court will not concur in such disposition or dismissal, the court should advise the child personally of this fact, advise the child that the disposition of the case may be less favorable to the child than that contemplated by the plea agreement, and afford the child the opportunity to withdraw the plea. If the court defers decision as to whether the court will concur with the proposed disposition or dismissal until there has been an opportunity to consider the predisposition report, the court shall advise the child that the court is not bound by the plea agreement and afford the child the opportunity to withdraw the plea.

5. The court shall not accept a plea admitting the allegations of the petition without:
  - a. Determining that there is a factual basis for the plea.
  - b. Determining that the child was given effective assistance of counsel prior to tender of the plea.
  - c. Inquiring of the parent or parents who are present in court whether they agree as to the course of action that their child has chosen. If either parent expresses disagreement with the plea, the court may refuse to accept that plea.

6. If the court determines that a plea is not in the child's best interest it may refuse to accept that plea regardless of the agreement of the parties.

[C79, 81, §232.43]

**232.44 Detention or shelter care hearing — release from detention upon change of circumstance.**

1. *a.* A hearing shall be held within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, of the time of the child's admission to a shelter care facility, and within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, of the time of a child's admission to a detention facility. If the hearing is not held within the time specified in this paragraph, the child shall be released from shelter care or detention.

*b.* Prior to the hearing a petition shall be filed, except where the child is already under the supervision of a juvenile court under a prior judgment.

*c.* If the child is placed in a detention facility in a county other than the county in which the child resides or in which the delinquent act allegedly occurred but which is within the same judicial district, the hearing may take place in the county in which the detention facility is located.

*d.* The child shall appear in person at the hearing required by this subsection.

2. The county attorney or a juvenile court officer may apply for a hearing at any time after the petition is filed to determine whether the child who is the subject of the petition should be placed in detention or shelter care. The court may upon the application or upon its own motion order such hearing. The court shall order a detention hearing for a child waived under section 232.45, subsection 7, at the time of waiver.

3. A notice shall be served upon the child, the child's attorney, the child's guardian ad litem if any, and the child's known parent, guardian, or custodian not less than twelve hours before the time the hearing is scheduled to begin and in a manner calculated fairly to apprise the parties of the time, place, and purpose of the hearing. In the case of a hearing for a child waived for prosecution as a youthful offender, this notice may accompany the waiver order. If the court finds that there has been reasonably diligent effort to give notice to a parent, guardian, or custodian and that the effort has been unavailing, the hearing may proceed without the notice having been served.

4. At the hearing to determine whether detention or shelter care is authorized under section 232.21 or 232.22 the court shall admit only testimony and other evidence relevant to the determination of whether there is probable cause to believe the child has committed the act as alleged in the petition and to the determination of whether the placement of the child in detention or shelter care is authorized under section 232.21 or 232.22. At the hearing to determine whether a child who has been waived for prosecution as a youthful offender should be released from detention the court shall also admit evidence of the kind admissible to determine bond or bail under chapter 811, notwithstanding section 811.1. Any written reports or records made available to the court at the hearing shall be made available to the parties. A copy of the petition or waiver order shall be given to each of the parties at or before the hearing.

5. The court shall find release to be proper under the following circumstances:

*a.* If the court finds that there is not probable cause to believe that the child is a child within the jurisdiction of the court under this chapter, it shall release the child and dismiss the petition.

*b.* If the court finds that detention or shelter care is not authorized under section 232.21 or 232.22, or is authorized but not warranted in a particular case, the court shall order the child's release, and in so doing, may impose one or more of the following conditions:

(1) Place the child in the custody of a parent, guardian or custodian under that person's supervision, or under the supervision of an organization which agrees to supervise the child.

(2) Place restrictions on the child's travel, association, or place of residence during the period of release.

(3) Impose any other condition deemed reasonably necessary and consistent with the grounds for detaining children specified in section 232.21 or 232.22, including a condition requiring that the child return to custody as required.

(4) In the case of a child waived for prosecution as a youthful offender, require bail, an appearance bond, or set other conditions consistent with this section or section 811.2.

*c.* An order releasing a child on conditions specified in this section may be amended at any time to impose equally or less restrictive conditions. The order may be amended to impose

additional or more restrictive conditions, or to revoke the release, if the child has failed to conform to the conditions originally imposed.

6. If the court finds that there is probable cause to believe that the child is within the jurisdiction of the court under this chapter and that full-time detention or shelter care is authorized under section 232.21 or 232.22 or that detention is authorized under section 232.23, it may issue an order authorizing either shelter care or detention until the adjudicatory hearing or trial is held or for a period not exceeding seven days, whichever is shorter. However, in the case of a child placed in detention under section 232.23, this period may be extended by agreement of the parties and the court.

7. If a child held in shelter care or detention by court order has not been released after a detention hearing or has not appeared at an adjudicatory hearing before the expiration of the order of detention, an additional hearing shall automatically be scheduled for the next court day following the expiration of the order. The child, the child's counsel, the child's guardian ad litem, and the child's parent, guardian or custodian shall be notified of this hearing not less than twenty-four hours before the hearing is scheduled to take place. The hearing required by this subsection may be held by telephone conference call.

8. A child held in a detention or shelter care facility pursuant to section 232.21 or 232.22 under order of court after a hearing may be released upon a showing that a change of circumstances makes continued detention unnecessary.

9. A written request for the release of the child, setting forth the changed circumstances, may be filed by the child, by a responsible adult on the child's behalf, by the child's custodian, or by the juvenile court officer.

10. Based upon the facts stated in the request for release the court may grant or deny the request without a hearing, or may order that a hearing be held at a date, time and place determined by the court. Notice of the hearing shall be given to the child and the child's custodian or counsel. Upon receiving evidence at the hearing, the court may release the child to the child's custodian or other suitable person, or may deny the request and remand the child to the detention or shelter care facility.

11. This section does not apply to a child placed in accordance with section 232.78, 232.79, or 232.95.

[C79, 81, §232.44; 82 Acts, ch 1209, §9, 10]

87 Acts, ch 149, §5; 94 Acts, ch 1172, §16, 17; 95 Acts, ch 67, §15; 97 Acts, ch 126, §19; 2009 Acts, ch 41, §94

Referred to in §232.9, 232.11, 232.22, 232.23, 232.45

### **232.45 Waiver hearing and waiver of jurisdiction.**

1. After the filing of a petition which alleges that a child has committed a delinquent act on the basis of an alleged commission of a public offense and before an adjudicatory hearing on the merits of the petition is held, the county attorney or the child may file a motion requesting the court to waive its jurisdiction over the child for the alleged commission of the public offense or for the purpose of prosecution of the child as an adult or a youthful offender. If the county attorney and the child agree, a motion for waiver for the purpose of being prosecuted as a youthful offender may be heard by the district court as part of the proceedings under section 907.3A, or by the juvenile court as provided in this section. If the motion for waiver for the purpose of being prosecuted as a youthful offender is made as a result of a conditional agreement between the county attorney and the child, the conditions of the agreement shall be disclosed to the court in the same manner as provided in rules of criminal procedure 2.8 and 2.10.

2. The court shall hold a waiver hearing on all such motions.

3. Reasonable notice that states the time, place, and purpose of the waiver hearing shall be provided to the persons required to be provided notice for adjudicatory hearings under section 232.37. Summons, subpoenas, and other process may be issued and served in the same manner as for adjudicatory hearings as provided in section 232.37.

4. Prior to the waiver hearing, the juvenile probation officer or other person or agency designated by the court shall conduct an investigation for the purpose of collecting information relevant to the court's decision to waive its jurisdiction over the child for

the alleged commission of the public offense and shall submit a report concerning the investigation to the court. The report shall include any recommendations made concerning waiver. Prior to the hearing the court shall provide the child's counsel and the county attorney with access to the report and to all written material to be considered by the court.

5. At the waiver hearing all relevant and material evidence shall be admitted.

6. At the conclusion of the waiver hearing the court may waive its jurisdiction over the child for the alleged commission of the public offense for the purpose of prosecution of the child as an adult if all of the following apply:

a. The child is fourteen years of age or older.

b. The court determines, or has previously determined in a detention hearing under section 232.44, that there is probable cause to believe that the child has committed a delinquent act which would constitute the public offense.

c. The court determines that the state has established that there are not reasonable prospects for rehabilitating the child if the juvenile court retains jurisdiction over the child and the child is adjudicated to have committed the delinquent act, and that waiver of the court's jurisdiction over the child for the alleged commission of the public offense would be in the best interests of the child and the community.

7. a. At the conclusion of the waiver hearing and after considering the best interests of the child and the best interests of the community the court may, in order that the child may be prosecuted as a youthful offender, waive its jurisdiction over the child if all of the following apply:

(1) The child is twelve through fifteen years of age or the child is ten or eleven years of age and has been charged with a public offense that would be classified as a class "A" felony if committed by an adult.

(2) The court determines, or has previously determined in a detention hearing under section 232.44, that there is probable cause to believe that the child has committed a delinquent act which would constitute a public offense under section 232.8, subsection 1, paragraph "c", notwithstanding the application of that paragraph to children aged sixteen or older.

(3) The court determines that the state has established that there are not reasonable prospects for rehabilitating the child, prior to the child's eighteenth birthday, if the juvenile court retains jurisdiction over the child and the child enters into a plea agreement, is a party to a consent decree, or is adjudicated to have committed the delinquent act.

b. The court shall retain jurisdiction over the child for the purpose of determining whether the child should be released from detention under section 232.23. If the court has been apprised of conditions of an agreement between the county attorney and the child which resulted in a motion for waiver for purposes of the child being prosecuted as a youthful offender, and the court finds that the conditions are in the best interests of the child, the conditions of the agreement shall constitute conditions of the waiver order.

8. In making the determination required by subsection 6, paragraph "c", the factors which the court shall consider include but are not limited to the following:

a. The nature of the alleged delinquent act and the circumstances under which it was committed.

b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.

c. The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

9. In making the determination required by subsection 7, paragraph "a", subparagraph (3), the factors which the court shall consider include but are not limited to the following:

a. The nature of the alleged delinquent act and the circumstances under which it was committed.

b. The nature and extent of the child's prior contacts with juvenile authorities, including

past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.

c. The age of the child, the programs, facilities, and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities, and personnel which would be available to the district court after the child reaches the age of eighteen in the event the child is given youthful offender status.

10. If at the conclusion of the hearing the court waives its jurisdiction over the child for the alleged commission of the public offense, the court shall make and file written findings as to its reasons for waiving its jurisdiction.

11. a. If the court waives jurisdiction, statements made by the child after being taken into custody and prior to intake are admissible as evidence in chief against the child in subsequent criminal proceedings provided that the statements were made with the advice of the child's counsel or after waiver of the child's right to counsel and provided that the court finds the child had voluntarily waived the right to remain silent. Other statements made by a child are admissible as evidence in chief provided that the court finds the statements were voluntary. In making its determination, the court may consider any factors it finds relevant and shall consider the following factors:

(1) Opportunity for the child to consult with a parent, guardian, custodian, lawyer, or other adult.

(2) The age of the child.

(3) The child's level of education.

(4) The child's level of intelligence.

(5) Whether the child was advised of the child's constitutional rights.

(6) Length of time the child was held in shelter care or detention before making the statement in question.

(7) The nature of the questioning which elicited the statement.

(8) Whether physical punishment such as deprivation of food or sleep was used upon the child during the shelter care, detention, or questioning.

b. Statements made by the child during intake or at a waiver hearing held pursuant to this section are not admissible as evidence in chief against the child in subsequent criminal proceedings over the child's objection in any event.

12. If the court waives its jurisdiction over the child for the alleged commission of the public offense so that the child may be prosecuted as an adult or a youthful offender, the judge who made the waiver decision shall not preside at any subsequent proceedings in connection with that prosecution if the child objects.

13. The waiver does not apply to other delinquent acts which are not alleged in the delinquency petition presented at the waiver hearing.

14. a. If a child who is alleged to have delivered, manufactured, or possessed with intent to deliver or manufacture, a controlled substance except marijuana, as defined in chapter 124, is waived to district court for prosecution, the mandatory minimum sentence provided in section 124.413 shall not be imposed if a conviction is had; however, each child convicted of such an offense shall be confined for not less than thirty days in a secure facility.

b. Upon application of a person charged or convicted under the authority of this subsection, the district court shall order the records in the case sealed if:

(1) Five years have elapsed since the final discharge of that person; and

(2) The person has not been convicted of a felony or an aggravated or serious misdemeanor, or adjudicated a delinquent for an act which if committed by an adult would be a felony, or an aggravated or serious misdemeanor since the final discharge of that person.

[C79, 81, §232.45]

85 Acts, ch 130, §1, 2; 97 Acts, ch 126, §20 – 23; 2001 Acts, ch 135, §26; 2009 Acts, ch 41, §263; 2013 Acts, ch 42, §4, 5

Referred to in §232.8, 232.9, 232.11, 232.22, 232.44, 232.45A, 232.51, 232.89, 803.5, 803.6, 903.1, 904.503, 907.3A, 915.37

Age of majority deemed attained for certain purposes during incarceration following waiver and conviction; see §599.1

Subsection 6, unnumbered paragraph 1 amended

Subsection 7, paragraph a, subparagraph (1) amended

**232.45A Waiver to and conviction by district court — processing.**

1. Once jurisdiction over a child has been waived by the juvenile court as provided in section 232.45, for the alleged commission of a felony, and once a conviction is entered by the district court, for all other offenses, the clerk of the juvenile court shall immediately send a certified copy of the findings required by section 232.45, subsection 10, and the judgment of conviction, as applicable, to the department of public safety. The department shall maintain a file on each child who has previously been waived to or waived to and convicted by the district court in a prosecution as an adult. The file shall be accessible by law enforcement officers on a twenty-four hour per day basis.

2. Once a child sixteen years of age or older has been waived by the juvenile court to the district court, all subsequent criminal proceedings against the child for any delinquent act committed after the date of the waiver by the juvenile court shall begin in district court, notwithstanding sections 232.8 and 232.45. A copy of the findings required by section 232.45, subsection 10, shall be made a part of the record in the district court proceedings. However, upon acquittal or dismissal in district court of all waived offenses and all lesser included offenses of the waived offenses, the proceedings for any delinquent act committed by the child subsequent to such acquittal or dismissal shall begin in juvenile court. Any proceedings initiated in district court for a public offense committed by the child subsequent to the waiver by the juvenile court, but prior to any acquittal or dismissal of all waived offenses and lesser included offenses in district court, shall remain in district court.

3. If proceedings against a child sixteen years of age or older who has previously been waived to district court are mistakenly begun in the juvenile court, the matter shall be transferred to district court upon the discovery of the prior waiver, notwithstanding sections 232.8 and 232.45.

4. This section shall not apply to a child who was waived to the district court for the purpose of being prosecuted as a youthful offender.

91 Acts, ch 232, §4; 92 Acts, ch 1231, §17; 94 Acts, ch 1172, §18; 95 Acts, ch 191, §12; 97 Acts, ch 126, §24; 2013 Acts, ch 42, §6

Referred to in §232.9, 232.22  
Subsections 2 and 3 amended

**232.46 Consent decree.**

1. At any time after the filing of a petition and prior to entry of an order of adjudication pursuant to section 232.47, the court may suspend the proceedings on motion of the county attorney or the child's counsel, enter a consent decree, and continue the case under terms and conditions established by the court. These terms and conditions may include prohibiting a child from driving a motor vehicle for a specified period of time or under specific circumstances, or the supervision of the child by a juvenile court officer or other agency or person designated by the court, and may include the requirement that the child perform a work assignment of value to the state or to the public or make restitution consisting of a monetary payment to the victim or a work assignment directly of value to the victim. The court shall notify the state department of transportation of an order prohibiting the child from driving.

2. A consent decree entered regarding a child placed in detention under section 232.22, subsection 1, paragraph "g", shall require the child to attend a batterers' treatment program under section 708.2B. The second time the child fails to attend the batterers' treatment as required by the consent decree shall result in the decree being vacated and proceedings commenced under section 232.47.

3. A consent decree shall not be entered unless the child and the child's parent, guardian or custodian is informed of the consequences of the decree by the court and the court determines that the child has voluntarily and intelligently agreed to the terms and conditions of the decree. If the county attorney objects to the entry of a consent decree, the court shall proceed to determine the appropriateness of entering a consent decree after consideration of any objections or reasons for entering such a decree.

4. A consent decree shall remain in force for up to one year unless the child is sooner discharged by the court or by the juvenile court officer or other agency or person supervising

the child. Upon application of a juvenile court officer or other agency or person supervising the child made prior to the expiration of the decree and after notice and hearing, or upon agreement by the parties, a consent decree may be extended for up to an additional year by order of the court.

5. When a child has complied with the express terms and conditions of the consent decree for the required amount of time or until earlier dismissed as provided in subsection 4, the original petition may not be reinstated. However, failure to so comply may result in the child's being thereafter held accountable as if the consent decree had never been entered.

6. A child who is discharged or who completes a period of continuance without the reinstatement of the original petition shall not be proceeded against in any court for a delinquent act alleged in the petition.

[C79, 81, §232.46; 82 Acts, ch 1209, §11]

83 Acts, ch 186, §10055, 10201; 94 Acts, ch 1172, §19; 95 Acts, ch 180, §5; 2008 Acts, ch 1187, §132

Referred to in §232.9

### **232.47 Adjudicatory hearing — findings — adjudication.**

1. If a child denies the allegations of the petition, that child may be found to be delinquent only after an adjudicatory hearing conducted in accordance with the provisions of this section.

2. The court shall hear and adjudicate all cases involving a petition alleging a child to have committed a delinquent act.

3. The child shall have the right to adjudication by an impartial finder of fact. A judge of the juvenile court may not serve as the finder of fact over objection of the child based upon a showing of prejudice on the part of the judge. In the event that a judge is disqualified from serving as a finder of fact under this provision, a substitute judge shall serve as the finder of fact.

4. At an adjudicatory hearing the state shall have the burden of proving the allegations of the petition.

5. Only evidence which is admissible under the rules of evidence applicable to the trial of criminal cases shall be admitted at the hearing except as otherwise provided by this section.

6. Statements or other evidence derived directly or indirectly from statements which a child makes to a law enforcement officer while in custody without presence of counsel may be admitted into evidence at an adjudicatory hearing over the child's objection only after the court determines whether the child has voluntarily waived the right to remain silent. In making its determination the court may consider any factors it finds relevant and shall consider the following factors:

a. Opportunity for the child to consult with a parent, guardian, custodian, lawyer or other adult.

b. The age of the child.

c. The child's level of education.

d. The child's level of intelligence.

e. Whether the child was advised of the child's constitutional rights.

f. Length of time the child was held in shelter care or detention before making the statement in question.

g. The nature of the questioning which elicited the statement.

h. Whether physical punishment such as deprivation of food or sleep was used upon the child during the shelter care, detention, or questioning.

7. The following statements or other evidence shall not be admitted as evidence in chief at an adjudicatory hearing:

a. Statements or other evidence derived directly or indirectly from statements which a child makes to a juvenile intake officer without the presence of counsel subsequent to the filing of a complaint and prior to adjudication unless the child and the child's attorney consent to the admission of such statements or evidence.

b. Statements which the child makes to a juvenile probation officer or other person conducting a predisposition investigation during such an investigation.

8. At the conclusion of an adjudicatory hearing, the court shall make a finding as to

whether the child has committed a delinquent act. The court shall make and file written findings as to the truth of the specific allegations of the petition and as to whether the child has engaged in delinquent conduct.

9. If the court finds that the child did not engage in delinquent conduct, the court shall enter an order dismissing the petition.

10. If the court finds that the child did engage in delinquent conduct, the court may enter an order adjudicating the child to have committed a delinquent act. The child shall be presumed to be innocent of the charges and no finding that a child has engaged in delinquent conduct may be made unless the state has proved beyond a reasonable doubt that the child engaged in such behavior.

11. If the court enters an order adjudicating the child to have committed a delinquent act, the court may issue an order authorizing either shelter care or detention until the dispositional hearing is held.

12. A juvenile court officer shall notify the superintendent of the school district or the superintendent's designee, or the authorities in charge of the nonpublic school which the child attends of the child's adjudication for a delinquent act which would be an indictable offense if committed by an adult.

[C66, 71, 73, 75, 77, §232.31; C79, 81, §232.47]

94 Acts, ch 1172, §20

Referred to in §232.8, 232.9, 232.11, 232.46, 232.48, 232.49, 232.50, 232.133

#### **232.48 Predisposition investigation and report.**

1. The court shall not make a disposition of the matter following the entry of an order of adjudication pursuant to section 232.47 until a predisposition report has been submitted to and considered by the court.

2. After a petition is filed, the court shall direct a juvenile court officer or any other agency or individual to conduct a predisposition investigation and to prepare a predisposition report. The investigation and report shall cover all of the following:

- a. The social history, environment and present condition of the child and the child's family.
- b. The performance of the child in school.
- c. The presence of child abuse and neglect histories, learning disabilities, physical impairments and past acts of violence.
- d. Other matters relevant to the child's status as a delinquent, treatment of the child or proper disposition of the case.

3. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing without the consent of the child and the child's counsel.

4. A predisposition report shall not be disclosed except as provided in this section and in division VIII of this chapter. The court shall permit the child's attorney to inspect the predisposition report prior to consideration by the court. The court may order counsel not to disclose parts of the report to the child, or to the child's parent, guardian, guardian ad litem, or custodian if the court finds that disclosure would seriously harm the treatment or rehabilitation of the child. If the report indicates the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse, unless otherwise ordered by the court, the child's parent, guardian, or foster parent or other person with custody of the child shall be provided with that information.

[C79, 81, §232.48]

83 Acts, ch 186, §10055, 10201; 85 Acts, ch 88, §1; 2005 Acts, ch 124, §2

#### **232.49 Physical and mental examinations.**

1. Following the entry of an order of adjudication under section 232.47 the court may, after a hearing which may be simultaneous with the adjudicatory hearing, order a physical or mental examination of the child if it finds that an examination is necessary to determine the child's physical or mental condition. The court may consider chemical dependency as either a physical or mental condition and may consider a chemical dependency evaluation as

either a physical or mental examination. If the examination indicates the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse, unless otherwise ordered by the court, the child's parent, guardian, or foster parent or other person with custody of the child shall be provided with that information.

2. When possible an examination shall be conducted on an outpatient basis, but the court may, if it deems necessary, commit the child to a suitable hospital, facility or institution for the purpose of examination. Commitment for examination shall not exceed thirty days and the civil commitment provisions of chapter 229 shall not apply.

3. *a.* At any time after the filing of a delinquency petition the court may order a physical or mental examination of the child if the following circumstances apply:

(1) The court finds such examination to be in the best interest of the child; and

(2) The parent, guardian, or custodian and the child's counsel agree.

*b.* An examination shall be conducted on an outpatient basis unless the court, the child's counsel, and the parent, guardian, or custodian agree that it is necessary the child be committed to a suitable hospital, facility, or institution for the purpose of examination. Commitment for examination shall not exceed thirty days and the civil commitment provisions of chapter 229 shall not apply.

[C66, 71, 73, 75, 77, §232.13; C79, 81, §232.49]

86 Acts, ch 1186, §4; 2005 Acts, ch 124, §3; 2009 Acts, ch 41, §235

#### **232.50 Dispositional hearing.**

1. As soon as practicable following the entry of an order of adjudication pursuant to section 232.47 or notification that the child has been placed on youthful offender status pursuant to section 907.3A, the court shall hold a dispositional hearing in order to determine what disposition should be made of the matter.

2. The court shall hold a periodic dispositional review hearing for each child in placement pursuant to section 232.52, subsection 2, paragraph "d" or "e", to determine the future disposition status of the child. The hearings shall not be waived or continued beyond twelve months after the last dispositional hearing or dispositional review hearing.

3. At dispositional hearings under this section all relevant and material evidence shall be admitted.

4. When a dispositional hearing under this section is concluded the court shall enter an order to make any one or more of the dispositions authorized under section 232.52.

[C66, 71, 73, 75, 77, §232.31; C79, 81, §232.50]

87 Acts, ch 159, §1; 97 Acts, ch 99, §1; 97 Acts, ch 126, §25; 2013 Acts, ch 42, §7

Referred to in §232.9, 232.11, 232.52, 232.103

Subsection 1 amended

#### **232.51 Disposition of child with mental illness or an intellectual disability.**

1. If the evidence received at an adjudicatory or a dispositional hearing indicates that the child is mentally ill, the court may direct the juvenile court officer or the department to initiate proceedings or to assist the child's parent or guardian to initiate civil commitment proceedings in the juvenile court and such proceedings in the juvenile court shall adhere to the requirements of chapter 229.

2. If the evidence received at an adjudicatory or a dispositional hearing indicates that the child has an intellectual disability, the court may direct the juvenile court officer or the department to initiate proceedings or to assist the child's parent or guardian to initiate civil commitment proceedings in the juvenile court and such proceedings shall adhere to the requirements of chapter 222.

3. *a.* If prior to the adjudicatory or dispositional hearing on the pending delinquency petition, the child is committed as a child with a mental illness or an intellectual disability and is ordered into a residential facility, institution, or hospital for inpatient treatment, the delinquency proceeding shall be suspended until such time as the juvenile court either terminates the civil commitment order or the child is released from the residential facility, institution, or hospital for purposes of receiving outpatient treatment.

b. During any time that the delinquency proceeding is suspended pursuant to this subsection, any time limits for speedy adjudicatory hearings and continuances shall be tolled.

c. This subsection shall not apply to waiver hearings held pursuant to section 232.45.

[C79, 81, §232.51]

83 Acts, ch 186, §10055, 10201; 86 Acts, ch 1186, §5; 96 Acts, ch 1129, §62; 2011 Acts, ch 10, §1; 2012 Acts, ch 1019, §85, 86

Referred to in §229.26

For future amendment to this section, effective July 1, 2014, see 2013 Acts, ch 130, §31, 35

Section not amended; footnote added

**232.52 Disposition of child found to have committed a delinquent act.**

1. Pursuant to a hearing as provided in section 232.50, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child’s culpability as indicated by the circumstances of the particular case, the age of the child, the child’s prior record, or the fact that the child has been placed on youthful offender status under section 907.3A. The order shall specify the duration and the nature of the disposition, including the type of residence or confinement ordered and the individual, agency, department, or facility in which custody is vested. In the case of a child who has been placed on youthful offender status, the initial duration of the dispositional order shall be until the child reaches the age of eighteen.

2. The dispositional orders which the court may enter subject to its continuing jurisdiction are as follows:

a. An order prescribing one or more of the following:

(1) A work assignment of value to the state or to the public.

(2) Restitution consisting of monetary payment or a work assignment of value to the victim.

(3) If the child is fourteen years of age or older, restitution consisting of monetary payment or a work assignment of value to the county or to the public for fees of attorneys appointed to represent the child at public expense pursuant to section 232.11.

(4) (a) The suspension or revocation of the driver’s license or operating privilege of the child, for a period of one year, for the commission of delinquent acts which are a violation of any of the following:

(i) Section 123.46.

(ii) Section 123.47 regarding the purchase or attempt to purchase of alcoholic beverages.

(iii) Chapter 124.

(iv) Section 126.3.

(v) Chapter 453B.

(vi) Two or more violations of section 123.47 regarding the possession of alcoholic beverages.

(vii) Section 708.1, if the assault is committed upon an employee of the school at which the child is enrolled, and the child intended to inflict serious injury upon the school employee or caused bodily injury or mental illness.

(viii) Section 724.4, if the child carried the dangerous weapon on school grounds.

(ix) Section 724.4B.

(b) The child may be issued a temporary restricted license or school license if the child is otherwise eligible.

(5) The suspension of the driver’s license or operating privilege of the child for a period not to exceed one year. The order shall state whether a work permit may or shall not be issued to the child.

b. An order placing the child on probation and releasing the child to the child’s parent, guardian, or custodian.

c. An order providing special care and treatment required for the physical, emotional, or mental health of the child, and

(1) Placing the child on probation or other supervision; and

(2) If the court deems appropriate, ordering the parent, guardian, or custodian to

reimburse the county for any costs incurred as provided in section 232.141, subsection 1, or to otherwise pay or provide for such care and treatment.

d. An order transferring the legal custody of the child, subject to the continuing jurisdiction of the court for purposes of section 232.54, to one of the following:

(1) An adult relative or other suitable adult and placing the child on probation.

(2) A child-placing agency or other suitable private agency or facility which is licensed or otherwise authorized by law to receive and provide care for children and placing the child on probation or other supervision.

(3) The department of human services for purposes of foster care and prescribing the type of placement which will serve the best interests of the child and the means by which the placement shall be monitored by the court. The court shall consider ordering placement in family foster care as an alternative to group foster care.

(4) The chief juvenile court officer or the officer's designee for placement in a program under section 232.191, subsection 4. The chief juvenile court officer or the officer's designee may place a child in group foster care for failure to comply with the terms and conditions of the supervised community treatment program for up to seventy-two hours without notice to the court or for more than seventy-two hours if the court is notified of the placement within seventy-two hours of placement, subject to a hearing before the court on the placement within ten days.

e. An order transferring the guardianship of the child, subject to the continuing jurisdiction and custody of the court for the purposes of section 232.54, to the director of the department of human services for purposes of placement in the state training school or other facility, provided that the child is at least twelve years of age and the court finds the placement to be in the best interests of the child or necessary for the protection of the public, and that the child has been found to have committed an act which is a forcible felony, as defined in section 702.11, or a felony violation of section 124.401 or chapter 707, or the court finds any three of the following conditions exist:

(1) The child is at least fifteen years of age and the court finds the placement to be in the best interests of the child or necessary to the protection of the public.

(2) The child has committed an act which is a crime against a person and which would be an aggravated misdemeanor or a felony if the act were committed by an adult.

(3) The child has previously been found to have committed a delinquent act.

(4) The child has previously been placed in a treatment facility outside the child's home or in a supervised community treatment program established pursuant to section 232.191, subsection 4, as a result of a prior delinquency adjudication.

f. An order committing the child to a mental health institute or other appropriate facility for the purpose of treatment of a mental or emotional condition after making findings pursuant to the standards set out for involuntary commitment in chapter 229.

g. An order placing a child, other than a child who has committed a violation of section 123.47, in secure custody for not more than two days in a facility under section 232.22, subsection 3, paragraph "a" or "b".

h. In the case of a child adjudicated delinquent for an act which would be a violation of chapter 236 or section 708.2A if committed by an adult, an order requiring the child to attend a batterers' treatment program under section 708.2B.

3. a. An order under subsection 2, paragraph "a", may be the sole disposition or may be included as an element in other dispositional orders.

b. A parent or guardian may be required by the juvenile court to participate in educational or treatment programs as part of a probation plan. A parent or guardian who does not participate in the probation plan when required to do so by the court may be held in contempt.

c. Notwithstanding subsection 2, the court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the service area plan for group foster care established pursuant to section 232.143 for the departmental service area in which the court is located.

4. When the court enters an order placing a child on probation pursuant to this section, the court may in cases of change of residency transfer jurisdiction of the child to the juvenile court

of the county where the child's residence is established. The court to which the jurisdiction of the child is transferred shall have the same powers with respect to the child as if the petition had originally been filed in that court.

5. When the court enters an order transferring the legal and physical custody of a child to an agency, facility, department, or institution, the court shall transmit its order, its finding, and a summary of its information concerning the child to such agency, facility, department, or institution.

6. If the court orders the transfer of custody of the child to the department of human services or other agency for placement, the department or agency responsible for the placement of the child shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible.

7. *a.* When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d", "e", or "f", the order shall state that reasonable efforts as defined in section 232.57 have been made. If deemed appropriate by the court, the order may include a determination that continuation of the child in the child's home is contrary to the child's welfare. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may be used to assist the department in obtaining federal funding for the child's placement. If such a determination is included in the order, unless the court makes a determination that further reasonable efforts are not required, reasonable efforts shall be made to prevent permanent removal of a child from the child's home and to encourage reunification of the child with the child's parents and family. The reasonable efforts may include but are not limited to early intervention and follow-up programs implemented pursuant to section 232.191.

*b.* When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d", and the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the child has a case permanency plan, the court shall consider the written transition plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the transition plan and needs assessment at the time the transfer order is entered, the written transition plan and needs assessment shall be developed and submitted for the court's consideration no later than six months from the date of the transfer order. The court shall modify the initial transfer order as necessary to specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the transition plan identifies services or other support needed to assist the child when the child becomes an adult and the court deems it to be beneficial to the child, the court may authorize the individual who is the child's guardian ad litem or court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

8. If the court orders the transfer of the custody of the child to the department of human services or to another agency for placement in group foster care, the department or agency shall make every reasonable effort to place the child in the least restrictive, most family-like, and most appropriate setting available and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

9. If a child has previously been adjudicated as a child in need of assistance, and a social worker or other caseworker from the department of human services has been assigned to work on the child's case, the court may order the department of human services to assign the same social worker or caseworker to work on any matters related to the child arising under this division.

10. *a.* Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the state training school pursuant to subsection 2, paragraph "e", to a facility which has been designated to be an alternative placement site for the state training school, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a substitute dispositional order under section 232.54.

(2) Immediate removal of the child from the state training school is necessary to safeguard the child's physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

b. If the court finds the conditions in paragraph "a" exist and there is insufficient time to provide notice as required under rule of juvenile procedure 8.12, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

c. Within three days of the child's transfer, the director shall file a motion for a substitute dispositional order under section 232.54 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

11. The court shall order a juvenile adjudicated a delinquent for an offense that requires DNA profiling under section 81.2 to submit a DNA sample for DNA profiling pursuant to section 81.4.

[C73, §1653 – 1659; C97, §2708, 2709; S13, §254-a23, 2708; C24, 27, 31, 35, 39, §3637, 3646, 3647, 3652; C46, 50, 54, 58, 62, §232.27, 232.28, 232.34; C66, 71, 73, 75, 77, §232.34, 232.38, 232.39; C79, 81, §232.52; 82 Acts, ch 1260, §22]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §5; 85 Acts, ch 124, §1; 88 Acts, ch 1249, §12, 13; 90 Acts, ch 1168, §35; 90 Acts, ch 1239, §7, 8; 90 Acts, ch 1271, §1505; 91 Acts, ch 232, §5, 6; 91 Acts, ch 258, §37; 92 Acts, ch 1229, §3; 92 Acts, ch 1231, §20, 21; 94 Acts, ch 1172, §21, 22; 95 Acts, ch 180, §6; 95 Acts, ch 191, §13, 14; 96 Acts, ch 1134, §2; 96 Acts, ch 1218, §57; 97 Acts, ch 51, §1; 97 Acts, ch 99, §2; 97 Acts, ch 126, §26, 27; 97 Acts, ch 208, §40; 98 Acts, ch 1073, §9; 99 Acts, ch 208, §35; 2001 Acts, ch 24, §39; 2001 Acts, ch 135, §7; 2002 Acts, ch 1081, §2; 2003 Acts, ch 117, §4; 2004 Acts, ch 1116, §4, 5; 2005 Acts, ch 158, §12, 19; 2007 Acts, ch 218, §113; 2009 Acts, ch 41, §236; 2009 Acts, ch 133, §220, 221; 2013 Acts, ch 42, §8

Referred to in §92.17, 232.22, 232.50, 232.53, 232.54, 232.58, 232.133, 234.35, 321.213, 321.213A, 321.215, 321A.17, 692A.103, 907.3A, 915.28

Juvenile victim restitution, see chapter 232A and §915.24 – 915.29

Subsection 1 amended

### **232.52A Disposition of certain juvenile offenders.**

1. In addition to any other order of the juvenile court, a person under age eighteen, who may be in need of treatment as determined under section 232.8, may be ordered to participate in an alcohol or controlled substance education or evaluation program approved by the juvenile court. If recommended after evaluation, the court may also order the person to participate in a treatment program approved by the court. The juvenile court may also require the custodial parent or parents or other legal guardian to participate in an educational program with the person under age eighteen if the court determines that such participation is in the best interests of the person under age eighteen.

2. If the duration of a dispositional order is extended pursuant to section 232.53, subsection 3, the court may continue or extend supervision by an electronic tracking and monitoring system in addition to any other conditions of supervision.

90 Acts, ch 1251, §26; 2009 Acts, ch 119, §35

Referred to in §232.8

### **232.53 Duration of dispositional orders.**

1. Any dispositional order entered by the court pursuant to section 232.52 shall remain in force for an indeterminate period or until the child becomes eighteen years of age unless otherwise specified by the court or unless sooner terminated pursuant to the provisions of section 232.54. No dispositional order made under section 232.52, subsection 2, paragraph "e", shall remain in force longer than the maximum possible duration of the sentence which may be imposed on an adult for the commission of the act which the child has been found by the court to have committed.

2. All dispositional orders entered prior to the child attaining the age of seventeen years shall automatically terminate when the child becomes eighteen years of age, except as provided in subsection 3. Dispositional orders entered subsequent to the child attaining

the age of seventeen years and prior to the child's eighteenth birthday shall automatically terminate one year and six months after the date of disposition. In the case of an adult within the jurisdiction of the court under the provisions of section 232.8, subsection 1, the dispositional order shall automatically terminate one year and six months after the last date upon which jurisdiction could attach.

3. A dispositional order entered prior to the child attaining the age of seventeen, for a child required to register as a sex offender pursuant to the provisions of chapter 692A, may be extended one year and six months beyond the date the child becomes eighteen years of age.

4. Notwithstanding section 233A.13, a child committed to the training school subsequent to the child attaining the age of seventeen years and prior to the child's eighteenth birthday may be held at the school beyond the child's eighteenth birthday pursuant to subsection 2 or 3, provided that the training school makes application to and receives permission from the committing court. This extension shall be for the purpose of completion by the child of a course of instruction established for the child pursuant to section 233A.4 and cannot extend for more than one year and six months beyond the date of disposition unless the duration of the dispositional order was extended pursuant to subsection 3.

5. a. Any person supervising but not having custody of the child pursuant to such an order shall file a written report with the court at least every six months concerning the status and progress of the child.

b. Any agency, facility, institution, or person to whom custody of the child has been transferred pursuant to such order shall file a written report with the court at least every six months concerning the status and progress of the child.

c. Any report prepared pursuant to this subsection shall be included in the record considered by the court in a permanency hearing conducted pursuant to section 232.58.

[C73, §1653 – 1658; C97, §2708; S13, §254-a23, 2708; C24, 27, 31, 35, 39, §3639, 3649; C46, 50, 54, 58, 62, §232.23, 232.30; C66, 71, 73, 75, §232.36, 232.37; C79, 81, §232.53; 82 Acts, ch 1209, §12]

84 Acts, ch 1166, §1; 2000 Acts, ch 1056, §2; 2001 Acts, ch 135, §8; 2009 Acts, ch 119, §34, 36

Referred to in §232.52A

#### **232.54 Termination, modification, or vacation and substitution of dispositional order.**

1. At any time prior to its expiration, a dispositional order may be terminated, modified, or vacated and another dispositional order substituted therefor only in accordance with the following provisions:

a. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraph "a", "b", or "c", and upon the motion of a child, a child's parent or guardian, a child's guardian ad litem, a person supervising the child under a dispositional order, a county attorney, or upon its own motion, the court may terminate the order and discharge the child, modify the order, or vacate the order and substitute another order pursuant to the provisions of section 232.52. Notice shall be afforded all parties, and a hearing shall be held at the request of any party.

b. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraphs "d" and "e", the court shall grant a motion of the person to whom custody has been transferred for termination of the order and discharge of the child, for modification of the order by imposition of less restrictive conditions, or for vacation of the order and substitution of a less restrictive order unless there is clear and convincing evidence that there has not been a change of circumstance sufficient to grant the motion. Notice shall be afforded all parties, and a hearing shall be held at the request of any party or upon the court's own motion.

c. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraph "d", or "e", or "f", the court shall grant a motion of a person or agency to whom custody has been transferred for modification of the order by transfer to an equally restrictive placement, unless there is clear and convincing evidence that there has not been a change of circumstance sufficient to grant the motion. Notice shall be afforded all parties, and a hearing shall be held at the request of any party or upon the court's own motion.

d. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraph “d”, “e”, or “f”, the court may, after notice and hearing, either grant or deny a motion of the child, the child’s parent or guardian, or the child’s guardian ad litem, to terminate the order and discharge the child, to modify the order either by imposing less restrictive conditions or by transfer to an equally or less restrictive placement, or to vacate the order and substitute a less restrictive order. A motion may be made pursuant to this paragraph no more than once every six months.

e. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraphs “d” and “e”, the court may, after notice and a hearing at which there is presented clear and convincing evidence to support such an action, either grant or deny a motion by a county attorney or by a person or agency to whom custody has been transferred, to modify an order by imposing more restrictive conditions or to vacate the order and substitute a more restrictive order.

f. With respect to a temporary transfer order made pursuant to section 232.52, subsection 10, if the court finds that removal of a child from the state training school is necessary to safeguard the child’s physical or emotional health and is in the best interests of the child, the court shall grant the director’s motion for a substitute dispositional order to place the child in a facility which has been designated to be an alternative placement site for the state training school.

g. With respect to a juvenile court dispositional order entered regarding a child who has been placed on youthful offender status under section 907.3A, the dispositional order may be terminated prior to the child reaching the age of eighteen upon motion of the child, the person or agency to whom custody of the child has been transferred, or the county attorney following a hearing before the juvenile court if it is shown by clear and convincing evidence that it is in the best interests of the child and the community to terminate the order. The hearing may be waived if all parties to the proceeding agree. The dispositional order regarding a child who has been placed on youthful offender status may also be terminated prior to the child reaching the age of eighteen upon motion of the county attorney, if the waiver of the child to district court was conditioned upon the terms of an agreement between the county attorney and the child, and the child violates the terms of the agreement after the waiver order has been entered. The district court shall discharge the child’s youthful offender status upon receiving a termination order under this section.

h. With respect to a dispositional order entered regarding a child who has been placed on youthful offender status under section 907.3A, the juvenile court may, in the case of a child who violates the terms of the order, modify or terminate the order in accordance with the following:

(1) After notice and hearing at which the facts of the child’s violation of the terms of the order are found, the juvenile court may refuse to modify the order, modify the order and impose a more restrictive order, or, after an assessment of the child by a juvenile court officer in consultation with the judicial district department of correctional services and if the child is age fourteen or over, terminate the order and return the child to the supervision of the district court under chapter 907.

(2) The juvenile court shall only terminate an order under this paragraph “h” if after considering the best interests of the child and the best interests of the community the court finds that the child should be returned to the supervision of the district court.

(3) A youthful offender over whom the juvenile court has terminated the dispositional order under this paragraph “h” shall be treated in the manner of an adult who has been arrested for a violation of probation under section 908.11 for sentencing purposes only.

i. With respect to a dispositional order requiring a child to register as a sex offender pursuant to chapter 692A, the juvenile court shall determine whether the child shall remain on the sex offender registry prior to termination of the dispositional order.

2. Notice requirements of this section shall be satisfied by providing reasonable notice to the persons required to be provided notice for adjudicatory hearings under section 232.37, except that notice shall be waived regarding a person who was notified of the adjudicatory

hearing and who failed to appear. At a hearing under this section all relevant and material evidence shall be admitted.

[C79, 81, §232.54]

90 Acts, ch 1239, §9; 95 Acts, ch 92, §2; 97 Acts, ch 126, §28; 98 Acts, ch 1100, §25; 2001 Acts, ch 135, §27; 2009 Acts, ch 41, §237; 2009 Acts, ch 119, §37; 2013 Acts, ch 42, §9, 10

Referred to in §232.2, 232.9, 232.11, 232.22, 232.52, 232.53, 692A.106, 907.3A

Subsection 1, paragraph g amended

Subsection 1, paragraph h, unnumbered paragraph 1 amended

### **232.55 Effect of adjudication and disposition.**

1. An adjudication or disposition in a proceeding under this division shall not be deemed a conviction of a crime and shall not impose any civil disabilities or operate to disqualify the child in any civil service application or appointment.

2. a. Adjudication and disposition proceedings under this division are not admissible as evidence against a person in a subsequent proceeding in any other court before or after the person reaches majority except in a sentencing proceeding after conviction of the person for an offense other than a simple or serious misdemeanor.

b. Adjudication and disposition proceedings may properly be included in a presentence investigation report prepared pursuant to chapter 901 and section 906.5.

c. However, the use of adjudication and disposition proceedings pursuant to this subsection shall be subject to the restrictions contained in section 232.150.

3. This section does not apply to dispositional orders entered regarding a child who has been placed on youthful offender status under section 907.3A who is not discharged from probation before or upon the child's eighteenth birthday.

[C79, 81, §232.55]

85 Acts, ch 179, §1; 97 Acts, ch 126, §29; 2009 Acts, ch 41, §238; 2013 Acts, ch 42, §11

Referred to in §321.213

Subsection 3 amended

### **232.56 Youthful offenders — transfer to district court supervision.**

The juvenile court shall deliver a report, which includes an assessment of the child by a juvenile court officer after consulting with the judicial district department of correctional services, to the district court prior to the eighteenth birthday of a child who has been placed on youthful offender status under section 907.3A. A hearing shall be held in the district court in accordance with section 907.3A to determine whether the child should be discharged from youthful offender status or whether the child shall continue under the supervision of the district court after the child's eighteenth birthday.

97 Acts, ch 126, §30; 2013 Acts, ch 42, §12

Referred to in §907.3A

Section amended

### **232.57 Reasonable efforts defined — effect of aggravated circumstances.**

1. For the purposes of this division, unless the context otherwise requires, “reasonable efforts” means the efforts made to prevent permanent removal of a child from the child's home and to encourage reunification of the child with the child's parents and family. Reasonable efforts shall include but are not limited to giving consideration, if appropriate, to interstate placement of a child in the permanency planning decisions involving the child and giving consideration to in-state and out-of-state placement options at a permanency hearing and when using concurrent planning. If a court order includes a determination that continuation of the child in the child's home is not appropriate or not possible, reasonable efforts may include the efforts made in a timely manner to finalize a permanency plan for the child.

2. If the court determines by clear and convincing evidence that aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

a. The parent has abandoned the child.

b. The court finds the circumstances described in section 232.116, subsection 1, paragraph “i”, are applicable to the child.

c. The parent's parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.

d. The parent has been convicted of the murder of another child of the parent.

e. The parent has been convicted of the voluntary manslaughter of another child of the parent.

f. The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

g. The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

3. Any order entered under this division may include findings regarding reasonable efforts.

2001 Acts, ch 135, §9; 2007 Acts, ch 172, §4

Referred to in §232.21, 232.22, 232.52, 232B.5

### **232.58 Permanency hearings.**

1. If an order entered pursuant to this division for an out-of-home placement of a child includes a determination that continuation of the child in the child's home is contrary to the child's welfare, the court shall review the child's continued placement by holding a permanency hearing or hearings in accordance with this section. The initial permanency hearing shall be the earlier of the following:

a. For an order for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home.

b. For an order in a case in which aggravated circumstances exist for which the court has waived reasonable efforts requirements, the permanency hearing shall be held within thirty days of the date the requirements were waived.

2. Reasonable notice shall be provided of a permanency hearing for an out-of-home placement in which the court order has included a determination that continuation of the child in the child's home is contrary to the child's welfare. A permanency hearing shall be conducted in substantial conformance with the provisions of section 232.99. During the hearing, the court shall consider the child's need for a secure and permanent placement in light of any case permanency plan or evidence submitted to the court and the reasonable efforts made concerning the child. Upon completion of the hearing, the court shall enter written findings identifying a primary permanency goal for the child. If a case permanency plan is in effect at the time of the hearing, the court shall also make a determination as to whether reasonable progress is being made in achieving the permanency goal and in complying with the other provisions of that case permanency plan.

3. After a permanency hearing, the court shall do one of the following:

a. Enter an order pursuant to section 232.52 to return the child to the child's home.

b. Enter an order pursuant to section 232.52 to continue the out-of-home placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.

c. Direct the county attorney or the attorney for the child to institute proceedings to terminate the parent-child relationship.

d. Enter an order, pursuant to findings based upon the existence of the evidence required by subsection 4, to do one of the following:

(1) Transfer guardianship and custody of the child to a suitable person.

(2) Transfer sole custody of the child from one parent to another parent.

(3) Transfer custody of the child to a suitable person for the purpose of long-term care.

(4) If the department has documented to the court's satisfaction a compelling reason for

determining that an order under the other subparagraphs of this paragraph “d” would not be in the child’s best interest, order another planned permanent living arrangement for the child.

4. Prior to entering a permanency order pursuant to subsection 3, paragraph “d”, clear and convincing evidence must exist showing that all of the following apply:

a. A termination of the parent-child relationship would not be in the best interest of the child.

b. Services were offered to the child’s family to correct the situation which led to the child’s removal from the home.

c. The child cannot be returned to the child’s home.

5. Any permanency order may provide restrictions upon the contact between the child and the child’s parent or parents, consistent with the best interest of the child.

6. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraph “d”, “e”, or “f”, for which the court has suspended or terminated sibling visitation or interaction, when a review is made under this section the court shall consider whether the visitation or interaction can be safely resumed and may modify the suspension or termination as appropriate.

7. Subsequent to the entry of a permanency order pursuant to this section, the child shall not be returned to the care, custody, or control of the child’s parent or parents, over a formal objection filed by the child’s attorney or guardian ad litem, unless the court finds by a preponderance of the evidence that returning the child to such custody would be in the best interest of the child.

8. Following an initial permanency hearing and the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served. When the order places the child in the custody of the department for the purpose of a planned permanent living arrangement, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the initial permanency hearing or the last permanency review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

2001 Acts, ch 135, §10; 2007 Acts, ch 67, §3; 2007 Acts, ch 172, §5

Referred to in §232.53

**232.59 and 232.60** Reserved.

### DIVISION III

#### CHILD IN NEED OF ASSISTANCE PROCEEDINGS

Referred to in §232.2, 232.109, 600A.5

#### PART 1

#### GENERAL PROVISIONS

##### **232.61 Jurisdiction.**

1. The juvenile court shall have exclusive jurisdiction over proceedings under this chapter alleging that a child is a child in need of assistance.

2. In determining such jurisdiction the age and marital status of the child at the time the proceedings are initiated is controlling.

[C71, 73, 75, 77, §232.63; C79, 81, §232.61]

##### **232.62 Venue.**

1. Venue for child in need of assistance proceedings shall be in the judicial district where the child is found or in the judicial district of the child’s residence.

2. The court may transfer any child in need of assistance proceedings brought under this chapter to the juvenile court of any county having venue at any stage in the proceedings as follows:

a. When it appears that the best interests of the child or the convenience of the proceedings shall be served by a transfer, the court may transfer the case to the court of the county of the child's residence.

b. With the consent of the receiving court, the court may transfer the case to the court of the county where the child is found.

3. The court shall transfer the case by ordering the transfer and a continuance and by forwarding to the clerk of the receiving court a certified copy of all papers filed together with an order of transfer. The judge of the receiving court may accept the filings of the transferring court or may direct the filing of a new petition and hear the case anew.

[C71, 73, 75, 77, §232.68 – 232.70; C79, 81, §232.62]

Referred to in §232.110, 232.123, 232.177

**232.63 through 232.66** Reserved.

## PART 2

### CHILD ABUSE REPORTING, ASSESSMENT, AND REHABILITATION

Referred to in §135L.3, 235A.13

#### **232.67 Legislative findings — purpose and policy.**

Children in this state are in urgent need of protection from abuse. It is the purpose and policy of this part 2 of division III to provide the greatest possible protection to victims or potential victims of abuse through encouraging the increased reporting of suspected cases of abuse, ensuring the thorough and prompt assessment of these reports, and providing rehabilitative services, where appropriate and whenever possible to abused children and their families which will stabilize the home environment so that the family can remain intact without further danger to the child.

[C66, 71, 73, 75, 77, §235A.1; C79, 81, §232.67]

97 Acts, ch 35, §3, 25

Referred to in §232.68

#### **232.68 Definitions.**

The definitions in section 235A.13 are applicable to this part 2 of division III. As used in sections 232.67 through 232.77 and 235A.12 through 235A.24, unless the context otherwise requires:

1. “*Child*” means any person under the age of eighteen years.

2. a. “*Child abuse*” or “*abuse*” means:

(1) Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child.

(2) Any mental injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior as the result of the acts or omissions of a person responsible for the care of the child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional as defined in section 622.10.

(3) The commission of a sexual offense with or to a child pursuant to chapter 709, section 726.2, or section 728.12, subsection 1, as a result of the acts or omissions of the person responsible for the care of the child. Notwithstanding section 702.5, the commission of a sexual offense under this subparagraph includes any sexual offense referred to in this subparagraph with or to a person under the age of eighteen years.

(4) (a) The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision, or

other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so.

(b) For the purposes of subparagraph division (a), failure to provide for the adequate supervision of a child means the person failed to provide proper supervision of a child that a reasonable and prudent person would exercise under similar facts and circumstances and the failure resulted in direct harm or created a risk of harm to the child.

(c) A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child, however this provision shall not preclude a court from ordering that medical service be provided to the child where the child's health requires it.

(5) The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1. Notwithstanding section 702.5, acts or omissions under this subparagraph include an act or omission referred to in this subparagraph with or to a person under the age of eighteen years.

(6) An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child.

(7) The person responsible for the care of a child has, in the presence of the child, as defined in section 232.2, subsection 6, paragraph "p", manufactured a dangerous substance, as defined in section 232.2, subsection 6, paragraph "p", or in the presence of the child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

(8) The commission of bestiality in the presence of a minor under section 717C.1 by a person who resides in a home with a child, as a result of the acts or omissions of a person responsible for the care of the child.

(9) Knowingly allowing a person custody or control of, or unsupervised access to a child or minor, after knowing the person is required to register or is on the sex offender registry under chapter 692A for a violation of section 726.6.

(10) The person responsible for the care of the child has knowingly allowed the child access to obscene material as defined in section 728.1 or has knowingly disseminated or exhibited such material to the child.

b. "Child abuse" or "abuse" shall not be construed to hold a victim responsible for failing to prevent a crime against the victim.

2A. "Child protection worker" means an individual designated by the department to perform an assessment in response to a report of child abuse.

3. "Confidential access to a child" means access to a child, during an assessment of an alleged act of child abuse, who is alleged to be the victim of the child abuse. The access may be accomplished by interview, observation, or examination of the child. As used in this subsection and this part:

a. "Interview" means the verbal exchange between the child protection worker and the child for the purpose of developing information necessary to protect the child. A child protection worker is not precluded from recording visible evidence of abuse.

b. "Observation" means direct physical viewing of a child under the age of four by the child protection worker where the viewing is limited to the child's body other than the genitalia and pubes. "Observation" also means direct physical viewing of a child aged four or older by the child protection worker without touching the child or removing an article of the child's clothing, and doing so without the consent of the child's parent, custodian, or guardian. A child protection worker is not precluded from recording evidence of abuse obtained as a result of a child's voluntary removal of an article of clothing without inducement by the child protection worker. However, if prior consent of the child's parent or guardian, or an ex parte court order, is obtained, "observation" may include viewing the child's unclothed body other than the genitalia and pubes.

c. "Physical examination" means direct physical viewing, touching, and medically necessary manipulation of any area of the child's body by a physician licensed under chapter 148.

4. “*Department*” means the state department of human services and includes the local, county, and service area offices of the department.

5. “*Differential response*” means an assessment system in which there are two discrete pathways to respond to accepted reports of child abuse, a child abuse assessment and a family assessment. The child abuse assessment pathway shall require a determination of abuse and a determination of whether criteria for placement on the central abuse registry are met. As used in this subsection and this part:

a. “*Assessment*” means the process by which the department responds to all accepted reports of alleged child abuse. An “*assessment*” addresses child safety, family functioning, culturally competent practice, and identifies the family strengths and needs, and engages the family in services if needed. The department’s assessment process occurs either through a child abuse assessment or a family assessment.

b. “*Child abuse assessment*” means an assessment process by which the department responds to all accepted reports of child abuse which allege child abuse as defined in subsection 2, paragraph “a”, subparagraphs (1) through (3) and subparagraphs (5) through (10), or which allege child abuse as defined in subsection 2, paragraph “a”, subparagraph (4), that also allege imminent danger, death, or injury to a child. A “*child abuse assessment*” results in a disposition and a determination of whether a case meets the definition of child abuse and a determination of whether criteria for placement on the registry are met.

c. “*Family assessment*” means an assessment process by which the department responds to all accepted reports of child abuse which allege child abuse as defined in subsection 2, paragraph “a”, subparagraph (4), but do not allege imminent danger, death, or injury to a child. A “*family assessment*” does not include a determination of whether a case meets the definition of child abuse and does not include a determination of whether criteria for placement on the registry are met.

6. “*Health practitioner*” includes a licensed physician and surgeon, osteopathic physician and surgeon, dentist, optometrist, podiatric physician, or chiropractor; a resident or intern in any of such professions; a licensed dental hygienist, a registered nurse or licensed practical nurse; a physician assistant; and an emergency medical care provider certified under section 147A.6.

7. “*Mental health professional*” means a person who meets the following requirements:

a. Holds at least a master’s degree in a mental health field, including but not limited to psychology, counseling, nursing, or social work; or is licensed to practice medicine pursuant to chapter 148.

b. Holds a license to practice in the appropriate profession.

c. Has at least two years of postdegree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals used in providing appropriate mental health services for those individuals.

8. “*Person responsible for the care of a child*” means:

a. A parent, guardian, or foster parent.

b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.

c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.

d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

9. “*Registry*” means the central registry for child abuse information established in section 235A.14.

[C66, 71, 73, 75, 77, §235A.2; C79, 81, §232.68]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1207, §1, 2; 85 Acts, ch 173, §2; 86 Acts, ch 1177, §1; 87 Acts, ch 153, §1, 2; 89 Acts, ch 24, §1; 89 Acts, ch 89, §16; 89 Acts, ch 230, §3, 4; 93 Acts, ch 76, §1; 93 Acts, ch 93, §2; 94 Acts, ch 1130, §1, 2; 95 Acts, ch 41, §24; 95 Acts, ch 108, §17; 95 Acts, ch 182, §7; 96 Acts, ch 1092, §2; 97 Acts, ch 35, §4, 5, 25; 97 Acts, ch 176, §1; 2001 Acts, ch 46, §2; 2001 Acts, ch 131, §1; 2003 Acts, ch 44, §49; 2004 Acts, ch 1116, §6; 2005 Acts, ch

158, §20; 2008 Acts, ch 1088, §113 – 115; 2009 Acts, ch 119, §64; 2010 Acts, ch 1151, §2; 2011 Acts, ch 28, §1, 2; 2013 Acts, ch 115, §1, 19

Referred to in §20.31, 135.119, 135L.3, 232.2, 232.69, 232.70, 232.71B, 232.71D, 232.76, 235A.18, 235B.3, 280.17, 915.35, 915.84  
 Subsection 5 takes effect January 1, 2014; transition to full implementation may begin prior to that date; 2013 Acts, ch 115, §19  
 NEW subsection 5 and former subsections 5 – 8 renumbered as 6 – 9

**232.69 Mandatory and permissive reporters — training required.**

1. The classes of persons enumerated in this subsection shall make a report within twenty-four hours and as provided in section 232.70, of cases of child abuse. In addition, the classes of persons enumerated in this subsection shall make a report of abuse of a child who is under twelve years of age and may make a report of abuse of a child who is twelve years of age or older, which would be defined as child abuse under section 232.68, subsection 2, paragraph “a”, subparagraph (3) or (5), except that the abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child.

a. Every health practitioner who in the scope of professional practice, examines, attends, or treats a child and who reasonably believes the child has been abused. Notwithstanding section 139A.30, this provision applies to a health practitioner who receives information confirming that a child is infected with a sexually transmitted disease.

b. Any of the following persons who, in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse:

- (1) A social worker.
- (2) An employee or operator of a public or private health care facility as defined in section 135C.1.
- (3) A certified psychologist.
- (4) A licensed school employee, certified para-educator, holder of a coaching authorization issued under section 272.31, or an instructor employed by a community college.
- (5) An employee or operator of a licensed child care center, registered child development home, head start program, family development and self-sufficiency grant program under section 216A.107, or healthy opportunities for parents to experience success – healthy families Iowa program under section 135.106.
- (6) An employee or operator of a substance abuse program or facility licensed under chapter 125.
- (7) An employee of a department of human services institution listed in section 218.1.
- (8) An employee or operator of a juvenile detention or juvenile shelter care facility approved under section 232.142.
- (9) An employee or operator of a foster care facility licensed or approved under chapter 237.
- (10) An employee or operator of a mental health center.
- (11) A peace officer.
- (12) A counselor or mental health professional.
- (13) An employee or operator of a provider of services to children funded under a federally approved medical assistance home and community-based services waiver.

2. Any other person who believes that a child has been abused may make a report as provided in section 232.70.

3. a. For the purposes of this subsection, “licensing board” means a board designated in section 147.13, the board of educational examiners created in section 272.2, or a licensing board as defined in section 272C.1.

b. A person required to make a report under subsection 1, other than a physician whose professional practice does not regularly involve providing primary health care to children, shall complete two hours of training relating to the identification and reporting of child abuse within six months of initial employment or self-employment involving the examination, attending, counseling, or treatment of children on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person’s employer or, if self-employed, from

the department. The person shall complete at least two hours of additional child abuse identification and reporting training every five years.

c. If the person is an employee of a hospital or similar institution, or of a public or private institution, agency, or facility, the employer shall be responsible for providing the child abuse identification and reporting training. If the person is self-employed, employed in a licensed or certified profession, or employed by a facility or program that is subject to licensure, regulation, or approval by a state agency, the person shall obtain the child abuse identification and reporting training as provided in paragraph “d”.

d. The person may complete the initial or additional training requirements as part of any of the following that are applicable to the person:

(1) A continuing education program required under chapter 272C and approved by the appropriate licensing board.

(2) A training program using a curriculum approved by the director of public health pursuant to section 135.11.

(3) A training program using such an approved curriculum offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, or a similar public agency.

e. A licensing board with authority over the license of a person required to make a report under subsection 1 shall require as a condition of licensure that the person is in compliance with the requirements for abuse training under this subsection. The licensing board shall require the person upon licensure renewal to accurately document for the licensing board the person’s completion of the training requirements. However, the licensing board may adopt rules providing for waiver or suspension of the compliance requirements, if the waiver or suspension is in the public interest, applicable to a person who is engaged in active duty in the military service of this state or of the United States, to a person for whom compliance with the training requirements would impose a significant hardship, or to a person who is practicing a licensed profession outside this state or is otherwise subject to circumstances that would preclude the person from encountering child abuse in this state.

f. For persons required to make a report under subsection 1 who are not engaged in a licensed profession that is subject to the authority of a licensing board but are employed by a facility or program subject to licensure, registration, or approval by a state agency, the agency shall require as a condition of renewal of the facility’s or program’s licensure, registration, or approval, that such persons employed by the facility or program are in compliance with the training requirements of this subsection.

g. For peace officers, the elected or appointed official designated as the head of the agency employing the peace officer shall ensure compliance with the training requirements of this subsection.

h. For persons required to make a report under subsection 1 who are employees of state departments and political subdivisions of the state, the department director or the chief administrator of the political subdivision shall ensure the persons’ compliance with the training requirements of this subsection.

[C66, 71, 73, 75, 77, §235A.3; C79, 81, §232.69]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §4, 6; 85 Acts, ch 173, §3 – 5; 87 Acts, ch 153, §3; 88 Acts, ch 1238, §1; 89 Acts, ch 89, §17; 89 Acts, ch 230, §5; 89 Acts, ch 265, §40; 94 Acts, ch 1130, §3; 97 Acts, ch 85, §1; 99 Acts, ch 192, §27, 33; 2000 Acts, ch 1066, §42; 2001 Acts, ch 122, §2, 3; 2002 Acts, ch 1047, §2, 20; 2002 Acts, ch 1142, §1, 31; 2005 Acts, ch 121, §2; 2007 Acts, ch 10, §164, 165; 2008 Acts, ch 1072, §3; 2013 Acts, ch 129, §54

Referred to in §135H.13, 232.68, 232.70, 232.75, 232.77, 235B.16, 237.9, 237A.5, 907.3, 915.35

Subsection 3, paragraph d, subparagraph (2) amended

### **232.70 Reporting procedure.**

1. Each report made by a mandatory reporter, as defined in section 232.69, subsection 1, shall be made both orally and in writing. Each report made by a permissive reporter, as defined in section 232.69, subsection 2, may be oral, written, or both.

2. The employer or supervisor of a person who is a mandatory or permissive reporter shall

not apply a policy, work rule, or other requirement that interferes with the person making a report of child abuse.

3. The oral report shall be made by telephone or otherwise to the department of human services. If the person making the report has reason to believe that immediate protection for the child is advisable, that person shall also make an oral report to an appropriate law enforcement agency.

4. The written report shall be made to the department of human services within forty-eight hours after such oral report.

5. Upon receipt of a report, the department shall do all of the following:

a. Immediately make a determination as to whether the report constitutes an allegation of child abuse as defined in section 232.68.

b. Notify the appropriate county attorney of the receipt of the report.

6. The oral and written reports shall contain the following information, or as much thereof as the person making the report is able to furnish:

a. The names and home address of the child and the child's parents or other persons believed to be responsible for the child's care;

b. The child's present whereabouts if not the same as the parent's or other person's home address;

c. The child's age;

d. The nature and extent of the child's injuries, including any evidence of previous injuries;

e. The name, age and condition of other children in the same home;

f. Any other information which the person making the report believes might be helpful in establishing the cause of the injury to the child, the identity of the person or persons responsible for the injury, or in providing assistance to the child; and

g. The name and address of the person making the report.

7. A report made by a permissive reporter, as defined in section 232.69, subsection 2, shall be regarded as a report pursuant to this chapter whether or not the report contains all of the information required by this section and may be made to the department of human services, county attorney, or law enforcement agency. If the report is made to any agency other than the department of human services, such agency shall promptly refer the report to the department of human services.

8. If a report would be determined to constitute an allegation of child abuse as defined under section 232.68, subsection 2, paragraph "a", subparagraph (3) or (5), except that the suspected abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child, the department shall refer the report to the appropriate law enforcement agency having jurisdiction to investigate the allegation. The department shall refer the report orally as soon as practicable and in writing within seventy-two hours of receiving the report.

9. Within twenty-four hours of receiving a report from a mandatory or permissive reporter, the department shall inform the reporter, orally or by other appropriate means, whether or not the department has commenced an assessment of the allegation in the report.

[C66, 71, 73, 75, 77, §235A.4; C79, 81, §232.70]

83 Acts, ch 96, §157, 159; 87 Acts, ch 153, §4; 97 Acts, ch 176, §2, 17; 2000 Acts, ch 1137, §4, 14; 2001 Acts, ch 122, §4; 2013 Acts, ch 115, §2, 19

Referred to in §232.68, 232.69, 232.75

2013 amendment to subsection 5 takes effect January 1, 2014; transition to full implementation may begin prior to that date; 2013 Acts, ch 115, §19

Subsection 5 amended

**232.71 and 232.71A** Repealed by 97 Acts, ch 35, § 24, 25.

**232.71B Duties of the department upon receipt of report.**

1. *Commencement of assessment — differential response — purpose.*

a. If the department determines a report constitutes a child abuse allegation, the department shall promptly commence either a child abuse assessment within twenty-four

hours of receiving the report or a family assessment within seventy-two hours of receiving the report.

(1) Upon acceptance of a report of child abuse, the department shall commence a child abuse assessment when the report alleges child abuse as defined in section 232.68, subsection 2, paragraph “a”, subparagraphs (1) through (3) and subparagraphs (5) through (10), or which alleges child abuse as defined in section 232.68, subsection 2, paragraph “a”, subparagraph (4), that also alleges imminent danger, death, or injury to a child.

(2) Upon acceptance of a report of child abuse, the department shall commence a family assessment when the report alleges child abuse as defined in section 232.68, subsection 2, paragraph “a”, subparagraph (4), but does not allege imminent danger, death, or injury to a child.

b. The primary purpose of either the child abuse assessment or the family assessment shall be the protection of the child named in the report. The secondary purpose of either type of assessment shall be to engage the child’s family in services to enhance family strengths and to address needs.

2. *Notification of parents.* The department, within five working days of commencing the assessment, shall provide written notification of the assessment to the child’s parents. If a parent is alleged to have committed the child abuse, the notice shall inform the parents regarding the complaint or allegation made regarding the parent. The parents shall be informed in a manner that protects the confidentiality rights of an individual who reported the child abuse or provided information as part of the assessment process. However, if the department shows the court to the court’s satisfaction that notification is likely to endanger the child or other persons, the court shall orally direct the department to withhold notification. Within one working day of issuing an oral directive, the court shall issue a written order restraining the notification. The department shall not reveal in the written notification to the parents or otherwise the identity of the reporter of child abuse to a subject of a child abuse report listed in section 235A.15, subsection 2, paragraph “a”.

3. *Involvement of law enforcement.* The department shall apply protocols, developed with the local child protection assistance team established pursuant to section 915.35, to prioritize the actions taken in response to a child abuse assessment and shall work jointly with child protection assistance teams and law enforcement agencies in performing assessment and investigative processes for child abuse assessments in which a criminal act harming a child is alleged. The county attorney and appropriate law enforcement agencies shall also take any other lawful action which may be necessary or advisable for the protection of the child. If a report is determined not to constitute a child abuse allegation or if the child abuse report is accepted but assessed under the family assessment, but a criminal act harming a child is alleged, the department shall immediately refer the matter to the appropriate law enforcement agency.

4. *Assessment process.*

a. A child abuse assessment or family assessment shall include all of the following:

(1) A safety assessment and risk assessment. If at any time during a family assessment, a child is determined unsafe or in imminent danger, it appears that the immediate safety or well-being of a child is endangered, it appears that the family may flee or the child may disappear, or the facts otherwise warrant, the department shall immediately commence a child abuse assessment.

(2) An evaluation of the home environment. If concerns regarding protection of children are identified by the child protection worker, the child protection worker shall evaluate the child named in the report and any other children in the same home as the parents or other persons responsible for their care.

b. In addition to the requirements of paragraph “a”, a child abuse assessment shall include the following:

(1) Identification of the nature, extent, and cause of the injuries, if any, to the child named in the report.

(2) Identification of the person or persons responsible for the alleged child abuse.

(3) A description of the name, age, and condition of other children in the same home as the child named in the report.

(4) An interview of the person alleged to have committed the child abuse, if the person's identity and location are known. The offer of an interview shall be made to the person prior to any consideration or determination being made that the person committed the alleged abuse. The person shall be informed of the complaint or allegation made regarding the person. The person shall be informed in a manner that protects the confidentiality rights of the individual who reported the child abuse or provided information as part of the assessment process. The purpose of the interview shall be to provide the person with the opportunity to explain or rebut the allegations of the child abuse report or other allegations made during the assessment. The court may waive the requirement to offer the interview only for good cause. The person offered an interview, or the person's attorney on the person's behalf, may decline the offer of an interview of the person.

5. *Child abuse determination.* Unless otherwise prohibited under section 234.40 or 280.21, the use of corporal punishment by the person responsible for the care of a child which does not result in a physical injury to the child shall not be considered child abuse.

6. *Home visit.* The assessment may, with the consent of the parent or guardian, include a visit to the home of the child named in the report and an interview or observation of the child may be conducted. If permission to enter the home to interview or observe the child is refused, the juvenile court or district court upon a showing of probable cause may authorize the person making the assessment to enter the home and interview or observe the child.

7. *Facility or school visit.* The assessment may include a visit to a facility providing care to the child named in the report or to any public or private school subject to the authority of the department of education where the child named in the report is located. The administrator of a facility, or a public or private school shall cooperate with the child protection worker by providing confidential access to the child named in the report for the purpose of interviewing the child, and shall allow the child protection worker confidential access to other children for the purpose of conducting interviews in order to obtain relevant information. The child protection worker may observe a child named in a report in accordance with the provisions of section 232.68, subsection 3, paragraph "b". A witness shall be present during an observation of a child. Any child aged ten years of age or older can terminate contact with the child protection worker by stating or indicating the child's wish to discontinue the contact. The immunity granted by section 232.73 applies to acts or omissions in good faith of administrators and their facilities or school districts for cooperating in an assessment and allowing confidential access to a child.

8. *Information requests.*

a. The department may request information from any person believed to have knowledge of a child abuse case. The county attorney, any law enforcement or social services agency in the state, and any mandatory reporter, whether or not the reporter made the specific child abuse report, shall cooperate and assist in the assessment upon the request of the department.

b. In performing an assessment, the department may request criminal history data from the department of public safety on any person believed to be responsible for an injury to a child which, if confirmed, would constitute child abuse. The department shall establish procedures for determining when a criminal history records check is necessary.

9. *Protective disclosure.* If the department determines that disclosure is necessary for the protection of a child, the department may disclose to a subject of a child abuse report referred to in section 235A.15, subsection 2, paragraph "a", that an individual is listed in the child or dependent adult abuse registry or is required to register with the sex offender registry in accordance with chapter 692A.

10. *Physical examination.* If the department refers a child to a physician for a physical examination, the department shall contact the physician regarding the examination within twenty-four hours of making the referral. If the physician who performs the examination upon referral by the department reasonably believes the child has been abused, the physician shall report to the department within twenty-four hours of performing the examination.

11. *Multidisciplinary team.* In each county or multicounty area in which more than fifty child abuse reports are made per year, the department shall establish a multidisciplinary team, as defined in section 235A.13, subsection 8. Upon the department's request, a

multidisciplinary team shall assist the department in the assessment, diagnosis, and disposition of a child abuse assessment.

12. *Facility protocol.*

a. The department shall apply a protocol, developed in consultation with facilities providing care to children, for conducting an assessment of reports of abuse of children allegedly caused by employees of facilities providing care to children. As part of such an assessment, the department shall notify the licensing authority for the facility, the governing body of the facility, and the administrator in charge of the facility of any of the following:

- (1) A violation of facility policy noted in the assessment.
- (2) An instance in which facility policy or lack of facility policy may have contributed to the reported incident of alleged child abuse.
- (3) An instance in which general practice in the facility appears to differ from the facility's written policy.

b. The licensing authority, the governing body, and the administrator in charge of the facility shall take any lawful action which may be necessary or advisable to protect children receiving care.

13. *Written assessment report.*

a. The department, upon completion of the child abuse assessment or the family assessment, shall make a written report of the assessment, in accordance with all of the following:

(1) The written assessment report shall incorporate the information required by subsection 4, paragraph "a".

(2) A written child abuse assessment report shall be completed within twenty business days of the receipt of the child abuse report. A written family assessment report shall be completed within ten business days of the receipt of the child abuse report.

(3) The written assessment report shall identify the strengths and needs of the child, and of the child's parent, home, and family.

(4) The written assessment report shall identify services available from the department and informal and formal services and other support available in the community to address the strengths and needs identified in the assessment.

(5) Upon completion of the assessment, the department shall consult with the child's family in offering services to the child and the child's family to address strengths and needs identified in the assessment.

b. In addition to the requirements of paragraph "a", a written child abuse assessment report shall include a description of the child's condition, identification of the injury or risk to which the child was exposed, the circumstances which led to the injury or risk to the child, and the identity of any person alleged to be responsible for the injury or risk to the child.

c. Following a child abuse assessment, the department shall notify each subject of the child abuse report, as identified in section 235A.15, subsection 2, paragraph "a", of the results of the child abuse assessment, of the subject's right, pursuant to section 235A.19, to correct the report data or disposition data which refers to the subject, and of the procedures to correct the data.

d. Following a family assessment, the department shall notify the parent or guardian of each child listed in the report of suspected child abuse of the completion of the family assessment and any service recommendations. For cases assessed pursuant to a family assessment, there shall be no right to a contested case hearing pursuant to chapter 17A.

e. If after completing the assessment the child protection worker determines, with the concurrence of the worker's supervisor and the department's area administrator, that a report of suspected child abuse is a spurious report or that protective concerns are not present, the portions of the written assessment report described under paragraph "a", subparagraphs (3) and (4) shall not be required.

14. *Court-ordered and voluntary services.* The department shall provide or arrange for and monitor services for abused children and their families on a voluntary basis or under a final or intermediate order of the juvenile court. The department may provide or arrange for and monitor services for children and their families on a voluntary basis for cases in which a family assessment is completed.

15. *Safety issue.* If the department determines that a safety issue continues to require a child to reside outside of the child’s home at the conclusion of a family assessment, the department shall transfer the assessment to the child abuse assessment pathway for a disposition.

16. *Conclusion of family assessment.* At the conclusion of a family assessment, the department shall transfer the case, if appropriate, to a contracted provider to review the service plan for the child and family. The contracted provider shall make a referral to the department abuse hotline if a family’s noncompliance with a service plan places a child at risk. If any of the criteria for child abuse as defined in section 232.68, subsection 2, paragraph “a”, are met, the department shall commence a child abuse assessment. If any of the criteria for a child in need of assistance, as defined in section 232.2, subsection 6, are met, the department shall determine whether to request a child in need of assistance petition.

17. *County attorney — juvenile court.* The department shall provide the juvenile court and the county attorney with a copy of the written child abuse assessment report, the written family assessment report for cases in which the department requests a child in need of assistance petition, or other reports for cases in which the department requests a child in need of assistance petition. The juvenile court and the county attorney shall notify the department of any action taken concerning an assessment provided by the department.

18. *False reports.* If a fourth report is received from the same person who made three earlier reports which identified the same child as a victim of child abuse and the same person responsible for the care of the child as the alleged abuser and which were determined by the department to be entirely false or without merit, the department may determine that the report is again false or without merit due to the report’s spurious or frivolous nature and may in its discretion terminate its assessment of the report. If the department receives more than three reports which identify the same child as a victim of child abuse or the same person as the alleged abuser of a child, or which were made by the same person, and the department determined the reports to be entirely false or without merit, the department shall provide information concerning the reports to the county attorney for consideration of criminal charges under section 232.75, subsection 3.

19. *Rules.* The department shall adopt rules regarding the intake process, assessment process, assessment reports, contact with juvenile court or the county attorney, involvement with law enforcement, case record retention, and dissemination of records for both child abuse assessments and family assessments.

20. *Quality assurance.* The department shall engage external stakeholders, including but not limited to representatives of the county attorneys’ offices, service providers, and parent partners to develop a quality assurance component to the differential response system.

97 Acts, ch 35, §6, 25; 97 Acts, ch 176, §24, 43; 2001 Acts, ch 122, §5; 2002 Acts, ch 1074, §1; 2003 Acts, ch 44, §50; 2003 Acts, ch 47, §1; 2003 Acts, ch 107, §1; 2003 Acts, ch 123, §1; 2003 Acts, ch 179, §68; 2004 Acts, ch 1152, §1, 2; 2009 Acts, ch 41, §239; 2013 Acts, ch 115, §3, 4, 19

Referred to in §135.43, 232.68, 232.71C, 232.71D, 232.72, 232.73, 232.73A, 232.77, 232.78, 232.141, 235A.15, 235A.19, 331.653, 915.35  
 2013 amendments take effect January 1, 2014; transition to full implementation may begin prior to that date; 2013 Acts, ch 115, §19  
 Subsections 1, 3, and 4 amended  
 NEW subsection 5 and former subsections 5 – 9 renumbered as 6 – 10  
 Former subsection 10 amended and renumbered as 11  
 Former subsection 11 renumbered as 12  
 Former subsections 12 and 13 amended and renumbered as 13 and 14  
 NEW subsections 15 and 16 and former subsection 14 amended and renumbered as 17  
 Former subsection 15 renumbered as 18  
 NEW subsections 19 and 20

**232.71C Court action following assessment — guardian ad litem.**

1. If, upon completion of an assessment performed under section 232.71B, the department determines that the best interests of the child require juvenile court action, the department shall act appropriately to initiate the action. If at any time during the assessment process the department believes court action is necessary to safeguard a child, the department shall act appropriately to initiate the action. The county attorney shall assist the department.

2. The department shall assist the juvenile court or district court during all stages of court

proceedings involving an alleged child abuse case in accordance with the purposes of this chapter.

3. In every case involving child abuse which results in a child protective judicial proceeding, whether or not the proceeding arises under this chapter, a guardian ad litem shall be appointed by the court to represent the child in the proceedings. Before a guardian ad litem is appointed pursuant to this section, the court shall require the person responsible for the care of the child to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court determines that the person responsible for the care of the child is able to bear the cost of the guardian ad litem, the court shall so order. In cases where the person responsible for the care of the child is unable to bear the cost of the guardian ad litem, the expense shall be paid out of the county treasury.

97 Acts, ch 35, §7, 25; 2013 Acts, ch 113, §1; 2013 Acts, ch 115, §5, 19

Referred to in §232.68, 331.424

2013 amendment to section headnote takes effect January 1, 2014; 2013 Acts, ch 115, §19

See Code editor's note on simple harmonization

Section amended

### **232.71D Founded child abuse — central registry.**

1. The requirements of this section shall apply to child abuse information relating to a report of child abuse and to a child abuse assessment performed in accordance with section 232.71B.

2. Except as otherwise provided in subsections 3 and 4, and section 235A.19, subsection 3, if the department issues a finding that the alleged child abuse meets the definition of child abuse under section 232.68, subsection 2, the names of the child and the alleged perpetrator of the alleged child abuse and any other child abuse information shall be placed in the central registry as a case of founded child abuse.

3. *a.* Unless any of the circumstances listed in paragraph “*b*” are applicable, cases to which any of the following circumstances apply shall not be placed in the central registry:

(1) A finding of physical abuse in which the department has determined the injury resulting from the abuse was minor, isolated, and unlikely to reoccur.

(2) A finding of abuse by failure to provide adequate supervision or by failure to provide adequate clothing, in which the department has determined the risk from the abuse to the child’s health and welfare was minor, isolated, and unlikely to reoccur.

*b.* If any of the following circumstances apply in addition to those listed in paragraph “*a*”, the names of the child and the alleged perpetrator of the alleged child abuse and any other child abuse information shall be placed in the central registry as a case of founded child abuse:

(1) The case was referred for juvenile or criminal court action as a result of the acts or omissions of the alleged perpetrator or a criminal or juvenile court action was initiated by the county attorney or juvenile court within twelve months of the date of the department’s report concerning the case, in which the alleged perpetrator was convicted of a crime involving the child or there was a delinquency or child in need of assistance adjudication.

(2) The department determines the acts or omissions of the alleged perpetrator meet the definition of child abuse and the department has previously determined within the five-year period preceding the issuance of the department’s report that the acts or omissions of the alleged perpetrator in a prior case met the definition of child abuse.

(3) The department determines the alleged perpetrator of the child abuse will continue to pose a danger to the child who is the subject of the report of child abuse or to another child with whom the alleged perpetrator may come into contact.

4. Cases of alleged child abuse to which any of the following circumstances apply shall be placed in the central registry as follows:

*a.* A finding of sexual abuse in which the alleged perpetrator of the abuse is age thirteen or younger. However, the name of the alleged perpetrator shall be withheld from the registry.

*b.* A finding of sexual abuse in which the alleged perpetrator of the abuse is age fourteen through seventeen and the court has found there is good cause for the name of the alleged perpetrator to be removed from the central registry. Only the name of the alleged perpetrator shall be removed from the registry.

5. If report data and disposition data are placed in the central registry in accordance with this section, the department shall make periodic follow-up reports in a manner prescribed by the registry so that the registry is kept up-to-date and fully informed concerning the case.

6. a. The confidentiality of all of the following shall be maintained in accordance with section 217.30:

(1) Assessment data.

(2) Information pertaining to an allegation of child abuse for which there was no assessment performed.

(3) Information pertaining to a report of suspected child abuse for which there was an assessment performed but no determination was made as to whether the definition of child abuse was met.

(4) Information pertaining to an allegation of child abuse which was determined to not meet the definition of child abuse. Individuals identified in section 235A.15, subsection 4, are authorized to have access to such information under section 217.30.

(5) Report data and disposition data pertaining to an allegation of child abuse determined to meet the definition of child abuse which is not subject to placement in the central registry. Individuals identified in section 235A.15, subsection 3, are authorized to have access to such data under section 217.30.

b. The confidentiality of report data and disposition data pertaining to an allegation of child abuse determined to meet the definition of child abuse which is subject to placement in the central registry, shall be maintained as provided in chapter 235A.

97 Acts, ch 176, §5, 25, 26, 43; 99 Acts, ch 192, §33; 2004 Acts, ch 1086, §43; 2005 Acts, ch 121, §3; 2011 Acts, ch 28, §3, 4; 2011 Acts, ch 131, §57, 158; 2012 Acts, ch 1082, §1; 2013 Acts, ch 115, §6 – 8, 19, 20

Referred to in §232.68, 235A.14, 235A.15, 235A.17, 235A.18, 235A.19, 237A.5

2013 amendment to subsection 3, relating to placing names of the child and the alleged perpetrator of alleged child abuse, as well as other information, in the central registry for child abuse information, if the department has determined in a prior case which occurred within the five-year period preceding the issuance of the department's report in the current case that the acts or omissions of an alleged perpetrator in the prior case met the definition of child abuse, applies to cases in which the prior case that met the definition of child abuse occurred on or after January 1, 2014; ch 115, §19, 20

2013 amendments take effect January 1, 2014; transition to full implementation may begin prior to that date; 2013 Acts, ch 115, §19

Subsection 1 amended

Subsection 3, paragraph b, subparagraph (2) amended

Subsection 6, paragraph a, NEW subparagraph (3) and former subparagraphs (3) and (4) renumbered as (4) and (5)

**232.72 Jurisdiction — transfer.**

1. For the purposes of this division, the terms “*department of human services*”, “*department*”, or “*county attorney*” ordinarily refer to the service area or local office of the department of human services or of the county attorney’s office serving the county in which the child’s home is located.

2. However, if the person making a report of child abuse pursuant to this chapter does not know where the child’s home is located, or if the child’s home is not located in the service area where the health practitioner examines, attends, or treats the child, the report may be made to the department or to the local office serving the county where the person making the report resides or the county where the health practitioner examines, attends, or treats the child. These agencies shall promptly proceed as provided in section 232.71B, unless the matter is transferred as provided in this section.

3. If the child’s home is located in a county not served by the office receiving the report, the department shall promptly transfer the matter by transmitting a copy of the report of injury and any other pertinent information to the office and the county attorney serving the other county. They shall promptly proceed as provided in section 232.71B.

[C66, 71, 73, 75, 77, §235A.6; C79, 81, §232.72]

83 Acts, ch 96, §157, 159; 97 Acts, ch 35, §8, 25; 2004 Acts, ch 1116, §7

Referred to in §232.68

**232.73 Medically relevant tests — immunity from liability.**

1. A person participating in good faith in the making of a report, photographs, or X rays, or in the performance of a medically relevant test pursuant to this chapter, or aiding and assisting in an assessment of a child abuse report pursuant to section 232.71B, shall have

immunity from any liability, civil or criminal, which might otherwise be incurred or imposed. The person shall have the same immunity with respect to participation in good faith in any judicial proceeding resulting from the report or relating to the subject matter of the report.

2. As used in this section and in sections 232.73A, 232.77, and 232.78, “*medically relevant test*” means a test that produces reliable results of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives of the illegal drugs, including a drug urine screen test.

[C66, 71, 73, 75, 77, §235A.7; C79, 81, §232.73]

83 Acts, ch 88, §1; 90 Acts, ch 1264, §28; 95 Acts, ch 182, §8; 96 Acts, ch 1092, §3; 97 Acts, ch 35, §9, 25; 2001 Acts, ch 135, §11; 2012 Acts, ch 1040, §1

Referred to in §232.2, 232.68, 232.71B, 232.77, 232.106

### **232.73A Retaliation prohibited — remedy.**

1. a. An employer shall not take retaliatory action against an employee as a reprisal for the employee’s participation in good faith in making a report, photograph, or X ray, or in the performance of a medically relevant test pursuant to this chapter, or aiding and assisting in an assessment of a child abuse report pursuant to section 232.71B. This section does not apply to a disclosure of information that is prohibited by statute.

b. For purposes of this section, “*retaliatory action*” includes but is not limited to an employer’s action to discharge an employee or to take or fail to take action regarding an employee’s appointment or proposed appointment to a position in employment, to take or fail to take action regarding an employee’s promotion or proposed promotion to a position in employment, or to fail to provide an advantage in a position in employment.

2. Subsection 1 may be enforced through a civil action.

a. A person who violates subsection 1 is liable to an aggrieved employee for affirmative relief including reinstatement, with or without back pay, or any other equitable relief the court deems appropriate, including attorney fees and costs.

b. When a person commits, is committing, or proposes to commit an act in violation of subsection 1, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or the county attorney.

2012 Acts, ch 1040, §2; 2013 Acts, ch 90, §59

Referred to in §232.68, 232.73

Subsection 1, paragraph b amended

### **232.74 Evidence not privileged or excluded.**

Sections 622.9 and 622.10 and any other statute or rule of evidence which excludes or makes privileged the testimony of a husband or wife against the other or the testimony of a health practitioner or mental health professional as to confidential communications, do not apply to evidence regarding a child’s injuries or the cause of the injuries in any judicial proceeding, civil or criminal, resulting from a report pursuant to this chapter or relating to the subject matter of such a report.

[C66, 71, 73, 75, 77, §235A.8; C79, 81, §232.74]

83 Acts, ch 37, §1; 87 Acts, ch 153, §6

Referred to in §228.6, 232.68

### **232.75 Sanctions.**

1. Any person, official, agency, or institution required by this chapter to report a suspected case of child abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor.

2. Any person, official, agency, or institution required by section 232.69 to report a suspected case of child abuse who knowingly fails to do so or who knowingly interferes with the making of such a report in violation of section 232.70 is civilly liable for the damages proximately caused by such failure or interference.

3. A person who reports or causes to be reported to the department of human services

false information regarding an alleged act of child abuse, knowing that the information is false or that the act did not occur, commits a simple misdemeanor.

[C75, 77, §235A.9; C79, 81, §232.75]

86 Acts, ch 1238, §11; 87 Acts, ch 13, §2; 2001 Acts, ch 122, §6

Referred to in §232.68, 232.71B

### **232.76 Publicity, educational, and training programs.**

1. The department, within the limits of available funds, shall conduct a continuing publicity and educational program for the personnel of the department, persons required to report, and any other appropriate persons to encourage the fullest possible degree of reporting of suspected cases of child abuse. Educational programs shall include but not be limited to the diagnosis and cause of child abuse, the responsibilities, obligations, duties, and powers of persons and agencies under this chapter and the procedures of the department and the juvenile court with respect to suspected cases of child abuse and disposition of actual cases.

2. a. For the purposes of this subsection, in addition to the definition in section 232.68, a “*child protection worker*” also includes any employee of the department who provides services to or otherwise works directly with children and families for whom child abuse has been alleged.

b. The training of a child protection worker shall include but is not limited to the worker’s legal duties to protect the constitutional and statutory rights of a child and the child’s family members throughout the child or family members’ period of involvement with the department beginning with the child abuse report and ending with the department’s closure of the case. The curriculum used for the training shall specifically include instruction on the fourth amendment to the Constitution of the United States and parents’ legal rights.

[C75, 77, §235A.10; C79, 81, §232.76]

2004 Acts, ch 1152, §3

Referred to in §232.68

### **232.77 Photographs, X rays, and medically relevant tests.**

1. A person who is required to report suspected child abuse may take or cause to be taken, at public expense, photographs, X rays, or other physical examinations or tests of a child which would provide medical indication of allegations arising from an assessment. A health practitioner may, if medically indicated, cause to be performed radiological examination, physical examination, or other medical tests of the child. A person who takes any photographs or X rays or performs physical examinations or other tests pursuant to this section shall notify the department that the photographs or X rays have been taken or the examinations or other tests have been performed. The person who made notification shall retain the photographs or X rays or examination or test findings for a reasonable time following the notification. Whenever the person is required to report under section 232.69, in that person’s capacity as a member of the staff of a medical or other private or public institution, agency or facility, that person shall immediately notify the person in charge of the institution, agency, or facility or that person’s designated delegate of the need for photographs or X rays or examinations or other tests.

2. If a health practitioner discovers in a child physical or behavioral symptoms of the effects of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives thereof, which were not prescribed by a health practitioner, or if the health practitioner has determined through examination of the natural mother of the child that the child was exposed in utero, the health practitioner may perform or cause to be performed a medically relevant test, as defined in section 232.73, on the child. The practitioner shall report any positive results of such a test on the child to the department. The department shall begin an assessment pursuant to section 232.71B upon receipt of such a report. A positive test result obtained prior to the birth of a child shall not be used for the

criminal prosecution of a parent for acts and omissions resulting in intrauterine exposure of the child to an illegal drug.

[C75, 77, §235A.11; C79, 81, §232.77]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1264, §29; 93 Acts, ch 93, §3; 94 Acts, ch 1130, §6; 96 Acts, ch 1092, §4; 97 Acts, ch 35, §10, 25; 2013 Acts, ch 115, §9, 19

Referred to in §232.68, 232.73

2013 amendment to subsection 1 takes effect January 1, 2014; transition to full implementation may begin prior to that date; 2013 Acts, ch 115, §19

Subsection 1 amended

### PART 3

#### TEMPORARY CUSTODY OF A CHILD

##### **232.78 Temporary custody of a child pursuant to ex parte court order.**

1. The juvenile court may enter an ex parte order directing a peace officer or a juvenile court officer to take custody of a child before or after the filing of a petition under this chapter provided all of the following apply:

a. The person responsible for the care of the child is absent, or though present, was asked and refused to consent to the removal of the child and was informed of an intent to apply for an order under this section, or there is reasonable cause to believe that a request for consent would further endanger the child, or there is reasonable cause to believe that a request for consent will cause the parent, guardian, or legal custodian to take flight with the child.

b. It appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health. The circumstances or conditions indicating the presence of such imminent danger shall include but are not limited to any of the following:

(1) The refusal or failure of the person responsible for the care of the child to comply with the request of a peace officer, juvenile court officer, or child protection worker for such person to obtain and provide to the requester the results of a physical or mental examination of the child. The request for a physical examination of the child may specify the performance of a medically relevant test.

(2) The refusal or failure of the person responsible for the care of the child or a person present in the person's home to comply with a request of a peace officer, juvenile court officer, or child protection worker for such a person to submit to and provide to the requester the results of a medically relevant test of the person.

c. There is not enough time to file a petition and hold a hearing under section 232.95.

d. The application for the order includes a statement of the facts to support the findings specified in paragraphs "a", "b", and "c".

2. The person making the application for an order shall assert facts showing there is reasonable cause to believe that the child cannot either be returned to the place where the child was residing or placed with the parent who does not have physical care of the child.

3. Except for good cause shown or unless the child is sooner returned to the place where the child was residing or permitted to return to the child care facility, a petition shall be filed under this chapter within three days of the issuance of the order.

4. The juvenile court may enter an order authorizing a physician or hospital to provide emergency medical or surgical procedures before the filing of a petition under this chapter provided:

a. Such procedures are necessary to safeguard the life and health of the child; and

b. There is not enough time to file a petition under this chapter and hold a hearing as provided in section 232.95.

5. The juvenile court, before or after the filing of a petition under this chapter, may enter an ex parte order authorizing a physician or hospital to conduct an outpatient physical examination or authorizing a physician, a psychologist certified under section 154B.7, or a community mental health center accredited pursuant to chapter 230A to conduct an outpatient mental examination of a child if necessary to identify the nature, extent, and cause of injuries to the child as required by section 232.71B, provided all of the following apply:

a. The parent, guardian, or legal custodian is absent, or though present, was asked and refused to provide written consent to the examination.

b. The juvenile court has entered an ex parte order directing the removal of the child from the child's home or a child care facility under this section.

c. There is not enough time to file a petition and to hold a hearing as provided in section 232.98.

6. Any person who may file a petition under this chapter may apply for, or the court on its own motion may issue, an order for temporary removal under this section. An appropriate person designated by the court shall confer with a person seeking the removal order, shall make every reasonable effort to inform the parent or other person legally responsible for the child's care of the application, and shall make such inquiries as will aid the court in disposing of such application. The person designated by the court shall file with the court a complete written report providing all details of the designee's conference with the person seeking the removal order, the designee's efforts to inform the parents or other person legally responsible for the child's care of the application, any inquiries made by the designee to aid the court in disposing of the application, and all information the designee communicated to the court. The report shall be filed within five days of the date of the removal order. If the court does not designate an appropriate person who performs the required duties, notwithstanding section 234.39 or any other provision of law, the child's parent shall not be responsible for paying the cost of care and services for the duration of the removal order.

7. Any order entered under this section authorizing temporary removal of a child must include both of the following:

a. A determination made by the court that continuation of the child in the child's home would be contrary to the welfare of the child. Such a determination must be made on a case-by-case basis. The grounds for the court's determination must be explicitly documented and stated in the order. However, preserving the safety of the child must be the court's paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determination shall not be a prerequisite to the removal of the child.

b. A statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

[C79, 81, §232.78]

84 Acts, ch 1279, §9; 85 Acts, ch 173, §10, 11; 89 Acts, ch 230, §14; 94 Acts, ch 1172, §23; 97 Acts, ch 35, §11, 25; 98 Acts, ch 1190, §4 – 6; 99 Acts, ch 192, §33; 2000 Acts, ch 1067, §6, 7; 2001 Acts, ch 135, §12, 13

Referred to in §232.44, 232.73, 232.79, 232.95, 232.98, 232.104, 232.196, 233.2

### **232.79 Custody without court order.**

1. A peace officer or juvenile court officer may take a child into custody, a physician treating a child may keep the child in custody, or a juvenile court officer may authorize a peace officer, physician, or medical security personnel to take a child into custody, without a court order as required under section 232.78 and without the consent of a parent, guardian, or custodian provided that both of the following apply:

a. The child is in a circumstance or condition that presents an imminent danger to the child's life or health.

b. There is not enough time to apply for an order under section 232.78.

2. If a person authorized by this section removes or retains custody of a child, the person shall:

a. Bring the child immediately to a place designated by the rules of the court for this purpose, unless the person is a physician treating the child and the child is or will presently be admitted to a hospital.

b. Make every reasonable effort to inform the parent, guardian, or custodian of the whereabouts of the child.

c. In accordance with court-established procedures, immediately orally inform the court of the emergency removal and the circumstances surrounding the removal.

d. Within twenty-four hours of orally informing the court of the emergency removal in

accordance with paragraph “c”, inform the court in writing of the emergency removal and the circumstances surrounding the removal.

3. Any person, agency, or institution acting in good faith in the removal or keeping of a child pursuant to this section, and any employer of or person under the direction of such a person, agency, or institution, shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed as the result of such removal or keeping.

4. a. When the court is informed that there has been an emergency removal or keeping of a child without a court order, the court shall direct the department of human services or the juvenile probation department to make every reasonable effort to communicate immediately with the child’s parent or parents or other person legally responsible for the child’s care. Upon locating the child’s parent or parents or other person legally responsible for the child’s care, the department of human services or the juvenile probation department shall, in accordance with court-established procedures, immediately orally inform the court. After orally informing the court, the department of human services or the juvenile probation department shall provide to the court written documentation of the oral information.

b. The court shall authorize the department of human services or the juvenile probation department to cause a child thus removed or kept to be returned if it concludes there is not an imminent risk to the child’s life and health in so doing. If the department of human services or the juvenile probation department receives information which could affect the court’s decision regarding the child’s return, the department of human services or the juvenile probation department, in accordance with court established procedures, shall immediately orally provide the information to the court. After orally providing the information to the court, the department of human services or the juvenile probation department shall provide to the court written documentation of the oral information. If the child is not returned, the department of human services or the juvenile probation department shall forthwith cause a petition to be filed within three days after the removal.

c. If deemed appropriate by the court, upon being informed that there has been an emergency removal or keeping of a child without a court order, the court may enter an order in accordance with section 232.78.

5. When there has been an emergency removal or keeping of a child without a court order, a physical examination of the child by a licensed medical practitioner shall be performed within twenty-four hours of such removal, unless the child is returned to the child’s home within twenty-four hours of the removal.

[C79, 81, §232.79]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §10; 89 Acts, ch 230, §15; 90 Acts, ch 1215, §1; 94 Acts, ch 1172, §24; 2001 Acts, ch 135, §14

Referred to in §232.44, 232.79A, 232.95, 232.104, 232B.6

### **232.79A Children without adult supervision.**

If a peace officer determines that a child does not have adult supervision because the child’s parent, guardian, or other person responsible for the care of the child has been arrested and detained or has been unexpectedly incapacitated, and that no adult who is legally responsible for the care of the child can be located within a reasonable period of time, the peace officer shall attempt to place the child with an adult relative of the child, an adult person who cares for the child, or another adult person who is known to the child. The person with whom the child is placed is authorized to give consent for emergency medical treatment of the child and shall not be held liable for any action arising from giving the consent. Upon the request of the peace officer, the department shall assist in making the placement. The placement shall not exceed a period of twenty-four hours and shall be terminated when a person who is legally responsible for the care of the child is located and takes custody of the child. If a person who is legally responsible for the care of the child cannot be located within the twenty-four hour period or a placement in accordance with this section is unavailable, the provisions of section 232.79 shall apply. If the person with whom the child is placed charges a fee for the care of the child, the fee shall be paid from funds provided in the appropriation to the department for protective child care.

90 Acts, ch 1215, §2

**232.80 Homemaker services.**

A homemaker-home health aide may be assigned to give care to a child in the child's place of residence. Whenever possible, the services shall be provided in preference to removal of the child from the home. The care may be provided under this Act\* on an emergency basis for up to twenty-four hours without court order, and may be ordered by the court for a period of time extending until dismissal or disposition of the case.

[C79, 81, §232.80; 82 Acts, ch 1260, §118]

\*See 78 Acts, ch 1088

**232.81 Complaint.**

1. Any person having knowledge of the circumstances may file a complaint with the person or agency designated by the court to perform intake duties alleging that a child is a child in need of assistance.

2. Upon receipt of a complaint, the court may request the department of human services, juvenile probation office, or other authorized agency or individual to conduct a preliminary investigation of the complaint to determine if further action should be taken.

3. A petition alleging the child to be a child in need of assistance may be filed pursuant to section 232.87 provided the allegations of the complaint, if proven, are sufficient to establish the court's jurisdiction and the filing is in the best interests of the child.

[SS15, §254-a15; C24, 27, 31, 35, 39, §3621; C46, 50, 54, 58, 62, §232.5; C71, 73, 75, 77, §232.3; C79, 81, §232.81]

83 Acts, ch 96, §157, 159; 2011 Acts, ch 98, §6

Referred to in §232.21, 232.83

**232.82 Removal of sexual offenders and physical abusers from the residence pursuant to court order.**

1. Notwithstanding section 561.15, if it is alleged by a person authorized to file a petition under section 232.87, subsection 2, or by the court on its own motion, that a parent, guardian, custodian, or an adult member of the household in which a child resides has committed a sexual offense with or against the child, pursuant to chapter 709 or section 726.2, or a physical abuse as defined by section 232.2, subsection 42, the juvenile court may enter an ex parte order requiring the alleged sexual offender or physical abuser to vacate the child's residence upon a showing that probable cause exists to believe that the sexual offense or physical abuse has occurred and that substantial evidence exists to believe that the presence of the alleged sexual offender or physical abuser in the child's residence presents a danger to the child's life or physical, emotional, or mental health.

2. If an order is entered under subsection 1 and a petition has not yet been filed under this chapter, the petition shall be filed under section 232.87 by the county attorney, the department of human services, or a juvenile court officer within three days of the entering of the order.

3. The juvenile court may order on its own motion, or shall order upon the request of the alleged sexual offender or physical abuser, a hearing to determine whether the order to vacate the residence should be upheld, modified, or vacated. The juvenile court may in any later child in need of assistance proceeding uphold, modify, or vacate the order to vacate the residence.

[82 Acts, ch 1209, §14]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10055, 10201; 86 Acts, ch 1186, §6; 90 Acts, ch 1251, §27

**232.83 Child sexual abuse involving a person not responsible for the care of the child.**

1. A complaint related to circumstances involving a child who is alleged to be a victim of an offense defined in chapter 709, 726, or 728 and an alleged offender who is not a person responsible for the care of the child shall be handled pursuant to section 232.81.

2. Anyone authorized to conduct a preliminary investigation in response to a complaint may apply for, or the court on its own motion may enter an ex parte order authorizing a physician or hospital to conduct an outpatient physical examination or authorizing a physician, a psychologist certified under section 154B.7, or a community mental health center accredited pursuant to chapter 230A to conduct an outpatient mental examination

of a child if necessary to identify the nature, extent, and causes of any injuries, emotional damage, or other such needs of a child as specified in section 232.2, subsection 6, paragraph “c”, “e”, or “f”, provided that all of the following apply:

- a. The parent, guardian, or legal custodian is absent, or though present, was asked and refused to authorize the examination.
- b. There is not enough time to file a petition and hold a hearing under this chapter.
- c. The parent, guardian, or legal custodian has not provided care and treatment related to their child’s alleged victimization.

88 Acts, ch 1252, §2

Referred to in §709.13

**232.84 Transfer of custody — notice to adult relatives.**

1. For the purposes of this section, unless the context otherwise requires, “agency” means the department, juvenile court services, or a private agency.

2. Within thirty days after the entry of an order under this chapter transferring custody of a child to an agency for placement, the agency shall exercise due diligence in identifying and providing notice to the child’s grandparents, aunts, uncles, adult siblings, parents of the child’s siblings, and adult relatives suggested by the child’s parents, subject to exceptions due to the presence of family or domestic violence.

3. The notice content shall include but is not limited to all of the following:

a. A statement that the child has been or is being removed from the custody of the child’s parent or parents.

b. An explanation of the options the relative has under federal, state, and other law to participate in the care and placement of the child on a temporary or permanent basis. The options addressed shall include but are not limited to assistance and support options, options for participating in legal proceedings, and any options that may be lost by failure to respond to the notice.

c. A description of the requirements for the relative to serve as a foster family home provider or other type of care provider for the child and the additional services, training, and other support available for children receiving such care.

d. Information concerning the option to apply for kinship guardianship assistance payments.

2009 Acts, ch 120, §3; 2013 Acts, ch 50, §2

Subsection 2 amended

**232.85 and 232.86** Reserved.

PART 4

JUDICIAL PROCEEDINGS

**232.87 Filing of a petition — contents of petition.**

1. A formal judicial proceeding to determine whether a child is a child in need of assistance under this chapter shall be initiated by the filing of a petition alleging a child to be a child in need of assistance.

2. A petition may be filed by the department of human services, juvenile court officer, or county attorney.

3. The department, juvenile court officer, county attorney or judge may authorize the filing of a petition with the clerk of the court by any competent person having knowledge of the circumstances without the payment of a filing fee.

4. The petition shall be submitted in the form specified in section 232.36.

5. The petition shall contain the information specified in section 232.36 and a clear and

concise summary of the facts which bring the child within the jurisdiction of the court under this division.

[C79, 81, §232.87]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10055, 10201

Referred to in §232.81, 232.82, 232.95, 232.98, 233.2

#### **232.88 Summons, notice, subpoenas, and service.**

After a petition has been filed, the court shall issue and serve summons, subpoenas, and other process in the same manner as for adjudicatory hearings in cases of juvenile delinquency as provided in section 232.37. Reasonable notice shall be provided to the persons required to be provided notice under section 232.37, except that notice shall be waived regarding a person who was notified of the adjudicatory hearing and who failed to appear. In addition, reasonable notice for any hearing under this division shall be provided to the agency, facility, institution, or person, including a foster parent, relative, or other individual providing preadoptive care, with whom a child has been placed.

[SS15, §254-a16; C24, 27, 31, 35, 39, §3623; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §232.4; C79, 81, §232.88]

89 Acts, ch 229, §5; 95 Acts, ch 182, §3; 96 Acts, ch 1034, §10; 97 Acts, ch 164, §2; 2001 Acts, ch 135, §28

Referred to in §232.91, 331.653

#### **232.89 Right to and appointment of counsel.**

1. Upon the filing of a petition the parent, guardian, or custodian identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If that person desires but is financially unable to employ counsel, the court shall appoint counsel.

2. Upon the filing of a petition, the court shall appoint counsel and a guardian ad litem for the child identified in the petition as a party to the proceedings. If a guardian ad litem has previously been appointed for the child in a proceeding under division II of this chapter or a proceeding in which the court has waived jurisdiction under section 232.45, the court shall appoint the same guardian ad litem upon the filing of the petition under this part. Counsel shall be appointed as follows:

a. If the child is represented by counsel and the court determines there is a conflict of interest between the child and the child's parent, guardian or custodian and that the retained counsel could not properly represent the child as a result of the conflict, the court shall appoint other counsel to represent the child, who shall be compensated pursuant to the provisions of subsection 3.

b. If the child is not represented by counsel, the court shall either order the parent, guardian or custodian to retain counsel for the child or shall appoint counsel for the child, who shall be compensated pursuant to the provisions of subsection 3.

3. The court shall determine, after giving the parent, guardian, or custodian an opportunity to be heard, whether the person has the ability to pay in whole or in part for counsel appointed for the child. If the court determines that the person possesses sufficient financial ability, the court shall then consult with the department of human services, the juvenile probation office, or other authorized agency or individual regarding the likelihood of impairment of the relationship between the child and the child's parent, guardian or custodian as a result of ordering the parent, guardian, or custodian to pay for the child's counsel. If impairment is deemed unlikely, the court shall order that person to pay an amount the court finds appropriate in the manner and to whom the court directs. If the person fails to comply with the order without good reason, the court shall enter judgment against the person. If impairment is deemed likely or if the court determines that the parent, guardian, or custodian cannot pay any part of the expenses of counsel appointed to represent the child, counsel shall be reimbursed pursuant to section 232.141, subsection 2, paragraph "b".

4. The same person may serve both as the child's counsel and as guardian ad litem. However, the court may appoint a separate guardian ad litem, if the same person cannot properly represent the legal interests of the child as legal counsel and also represent the

best interest of the child as guardian ad litem, or a separate guardian ad litem is required to fulfill the requirements of subsection 2.

5. The court may appoint a court appointed special advocate to act as guardian ad litem. The court appointed special advocate shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child. The court appointed special advocate shall not be allowed to separately introduce evidence or to directly examine or cross-examine witnesses. The court appointed special advocate shall submit a written report to the court and to each of the parties to the proceedings containing results of the court appointed special advocate's initial investigation of the child's case, including but not limited to recommendations regarding placement of the child and other recommendations based on the best interest of the child. The court appointed special advocate shall submit subsequent reports to the court and parties, as needed, detailing the continuing situation of the child's case as long as the child remains under the jurisdiction of the court. In addition, the court appointed special advocate shall file other reports to the court as required by the court.

[C24, 27, 31, 35, 39, §3631; C46, 50, 54, 58, 62, §232.15; C66, 71, 73, 75, 77, §232.28; C79, 81, §232.89]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1186, §7; 87 Acts, ch 121, §4; 89 Acts, ch 283, §24; 90 Acts, ch 1271, §1506, §1507; 96 Acts, ch 1193, §5; 97 Acts, ch 23, §22; 97 Acts, ch 99, §3, 11; 2002 Acts, ch 1162, §17

Referred to in §232.108, 232.126

### **232.90 Duties of county attorney.**

1. As used in this section, "state" means the general interest held by the people in the health, safety, welfare, and protection of all children living in this state.

2. The county attorney shall represent the state in proceedings arising from a petition filed under this division and shall present evidence in support of the petition. The county attorney shall be present at proceedings initiated by petition under this division filed by an intake officer or the county attorney, or if a party to the proceedings contests the proceedings, or if the court determines there is a conflict of interest between the child and the child's parent, guardian, or custodian or if there are contested issues before the court.

3. If there is disagreement between the department and the county attorney regarding the appropriate action to be taken, the department may request that the state be represented by the attorney general in place of the county attorney. If the state is represented by the attorney general, the county attorney may continue to appear in the proceeding and may present the position of the county attorney regarding the appropriate action to be taken in the case.

4. The county attorney shall comply with the requirements of chapter 232B and the federal Indian Child Welfare Act, Pub. L. No. 95-608, when either chapter 232B or the federal Indian Child Welfare Act is determined to be applicable in any proceeding under this division.

[C66, 71, 73, 75, 77, §232.29; C79, 81, §232.90]

87 Acts, ch 151, §1; 89 Acts, ch 230, §16; 2013 Acts, ch 113, §2

Referred to in §232.180

Section amended

### **232.91 Presence of child, parents, guardian ad litem, and others at hearings — additional parties — department recordkeeping.**

1. Any hearings or proceedings under this division subsequent to the filing of a petition shall not take place without the presence of the child's parent, guardian, custodian, or guardian ad litem in accordance with and subject to section 232.38. A parent without custody may petition the court to be made a party to proceedings under this division.

2. An agency, facility, institution, or person, including a foster parent or an individual providing preadoptive care, may petition the court to be made a party to proceedings under this division.

3. Any person who is entitled under section 232.88 to receive notice of a hearing concerning a child shall be given the opportunity to be heard in any other review or hearing involving the child. A foster parent, relative, or other individual with whom a child has been placed for preadoptive care shall have the right to be heard in any proceeding involving the

child. If a child is of an age appropriate to attend the hearing but the child does not attend, the court shall determine if the child was informed of the child's right to attend the hearing. A presumption exists that it is in the best interests of a child fourteen years of age or older to attend all hearings.

4. If a child is of an age appropriate to attend a hearing but the child does not attend, the court shall determine if the child was informed of the child's right to attend the hearing. A presumption exists that it is in the best interests of a child fourteen years of age or older to attend all hearings and all staff or family meetings involving placement options or services provided to the child. The department shall allow the child to attend all such hearings and meetings unless the attorney for the child finds the child's attendance is not in the best interests of the child. If the child is excluded from attending a hearing or meeting, the department shall maintain a written record detailing the reasons for excluding the child. Notwithstanding sections 232.147 through 232.151, a copy of the written record shall be made available to the child upon the request of the child after reaching the age of majority.

5. For purposes of this section, "attend" includes the appearance of the child at a hearing by video or telephonic means.

[SS15, §254-a16; C24, 27, 31, 35, 39, §3631; C46, 50, 54, 58, 62, §232.15; C66, 71, 73, 75, 77, §232.11; C79, 81, §232.91]

84 Acts, ch 1279, §11; 95 Acts, ch 182, §4; 97 Acts, ch 164, §3; 98 Acts, ch 1190, §7; 2007 Acts, ch 172, §13; 2008 Acts, ch 1114, §1; 2008 Acts, ch 1187, §133; 2010 Acts, ch 1065, §1, 2

Referred to in §600A.7

#### **232.92 Exclusion of public from hearings.**

Hearings held under this division are open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

[C79, 81, §232.92]

89 Acts, ch 230, §17

Referred to in §600A.7

#### **232.93 Other issues adjudicated.**

When it appears during the course of any hearing or proceeding that some action or remedy other than those indicated by the application or pleading appears appropriate, the court may, provided all necessary parties consent, proceed to hear and determine the other issues as though originally properly sought and pleaded.

[C66, 71, 73, 75, 77, §232.12; C79, 81, §232.93]

Referred to in §600A.7

#### **232.94 Reporter required.**

Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings held pursuant to this division unless waived by the parties. The child shall not be competent to waive the reporting requirement, but waiver may be made for the child by the child's counsel or guardian ad litem. Matters which must be reported under the provisions of this section shall be reported in the same manner as required in section 624.9.

[C66, 71, 73, 75, 77, §232.32; C79, 81, §232.94]

Referred to in §232.94A, 600A.7

#### **232.94A Records — subsequent hearings.**

Juvenile court records, social records, and the material required to be recorded pursuant to section 232.94 shall be maintained and shall be a part of each hearing relating to the child so long as and whenever the child is a child in need of assistance.

84 Acts, ch 1279, §12

Referred to in §600A.7

**232.95 Hearing concerning temporary removal.**

1. At any time after the petition is filed, any person who may file a petition under section 232.87 may apply for, or the court on its own motion may order, a hearing to determine whether the child should be temporarily removed from home. If the child is in the custody of a person other than the child's parent, guardian, or custodian as the result of action taken pursuant to section 232.78 or 232.79, the court shall hold a hearing within ten days of the date of temporary removal to determine whether the temporary removal should be continued.

2. Upon such hearing, the court may:

a. Remove the child from home and place the child in a shelter care facility or in the custody of a suitable person or agency pending a final order of disposition if the court finds that substantial evidence exists to believe that removal is necessary to avoid imminent risk to the child's life or health.

(1) If removal is ordered, the court must, in addition, make a determination that continuation of the child in the child's home would be contrary to the welfare of the child, and that reasonable efforts, as defined in section 232.102, have been made to prevent or eliminate the need for removal of the child from the child's home.

(2) The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the court order. However, preserving the safety of the child must be the court's paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for removal of the child.

(3) The order shall also include a statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

b. Release the child to the child's parent, guardian, or custodian pending a final order of disposition.

c. Authorize a physician or hospital to provide medical or surgical procedures if such procedures are necessary to safeguard the child's life or health.

3. The court shall make and file written findings as to the grounds for granting or denying an application under this section.

4. If the court orders the child removed from the home pursuant to subsection 2, paragraph "a", the court shall hold a hearing to review the removal order within six months unless a dispositional hearing pursuant to section 232.99 has been held.

[C79, 81, §232.95]

84 Acts, ch 1279, §13; 86 Acts, ch 1186, §8; 87 Acts, ch 159, §2; 98 Acts, ch 1190, §8; 2000 Acts, ch 1067, §8; 2001 Acts, ch 135, §15

[Subsection 2, paragraphs b and c, were inadvertently omitted in the 2001 Code Supplement and 2003 Code]

2004 Acts, ch 1101, §28

Referred to in §232.44, 232.78, 232.96, 232.104, 232B.6, 600A.7

**232.96 Adjudicatory hearing.**

1. The court shall hear and adjudicate cases involving a petition alleging a child to be a child in need of assistance.

2. The state shall have the burden of proving the allegations by clear and convincing evidence.

3. Only evidence which is admissible under the rules of evidence applicable to the trial of civil cases shall be admitted, except as otherwise provided by this section.

4. A report made to the department of human services pursuant to chapter 235A shall be admissible in evidence, but such a report shall not alone be sufficient to support a finding that the child is a child in need of assistance unless the attorneys for the child and the parents consent to such a finding.

5. Neither the privilege attaching to confidential communications between a health practitioner or mental health professional and patient nor the prohibition upon admissibility of communications between husband and wife shall be ground for excluding evidence at an adjudicatory hearing.

6. A report, study, record, or other writing or an audiotape or videotape recording made by the department of human services, a juvenile court officer, a peace officer or a hospital relating to a child in a proceeding under this division is admissible notwithstanding any objection to hearsay statements contained in it provided it is relevant and material and provided its probative value substantially outweighs the danger of unfair prejudice to the child's parent, guardian, or custodian. The circumstances of the making of the report, study, record or other writing or an audiotape or videotape recording, including the maker's lack of personal knowledge, may be proved to affect its weight.

7. After the hearing is concluded, the court shall make and file written findings as to the truth of allegations of the petition and as to whether the child is a child in need of assistance.

8. If the court concludes facts sufficient to sustain a petition have not been established by clear and convincing evidence or if the court concludes that its aid is not required in the circumstances, the court shall dismiss the petition.

9. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence and that its aid is required, the court may enter an order adjudicating the child to be a child in need of assistance.

10. If the court enters an order adjudicating the child to be a child in need of assistance, the court, if it has not previously done so, may issue an order authorizing temporary removal of the child from the child's home as set forth in section 232.95, subsection 2, paragraph "a", pending a final order of disposition. The order shall include both of the following:

a. A determination that continuation of the child in the child's home would be contrary to the welfare of the child, and that reasonable efforts, as defined in section 232.102, have been made to prevent or eliminate the need for removal of the child from the child's home. The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the court order. However, preserving the safety of the child is the paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for temporary removal of the child.

b. A statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

[C66, 71, 73, 75, 77, §232.31; C79, 81, §232.96]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10055, 10201; 84 Acts, ch 1207, §4; 87 Acts, ch 153, §7; 98 Acts, ch 1190, §9; 2000 Acts, ch 1067, §9; 2001 Acts, ch 135, §16

Referred to in §232.99, 232.104, 232.116, 600A.7

### **232.97 Social investigation and report.**

1. The court shall not make a disposition of the petition until two working days after a social report has been submitted to the court and counsel for the child and has been considered by the court. The court may waive the two-day requirement upon agreement by all the parties. The court may direct either the juvenile court officer or the department of human services or any other agency licensed by the state to conduct a social investigation and to prepare a social report which may include any evidence provided by an individual providing foster care for the child. A report prepared shall include any founded reports of child abuse.

2. The social investigation may be conducted and the social history may be submitted to the court prior to the adjudication of the child as a child in need of assistance with the consent of the parties.

3. The social report shall not be disclosed except as provided in this section and except as otherwise provided in this chapter. Prior to the hearing at which the disposition is

determined, the court shall permit counsel for the child, counsel for the child's parent, guardian, or custodian, and the guardian ad litem to inspect any social report to be considered by the court. The court may in its discretion order counsel not to disclose parts of the report to the child, or to the parent, guardian, or custodian if disclosure would seriously harm the treatment or rehabilitation of the child or would violate a promise of confidentiality given to a source of information. If the report indicates the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse, unless otherwise ordered by the court, the child's parent, guardian, or foster parent or other person with custody of the child shall be provided with that information.

[C66, 71, 73, 75, 77, §232.14; C79, 81, §232.97]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10055, 10201; 84 Acts, ch 1279, §14; 86 Acts, ch 1186, §9; 2005 Acts, ch 124, §4

### **232.98 Physical and mental examinations.**

1. Except as provided in section 232.78, subsection 5, a physical or mental examination of the child may be ordered only after the filing of a petition pursuant to section 232.87 and after a hearing to determine whether an examination is necessary to determine the child's physical or mental condition. The court may consider chemical dependency as either a physical or mental condition and may consider a chemical dependency evaluation as either a physical or mental examination.

a. The hearing required by this section may be held simultaneously with the adjudicatory hearing.

b. An examination ordered prior to the adjudication shall be conducted on an outpatient basis when possible, but if necessary the court may commit the child to a suitable nonsecure hospital, facility, or institution for the purpose of examination for a period not to exceed fifteen days if all of the following are found to be present:

(1) Probable cause exists to believe that the child is a child in need of assistance pursuant to section 232.2, subsection 6, paragraph "e" or "f".

(2) Commitment is necessary to determine whether there is clear and convincing evidence that the child is a child in need of assistance.

(3) The child's attorney agrees to the commitment.

c. An examination ordered after adjudication shall be conducted on an outpatient basis when possible, but if necessary the court may commit the child to a suitable nonsecure hospital, facility, or institution for the purpose of examination for a period not to exceed thirty days.

d. The child's parent, guardian, or custodian shall be included in counseling sessions offered during the child's stay in a hospital, facility, or institution when feasible, and when in the best interests of the child and the child's parent, guardian, or custodian. If separate counseling sessions are conducted for the child and the child's parent, guardian, or custodian, a joint counseling session shall be offered prior to the release of the child from the hospital, facility, or institution. The court shall require that notice be provided to the child's guardian ad litem of the counseling sessions and of the participants and results of the sessions.

2. Following an adjudication that a child is a child in need of assistance, the court may after a hearing order the physical or mental examination of the parent, guardian or custodian if that person's ability to care for the child is at issue.

[C66, 71, 73, 75, 77, §232.13; C79, 81, §232.98; 82 Acts, ch 1209, §15]

84 Acts, ch 1279, §15; 85 Acts, ch 173, §12; 86 Acts, ch 1186, §10; 2009 Acts, ch 41, §263

Referred to in §232.78

### **232.99 Dispositional hearing — findings.**

1. Following the entry of an order pursuant to section 232.96, the court shall, as soon as practicable, hold a dispositional hearing in order to determine what disposition should be made of the petition.

2. All relevant and material evidence shall be admitted.

3. In the initial dispositional hearing, any hearing held under section 232.103, and any

dispositional review or permanency hearing, the court shall inquire of the parties as to the sufficiency of the services being provided and whether additional services are needed to facilitate the safe return of the child to the child's home. If the court determines such services are needed, the court shall order the services to be provided. The court shall advise the parties that failure to identify a deficiency in services or to request additional services may preclude the party from challenging the sufficiency of the services in a termination of parent-child relationship proceeding.

4. When the dispositional hearing is concluded the court shall make the least restrictive disposition appropriate considering all the circumstances of the case. The dispositions which may be entered under this division are listed in sections 232.100 to 232.102 in order from least to most restrictive.

5. The court shall make and file written findings as to its reason for the disposition.

[C66, 71, 73, 75, 77, §232.31; C79, 81, §232.99]

98 Acts, ch 1190, §10

Referred to in §232.58, 232.95, 232.104

### **232.100 Suspended judgment.**

After the dispositional hearing the court may enter an order suspending judgment and continuing the proceedings subject to terms and conditions imposed to assure the proper care and protection of the child. Such terms and conditions may include the supervision of the child and of the parent, guardian or custodian by the department of human services, juvenile court office or other appropriate agency designated by the court. The maximum duration of any term or condition of a suspended judgment shall be twelve months unless the court finds at a hearing held during the last month of that period that exceptional circumstances require an extension of the term or condition for an additional six months.

[C79, 81, §232.100]

83 Acts, ch 96, §157, 159

Referred to in §232.99, 232.103, 232.117, 232.127

### **232.101 Retention of custody by parent.**

1. After the dispositional hearing, the court may enter an order permitting the child's parent, guardian or custodian at the time of the filing of the petition to retain custody of the child subject to terms and conditions which the court prescribes to assure the proper care and protection of the child. Such terms and conditions may include supervision of the child and the parent, guardian or custodian by the department of human services, juvenile court office or other appropriate agency which the court designates. Such terms and conditions may also include the provision or acceptance by the parent, guardian or custodian of special treatment or care which the child needs for the child's physical or mental health. If the parent, guardian or custodian fails to provide the treatment or care, the court may order the department of human services or some other appropriate state agency to provide such care or treatment.

2. The duration of any period of supervision or other terms or conditions shall be for an initial period of no more than twelve months and the court, at the expiration of that period, upon a hearing and for good cause shown, may make not more than two successive extensions of such supervision or other terms or conditions of up to twelve months each.

[S13, §254-a20, 2708; C24, 27, 31, 35, 39, §3637; C46, 50, 54, 58, 62, §232.21; C66, 71, 73, 75, 77, §232.33; C79, 81, §232.101]

83 Acts, ch 96, §157, 159; 97 Acts, ch 99, §4

Referred to in §232.99, 232.103, 232.117, 232.127

### **232.102 Transfer of legal custody of child and placement.**

1. a. After a dispositional hearing the court may enter an order transferring the legal custody of the child to one of the following for purposes of placement:

(1) A parent who does not have physical care of the child, other relative, or other suitable person.

(2) A child-placing agency or other suitable private agency, facility, or institution which is licensed or otherwise authorized by law to receive and provide care for the child.

(3) The department of human services.

b. If the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the child has a case permanency plan, the court shall consider the written transition plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the transition plan and needs assessment at the time the order is entered, the written transition plan and needs assessment shall be developed and submitted for the court's consideration no later than six months from the date of the transfer order. The court shall modify the initial transfer order as necessary to specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the transition plan identifies services or other support needed to assist the child when the child becomes an adult and the court deems it to be beneficial to the child, the court may authorize the individual who is the child's guardian ad litem or court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

1A. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the service area plan for group foster care established pursuant to section 232.143 for the departmental service area in which the court is located.

2. After a dispositional hearing and upon the request of the department, the court may enter an order appointing the department as the guardian of an unaccompanied refugee child or of a child without parent or guardian.

3. After a dispositional hearing and upon written findings of fact based upon evidence in the record that an alternative placement set forth in subsection 1, paragraph "a", subparagraph (1), has previously been made and is not appropriate the court may enter an order transferring the guardianship of the child for the purposes of subsection 8, to the director of human services for the purposes of placement in the Iowa juvenile home at Toledo.

4. a. Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the Iowa juvenile home at Toledo pursuant to subsection 3, to a facility which has been designated to be an alternative placement site for the juvenile home, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a new dispositional order under section 232.103.

(2) Immediate removal of the child from the juvenile home is necessary to safeguard the child's physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

b. If the court finds the conditions in paragraph "a" exist and there is insufficient time to provide notice as required under rule of juvenile procedure 8.12, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

c. Within three days of the child's transfer, the director shall file a motion for a new dispositional order under section 232.103 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

5. a. Whenever possible the court should permit the child to remain at home with the child's parent, guardian, or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

(1) The child cannot be protected from physical abuse without transfer of custody; or

(2) The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

b. In order to transfer custody of the child under this subsection, the court must make a determination that continuation of the child in the child's home would be contrary to the welfare of the child, and shall identify the reasonable efforts that have been made. The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts

are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the court order. However, preserving the safety of the child is the paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for removal of the child. If the court transfers custody of the child, unless the court waives the requirement for making reasonable efforts or otherwise makes a determination that reasonable efforts are not required, reasonable efforts shall be made to make it possible for the child to safely return to the family's home.

6. The child shall not be placed in the state training school.

7. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility. If the court orders the transfer of custody to a parent who does not have physical care of the child, other relative, or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian, or custodian in order to enable them to resume custody of the child. If the court orders the transfer of custody to the department of human services or to another agency for placement in group foster care, the department or agency shall make every reasonable effort to place the child in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

8. Any order transferring custody to the department or an agency shall include a statement informing the child's parent that the consequences of a permanent removal may include the termination of the parent's rights with respect to the child.

9. An agency, facility, institution, or person to whom custody of the child has been transferred pursuant to this section shall file a written report with the court at least every six months concerning the status and progress of the child. The court shall hold a periodic dispositional review hearing for each child in placement pursuant to this section in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted. The placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6. If the placement is extended, the court shall determine whether additional services are necessary to facilitate the return of the child to the child's home, and if the court determines such services are needed, the court shall order the provision of such services. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency responsible for the placement of the child shall consider placing the child in the same licensed foster care facility.

a. The initial dispositional review hearing shall not be waived or continued beyond six months after the date of the dispositional hearing.

b. Subsequent dispositional review hearings shall not be waived or continued beyond twelve months after the date of the most recent dispositional review hearing.

c. For purposes of this subsection, a hearing held pursuant to section 232.103 satisfies the requirements for initial dispositional review or subsequent permanency hearing.

10. a. As used in this division, "*reasonable efforts*" means the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the

family's home. Reasonable efforts shall include but are not limited to giving consideration, if appropriate, to interstate placement of a child in the permanency planning decisions involving the child and giving consideration to in-state and out-of-state placement options at a permanency hearing and when using concurrent planning. If returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include the efforts made in a timely manner to finalize a permanency plan for the child. A child's health and safety shall be the paramount concern in making reasonable efforts. Reasonable efforts may include but are not limited to family-centered services, if the child's safety in the home can be maintained during the time the services are provided. In determining whether reasonable efforts have been made, the court shall consider both of the following:

(1) The type, duration, and intensity of services or support offered or provided to the child and the child's family. If family-centered services were not provided, the court record shall enumerate the reasons the services were not provided, including but not limited to whether the services were not available, not accepted by the child's family, judged to be unable to protect the child and the child's family during the time the services would have been provided, judged to be unlikely to be successful in resolving the problems which would lead to removal of the child, or other services were found to be more appropriate.

(2) The relative risk to the child of remaining in the child's home versus removal of the child.

b. As used in this section, "*family-centered services*" means services and other support intended to safely maintain a child with the child's family or with a relative, to safely and in a timely manner return a child to the home of the child's parent or relative, or to promote achievement of concurrent planning goals by identifying and helping the child secure placement for adoption, with a guardian, or with other alternative permanent family connections. Family-centered services are adapted to the individual needs of a family in regard to the specific services and other support provided to the child's family and the intensity and duration of service delivery. Family-centered services are intended to preserve a child's connections to the child's neighborhood, community, and family and to improve the overall capacity of the child's family to provide for the needs of the children in the family.

11. The performance of reasonable efforts to place a child for adoption or with a guardian may be made concurrently with making reasonable efforts as defined in this section.

12. If the court determines by clear and convincing evidence that aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

a. The parent has abandoned the child.

b. The court finds the circumstances described in section 232.116, subsection 1, paragraph "i", are applicable to the child.

c. The parent's parental rights have been terminated under section 232.116 or involuntarily terminated by an order of a court of competent jurisdiction in another state with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.

d. The parent has been convicted of the murder of another child of the parent.

e. The parent has been convicted of the voluntary manslaughter of another child of the parent.

f. The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

g. The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

13. Unless prohibited by the court order transferring custody of the child for placement or other court order or the department or agency that received the custody transfer finds that allowing the visitation would not be in the child's best interest, the department or agency may

authorize reasonable visitation with the child by the child’s grandparent, great-grandparent, or other adult relative who has established a substantial relationship with the child.

[S13, §254-a20, -a23, 2708, 2709; C24, 27, 31, 35, 39, §3637, 3646, 3647; C46, 50, 54, 58, 62, §232.21, 232.27, 232.28; C66, 71, 73, 75, 77, §232.33; C79, 81, §232.102; 81 Acts, ch 11, §17; 82 Acts, ch 1260, §23]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §16 – 18; 85 Acts, ch 173, §13; 87 Acts, ch 159, §3; 88 Acts, ch 1134, §52; 88 Acts, ch 1249, §14; 90 Acts, ch 1239, §10, 11; 91 Acts, ch 232, §7, 8; 92 Acts, ch 1229, §5; 92 Acts, 1st Ex, ch 1004, §2; 95 Acts, ch 67, §16; 97 Acts, ch 99, §5; 98 Acts, ch 1190, §11 – 17; 2000 Acts, ch 1067, §10; 2001 Acts, ch 24, §40; 2001 Acts, ch 135, §17 – 19; 2002 Acts, ch 1081, §3; 2003 Acts, ch 117, §5; 2004 Acts, ch 1116, §8 – 10; 2007 Acts, ch 172, §6, 9; 2007 Acts, ch 218, §114; 2008 Acts, ch 1098, §1; 2009 Acts, ch 41, §263

Referred to in §225C.49, 232.2, 232.95, 232.96, 232.99, 232.103, 232.104, 232.111, 232.116, 232.117, 232.127, 232.182, 232.189, 232B.5, 233.2, 234.6, 234.35

Copy of dispositional order under subsection 9 to be submitted to foster care review boards; 84 Acts, ch 1279, §42

Limitation on placing child in mental health institute; 86 Acts, ch 1246, §305

**232.103 Termination, modification, vacation and substitution of dispositional order.**

1. At any time prior to expiration of a dispositional order and upon the motion of an authorized party or upon its own motion as provided in this section, the court may terminate the order and discharge the child, modify the order, or vacate the order and make a new order.

2. The following persons shall be authorized to file a motion to terminate, modify or vacate and substitute a dispositional order:

a. The child.

b. The child’s parent, guardian or custodian, except that such motion may be filed by that person not more often than once every six months except with leave of court for good cause shown.

c. The child’s guardian ad litem.

d. A person supervising the child pursuant to a dispositional order.

e. An agency, facility, institution or person to whom legal custody has been transferred pursuant to a dispositional order.

f. The county attorney.

3. A change in the level of care for a child who is subject to a dispositional order for out-of-home placement requires modification of the dispositional order. A hearing shall be held on a motion to terminate or modify a dispositional order except that a hearing on a motion to terminate or modify an order may be waived upon agreement by all parties. Reasonable notice of the hearing shall be given to the parties. The hearing shall be conducted in accordance with the procedure established for dispositional hearings under section 232.50, subsection 3.

4. The court may modify a dispositional order, vacate and substitute a dispositional order, or terminate a dispositional order and release the child if the court finds that any of the following circumstances exist:

a. The purposes of the order have been accomplished and the child is no longer in need of supervision, care, or treatment.

b. The purposes of the order cannot reasonably be accomplished.

c. The efforts made to effect the purposes of the order have been unsuccessful and other options to effect the purposes of the order are not available.

d. The purposes of the order have been sufficiently accomplished and the continuation of supervision, care, or treatment is unjustified or unwarranted.

5. The court may modify or vacate an order for good cause shown provided that where the request to modify or vacate is based on the child’s alleged failure to comply with the conditions or terms of the order, the court may modify or vacate the order only if it finds that there is clear and convincing evidence that the child violated a material and reasonable condition or term of the order.

6. If the court vacates the order it may make any other order in accordance with and subject to the provisions of sections 232.100 to 232.102.

7. With respect to a temporary transfer order made pursuant to section 232.102, subsection 4, if the court finds that removal of a child from the Iowa juvenile home is

necessary to safeguard the child's physical or emotional health and is in the best interests of the child, the court shall grant the director's motion for a new dispositional order to place the child in a facility which has been designated to be an alternative placement site for the juvenile home.

[C79, 81, §232.103]

90 Acts, ch 1239, §12; 2001 Acts, ch 135, §20; 2003 Acts, ch 117, §6; 2004 Acts, ch 1154, §1, 2; 2012 Acts, ch 1021, §51

Referred to in §232.2, 232.99, 232.102, 232.104

#### **232.104 Permanency hearing — permanency order — subsequent proceedings.**

1. *a.* The time for the initial permanency hearing for a child subject to out-of-home placement shall be the earlier of the following:

(1) For a temporary removal order entered under section 232.78, 232.95, or 232.96, for a child who was removed without a court order under section 232.79, or for an order entered under section 232.102, for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home.

(2) For an order entered under section 232.102, for which the court has waived reasonable efforts requirements under section 232.102, subsection 12, the permanency hearing shall be held within thirty days of the date the requirements were waived.

*b.* The permanency hearing may be held concurrently with a hearing under section 232.103 to review, modify, substitute, vacate, or terminate a dispositional order.

*c.* Reasonable notice of a permanency hearing shall be provided to the parties. A permanency hearing shall be conducted in substantial conformance with the provisions of section 232.99. During the hearing, the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court and the reasonable efforts made concerning the child. Upon completion of the hearing, the court shall enter written findings and make a determination identifying a primary permanency goal for the child. If a permanency plan is in effect at the time of the hearing, the court shall also make a determination as to whether reasonable progress is being made in achieving the permanency goal and complying with the other provisions of that permanency plan.

2. After a permanency hearing the court shall do one of the following:

*a.* Enter an order pursuant to section 232.102 to return the child to the child's home.

*b.* Enter an order pursuant to section 232.102 to continue placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.

*c.* Direct the county attorney or the attorney for the child to institute proceedings to terminate the parent-child relationship.

*d.* Enter an order, pursuant to findings required by subsection 3, to do one of the following:

(1) Transfer guardianship and custody of the child to a suitable person.

(2) Transfer sole custody of the child from one parent to another parent.

(3) Transfer custody of the child to a suitable person for the purpose of long-term care.

(4) If the department has documented to the court's satisfaction a compelling reason for determining that an order under the other subparagraphs of this paragraph would not be in the child's best interest, order another planned permanent living arrangement for the child.

3. Prior to entering a permanency order pursuant to subsection 2, paragraph "d", convincing evidence must exist showing that all of the following apply:

*a.* A termination of the parent-child relationship would not be in the best interest of the child.

*b.* Services were offered to the child's family to correct the situation which led to the child's removal from the home.

*c.* The child cannot be returned to the child's home.

4. Any permanency order may provide restrictions upon the contact between the child and the child's parent or parents, consistent with the best interest of the child.

5. With respect to a dispositional order providing for transfer of custody of a child and siblings to the department or other agency for placement for which the court has suspended or terminated sibling visitation or interaction, when a review is made under this section the court shall consider whether the visitation or interaction can be safely resumed and may modify the suspension or termination as appropriate.

6. Subsequent to the entry of a permanency order pursuant to this section, the child shall not be returned to the care, custody, or control of the child's parent or parents, over a formal objection filed by the child's attorney or guardian ad litem, unless the court finds by a preponderance of the evidence, that returning the child to such custody would be in the best interest of the child.

7. *a.* Following an initial permanency hearing and the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served. When the order places the child in the custody of the department for the purpose of long-term foster care placement in a facility, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the initial permanency hearing or the last permanency review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

*b.* In lieu of the procedures specified in paragraph "a", the court may close the child in need of assistance case by transferring jurisdiction over the child's guardianship to the probate court. The court shall inform the proposed guardian of the guardian's reporting duties under section 633.669 and other duties under the probate code. Upon transferring jurisdiction, the court shall direct the probate clerk, once the proposed guardian has filed an oath of office and identification in accordance with section 602.6111, to issue letters of appointment for guardianship and docket the case in probate. Records contained in the probate case file that were copied or transferred from the juvenile court file concerning the case shall be subject to section 232.147 and other confidentiality provisions of this chapter for cases not involving juvenile delinquency.

87 Acts, ch 159, §4; 89 Acts, ch 229, §6; 95 Acts, ch 182, §5; 98 Acts, ch 1190, §18, 19; 2000 Acts, ch 1067, §11, 12; 2001 Acts, ch 135, §21, 22; 2007 Acts, ch 67, §4; 2007 Acts, ch 172, §7; 2010 Acts, ch 1143, §1

Referred to in §232.117, 633.559, 633.675, 633.679

**232.105** Reserved.

**232.106 Terms and conditions on child's parent.**

If the court enters an order under this chapter which imposes terms and conditions on the child's parent, guardian, or custodian, the purpose of the terms and conditions shall be to assure the protection of the child. The order is subject to the following provisions:

1. The order shall state the reasons for and purpose of the terms and conditions.

2. If a parent, guardian, or custodian is required to have a chemical test of blood or urine for the purpose of determining the presence of an illegal drug, the test shall be a medically relevant test as defined in section 232.73.

95 Acts, ch 182, §9; 96 Acts, ch 1092, §5

**232.107 Parent visitation.**

If a child is removed from the child's home in accordance with an order entered under this division based upon evidence indicating the presence of an illegal drug in the child's body, unless the court finds that substantial evidence exists to believe that reasonable visitation or supervised visitation would cause an imminent risk to the child's life or health, the order shall allow the child's parent reasonable visitation or supervised visitation with the child.

96 Acts, ch 1092, §6

**232.108 Visitation or ongoing interaction with siblings.**

1. If the court orders the transfer of custody of a child and siblings to the department or other agency for placement under this division, under division II, relating to juvenile delinquency proceedings, or under any other provision of this chapter, the department or other agency shall make a reasonable effort to place the child and siblings together in the same placement. The requirement of this subsection remains applicable to custody transfer orders made at separate times and applies in addition to efforts made by the department or agency to place the child with a relative.

2. If the requirements of subsection 1 apply but the siblings are not placed in the same placement together, the department or other agency shall provide the siblings with the reasons why and the efforts being made to facilitate such placement, or why making efforts for such placement is not appropriate. Unless visitation or ongoing interaction with siblings is suspended or terminated by the court, the department or agency shall make reasonable effort to provide for frequent visitation or other ongoing interaction between the child and the child's siblings from the time of the child's out-of-home placement until the child returns home or is in a permanent placement.

3. A person who wishes to assert a sibling relationship with a child who is subject to an order under this chapter for an out-of-home placement and to request frequent visitation or other ongoing interaction with the child may file a petition with the court with jurisdiction over the child. Unless the court determines it would not be in the child's best interest, upon finding that the person is a sibling of the child, the provisions of this section providing for frequent visitation or other ongoing interaction between the siblings shall apply. Nothing in this section is intended to provide or expand a right to counsel under this chapter beyond the right provided and persons specified in sections 232.89 and 232.113.

4. If the court determines by clear and convincing evidence that visitation or other ongoing interaction between a child and the child's siblings would be detrimental to the well-being of the child or a sibling, the court shall order the visitation or interaction to be suspended or terminated. The reasons for the determination shall be noted in the court order suspending or terminating the visitation or interaction and shall be explained to the child and the child's siblings, and to the parent, guardian, or custodian of the child.

5. The case permanency plan of a child who is subject to this section shall comply with all of the following, as applicable:

a. The plan shall document the efforts being made to provide for the child's frequent visitation or other ongoing interaction with the child's siblings from the time of the child's out-of-home placement until the child returns home or is in a permanent placement. The child's parent, guardian, or custodian may comment on the efforts as documented in the case permanency plan.

b. If at any point the court determines that the child's visitation or interaction with siblings would be detrimental to the child's well-being and visitation or interaction with siblings is suspended or terminated by the court, the determination shall be noted in the case permanency plan. If the court lifts the suspension or termination, the case permanency plan shall be revised to document the efforts to provide for visitation or interaction as required under paragraph "a".

c. If one or more of the child's siblings are also subject to an order under this chapter for an out-of-home placement and the siblings are not placed in the same placement together, the plan shall document the reasons why and the efforts being made to facilitate such placement, or why making efforts for such placement is not appropriate.

6. If an order is entered for termination of parental rights of a child who is subject to this section, unless the court has suspended or terminated sibling visitation or interaction in accordance with this section, the department or child-placing agency shall do all of the following to facilitate frequent visitation or ongoing interaction between the child and siblings when the child is adopted or enters a permanent placement:

a. Include in the training provided to prospective adoptive parents information regarding the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships.

b. Provide prospective adoptive parents with information regarding the child's siblings.

The address of a sibling's residence shall not be disclosed in the information unless authorized by court order for good cause shown.

c. Encourage prospective adoptive parents to plan for facilitating postadoption contact between the child and the child's siblings.

7. Any information regarding court-ordered or authorized sibling visitation, interaction, or contact shall be provided to the foster parent, relative caretaker, guardian, prospective adoptive parent, and child as soon as reasonably possible following the entry of the court order or authorization as necessary to facilitate the visitation or interaction.

2007 Acts, ch 67, §5

Referred to in §232.2, 238.18

Department to adapt section's provisions for application to the subsidized guardianship program; 2011 Acts, ch 98, §10, 11

#### DIVISION IV

#### TERMINATION OF PARENT-CHILD RELATIONSHIP PROCEEDING

Referred to in §232.2, 600A.5

##### **232.109 Jurisdiction.**

The juvenile court shall have exclusive jurisdiction over proceedings under this chapter to terminate a parent-child relationship and all parental rights with respect to a child. No such termination shall be ordered except under the provisions of this chapter if the court has made an order concerning the child pursuant to the provisions of division III of this chapter and the order is in force at the time a petition for termination is filed.

[C79, 81, §232.109]

##### **232.110 Venue.**

1. Venue for termination proceedings under this chapter shall be in the judicial district where the child is found or the judicial district where the child resides except as otherwise provided in subsection 2.

2. If a court has made an order concerning the child pursuant to the provisions of this chapter and the order is still in force at the time the termination petition is filed, such court shall hear and adjudicate the case unless the court transfers the case.

3. The judge may transfer the case to the juvenile court of any county having venue in accordance with the provisions of section 232.62.

[C79, 81, §232.110]

##### **232.111 Petition.**

1. A child's guardian, guardian ad litem, or custodian, the department of human services, a juvenile court officer, or the county attorney may file a petition for termination of the parent-child relationship and parental rights with respect to a child.

2. *a.* Unless any of the circumstances described in paragraph "b" exist, the county attorney shall file a petition for termination of the parent-child relationship and parental rights with respect to a child or if a petition has been filed, join in the petition, under any of the following circumstances:

(1) The child has been placed in foster care for fifteen months of the most recent twenty-two-month period. The petition shall be filed by the end of the child's fifteenth month of foster care placement.

(2) A court has determined aggravated circumstances exist and has waived the requirement for making reasonable efforts under section 232.102 because the court has found the circumstances described in section 232.116, subsection 1, paragraph "i", are applicable to the child.

(3) The child is less than twelve months of age and has been judicially determined to have been abandoned or the child is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

(4) The parent has been convicted of the murder or the voluntary manslaughter of another child of the parent.

(5) The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

(6) The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

b. If any of the following conditions exist, the county attorney is not required to file a petition or join in an existing petition as provided in paragraph “a”:

(1) At the option of the department or by order of the court, the child is being cared for by a relative.

(2) The department or a state agency has documented in the child’s case permanency plan provided or available to the court a compelling reason for determining that filing the petition would not be in the best interest of the child. A compelling reason shall include but is not limited to documentation in the child’s case permanency plan indicating it is reasonably likely the completion of the services being received in accordance with the permanency plan will eliminate the need for removal of the child or make it possible for the child to safely return to the family’s home within six months.

(3) The department has not provided the child’s family, consistent with the time frames outlined in the child’s case permanency plan, with those services the state deems necessary for the safe return of the child to the child’s home, and the limited extension of time necessary to complete the services is clearly documented in the case permanency plan.

3. The department, juvenile court officer, county attorney or judge may authorize any competent person having knowledge of the circumstances to file a termination petition with the clerk of the court without the payment of a filing fee.

4. A petition for termination of parental rights shall include the following:

a. The legal name, age, and domicile, if any, of the child.

b. The names, residences, and domicile of any:

(1) Living parents of the child.

(2) Guardian of the child.

(3) Custodian of the child.

(4) Guardian ad litem of the child.

(5) Petitioner.

(6) Person standing in the place of the parents of the child.

c. A plain statement of those facts and grounds specified in section 232.116 which indicate that the parent-child relationship should be terminated.

d. A plain statement explaining why the petitioner does not know any of the information required under paragraphs “a” and “b” of this subsection.

e. A complete list of the services which have been offered to preserve the family and a statement specifying the services provided to address the reasons stated in any order for removal or in any dispositional or permanency order which did not return the child to the child’s home.

f. The signature and verification of the petitioner.

[C79, 81, §232.111]

83 Acts, ch 96, §157, 159; 83 Acts, ch 186, §10055, 10201; 95 Acts, ch 147, §6; 98 Acts, ch 1190, §20, 21; 2001 Acts, ch 67, §8, 13; 2001 Acts, ch 135, §25; 2002 Acts, ch 1050, §23

Referred to in §232.2, 232.112, 233.2

### **232.112 Notice — service.**

1. Persons listed in section 232.111, subsection 4, shall be necessary parties to a termination of parent-child relationship proceeding and are entitled to receive notice and an opportunity to be heard, except that notice may be dispensed with in the case of any such person whose name or whereabouts the court determines is unknown and cannot be ascertained by reasonably diligent search. In addition to the persons who are necessary parties who may be parties under section 232.111, notice for any hearing under this division

shall be provided to the child's foster parent, an individual providing preadoptive care for the child, or a relative providing care for the child.

2. Prior to the service of notice on the necessary parties, the juvenile court shall appoint a guardian ad litem for a child if the child does not have a guardian or guardian ad litem or if the interests of the guardian or guardian ad litem conflict with the interests of the child. Such guardian ad litem shall be a necessary party under subsection 1.

3. Notice under this section shall be served personally or shall be sent by restricted certified mail, whichever is determined by the court to be the most effective means of notification. Such notice shall be made according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this section. Notice by personal delivery shall be served not less than seven days prior to the hearing on termination of parental rights. Notice by restricted certified mail shall be sent not less than fourteen days prior to the hearing on termination of parental rights. A notice by restricted certified mail which is refused by the necessary party given notice shall be sufficient notice to the party under this section.

[C79, 81, §232.112]

98 Acts, ch 1190, §22

#### **232.113 Right to and appointment of counsel.**

1. Upon the filing of a petition the parent identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If the parent desires but is financially unable to employ counsel, the court shall appoint counsel.

2. Upon the filing of a petition the court shall appoint counsel for the child identified in the petition as a party to the proceedings. The same person may serve both as the child's counsel and as guardian ad litem.

[C79, 81, §232.113]

Referred to in §232.108

#### **232.114 Duties of county attorney.**

1. As used in this section, "state" means the general interest held by the people in the health, safety, welfare, and protection of all children living in this state.

2. Upon the filing of a petition the county attorney shall represent the state in all adversary proceedings arising under this division and shall present evidence in support of the petition.

3. If there is disagreement between the department and the county attorney regarding the appropriate action to be taken, the department may request that the state be represented by the attorney general in place of the county attorney. If the state is represented by the attorney general, the county attorney may continue to appear in the proceeding and may present the position of the county attorney regarding the appropriate action to be taken in the case.

4. The county attorney shall comply with the requirements of chapter 232B and the federal Indian Child Welfare Act, Pub. L. No. 95-608, when either chapter 232B or the federal Indian Child Welfare Act is determined to be applicable in any proceeding under this division.

[C81, §232.114]

89 Acts, ch 230, §18; 2013 Acts, ch 113, §3

Section amended

#### **232.115 Reporter required.**

Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings held pursuant to this division unless waived by the parties. The child shall not be competent to waive the reporting requirement, but waiver may be made for the child by the child's counsel or guardian ad litem. Matters which must be reported under the provisions of this section shall be reported in the same manner as required in section 624.9.

[C81, §232.115]

#### **232.116 Grounds for termination.**

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

a. The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

b. The court finds that there is clear and convincing evidence that the child has been abandoned or deserted.

c. The court finds that there is clear and convincing evidence that the child is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

d. The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

e. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "*significant and meaningful contact*" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obligations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

f. The court finds that all of the following have occurred:

(1) The child is four years of age or older.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

g. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family or a court of competent jurisdiction in another state has entered an order involuntarily terminating parental rights with respect to another child who is a member of the same family.

(3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.

(4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

h. The court finds that all of the following have occurred:

(1) The child is three years of age or younger.

(2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.

(4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

i. The court finds that all of the following have occurred:

(1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.

(2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.

(3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

*j.* The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has been imprisoned for a crime against the child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years.

*k.* The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

*l.* The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.

(2) The parent has a severe substance-related disorder and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

*m.* The court finds that both of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused or neglected as a result of the acts or omissions of a parent.

(2) The parent found to have physically or sexually abused or neglected the child has been convicted of a felony and imprisoned for physically or sexually abusing or neglecting the child, the child's sibling, or any other child in the household.

*n.* The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The parent has been convicted of child endangerment resulting in the death of the child's sibling, has been convicted of three or more acts of child endangerment involving the child, the child's sibling, or another child in the household, or has been convicted of child endangerment resulting in a serious injury to the child, the child's sibling, or another child in the household.

(3) There is clear and convincing evidence that the circumstances surrounding the parent's conviction for child endangerment would result in a finding of imminent danger to the child.

*o.* The parent has been convicted of a felony offense that is a sex offense against a minor as defined in section 692A.101, the parent is divorced from or was never married to the minor's other parent, and the parent is serving a minimum sentence of confinement of at least five years for that offense.

2. In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering

the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child. This consideration may include any of the following:

a. Whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony.

b. For a child who has been placed in foster family care by a court or has been voluntarily placed in foster family care by a parent or by another person, whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family. In considering integration into a foster family, the court shall review the following:

(1) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.

(2) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

c. The relevant testimony or written statement that a foster parent, relative, or other individual with whom the child has been placed for preadoptive care or other care has a right to provide to the court.

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

a. A relative has legal custody of the child.

b. The child is over ten years of age and objects to the termination.

c. There is clear and convincing evidence that the termination would be detrimental to the child at the time due to the closeness of the parent-child relationship.

d. It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.

e. The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

[C79, §232.114; C81, §232.116]

84 Acts, ch 1279, §19, 20; 86 Acts, ch 1186, §11; 87 Acts, ch 159, §6; 89 Acts, ch 229, §7 – 12; 90 Acts, ch 1251, §28; 92 Acts, ch 1231, §27 – 29; 93 Acts, ch 76, §2; 94 Acts, ch 1174, §3, 22; 95 Acts, ch 182, §10, 11; 98 Acts, ch 1190, §23; 2001 Acts, ch 67, §9, 13; 2006 Acts, ch 1182, §59; 2007 Acts, ch 172, §14; 2008 Acts, ch 1098, §2; 2009 Acts, ch 119, §38; 2011 Acts, ch 121, §58, 62

Referred to in §232.57, 232.102, 232.111, 232.117

### **232.117 Termination — findings — disposition.**

1. After the hearing is concluded the court shall make and file written findings.

2. If the court concludes that facts sufficient to terminate parental rights have not been established by clear and convincing evidence, the court shall dismiss the petition.

3. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence, the court may order parental rights terminated. If the court terminates the parental rights of the child's parents, the court shall transfer the guardianship and custody of the child to one of the following:

a. The department of human services.

b. A child-placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.

c. A parent who does not have physical care of the child, other relative, or other suitable person.

4. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the service area plan for group foster care established pursuant to section 232.143 for the departmental service area in which the court is located.

5. If after a hearing the court does not order the termination of parental rights but finds that there is clear and convincing evidence that the child is a child in need of assistance, under

section 232.2, subsection 6, due to the acts or omissions of one or both of the child's parents the court may adjudicate the child to be a child in need of assistance and may enter an order in accordance with the provisions of section 232.100, 232.101, 232.102, or 232.104.

6. If the court orders the termination of parental rights and transfers guardianship and custody under subsection 3, the guardian shall submit a case permanency plan to the court and shall make every effort to establish a stable placement for the child by adoption or other permanent placement. Within forty-five days of receipt of the termination order, and every forty-five days thereafter until the court determines such reports are no longer necessary, the guardian shall report to the court regarding efforts made to place the child for adoption or providing the rationale as to why adoption would not be in the child's best interest.

7. The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has not been placed for adoption shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed six months after the date of the termination of parental rights or the last placement review hearing.

8. The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has been placed for adoption and whose adoption has not been finalized shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed twelve months after the date of the adoptive placement or the last placement review hearing.

9. Hearings held under this division are open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having a public hearing. Upon closing the hearing, the court may admit persons who have a direct interest in the case or in the work of the court.

10. If a termination of parental rights order is issued on the grounds that the child is a newborn infant whose parent has voluntarily released custody of the child under section 232.116, subsection 1, paragraph "c", the court shall retain jurisdiction to change a guardian or custodian and to allow a parent whose rights have been terminated to request vacation or appeal of the termination order which request must be made within thirty days of issuance of the granting of the termination order. The period for request for vacation or appeal by a parent whose rights have been terminated shall not be waived or extended and a vacation or appeal shall not be granted for a request made after the expiration of this period. The court shall grant the vacation request only if it is in the best interest of the child. The supreme court shall prescribe rules to establish the period of thirty days, which shall not be waived or extended, in which a parent whose parental rights have been terminated may request a vacation or appeal of such a termination order.

[C79, §232.115; C81, §232.117]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §21; 87 Acts, ch 159, §5, 7; 89 Acts, ch 229, §13; 89 Acts, ch 230, §19; 92 Acts, ch 1229, §6; 94 Acts, ch 1046, §3; 98 Acts, ch 1190, §24, 25; 2001 Acts, ch 67, §10, 13; 2004 Acts, ch 1116, §11

Referred to in §232.116, 232.118, 232.119, 232.133, 237.20

### **232.118 Removal of guardian.**

1. Upon application of an interested party or upon the court's own motion, the court having jurisdiction of the child may, after notice to the parties and a hearing, remove a court-appointed guardian and appoint a guardian in accordance with the provisions of section 232.117, subsection 3.

2. A child fourteen years of age or older who has not been adopted but who is placed in a satisfactory foster home may, with the consent of the foster parents, join with the guardian appointed by the court in an application to the court to remove the existing guardian and appoint the foster parents as guardians of the child.

3. The authority of a guardian appointed by the court terminates when the child reaches the age of majority or is adopted.

[C79, §232.116; C81, §232.118]

88 Acts, ch 1134, §53

**232.119 Adoption exchange established.**

1. The purpose of this section is to facilitate the placement of all children in Iowa who are legally available for adoption through the establishment of an adoption exchange to help find adoptive homes for these children.

2. An adoption information exchange is established within the department to be operated by the department or by an individual or agency under contract with the department.

a. All special needs children under state guardianship shall be registered on the adoption exchange within sixty days of the termination of parental rights pursuant to section 232.117 or 600A.9 and assignment of guardianship to the director.

b. Prospective adoptive families requesting a special needs child shall be registered on the adoption exchange upon receipt of an approved home study.

3. To register a child on the Iowa exchange, the department adoption worker or the private agency worker shall register the pertinent information concerning the child on the exchange. A photo of the child and other necessary information shall be forwarded to the department to be included in the photo-listing book which shall be updated regularly. The department adoption worker or the private agency worker who places a child on the exchange shall update the registration information within ten working days after a change in the information occurs.

4. The exchange shall include a matching service for children registered or listed in the adoption photo-listing book and prospective adoptive families listed on the exchange. The department shall register a child with the national electronic exchange and electronic photo-listing system if the child has not been placed for adoption after three months on the exchange established pursuant to this section.

5. A request to defer registering the child on the exchange shall be submitted in writing and shall be granted if any of the following conditions exist:

a. The child is in an adoptive placement.

b. The child's foster parents or another person with a significant relationship is being considered as the adoptive family.

c. A diagnostic study or testing is necessary to clarify the child's needs and to provide an adequate description of the child's needs.

d. At the time of the request, the child is receiving medical care, mental health treatment, or other treatment and the child's care or treatment provider has determined that meeting prospective adoptive parents is not in the child's best interest.

e. The child is fourteen years of age or older and will not consent to an adoption plan and the consequences of not being adopted have been explained to the child.

6. The following requirements apply to a request to defer registering a child on the adoption exchange under subsection 5:

a. For a deferral granted by the exchange pursuant to subsection 5, paragraph "a", "b", or "e", the child's guardian shall address the child's deferral status in the report filed with the court and the court shall review the deferral status in the six-month review hearings held pursuant to section 232.117, subsection 7.

b. In addition to the requirements of paragraph "a", a deferral granted by the exchange pursuant to subsection 5, paragraph "b", shall be limited to not more than a one-time, ninety-day period unless the termination of parental rights order is appealed or the child is placed in a hospital or other institutional placement. However, if the foster parents or another person with a significant relationship continues to be considered the child's prospective adoptive family, additional extensions of the deferral request under subsection 5, paragraph "b", may be granted until sixty days after the date of the final decision regarding the appeal or until the date the child is discharged from a hospital or other institutional placement.

c. A deferral granted by the exchange pursuant to subsection 5, paragraph "c", shall be limited to not more than a one-time, ninety-day period.

d. A deferral granted by the exchange pursuant to subsection 5, paragraph “d”, shall be limited to not more than a one-time, one-hundred-twenty-day period.

87 Acts, ch 159, §8; 91 Acts, ch 232, §9, 10; 93 Acts, ch 22, §1; 95 Acts, ch 182, §12; 98 Acts, ch 1190, §26

**232.120 Preadoptive care — continued placement.**

If a foster parent is providing preadoptive care to a child for whom a termination of parental rights petition has been filed, the placement of the child with that foster parent shall continue through the termination of parental rights proceeding unless the court orders otherwise based upon the best interests of the child.

98 Acts, ch 1190, §27

**232.121** Reserved.

DIVISION V

FAMILY IN NEED OF ASSISTANCE PROCEEDINGS

**232.122 Jurisdiction.**

The juvenile court shall have exclusive jurisdiction over family in need of assistance proceedings.

[C79, 81, §232.122]

Referred to in §232C.2, 232C.3

**232.123 Venue.**

Venue for family in need of assistance proceedings shall be determined in accordance with section 232.62.

[C79, 81, §232.123]

Referred to in §232C.2, 232C.3

**232.124** Repealed by 83 Acts, ch 21, § 3; 83 Acts, ch 186, § 10201, 10203.

**232.125 Petition.**

1. A family in need of assistance proceeding shall be initiated by the filing of a petition alleging that a child and the child’s parent, guardian, or custodian are a family in need of assistance.

2. Such a petition may be filed by the child’s parent, guardian, or custodian, by the child, or on the court’s own motion as provided in section 232C.2. The judge, county attorney, or juvenile court officer may authorize such parent, guardian, custodian, or child to file a petition with the clerk of the court without the payment of a filing fee.

3. The petition and subsequent court documents shall be entitled “In re the family of .....

4. The petition shall state the names and residences of the child, and the child’s living parents, guardian, custodian, and guardian ad litem, if any and the age of the child.

5. The petition shall allege that there has been a breakdown in the familial relationship and that the petitioner has sought services from public or private agencies to maintain and improve the familial relationship.

[C79, 81, §232.125]

83 Acts, ch 186, §10055, 10201; 2009 Acts, ch 153, §1

Referred to in §232.21, 232C.2, 232C.3

**232.126 Appointment of counsel and guardian ad litem.**

The court shall appoint counsel or a guardian ad litem to represent the interests of the child at the hearing to determine whether the family is a family in need of assistance unless the child already has such counsel or guardian. The court shall appoint counsel for the parent, guardian or custodian if that person desires but is financially unable to employ counsel.

The court may appoint a court appointed special advocate to act as guardian ad litem. The court appointed special advocate shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child. The court appointed special advocate shall not be allowed to separately introduce evidence or to directly examine or cross-examine witnesses. The court appointed special advocate shall submit reports to the court and the parties to the proceedings containing the information required in reports submitted by a court appointed special advocate under section 232.89, subsection 5. In addition, the court appointed special advocate shall file other reports to the court as required by the court.

[C79, 81, §232.126]

87 Acts, ch 121, §5; 2002 Acts, ch 1162, §18

Referred to in §232C.2, 232C.3

### **232.127 Hearing — adjudication — disposition.**

1. Upon the filing of a petition, the court shall fix a time for a hearing and give notice thereof to the child and the child's parent, guardian or custodian.

2. A parent without custody may petition the court to be made a party to proceedings under this division.

3. The court shall exclude the general public from such hearing except the court in its discretion may admit persons having a legitimate interest in the case or the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. The court may adjudicate the family to be a family in need of assistance and enter an appropriate dispositional order if the court finds:

a. There has been a breakdown in the relationship between the child and the child's parent, guardian or custodian; and

b. The child or the child's parent, guardian or custodian has sought services from public or private agencies to maintain and improve the familial relationship; and

c. The court has at its disposal services for this purpose which can be made available to the family.

6. If the court makes such a finding the court may order any or all of the parties to accept counseling and to comply with any other reasonable orders designed to maintain and improve the familial relationship. At the conclusion of any counseling ordered by the court, or at any other time deemed necessary, the parties shall be required to meet together and be apprised of the findings and recommendations of such counseling. Such an order shall remain in force for a period not to exceed one year unless the court otherwise specifies or sooner terminates the order.

7. The court may not order the child placed on probation, in a foster home or in a nonsecure facility unless the child requests and agrees to such supervision or placement. In no event shall the court order the child placed in the state training school or other secure facility.

8. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the service area plan for group foster care established pursuant to section 232.143 for the departmental service area in which the court is located.

9. A child found in contempt of court because of violation of conditions imposed under this section shall not be considered delinquent. Such a contempt may be punished by imposition of a work assignment or assignments to benefit the state or a governmental subdivision of the state. In addition to or in lieu of such an assignment or assignments, the court may impose one of the dispositions set out in sections 232.100 to 232.102.

10. If the child is sixteen years of age or older and an order for an out-of-home placement is entered, the order shall specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the child has a case permanency plan, the court shall consider the written transition plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the transition plan and needs assessment at the time the order is entered, the written transition plan and needs assessment shall be developed and submitted for the court's

consideration no later than six months from the date of the transfer order. The court shall modify the initial transfer order as necessary to specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the transition plan identifies services or other support needed to assist the child when the child becomes an adult and the court deems it to be beneficial to the child, the court may authorize the individual who is the child's guardian ad litem or court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

11. If after hearing pursuant to this section, the court finds, by clear and convincing evidence, that no remedy is available that would result in strengthening or maintaining the familial relationship, the court may order the minor emancipated pursuant to section 232C.3, subsection 4.

[C79, 81, §232.127; 82 Acts, ch 1260, §24]

92 Acts, ch 1229, §7; 2003 Acts, ch 117, §7; 2004 Acts, ch 1116, §12; 2009 Acts, ch 153, §2

Referred to in §232C.2, 232C.3

**232.128 through 232.132** Reserved.

## DIVISION VI

### APPEAL

Referred to in §232.147

#### **232.133 Appeal.**

1. An interested party aggrieved by an order or decree of the juvenile court may appeal from the court for review of questions of law or fact. However, an order adjudicating a child to have committed a delinquent act, entered pursuant to section 232.47, shall not be appealed until the court enters a corresponding dispositional order pursuant to section 232.52. An appeal that affects the custody of a child shall be heard at the earliest practicable time.

2. Except for appeals from orders entered in child in need of assistance proceedings or orders entered pursuant to section 232.117, appellate procedures shall be governed by the same provisions applicable to appeals from the district court. The supreme court may prescribe rules to expedite the resolution of appeals from orders entered in child in need of assistance proceedings or orders entered pursuant to section 232.117.

3. The pendency of an appeal or application therefor shall not suspend the order of the juvenile court regarding a child and shall not discharge the child from the custody of the court or the agency, association, facility, institution or person to whom the court has transferred legal custody unless the appellate court otherwise orders on application of an appellant.

4. If the appellate court does not dismiss the proceedings and discharge the child, the appellate court shall affirm or modify the order of the juvenile court and remand the child to the jurisdiction of the juvenile court for disposition not inconsistent with the appellate court's finding on the appeal.

[C66, 71, 73, 75, 77, §232.58; C79, 81, §232.133]

86 Acts, ch 1186, §12; 2001 Acts, ch 117, §1; 2003 Acts, ch 25, §1; 2006 Acts, ch 1129, §1; 2007 Acts, ch 126, §45

**232.134 through 232.140** Reserved.

## DIVISION VII

### EXPENSES AND COSTS

#### **232.141 Expenses.**

1. Except as otherwise provided by law, the court shall inquire into the ability of the child or the child's parent to pay expenses incurred pursuant to subsections 2, 4, and 8. After giving the parent a reasonable opportunity to be heard, the court may order the parent to

pay all or part of the costs of the child's care, examination, treatment, legal expenses, or other expenses. An order entered under this section does not obligate a parent paying child support under a custody decree, except that part of the monthly support payment may be used to satisfy the obligations imposed by the order entered pursuant to this section. If a parent fails to pay as ordered, without good reason, the court may proceed against the parent for contempt and may inform the county attorney who shall proceed against the parent to collect the unpaid amount. Any payment ordered by the court shall be a judgment against each of the child's parents and a lien as provided in section 624.23. If all or part of the amount that the parents are ordered to pay is subsequently paid by the county or state, the judgment and lien shall thereafter be against each of the parents in favor of the county to the extent of the county's payments and in favor of the state to the extent of the state's payments.

2. All of the following juvenile court expenses are a charge upon the county in which the proceedings are held, to the extent provided in subsection 3:

a. Juvenile court expenses incurred by an attorney appointed by the court to serve as counsel to any party or to serve as a guardian ad litem for any child, including fees and expenses for foreign language interpreters, costs of depositions and transcripts, fees and mileage of witnesses, and the expenses of officers serving notices and subpoenas.

b. Reasonable compensation for an attorney appointed by the court to serve as counsel to any party or as guardian ad litem for any child in juvenile court.

c. Fees and expenses incurred by the juvenile court for foreign language interpreters for court proceedings.

3. Costs incurred under subsection 2 shall be paid as follows:

a. A county shall be required to pay for the fiscal year beginning July 1, 1989, an amount equal to the county's base cost for witness and mileage fees and attorney fees established pursuant to section 232.141, subsection 8, paragraph "d", Code 1989, for the fiscal year beginning July 1, 1988, plus an amount equal to the percentage rate of change in the consumer price index as tabulated by the federal bureau of labor statistics for the current year times the county's base cost.

b. A county's base cost for a fiscal year plus the percentage rate of change amount as computed in paragraph "a" is the county's base cost for the succeeding fiscal year. The amount to be paid in the succeeding year by the county shall be computed as provided in paragraph "a".

c. The county, on an annual basis, shall pay to the indigent defense fund created under section 815.11 the amount of the county's base cost as determined in accordance with this subsection.

d. Costs incurred under subsection 2 shall be paid by the state from the appropriations to the indigent defense fund under section 815.11 in accordance with this chapter, chapter 815, and the rules adopted by the state public defender. The county shall be required to reimburse the indigent defense fund for costs incurred by the state up to the county's base in this subsection.

4. Upon certification of the court, all of the following expenses are a charge upon the state to the extent provided in subsection 5:

a. The expenses of transporting a child to or from a place designated by the court for the purpose of care or treatment.

b. Expenses for mental or physical examinations of a child if ordered by the court.

c. The expenses of care or treatment ordered by the court.

5. If no other provision of law requires the county to reimburse costs incurred pursuant to subsection 4, the department shall reimburse the costs as follows:

a. The department shall prescribe by administrative rule all services eligible for reimbursement pursuant to subsection 4 and shall establish an allowable rate of reimbursement for each service.

b. The department shall receive billings for services provided and, after determining allowable costs, shall reimburse providers at a rate which is not greater than allowed by administrative rule. Reimbursement paid to a provider by the department shall be considered reimbursement in full unless a county voluntarily agrees to pay any difference between the reimbursement amount and the actual cost. When there are specific program regulations

prohibiting supplementation those regulations shall be applied to providers requesting supplemental payments from a county. Billings for services not listed in administrative rule shall not be paid. However, if the court orders a service not currently listed in administrative rule, the department shall review the order and, if reimbursement for the service of the department is not in conflict with other law or administrative rule, and meets the criteria of subsection 4, the department shall reimburse the provider.

6. If a child is given physical or mental examinations or treatment relating to an assessment performed pursuant to section 232.71B with the consent of the child's parent, guardian, or legal custodian and no other provision of law otherwise requires payment for the costs of the examination and treatment, the costs shall be paid by the state. Reimbursement for costs of services described in this subsection is subject to subsection 5.

7. A county charged with the costs and expenses under subsections 2 and 3 may recover the costs and expenses from the county where the child has legal settlement by filing verified claims which are payable as are other claims against the county. A detailed statement of the facts upon which a claim is based shall accompany the claim. Any dispute involving the legal settlement of a child for which the court has ordered payment under this section shall be settled pursuant to sections 252.22 and 252.23.

8. This subsection applies only to placements in a juvenile shelter care home which is publicly owned, operated as a county or multicounty shelter care home, organized under a chapter 28E agreement, or operated by a private juvenile shelter care home. If the actual and allowable costs of a child's shelter care placement exceed the amount the department is authorized to pay in accordance with law and administrative rule, the unpaid costs may be recovered from the child's county of legal settlement. However, the maximum amount of the unpaid costs which may be recovered under this subsection is limited to the difference between the amount the department is authorized to pay and the statewide average of the actual and allowable rates in effect in May of the preceding fiscal year for reimbursement of juvenile shelter care homes. In no case shall the home be reimbursed for more than the home's actual and allowable costs. The unpaid costs are payable pursuant to filing of verified claims against the county of legal settlement. A detailed statement of the facts upon which a claim is based shall accompany the claim. Any dispute between counties arising from filings of claims pursuant to this subsection shall be settled in the manner provided to determine residency in section 331.394.

[S13, §254-a25, -a45; C24, 27, 31, 35, 39, §3644, 3645; C46, 50, 54, 58, 62, §232.25, 232.26; C66, 71, 73, 75, 77, §232.51 – 232.53; C79, 81, §232.141; 82 Acts, ch 1260, §119]

85 Acts, ch 173, §14; 87 Acts, ch 152, §1; 88 Acts, ch 1134, §54; 89 Acts, ch 283, §23; 90 Acts, ch 1233, §8; 92 Acts, ch 1229, §8; 92 Acts, 1st Ex, ch 1004, §3; 93 Acts, ch 76, §15; 93 Acts, ch 172, §34; 97 Acts, ch 35, §12, 25; 97 Acts, ch 126, §31; 99 Acts, ch 135, §20, 21; 2000 Acts, ch 1115, §2 – 4; 2002 Acts, ch 1119, §147; 2004 Acts, ch 1090, §51; 2004 Acts, ch 1175, §148; 2006 Acts, ch 1041, §5, 6; 2012 Acts, ch 1120, §118, 130; 2013 Acts, ch 115, §10, 19

Referred to in §232.11, 232.52, 232.89, 232.143, 234.8, 237.20, 331.401, 602.1302, 602.1303, 815.11

2013 amendment to subsection 6 takes effect January 1, 2014; transition to full implementation may begin prior to that date; 2013 Acts, ch 115, §19

2012 amendment to subsection 8 takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Subsections 6 and 8 amended

### **232.142 Maintenance and cost of juvenile homes — fund.**

1. County boards of supervisors which singly or in conjunction with one or more other counties provide and maintain juvenile detention and juvenile shelter care homes are subject to this section.

2. For the purpose of providing and maintaining a county or multicounty home, the board of supervisors of any county may issue general county purpose bonds in accordance with sections 331.441 to 331.449. Expenses for providing and maintaining a multicounty home shall be paid by the counties participating in a manner to be determined by the boards of supervisors.

3. A county or multicounty juvenile detention home approved pursuant to this section shall receive financial aid from the state in a manner approved by the director. Aid paid by

the state shall be at least ten percent and not more than fifty percent of the total cost of the establishment, improvements, operation, and maintenance of the home.

4. The director shall adopt minimal rules and standards for the establishment, maintenance, and operation of such homes as shall be necessary to effect the purposes of this chapter. The rules shall apply the requirements of section 237.8, concerning employment and evaluation of persons with direct responsibility for a child or with access to a child when the child is alone and persons residing in a child foster care facility, to persons employed by, residing in, or volunteering for a home approved under this section. The director shall, upon request, give guidance and consultation in the establishment and administration of the homes and programs for the homes.

5. The director shall approve annually all such homes established and maintained under the provisions of this chapter. A home shall not be approved unless it complies with minimal rules and standards adopted by the director and has been inspected by the department of inspections and appeals. The statewide number of beds in the homes approved by the director shall not exceed two hundred sixty-two beds.

6. A juvenile detention home fund is created in the state treasury under the authority of the department. The fund shall consist of moneys deposited in the fund pursuant to sections 321.218A and 321A.32A. The moneys in the fund shall be used for the costs of the establishment, improvement, operation, and maintenance of county or multicounty juvenile detention homes in accordance with annual appropriations made by the general assembly from the fund for these purposes.

[S13, §254-a20, -a26, -a29, -a30; C24, 27, 31, 35, 39, §3653 – 3655; C46, 50, 54, 58, 62, §232.35 – 232.37; C66, 71, 73, 75, 77, §232.21 – 232.26; C79, 81, S81, §232.142; 81 Acts, ch 117, §1031]

83 Acts, ch 123, §91, 209; 88 Acts, ch 1134, §55; 90 Acts, ch 1204, §47; 90 Acts, ch 1239, §13; 91 Acts, ch 138, §4; 92 Acts, ch 1229, §9; 2001 Acts, ch 191, §38; 2011 Acts, ch 98, §7; 2013 Acts, ch 138, §47

Referred to in §232.69, 237.4, 321.210B, 321.218A, 321A.32A, 331.382, 709.16  
Subsection 5 amended

### **232.143 Service area group foster care budget targets.**

1. a. A statewide expenditure target for children in group foster care placements in a fiscal year, which placements are a charge upon or are paid for by the state, shall be established annually in an appropriation bill by the general assembly. Representatives of the department and juvenile court services shall jointly develop a formula for allocating a portion of the statewide expenditure target established by the general assembly to each of the department's service areas. The formula shall be based upon the service area's proportion of the state population of children and of the statewide usage of group foster care in the previous five completed fiscal years and upon other indicators of need. The expenditure amount determined in accordance with the formula shall be the group foster care budget target for that service area.

b. A service area may exceed the service area's budget target for group foster care by not more than five percent in a fiscal year, provided the overall funding allocated by the department for all child welfare services in the service area is not exceeded.

c. If all of the following circumstances are applicable, a service area may temporarily exceed the service area's budget target as necessary for placement of a child in group foster care:

- (1) The child is thirteen years of age or younger.
- (2) The court has entered a dispositional order for placement of the child in group foster care.
- (3) The child is placed in a juvenile detention facility awaiting placement in group foster care.

d. If a child is placed pursuant to paragraph "c", causing a service area to temporarily exceed the service area's budget target, the department and juvenile court services shall examine the cases of the children placed in group foster care and counted in the service area's budget target at the time of the placement pursuant to paragraph "c". If the

examination indicates it may be appropriate to terminate the placement for any of the cases, the department and juvenile court services shall initiate action to set a dispositional review hearing under this chapter for such cases. In such a dispositional review hearing, the court shall determine whether needed aftercare services are available following termination of the placement and whether termination of the placement is in the best interests of the child and the community.

2. For each of the department's service areas, representatives appointed by the department and juvenile court services shall establish a plan for containing the expenditures for children placed in group foster care ordered by the court within the budget target allocated to that service area pursuant to subsection 1. The plan shall be established in a manner so as to ensure the budget target amount will last the entire fiscal year. The plan shall include monthly targets and strategies for developing alternatives to group foster care placements in order to contain expenditures for child welfare services within the amount appropriated by the general assembly for that purpose. Funds for a child placed in group foster care shall be considered encumbered for the duration of the child's projected or actual length of stay, whichever is applicable. Each service area plan shall be established within sixty days of the date by which the group foster care budget target for the service area is determined. To the extent possible, the department and juvenile court services shall coordinate the planning required under this subsection with planning for services paid under section 232.141, subsection 4. The department's service area manager shall communicate regularly, as specified in the service area plan, with the chief juvenile court officers within that service area concerning the current status of the service area plan's implementation.

3. State payment for group foster care placements shall be limited to those placements which are in accordance with the service area plans developed pursuant to subsection 2.

92 Acts, ch 1229, §10; 96 Acts, ch 1213, §35; 98 Acts, ch 1047, §22; 99 Acts, ch 111, §9; 2004 Acts, ch 1116, §13; 2007 Acts, ch 218, §115

Referred to in §232.52, 232.102, 232.117, 232.127, 234.35

Statewide expenditure target for group foster care maintenance and services for 2013-2014 and 2014-2015 fiscal years; 2013 Acts, ch 138, §18, 148

Section not amended; footnote revised

**232.144 through 232.146** Reserved.

## DIVISION VIII

### RECORDS

Referred to in §232.48

#### **232.147 Confidentiality of juvenile court records.**

1. Juvenile court records shall be confidential. They shall not be inspected and their contents shall not be disclosed except as provided in this section.

2. Official juvenile court records in cases alleging delinquency, including complaints under section 232.28, shall be public records, subject to the following restrictions:

a. Official juvenile court records containing a petition or complaint alleging delinquency filed prior to January 1, 2007, shall be public records subject to a confidentiality order under section 232.149A or sealing under section 232.150.

b. Official juvenile court records containing a petition or complaint alleging delinquency filed on or after January 1, 2007, shall be public records subject to a confidentiality order under section 232.149A or sealing under section 232.150. The official records shall not be available to the public or any governmental agency through the internet or in an electronic customized data report unless the child has been adjudicated delinquent. However, the following shall have access to official juvenile court records through the internet or in an electronic customized data report prior to the child being adjudicated delinquent:

- (1) The judge and professional court staff, including juvenile court officers.
- (2) The child's counsel or guardian ad litem.
- (3) The county attorney and the county attorney's assistants.

(4) A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who prior thereto had been the subject of a juvenile court proceeding.

(5) A state or local law enforcement agency.

(6) The state public defender.

(7) The division of criminal and juvenile justice planning of the department of human rights.

c. If the court has excluded the public from a hearing under division II of this chapter, the transcript of the proceedings shall not be deemed a public record and inspection and disclosure of the contents of the transcript shall not be permitted except pursuant to court order or unless otherwise provided in this chapter.

d. Complaints under section 232.28 shall be released in accordance with section 915.25. Other official juvenile court records may be released under this section by a juvenile court officer.

3. Official juvenile court records in all cases except those alleging delinquency may be inspected and their contents shall be disclosed to the following without court order:

a. The judge and professional court staff, including juvenile court officers.

b. The child and the child's counsel.

c. The child's parent, guardian or custodian, court appointed special advocate, and guardian ad litem, and the members of the child advocacy board created in section 237.16 or a local citizen foster care review board created in accordance with section 237.19 who are assigning or reviewing the child's case.

d. The county attorney and the county attorney's assistants.

e. An agency, association, facility or institution which has custody of the child, or is legally responsible for the care, treatment or supervision of the child.

f. A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who prior thereto had been the subject of a juvenile court proceeding.

g. The child's foster parent or an individual providing preadoptive care to the child.

h. The state public defender.

4. Official juvenile court records enumerated in section 232.2, subsection 38, paragraph "e", relating to paternity, support, or the termination of parental rights, shall be disclosed, upon request, to the child support recovery unit without court order.

5. Pursuant to court order official records may be inspected by and their contents may be disclosed to:

a. A person conducting bona fide research for research purposes under whatever conditions the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.

b. Persons who have a direct interest in a proceeding or in the work of the court.

6. a. Inspection of social records and disclosure of their contents shall not be permitted except pursuant to court order or unless otherwise provided in this subsection or chapter.

b. If an informal adjustment of a complaint is made pursuant to section 232.29, the intake officer shall disclose to the victim of the delinquent act, upon the request of the victim, the name and address of the child who committed the delinquent act.

7. Social records prior to adjudication may be disclosed without court order to the superintendent or superintendent's designee of a school district, authorities in charge of an accredited nonpublic school, or any other state or local agency that is part of the juvenile justice system, in accordance with an interagency agreement established under section 280.25. The disclosure shall only include identifying information that is necessary to fulfill the purpose of the disclosure. The social records disclosed shall be used solely for the purpose of determining the programs and services appropriate to the needs of the child or the family of the child and shall not be disclosed for any other purpose unless otherwise provided by law.

8. All juvenile court records shall be made available for inspection and their contents shall be disclosed to any party to the case and the party's counsel and to any trial or appellate court in connection with an appeal pursuant to division VI of this chapter.

9. The clerk of the district court shall enter information from the juvenile record on the judgment docket and lien index, but only as necessary to record support judgments.

10. The state agency designated to enforce support obligations may release information as necessary in order to meet statutory responsibilities.

11. Release of official juvenile court records to a victim of a delinquent act is subject to the provisions of section 915.24, notwithstanding contrary provisions of this chapter.

[C66, 71, 73, 75, 77, §232.54, 232.57; C79, 81, §232.147; 82 Acts, ch 1209, §16]

83 Acts, ch 186, §10057, 10201; 84 Acts, ch 1208, §2; 90 Acts, ch 1271, §1508; 92 Acts, ch 1195, §301; 93 Acts, ch 172, §35, 56; 95 Acts, ch 191, §15; 96 Acts, ch 1110, §3; 97 Acts, ch 164, §4; 98 Acts, ch 1090, §63, 83, 84; 2000 Acts, ch 1123, §2; 2001 Acts, ch 79, §1; 2005 Acts, ch 55, §2; 2006 Acts, ch 1164, §1; 2006 Acts, ch 1185, §76; 2009 Acts, ch 41, §263; 2013 Acts, ch 116, §3

Referred to in §13B.4B, 135L.3, 216A.136, 228.6, 232.19, 232.91, 232.104, 232.149A, 232.150, 232.151, 232C.4, 235A.17, 280.25, 692A.121, 915.10A, 915.25

Subsection 3, NEW paragraph h

### **232.148 Fingerprints — photographs.**

1. Except as provided in this section, a child shall not be fingerprinted or photographed by a criminal or juvenile justice agency after the child is taken into custody.

2. Fingerprints of a child who has been taken into custody shall be taken and filed by a criminal or juvenile justice agency investigating the commission of a public offense other than a simple misdemeanor. In addition, photographs of a child who has been taken into custody may be taken and filed by a criminal or juvenile justice agency investigating the commission of a public offense other than a simple misdemeanor. The criminal or juvenile justice agency shall forward the fingerprints to the department of public safety for inclusion in the automated fingerprint identification system and may also retain a copy of the fingerprint card for comparison with latent fingerprints and the identification of repeat offenders.

3. If a peace officer has reasonable grounds to believe that latent fingerprints found during the investigation of the commission of a public offense are those of a particular child, fingerprints of the child may be taken for immediate comparison with the latent fingerprints regardless of the nature of the offense. If the comparison is negative the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive, the fingerprint card and other copies of the fingerprints taken shall be delivered to the division of criminal investigation of the department of public safety in the manner and on the forms prescribed by the commissioner of public safety within two working days after the fingerprints are taken. After notification by the child or the child's representative that the child has not had a delinquency petition filed against the child or has not entered into an informal adjustment agreement, the fingerprint card and copies of the fingerprints shall be immediately destroyed.

4. Fingerprint and photograph files of children may be inspected by peace officers when necessary for the discharge of their official duties. The juvenile court may authorize other inspections of such files in individual cases upon a showing that inspection is necessary in the public interest.

5. Fingerprints and photographs of a child shall be removed from the file and destroyed upon notification by the child's guardian ad litem or legal counsel to the department of public safety that either of the following situations apply:

a. A petition alleging the child to be delinquent is not filed and the child has not entered into an informal adjustment, admitting involvement in a delinquent act alleged in the complaint.

b. After a petition is filed, the petition is dismissed or the proceedings are suspended and the child has not entered into a consent decree and has not been adjudicated delinquent on

the basis of a delinquent act other than one alleged in the petition in question, or the child has not been placed on youthful offender status.

[C79, 81, §232.148; 82 Acts, ch 1209, §17]

94 Acts, ch 1172, §25; 95 Acts, ch 67, §17; 95 Acts, ch 191, §16, 17; 96 Acts, ch 1034, §11; 97 Acts, ch 126, §32, 33; 98 Acts, ch 1100, §26; 99 Acts, ch 37, §1

Referred to in §216A.136, 232.91, 232.151, 232C.4, 692.15, 692A.121, 726.23

See also §690.2, 690.4, and 726.23

### **232.149 Records of criminal or juvenile justice agencies.**

1. The taking of a child into custody under the provisions of section 232.19 shall not be considered an arrest.

2. Records and files of a criminal or juvenile justice agency concerning a child involved in a delinquent act are public records, except that release of criminal history data, intelligence data, and law enforcement investigatory files is subject to the provisions of section 22.7 and chapter 692, and juvenile court social records, as defined in section 232.2, subsection 31, shall be deemed confidential criminal identification files under section 22.7, subsection 9. The records are subject to sealing under section 232.150 unless the juvenile court waives its jurisdiction over the child so that the child may be prosecuted as an adult for a public offense.

3. Notwithstanding subsection 2, if a juvenile who has been placed in detention under section 232.22 escapes from the facility, the criminal or juvenile justice agency may release the name of the juvenile, the facts surrounding the escape, and the offense or alleged offense which resulted in the placement of the juvenile in the facility.

[C66, 71, 73, 75, 77, §232.15; C79, 81, §232.149]

83 Acts, ch 186, §10057, 10201; 85 Acts, ch 173, §15; 94 Acts, ch 1172, §26; 95 Acts, ch 191, §18, 19; 97 Acts, ch 126, §34, 35

Referred to in §216A.136, 232.91, 232.149A, 232.150, 232.151, 232C.4, 692A.121

### **232.149A Confidentiality orders.**

1. Notwithstanding any other provision of the Code to the contrary, upon application of a person who was taken into custody for a delinquent act or was the subject of a complaint alleging delinquency or was the subject of a delinquency petition, or upon the court's own motion, the court after hearing, shall order official juvenile court records in the case to be kept confidential and no longer public records under sections 232.147 and 232.149, if the court finds both of the following apply:

a. The case has been dismissed and the person is no longer subject to the jurisdiction of the juvenile court.

b. Making the records confidential is in the best interests of the person and the public.

2. The records subject to a confidentiality order may be sealed at a later date if section 232.150 applies.

3. Official juvenile court records subject to a confidentiality order may be inspected and their contents shall be disclosed to the following without court order:

a. The judge and professional court staff, including juvenile court officers.

b. The child and the child's counsel.

c. The child's parent, guardian or custodian, court appointed special advocate, and guardian ad litem, and the members of the child advocacy board created in section 237.16 or a local citizen foster care review board created in accordance with section 237.19 who are assigning or reviewing the child's case.

d. The county attorney and the county attorney's assistants.

e. An agency, association, facility, or institution which has custody of the child, or is legally responsible for the care, treatment, or supervision of the child, including but not limited to the department of human services.

f. A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who had been the subject of a juvenile court proceeding.

g. The child's foster parent or an individual providing preadoptive care to the child.

h. A state or local law enforcement agency.

i. The state public defender.

4. If the child has been discharged from the jurisdiction of the juvenile court due to reaching the age of eighteen and restitution remains unpaid, the name of the court, the title of the action, and the court's file number shall not be kept confidential, and the restitution amount shall be a judgment and lien as provided in sections 910.7A, 910.8, 910.10, and 915.28 until the restitution is paid.

5. Pursuant to court order, official juvenile court records subject to a confidentiality order may be inspected by and their contents may be disclosed to:

a. A person conducting bona fide research for research purposes under whatever conditions the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.

b. Persons who have a direct interest in a proceeding or in the work of the court.

2006 Acts, ch 1164, §2; 2006 Acts, ch 1185, §77

Referred to in §216A.136, 232.91, 232.147, 232.151, 232C.4, 692A.121

### **232.150 Sealing of records.**

1. a. Upon application of a person who was taken into custody for a delinquent act or was the subject of a complaint alleging delinquency or was the subject of a delinquency petition, or upon the court's own motion, the court, after hearing, shall order the official juvenile court records in the case including those specified in sections 232.147 and 232.149 sealed if the court finds all of the following:

(1) The person is eighteen years of age or older and two years have elapsed since the last official action in the person's case.

(2) The person has not been subsequently convicted of a felony or an aggravated or serious misdemeanor or adjudicated a delinquent child for an act which if committed by an adult would be a felony, an aggravated misdemeanor, or a serious misdemeanor and no proceeding is pending seeking such conviction or adjudication.

(3) The person was not placed on youthful offender status, transferred back to district court after the youthful offender's eighteenth birthday, and sentenced for the offense which precipitated the youthful offender placement.

b. If the person was adjudicated delinquent for an offense which if committed by an adult would be an aggravated misdemeanor or a felony, the court shall not order the records in the case sealed unless, upon application of the person or upon the court's own motion and after hearing, the court finds that paragraph "a", subparagraphs (1) and (2), apply and that the sealing is in the best interests of the person and the public.

c. If the person is required to pay monetary restitution to a victim due to a delinquent act and the restitution is unpaid, the records in the case may be sealed, but the name of the court, the title of the action, and the court's file number shall remain unsealed as provided in section 910.10 and the restitution amount shall be a judgment and lien as provided in sections 910.7A, 910.8, 910.10, and 915.28 until the restitution is paid in full.

2. Reasonable notice of the hearing shall be given to the person who is the subject of the records named in the motion, the county attorney, and the agencies having custody of the records named in the application or motion.

3. Notice and copies of a sealing order shall be sent to each agency or person having custody of the records named therein.

4. On entry of a sealing order:

a. All agencies and persons having custody of records which are named therein, shall send such records to the court issuing the order.

b. All index references to sealed records shall be deleted.

5. The sealed records shall no longer be deemed to exist as a matter of law, and the juvenile court and any other agency or person who received notice and a copy of the sealing order shall reply to an inquiry that no such records exist, except when such reply is made to an inquiry pursuant to subsection 6.

6. Inspection of sealed records and disclosure of their contents thereafter may be permitted only pursuant to an order of the court upon application of the person who is the subject of such records except that the court in its discretion may permit reports to be

inspected by or their contents to be disclosed for research purposes to a person conducting bona fide research under whatever conditions the court deems proper.

[C79, 81, §232.150; 82 Acts, ch 1209, §18]

97 Acts, ch 126, §36; 2006 Acts, ch 1164, §3

Referred to in §216A.136, 232.55, 232.91, 232.147, 232.149, 232.149A, 232.151, 232C.4, 692A.101, 692A.121

### **232.151 Criminal penalties.**

Any person who knowingly discloses, receives, or makes use or permits the use of information derived directly or indirectly from the records concerning a child referred to in sections 232.147 to 232.150 except as provided by those sections shall be guilty of a serious misdemeanor.

[C79, 81, §232.151]

Referred to in §216A.136, 232.91, 232C.4, 692A.121

### **232.152 Rules of juvenile procedure.**

Proceedings under this chapter are subject to rules prescribed by the supreme court under section 602.4201.

[C79, 81, §232.152]

83 Acts, ch 186, §10058, 10201

Referred to in §216A.136

Rules adopted by the supreme court are published in the compilation "Iowa Court Rules"

Section not amended; footnote revised

### **232.153 Applicability of this chapter prior to its effective date.**

1. Except as provided in subsections 2 and 3 of this section, this chapter does not apply to juvenile court cases brought prior to July 1, 1979 or to acts committed prior to July 1, 1979 which would otherwise bring a child or a child's parent, guardian or custodian within the jurisdiction of the juvenile court pursuant to this chapter.

2. In a case pending on or commenced after July 1, 1979, involving acts committed prior to July 1, 1979, upon the request of any party and the approval of the court:

a. Procedural provisions of this chapter shall apply insofar as they are justly applicable.

b. The court may order a disposition of the case pursuant to the provisions of this chapter.

3. Provisions of this chapter governing the termination, modification or vacation of a dispositional order shall apply to persons to whom a dispositional order has been issued for acts committed prior to July 1, 1979, except that the maximum length of the order and the severity of the disposition shall not be increased. The provisions of this chapter shall not affect the substantive or procedural validity of a judgment entered before July 1, 1979, regardless of the fact that appeal time has not run or that an appeal is pending.

[C81, §232.153]

Referred to in §216A.136

**232.154 through 232.157** Reserved.

## DIVISION IX

### INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

### **232.158 Interstate compact on placement of children.**

The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

1. *Article I — Purpose and policy.* It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

a. Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

b. The appropriate authorities in a state where a child is to be placed may have full

opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

c. The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

d. Appropriate jurisdictional arrangements for the care of children will be promoted.

2. *Article II — Definitions.* As used in this compact:

a. “Child” means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

b. “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

c. “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

d. “Placement” means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution, but not in an institution caring for the mentally ill, mentally defective, or epileptic, in an institution primarily educational in character, or in a hospital or other medical facility.

3. *Article III — Conditions for placement.*

a. A sending agency shall not send, bring, or cause to be sent or brought into any other party state a child for placement in foster care or as a preliminary to a possible adoption unless the sending agency complies with every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children in the receiving state.

b. Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

c. Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph “b” of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency’s state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

d. The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

4. *Article IV — Penalty for illegal placement.* The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

5. *Article V — Retention of jurisdiction.*

a. The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

b. When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

c. Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph "a" hereof.

6. *Article VI — Institutional care of delinquent children.* A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to the child being sent to such other party jurisdiction for institutional care and the court finds that:

a. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

b. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

7. *Article VII — Compact administrator.* The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in the officer's jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

8. *Article VIII — Limitations.* This compact shall not apply to:

a. The sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

b. Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

9. *Article IX — Enactment and withdrawal.* This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

10. *Article X — Construction and severability.* The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the

remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[S13, §3260-1; C24, §3672, 3675; C27, 31, 35, §3661-a90, -a93, -a95, -a96; C39, §3661.104, 3661.107, 3661.109, 3661.110; C46, 50, 54, 58, 62, 66, §238.33, 238.36, 238.38, 238.39; C71, 73, 75, 77, 79, 81, §238.33]

85 Acts, ch 173, §21 – 23, 30

CS85, §232.158

2008 Acts, ch 1032, §201

Referred to in §232.159, 232.160, 232.161, 232.162, 232.163, 232.164, 232.165, 232.166, 232.167

### **232.158A Legal risk placement.**

1. Notwithstanding any provision of the interstate compact on the placement of children to the contrary, the department of human services shall permit the legal risk placement of a child under the interstate compact on the placement of children if the prospective adoptive parent provides a legal risk statement, in writing, acknowledging all of the following:

- a. That the placement is a legal risk placement.
- b. That the court of the party state of the sending agency retains jurisdiction over the child for purposes of the termination of the parental rights of the biological parents.
- c. That if termination of parental rights cannot be accomplished in accordance with applicable laws, the child shall be promptly returned to the party state of the sending agency to be returned to the child's biological parent or placed as deemed appropriate by a court of the party state of the sending agency.
- d. That the prospective adoptive parent assumes full legal, financial, and other risks associated with the legal risk placement and that the prospective adoptive parent agrees to hold the department of human services harmless for any disruption or failure of the placement.
- e. That the prospective adoptive parent shall provide support and medical and other appropriate care to the child pending the termination of parental rights of the biological parents and shall assume liability for all costs associated with the return of the child to the party state of the sending agency if the placement is disrupted or fails.

2. Any written legal risk statement utilized in establishing a legal risk placement shall, at a minimum, state all of the information required under subsection 1, shall be signed by any prospective adoptive parent, and shall be notarized. The legal risk statement shall also contain the following notice printed in clearly legible type:

If termination of parental rights is not accomplished and return of the child to the biological parent is required, the prospective adoptive parents are encouraged to seek mental health counseling to address any resulting psychological or family problems.

3. For the purposes of this section, “*legal risk placement*” means the placement of a child, who is to be adopted, with a prospective adoptive parent prior to the termination of parental rights of the biological parents, under which the prospective adoptive parent assumes the risk that if the parental rights of the biological parents are not terminated the child shall be returned to the biological parents or placed as deemed appropriate by a court of the party state of the sending agency, and under which the prospective adoptive parent assumes other risks and liabilities specified in a written agreement.

2001 Acts, ch 57, §1

Referred to in §232.166, 232.167

Section not amended; editorial change applied

### **232.159 Financial responsibility.**

Financial responsibility for any child placed pursuant to the provisions of the interstate compact on the placement of children under section 232.158 shall be determined in

accordance with the provisions of article V of that interstate compact in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of chapters 252 and 252A, fixing responsibility for the support of children also may be invoked.

[C71, 73, 75, 77, 79, 81, §238.34]

85 Acts, ch 173, §30

CS85, §232.159

2008 Acts, ch 1032, §201

Referred to in §232.166, 232.167

**232.160 Department of human services as public authority.**

The “*appropriate public authorities*” as used in article III of the interstate compact on the placement of children under section 232.158 shall, with reference to this state, mean the state department of human services and said department shall receive and act with reference to notices required by article III of that interstate compact.

[C71, 73, 75, 77, 79, 81, §238.35]

83 Acts, ch 96, §157, 159

85 Acts, ch 173, §30

CS85, §232.160

2008 Acts, ch 1032, §201

Referred to in §232.166, 232.167

**232.161 Department as authority in receiving state.**

As used in paragraph “a” of article V of the interstate compact on the placement of children under section 232.158, the phrase “*appropriate authority in the receiving state*” with reference to this state shall mean the state department of human services.

[C71, 73, 75, 77, 79, 81, §238.36]

83 Acts, ch 96, §157, 159

85 Acts, ch 173, §30

CS85, §232.161

2008 Acts, ch 1032, §201

Referred to in §232.166, 232.167

**232.162 Authority to enter agreements.**

The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph “b” of article V of the interstate compact on the placement of children under section 232.158. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or a subdivision or agency of this state shall not be binding unless it has the approval in writing of the administrator of child and family services in the case of the state and the county general assistance director in the case of a subdivision of the state.

[C71, 73, 75, 77, 79, 81, §238.37]

85 Acts, ch 173, §30

CS85, §232.162

92 Acts, ch 1212, §8; 2008 Acts, ch 1032, §201

Referred to in §232.166, 232.167

**232.163 Visitation, inspection, or supervision.**

1. Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision of this state as contemplated by paragraph “b” of article V of the interstate compact on the placement of children contained in section 232.158.

2. If a child is placed outside the residency state of the child’s parent, the sending agency

shall provide for a designee to visit the child at least once every twelve months and to submit a written report to the court concerning the child and the visit.

[C71, 73, 75, 77, 79, 81, §238.38]

85 Acts, ch 173, §30

CS85, §232.163

97 Acts, ch 99, §6; 98 Acts, ch 1100, §27; 2008 Acts, ch 1032, §201

Referred to in §232.166, 232.167

**232.164 Court authority to place child in another state.**

Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to article VI of the interstate compact on the placement of children, section 232.158, and shall retain jurisdiction as provided in article V of that interstate compact.

[C71, 73, 75, 77, 79, 81, §238.39]

85 Acts, ch 173, §30

CS85, §232.164

2008 Acts, ch 1032, §201

Referred to in §232.166, 232.167

**232.165 Executive head.**

As used in article VII of the interstate compact on the placement of children, section 232.158, the term “*executive head*” means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of article VII of that interstate compact.

[C71, 73, 75, 77, 79, 81, §238.40]

85 Acts, ch 173, §30

CS85, §232.165

2008 Acts, ch 1032, §201

Referred to in §232.166, 232.167

**232.166 Statutes not affected.**

Nothing contained in sections 232.158 to 232.165 shall be deemed to affect or modify the other provisions of this chapter or of chapter 600.

[C71, 73, 75, 77, 79, 81, §238.41]

85 Acts, ch 173, §30

CS85, §232.166

Referred to in §232.167

**232.167 Penalty.**

A person or agency which violates or aids and abets in the violation of any of the provisions of sections 232.158 through 232.166 commits a fraudulent practice.

88 Acts, ch 1249, §15

**232.168 Attorney general to enforce.**

The attorney general may, on the attorney general’s own initiative, institute any criminal and civil actions and proceedings under this division, at whatever stage of placement necessary, to enforce the interstate compact on the placement of children, including, but not limited to, seeking enforcement of the provisions of the compact through the courts of a party state. The department of human services shall cooperate with the attorney general and shall refer any placement or proposed placement to the attorney general which may require enforcement measures.

94 Acts, ch 1174, §4

**232.169 and 232.170 Reserved.**

DIVISION X  
INTERSTATE JUVENILE COMPACTS

**232.171 Interstate compact on juveniles.**

The state of Iowa through its courts and agencies is hereby authorized to enter into interstate compacts on juveniles in behalf of this state with any other contracting state which legally joins therein in substantially the following form and the contracting states solemnly agree:

1. *Article I — Findings and purposes.* That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to

a. Cooperative supervision of delinquent juveniles on probation or parole;

b. The return, from one state to another, of delinquent juveniles who have escaped or absconded;

c. The return, from one state to another, of nondelinquent juveniles who have run away from home; and

d. Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

2. *Article II — Existing rights and remedies.* That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

3. *Article III — Definitions.* That, for the purposes of this compact, “*delinquent juvenile*” means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; “*probation or parole*” means any kind of conditional release of juveniles authorized under the laws of the states party hereto; “*court*” means any court having jurisdiction over delinquent, neglected or dependent children; “*state*” means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and “*residence*” or any variant thereof means a place at which a home or regular place of abode is maintained.

4. *Article IV — Return of runaways.*

a. (1) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the juvenile’s return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile’s custody, the circumstances of the juvenile’s running away, the juvenile’s location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering the juvenile’s own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner’s entitlement to the juvenile’s custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of

the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel the juvenile's return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to the juvenile's legal custody, and that it is in the best interest and for the protection of such juvenile that the juvenile be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the officer or person to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of a court in the state, who shall inform the juvenile of the demand made for the juvenile's return, and who may appoint counsel or guardian ad litem for the juvenile. If the judge of such court shall find that the requisition is in order, the judge shall deliver such juvenile over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to the juvenile's legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for the person's own protection and welfare, for such a time not exceeding ninety days as will enable the person's return to another state party to this compact pursuant to a requisition for the person's return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

b. That the state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

c. That "juvenile" as used in this article means any person who is a minor under the law of

the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

5. *Article V — Return of escapees and absconders.*

a. (1) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody the delinquent juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of the juvenile's probation or parole or of the juvenile's escape from an institution or agency vested with the juvenile's legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the officer or person to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform the juvenile of the demand made for the juvenile's return and who may appoint counsel or guardian ad litem for the juvenile. If the judge of such court shall find that the requisition is in order, the judge shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with the person's legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, the person must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety days, as will enable the person's detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with the juvenile's legal custody or supervision, there is pending in the state wherein the juvenile is detained any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon the juvenile's return to the state from which the juvenile escaped or

absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

b. That the state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

6. *Article VI — Voluntary return procedure.* That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with the juvenile's legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV, paragraph "a", or of article V, paragraph "a", may consent to the juvenile's immediate return to the state from which the juvenile absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, consent to the juvenile's return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of the juvenile's rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver the juvenile to the duly accredited officer or officers of the state demanding the juvenile's return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order the juvenile to return unaccompanied to such state and shall provide the juvenile with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

7. *Article VII — Cooperative supervision of probationers and parolees.*

a. That the duly constituted judicial and administrative authorities of a state party to this compact, herein called "*sending state*", may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact, herein called "*receiving state*", while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

b. That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

c. That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against the juvenile within the receiving state any criminal charge or any proceeding to have the juvenile adjudicated

a delinquent juvenile for any act committed in such state, or if the juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

d. That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

8. *Article VIII — Responsibility for costs.*

a. That the provisions of article IV, paragraph “b”, article V, paragraph “b”, and article VII, paragraph “d” of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

b. That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to article IV, paragraph “b”, article V, paragraph “b”, or article VII, paragraph “d” of this compact.

9. *Article IX — Detention practices.* That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

10. *Article X — Supplementary agreements.* That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

a. Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

b. Provide that the delinquent juvenile shall be given a court hearing prior to the juvenile being sent to another state for care, treatment and custody;

c. Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

d. Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

e. Provide for reasonable inspection of such institutions by the sending state;

f. Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to the juvenile being sent to another state; and

g. Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

11. *Article XI — Acceptance of federal and other aid.* That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

12. *Article XII — Compact administrators.* That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

13. *Article XIII — Execution of compact.* That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

14. *Article XIV — Renunciation.* That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present article.

15. *Article XV — Rendition amendment.*

a. This article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

b. All provisions and procedures of articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

16. *Out-of-state confinement amendment.*

a. Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

b. Escapees and absconders who would otherwise be returned pursuant to article V of the compact may be confined or reconfined in the receiving state pursuant to this amendment. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such article shall be made and furnished, but in place of the demand pursuant to article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in article V may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.

c. The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

d. As used in this amendment:

(1) "*Sending state*" means sending state as that term is used in article VII of the compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of article V of the compact.

(2) "*Receiving state*" means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this amendment.

e. Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a "compact institution" and shall confine persons therein as provided in paragraph "a" hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to "compact institutions" at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

f. Persons confined in “compact institutions” pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said “compact institution” for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge or for any purpose permitted by the laws of the sending state.

g. All persons who may be confined in a “compact institution” pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this amendment be construed as a waiver of any rights which the delinquent would have had if the delinquent had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee, or absconder may be entitled, prior to confinement or reconfinement, by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

h. Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

i. This amendment shall take initial effect when entered into by any two or more states party to the compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have enacted this amendment.

[C62, 66, 71, 73, 75, 77, §231.14; C79, 81, §232.139]

85 Acts, ch 182, §1

CS85, §232.171

2008 Acts, ch 1032, §201

Referred to in §232.172

See §232.172 for limitations on applicability of this section

### **232.172 Confinement of delinquent juvenile.**

1. For a juvenile under the jurisdiction of this state who is subject to the interstate compact for juveniles under section 232.173, the confinement of the juvenile in an institution located within another compacting state shall be as provided under the compact.

2. This subsection applies to the confinement of a delinquent juvenile under the jurisdiction of this state in an institution located within a noncompacting state, as defined in section 232.173, that entered into the interstate compact on juveniles under section 232.171. In addition to any institution in which the authorities of this state may otherwise confine or order the confinement of the delinquent juvenile, such authorities may, pursuant to the out-of-state confinement amendment to the interstate compact on juveniles in section 232.171, confine or order the confinement of the delinquent juvenile in a compact institution within another party state.

[C66, 71, 73, 75, 77, §231.15; C79, 81, §232.140]

CS85, §232.172

2010 Acts, ch 1192, §75; 2011 Acts, ch 34, §58

### **232.173 Interstate compact for juveniles.**

1. *Article I — Purpose.*

a. The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away

from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

b. It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

(1) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state.

(2) Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected.

(3) Return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return.

(4) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services.

(5) Provide for the effective tracking and supervision of juveniles.

(6) Equitably allocate the costs, benefits, and obligations of the compacting states.

(7) Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders.

(8) Insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines.

(9) Establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact.

(10) Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators.

(11) Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance.

(12) Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity.

(13) Coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise.

c. It is the policy of the compacting states that the activities conducted by the interstate commission created in this compact are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

2. *Article II — Definitions.* As used in this compact, unless the context clearly requires a different construction:

a. “Bylaws” means those bylaws established by the interstate commission for its governance, or for directing or controlling its actions or conduct.

b. “Compact administrator” means the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

c. “Compacting state” means any state which has enacted the enabling legislation for this compact.

d. “*Commissioner*” means the voting representative of each compacting state appointed pursuant to article III of this compact.

e. “*Court*” means any court having jurisdiction over delinquent, neglected, or dependent children.

f. “*Deputy compact administrator*” means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

g. “*Interstate commission*” means the interstate commission for juveniles created by article III of this compact.

h. “*Juvenile*” means any person defined as a juvenile in any member state or by the rules of the interstate commission, including persons who are any of the following:

(1) An accused delinquent, meaning a person charged with an offense that, if committed by an adult, would be a criminal offense.

(2) An adjudicated delinquent, meaning a person found to have committed an offense that, if committed by an adult, would be a criminal offense.

(3) An accused status offender, meaning a person charged with an offense that would not be a criminal offense if committed by an adult.

(4) An adjudicated status offender, meaning a person found to have committed an offense that would not be a criminal offense if committed by an adult.

(5) A nonoffender, meaning a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

i. “*Noncompacting state*” means any state which has not enacted the enabling legislation for this compact.

j. “*Probation or parole*” means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

k. “*Rule*” means a written statement by the interstate commission promulgated pursuant to article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

l. “*State*” means a state of the United States, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

### 3. *Article III — Interstate commission for juveniles.*

a. The compacting states hereby create the interstate commission for juveniles. The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers, and duties set forth in this compact, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

b. The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created in this compact. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the interstate commission in such capacity under or pursuant to the applicable law of the compacting state.

c. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for adult offender supervision, interstate compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission shall be ex officio, nonvoting members. The interstate commission may provide in its bylaws for such additional ex officio,

nonvoting members, including members of other national organizations, in such numbers as shall be determined by the commission.

d. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

e. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

f. The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and interstate commission staff; administer enforcement and compliance with the provisions of the compact, its bylaws, and rules; and perform such other duties as directed by the interstate commission or set forth in the bylaws.

g. Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

h. The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

i. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the interstate commission's internal personnel practices and procedures.

(2) Disclose matters specifically exempted from disclosure by statute.

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential.

(4) Involve accusing any person of a crime, or formally censuring any person.

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(6) Disclose investigative records compiled for law enforcement purposes.

(7) Disclose information contained in or related to an examination or operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity.

(8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity.

(9) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

j. For every meeting closed pursuant to this provision, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting

and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote, reflected in the vote of each member on the question. All documents considered in connection with any action shall be identified in such minutes.

k. The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

4. *Article IV — Powers and duties of the interstate commission.* The commission shall have the following powers and duties:

a. To provide for dispute resolution among compacting states.

b. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

c. To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission.

d. To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.

e. To establish and maintain offices which shall be located within one or more of the compacting states.

f. To purchase and maintain insurance and bonds.

g. To borrow, accept, hire, or contract for services of personnel.

h. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including but not limited to an executive committee as required by article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.

i. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

j. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

k. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

l. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

m. To establish a budget and make expenditures and levy dues as provided in article VIII of this compact.

n. To sue and be sued.

o. To adopt a seal and bylaws governing the management and operation of the interstate commission.

p. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

q. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

r. To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

s. To establish uniform standards of the reporting, collecting, and exchanging of data.

t. The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

5. *Article V — Organization and operation of the interstate commission.*

a. *Bylaws.* The interstate commission shall, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to all of the following:

- (1) Establishing the fiscal year of the interstate commission.
- (2) Establishing an executive committee and such other committees as may be necessary.
- (3) Provide for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission.
- (4) Providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each such meeting.
- (5) Establishing the titles and responsibilities of the officers of the interstate commission.
- (6) Providing a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations.
- (7) Providing “start-up” rules for initial administration of the compact.
- (8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

b. *Officers and staff.*

(1) The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson’s absence or disability, the vice chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the interstate commission.

c. *Immunity, defense, and indemnification.*

(1) The commission’s executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person’s employment or duties for acts, errors, or omissions occurring within such person’s state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subparagraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(3) The interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner’s representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate

commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The interstate commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

6. *Article VI — Rulemaking functions of the interstate commission.*

a. The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

b. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the model state administrative procedures Act, 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the interstate commission deems appropriate consistent with due process requirements under the Constitution of the United States as now or hereafter interpreted by the United States supreme court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

c. When promulgating a rule, the interstate commission shall, at a minimum, do all of the following:

(1) Publish the proposed rule's entire text stating the reasons for that proposed rule.

(2) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available.

(3) Provide an opportunity for an informal hearing if petitioned by ten or more persons.

(4) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

d. Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this lettered paragraph, evidence is substantial if it would be considered substantial evidence under the model state administrative procedures Act.

e. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

f. The existing rules governing the operation of the interstate compact on juveniles superseded by this compact shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

g. Upon determination by the interstate commission that a state of emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

7. *Article VII — Oversight, enforcement, and dispute resolution by the interstate commission.*

a. *Oversight.*

(1) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

*b. Dispute resolution.*

(1) The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(2) The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in article XI of this compact.

*8. Article VIII — Finance.*

*a.* The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

*b.* The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

*c.* The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

*d.* The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

*9. Article IX — The state council.* Each member state shall create a state council for interstate juvenile supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and other duties as may be determined by that state, including but not limited to development of policy concerning operations and procedures of the compact within that state.

*10. Article X — Compacting states, effective date, and amendment.*

*a.* Any state, the District of Columbia, or its designee, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in article II of this compact is eligible to become a compacting state.

b. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

c. The interstate commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

11. *Article XI — Withdrawal, default, termination, and judicial enforcement.*

a. *Withdrawal.*

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

b. *Technical assistance, fines, suspension, termination, and default.*

(1) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(a) Remedial training and technical assistance as directed by the interstate commission.

(b) Alternative dispute resolution.

(c) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission.

(d) Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws or duly promulgated rules, and any other grounds designated in commission bylaws and rules.

(3) The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(4) Within sixty days of the effective date of termination of a defaulting state, the commission shall notify the governor, the chief justice or chief judicial officer, the majority

and minority leaders of the defaulting state's legislature, and the state council of such termination.

(5) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(6) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(7) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

*c. Judicial enforcement.* The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney fees.

*d. Dissolution of compact.*

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

12. *Article XII — Severability and construction.*

*a.* The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

*b.* The provisions of this compact shall be liberally construed to effectuate its purposes.

13. *Article XIII — Binding effect of compact and other laws.*

*a. Other laws.*

(1) Nothing in this compact prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

*b. Binding effect of the compact.*

(1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

2010 Acts, ch 1192, §76

Referred to in §232.2, 232.172

**232.174** Reserved.

DIVISION XI  
VOLUNTARY FOSTER CARE PLACEMENT

**232.175 Placement oversight.**

Placement oversight shall be provided pursuant to this division when the parent, guardian, or custodian of a child with an intellectual disability or other developmental disability requests placement of the child in foster family care for a period of more than thirty days. The oversight shall be provided through review of the placement every six months by the department's foster care review committees or by a local citizen foster care review board. Court oversight shall be provided prior to the initial placement and at periodic intervals which shall not exceed twelve months. It is the purpose and policy of this division to ensure the existence of oversight safeguards as required by the federal Child Welfare Act of 1980, Pub. L. No. 96-272, as codified in 42 U.S.C. § 671(a)(16), 627(a)(2)(B), and 675(1),(5), while maintaining parental decision-making authority.

89 Acts, ch 169, §2; 92 Acts, ch 1141, §2; 92 Acts, ch 1229, §11; 97 Acts, ch 99, §7; 99 Acts, ch 111, §1, 7; 2012 Acts, ch 1019, §87

**232.176 Jurisdiction.**

The court shall have exclusive jurisdiction over voluntary placement proceedings.

89 Acts, ch 169, §3

**232.177 Venue.**

Venue for voluntary placement proceedings shall be determined in accordance with section 232.62.

89 Acts, ch 169, §4

**232.178 Petition.**

1. For a placement initiated on or after July 1, 1992, the department shall file a petition to initiate a voluntary placement proceeding prior to the child's placement in accordance with criteria established pursuant to the federal Child Welfare Act of 1980, Pub. L. No. 96-272, as codified in 42 U.S.C. § 627(a). For a placement initiated before July 1, 1992, the department shall file a petition to approve placement on or before September 1, 1992.

2. The petition and subsequent court documents shall be entitled "In the interests of ....., a child".

3. The petition shall state the names and residence of the child and the child's living parents, guardian, custodian, and guardian ad litem, if any, and the age of the child.

4. The petition shall describe the child's emotional, physical, or intellectual disability which requires care and treatment; the reasonable efforts to maintain the child in the child's home; the department's request to the family of a child with an intellectual disability, other developmental disability, or organic mental illness to determine if any services or support provided to the family will enable the family to continue to care for the child in the child's home; and the reason the child's parent, guardian, or custodian has requested a foster family care placement. The petition shall also describe the commitment of the parent, guardian, or custodian in fulfilling the responsibilities defined in the case permanency plan and how the placement will serve the child's best interests.

89 Acts, ch 169, §5; 92 Acts, ch 1229, §12; 99 Acts, ch 111, §2, 7; 2012 Acts, ch 1019, §88

**232.179 Appointment of counsel and guardian ad litem.**

Upon the filing of a petition, the court shall appoint a guardian ad litem to represent the best interests of the child unless the court determines that the child already has a guardian ad litem who represents the child's best interests. If the child's parent, guardian, or custodian desires counsel but cannot pay the counsel's expenses, the court may appoint counsel.

89 Acts, ch 169, §6

**232.180 Duties of county attorney.**

Upon the filing of a petition and the request of the department, the county attorney shall represent the state in all adversary proceedings arising under this division and shall present evidence in support of the petition as provided under section 232.90.

89 Acts, ch 169, §7

**232.181 Social history report.**

Upon the filing of a petition, the department shall submit a social history report regarding the child and the child's family. The report shall include a description of the child's disability and resultant functional limitations, the case permanency plan, a description of the proposed foster care placement, and a description of family participation in developing the child's case permanency plan and the commitment of the parent, guardian, or custodian in fulfilling the responsibilities defined in the plan. If the report indicates the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse, unless otherwise ordered by the court, the child's parent, guardian, or foster parent or other person with custody of the child shall be provided with that information.

89 Acts, ch 169, §8; 92 Acts, ch 1229, §13; 2005 Acts, ch 124, §5

**232.182 Initial determination.**

1. Upon the filing of a petition, the court shall fix a time for an initial determination hearing and give notice of the hearing to the child's parent, guardian, or custodian, counsel or guardian ad litem, and the department.

2. A parent who does not have custody of the child may petition the court to be made a party to proceedings under this division.

3. An initial determination hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing only if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. After the hearing is concluded, the court shall make and file written findings as to whether reasonable efforts, as defined in section 232.102, subsection 10, have been made and whether the voluntary foster family care placement is in the child's best interests.

a. The court shall order foster family care placement in the child's best interests if the court finds that all of the following conditions exist:

(1) The child has an emotional, physical, or intellectual disability which requires care and treatment.

(2) The child's parent, guardian, or custodian has demonstrated a willingness or ability to fulfill the responsibilities defined in the case permanency plan.

(3) Reasonable efforts have been made and the placement is in the child's best interests.

(4) A determination that services or support provided to the family of a child with an intellectual disability, other developmental disability, or organic mental illness will not enable the family to continue to care for the child in the child's home.

b. If the court finds that reasonable efforts have not been made and that services or support are available to prevent the placement, the court may order the services or support to be provided to the child and the child's family.

c. If the court finds that the foster care placement is necessary and the child's parent, guardian, or custodian has not demonstrated a commitment to fulfill the responsibilities defined in the child's case permanency plan, the court shall cause a child in need of assistance petition to be filed.

5A. If the court orders placement of the child into foster care, the court or the department shall establish a support obligation for the costs of the placement pursuant to section 234.39.

6. The hearing may be waived and the court may issue the findings and order required

under subsection 5 on the basis of the department's written report if all parties agree to the hearing's waiver and the department's written report.

89 Acts, ch 169, §9; 92 Acts, ch 1229, §14, 15; 93 Acts, ch 78, §1; 99 Acts, ch 111, §3, 4, 7; 2009 Acts, ch 41, §240; 2012 Acts, ch 1019, §89

Referred to in §232.183, 234.35

### **232.183 Dispositional hearing.**

1. Following an entry of an initial determination order pursuant to section 232.182, the court shall hold a dispositional hearing in order to determine the future status of the child based on the child's best interests. Notice of the hearing shall be given to the child and the child's parent, guardian, or custodian, and the department.

2. The dispositional hearing shall be held within twelve months of the date the child was placed in foster care.

3. A dispositional hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. Following the hearing, the court shall issue a dispositional order. The dispositional orders which the court may enter, subject to its continuing jurisdiction, are as follows:

a. An order that the child's voluntary placement shall be terminated and the child returned to the child's home and provided with available services and support needed for the child to remain in the home.

b. An order that the child's voluntary placement may continue if the department and the child's parent or guardian continue to agree to the voluntary placement.

c. If the court finds that the child's parent, guardian, or custodian has failed to fulfill responsibilities outlined in the case permanency plan, an order that the child remain in foster care and that the county attorney or department file, within three days, a petition alleging the child to be a child in need of assistance.

d. If the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the child has a case permanency plan, the court shall consider the written transition plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the transition plan and needs assessment at the time the order is entered, the transition plan and needs assessment shall be developed and submitted for the court's consideration no later than six months from the date of the transfer order. The court shall modify the initial transfer order as necessary to specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the transition plan identifies services or other support needed to assist the child when the child becomes an adult and the court deems it to be beneficial to the child, the court may authorize the individual who is the child's guardian ad litem or court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

6. With respect to each child whose placement was approved pursuant to subsection 5, the court shall continue to hold periodic dispositional hearings. The hearings shall not be waived or continued beyond twelve months following the last dispositional hearing. After a dispositional hearing, the court shall enter one of the dispositional orders authorized under subsection 5.

89 Acts, ch 169, §10; 92 Acts, ch 1141, §3; 92 Acts, ch 1229, §16; 93 Acts, ch 172, §36, 56; 97 Acts, ch 99, §8, 9; 2003 Acts, ch 117, §8; 2003 Acts, ch 151, §6

**232.184 through 232.186** Reserved.

DIVISION XII  
JUVENILE JUSTICE REFORM

**232.187** Repealed by 93 Acts, ch 172, § 48, 56.

**232.188 Decategorization of child welfare and juvenile justice funding initiative.**

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

a. “*Decategorization governance board*” or “*governance board*” means the group that enters into and implements a decategorization project agreement.

b. “*Decategorization project*” means the county or counties that have entered into a decategorization agreement to implement the decategorization initiative in the county or multicounty area covered by the agreement.

c. “*Decategorization services funding pool*” or “*funding pool*” means the funding designated for a decategorization project from all sources.

2. *Purpose.* The decategorization of the child welfare and juvenile justice funding initiative is intended to establish a system of delivering human services based upon client needs to replace a system based upon a multitude of categorical programs and funding sources, each with different service definitions and eligibility requirements. The purposes of the decategorization initiative include but are not limited to redirecting child welfare and juvenile justice funding to services which are more preventive, family-centered, and community-based in order to reduce use of restrictive approaches which rely upon institutional, out-of-home, and out-of-community services.

3. *Implementation.*

a. Implementation of the initiative shall be through creation of decategorization projects. A project shall consist of either a single county or a group of counties interested in jointly implementing the initiative. Representatives of the department, juvenile court services, and county government shall develop a project agreement to implement the initiative within a project.

b. The initiative shall include community planning activities in the area covered by a project. As part of the community planning activities, the department shall partner with other community stakeholders to develop service alternatives that provide less restrictive levels of care for children and families receiving services from the child welfare and juvenile justice systems within the project area.

c. The decategorization initiative shall not be implemented in a manner that limits the legal rights of children and families to receive services.

4. *Governance board.*

a. In partnership with an interested county or group of counties which has demonstrated the commitment and involvement of the affected county department, or departments, of human services, the juvenile justice system within the project area, and board, or boards, of supervisors in order to form a decategorization project, the department shall develop a process for combining specific state and state-federal funding categories into a decategorization services funding pool for that project. A decategorization project shall be implemented by a decategorization governance board. The decategorization governance board shall develop specific, quantifiable short-term and long-term plans for enhancing the family-centered and community-based services and reducing reliance upon out-of-community care in the project area.

b. The department shall work with the decategorization governance boards to best coordinate planning activities and most effectively target funding resources. A departmental service area manager shall work with the decategorization governance boards in that service area to support board planning and service development activities and to promote the most effective alignment of resources.

c. A decategorization governance board shall coordinate the project’s planning and budgeting activities with the departmental service area manager for the county or counties

comprising the project area and the early childhood Iowa area board or boards for the early childhood Iowa area or areas within which the decategorization project is located.

5. *Funding pool.*

a. The governance board for a decategorization project has authority over the project's decategorization services funding pool and shall manage the pool to provide more flexible, individualized, family-centered, preventive, community-based, comprehensive, and coordinated service systems for children and families served in that project area. A funding pool shall also be used for child welfare and juvenile justice systems enhancements.

b. Notwithstanding section 8.33, moneys designated for a project's decategorization services funding pool that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure as directed by the project's governance board for child welfare and juvenile justice systems enhancements and other purposes of the project for the next two succeeding fiscal years. Such moneys shall be known as "*carryover funding*". Moneys may be made available to a funding pool from one or more of the following sources:

- (1) Funds designated for the initiative in a state appropriation.
- (2) Child welfare and juvenile justice services funds designated for the initiative by a departmental service area manager.
- (3) Juvenile justice program funds designated for the initiative by a chief juvenile court officer.
- (4) Carryover funding.
- (5) Any other source designating moneys for the funding pool.

c. The services and activities funded from a project's funding pool may vary depending upon the strategies selected by the project's governance board and shall be detailed in an annual child welfare and juvenile justice decategorization services plan developed by the governance board. A decategorization governance board shall involve community representatives and county organizations in the development of the plan for that project's funding pool. In addition, the governance board shall coordinate efforts through communication with the appropriate departmental service area manager regarding budget planning and decategorization service decisions.

d. A decategorization governance board is responsible for ensuring that decategorization services expenditures from that project's funding pool do not exceed the amount of funding available. If necessary, the governance board shall reduce expenditures or discontinue specific services as necessary to manage within the funding pool resources available for a fiscal year.

e. The annual child welfare and juvenile justice decategorization services plan developed for use of the funding pool by a decategorization governance board shall be submitted to the department administrator of child welfare services and the Iowa empowerment board. In addition, the decategorization governance board shall submit an annual progress report to the department administrator and the Iowa empowerment board which summarizes the progress made toward attaining the objectives contained in the plan. The progress report shall serve as an opportunity for information sharing and feedback.

6. *Departmental role.* A departmental service area's share of the child welfare appropriation that is not allocated by law for the decategorization initiative shall be managed by and is under the authority of the service area manager. A service area manager is responsible for meeting the child welfare service needs in the counties comprising the service area with the available funding resources.

92 Acts, ch 1229, §18; 98 Acts, ch 1206, §11, 20; 99 Acts, ch 111, §10; 99 Acts, ch 190, §16; 99 Acts, ch 192, §33; 2004 Acts, ch 1116, §14; 2005 Acts, ch 95, §1; 2010 Acts, ch 1031, §297; 2011 Acts, ch 129, §90, 156

Referred to in §225C.49, 235.7, 237A.1, 249A.26

Carryover funding from fiscal year beginning July 1, 2009, transferred to community housing and services for persons with disabilities revolving loan program fund; 2011 Acts, ch 129, §55, 74

**232.189 Reasonable efforts administrative requirements.**

Based upon a model reasonable efforts family court initiative, the director of human services and the chief justice of the supreme court or their designees shall jointly establish

and implement a statewide protocol for reasonable efforts, as defined in section 232.102. In addition, the director and the chief justice shall design and implement a system for judicial and departmental reasonable efforts education for deployment throughout the state. The system for reasonable efforts education shall be developed in a manner which addresses the particular needs of rural areas and shall include but is not limited to all of the following topics:

1. Regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

2. The duties of judicial and departmental employees associated with placing a child removed from the child's home into a permanent home and the urgency of the placement for the child.

3. The essential elements, including writing techniques, in developing effective permanency plans.

4. The essential elements of gathering evidence sufficient for the evidentiary standards required for judicial orders under this chapter.

92 Acts, ch 1229, §19; 95 Acts, ch 182, §13; 98 Acts, ch 1190, §28

**232.190** Repealed by its own terms effective June 30, 2005; 2000 Acts, ch 1222, § 14.

**232.191 Early intervention and follow-up programs.**

Contingent on a specific appropriation for these purposes, the department shall do the following:

1. Develop or expand programs providing specific life skills and interpersonal skills training for adjudicated delinquent youth who pose a low or moderate risk to the community.

2. Develop or expand a school-based program addressing truancy and school behavioral problems for youth ages twelve through seventeen.

3. Develop or expand an intensive tracking and supervision program for adjudicated delinquent youth at risk for placement who have been released from resident facilities, which shall include telephonic or electronic tracking and monitoring and intervention by juvenile authorities.

4. Develop or expand supervised community treatment for adjudicated delinquent youth who experience significant problems and who constitute a moderate community risk.

94 Acts, ch 1172, §28

Referred to in §232.52

**232.192 through 232.194** Reserved.

**232.195 Runaway treatment plan.**

A county may develop a runaway treatment plan to address problems with chronic runaway children in the county. The plan shall identify the problems with chronic runaway children in the county and specific solutions to be implemented by the county, including the development of a runaway assessment center.

97 Acts, ch 90, §3; 98 Acts, ch 1100, §28

Referred to in §232.196

**232.196 Runaway assessment center.**

1. As part of a county runaway treatment plan under section 232.195, a county may establish a runaway assessment center or other plan. The center or other plan, if established, shall provide services to assess a child who is referred to the center or plan for being a chronic runaway and intensive family counseling services designed to address any problem causing the child to run away. A center shall at least meet the requirements established for providing child foster care under chapter 237.

2. *a.* If not sent home with the child's parent, guardian, or custodian, a chronic runaway may be placed in a runaway assessment center by the peace officer who takes the child into custody under section 232.19, if the officer believes it to be in the child's best interest after consulting with the child's parent, guardian, or custodian. A chronic runaway shall not be placed in a runaway assessment center for more than forty-eight hours.

b. If a runaway is placed in an assessment center according to a county plan, the runaway shall be assessed within twenty-four hours of being placed in the center by a center counselor to determine the following:

- (1) The reasons why the child is a runaway.
- (2) Whether the initiation or continuation of child in need of assistance or family in need of assistance proceedings is appropriate.

c. As soon as practicable following the assessment, the child and the child’s parents, guardian, or custodian shall be provided the opportunity for a counseling session to identify the underlying causes of the runaway behavior and develop a plan to address those causes.

d. A child shall be released from a runaway assessment center, established pursuant to the county plan, to the child’s parents, guardian, or custodian not later than forty-eight hours after being placed in the center unless the child is placed in shelter care under section 232.21 or an order is entered under section 232.78. A child whose parents, guardian, or custodian failed to attend counseling at the center or fail to take custody of the child at the end of placement in the center may be the subject of a child in need of assistance petition or such other order as the juvenile court finds to be in the child’s best interest.

97 Acts, ch 90, §4; 98 Acts, ch 1100, §29  
 Referred to in §232.19

## CHAPTER 232A

### JUVENILE VICTIM RESTITUTION

Referred to in §602.7203, 645.3, 915.28

232A.1	Repealed by 98 Acts, ch 1047, §67.	232A.3	Reports required.
232A.2	Program created.	232A.4	Repealed by 98 Acts, ch 1090, §80, 84.

**232A.1** Repealed by 98 Acts, ch 1047, § 67.

**232A.2 Program created.**

A juvenile victim restitution program is created which shall be funded through moneys appropriated by the general assembly to the judicial branch. The primary purpose of the program is to provide funds to compensate victims for losses due to the delinquent acts of juveniles.

Upon completion of a district’s plan, the judicial branch shall provide funds in conformance with the procedures and policies of the state. The judicial branch shall reclaim any portion of an initial allocation to a judicial district that is unencumbered on December 31 of any year. The judicial branch shall immediately reallocate the reclaimed funds to those judicial districts from which funds were not reclaimed in the manner provided in this section for the original allocation. Any portion of an amount allocated that remains unencumbered on June 30 of any year shall revert to the general fund of the state.

83 Acts, ch 94, §3; 90 Acts, ch 1247, §6; 98 Acts, ch 1047, §23

**232A.3 Reports required.**

Each judicial district shall submit a report of the progress and financial status of its juvenile victim restitution program to the judicial branch on a quarterly basis. The judicial branch shall prepare and submit annually a report on the progress and financial status of the programs to the general assembly no later than March 15.

83 Acts, ch 94, §4; 90 Acts, ch 1247, §7; 98 Acts, ch 1047, §24

**232A.4** Repealed by 98 Acts, ch 1090, § 80, 84. See § 915.28.

## CHAPTER 232B

## INDIAN CHILD WELFARE ACT

Referred to in §232.7, 232.90, 232.114, 600.1, 600A.3

232B.1	Short title.	232B.8	Return of custody — improper removal of child from custody — protection of rights of parent or Indian custodian.
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232B.5	Indian child custody proceedings — jurisdiction — notice — transfer of proceedings.	232B.12	Payment of foster care expenses.
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232B.7	Parental rights — voluntary termination or foster care placement.	232B.14	Compliance.

**232B.1 Short title.**

This chapter shall be known and may be cited as the “*Iowa Indian Child Welfare Act*”.  
2003 Acts, ch 153, §2

**232B.2 Purpose — policy of state.**

The purpose of the Iowa Indian child welfare Act is to clarify state policies and procedures regarding implementation of the federal Indian Child Welfare Act, Pub. L. No. 95-608, as codified in 25 U.S.C. ch. 21. It is the policy of the state to cooperate fully with Indian tribes and tribal citizens in Iowa in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced. This cooperation includes recognition by the state that Indian tribes have a continuing and compelling governmental interest in an Indian child whether or not the child is in the physical or legal custody of an Indian parent, Indian custodian, or an Indian extended family member at the commencement of a child custody proceeding or the child has resided or domiciled on an Indian reservation. The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the federal Indian Child Welfare Act and other applicable law, designed to prevent the child’s voluntary or involuntary out-of-home placement and, whenever such placement is necessary or ordered, by placing the child, whenever possible, in a foster home, adoptive home, or other type of custodial placement that reflects the unique values of the child’s tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child’s tribe and tribal community.

2003 Acts, ch 153, §3

**232B.3 Definitions.**

For the purposes of this chapter unless the context otherwise requires:

1. “*Adoptive placement*” means the permanent placement of an Indian child for adoption including, but not limited to, any action under chapter 232, 600, or 600A resulting in a final decree of adoption. “*Adoptive placement*” does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child’s parents.

2. “*Best interest of the child*” means the use of practices in accordance with the federal Indian Child Welfare Act, this chapter, and other applicable law, that are designed to prevent the Indian child’s voluntary or involuntary out-of-home placement, and whenever such placement is necessary or ordered, placing the child, to the greatest extent possible, in a foster home, adoptive placement, or other type of custodial placement that reflects the unique values of the child’s tribal culture and is best able to assist the child in establishing,

developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community.

3. "*Child custody proceeding*" means a voluntary or involuntary proceeding that may result in an Indian child's adoptive placement, foster care placement, preadoptive placement, or termination of parental rights.

4. "*Foster care placement*" means the temporary placement of an Indian child in an individual or agency foster care placement or in the personal custody of a guardian or conservator prior to the termination of parental rights, from which the child cannot be returned upon demand to the custody of the parent or Indian custodian but there has not been a termination of parental rights. "*Foster care placement*" does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child's parents.

5. "*Indian*" means a person who is a member of an Indian tribe, or is eligible for membership in an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. § 1606.

6. "*Indian child*" or "*child*" means an unmarried Indian person who is under eighteen years of age or a child who is under eighteen years of age that an Indian tribe identifies as a child of the tribe's community.

7. "*Indian child's family*" or "*extended family member*" means an adult person who is an Indian child's family member or extended family member under the law or custom of the Indian child's tribe or, in absence of such law or custom, an adult person who has any of the following relationships with the Indian child:

- a. Parent.
- b. Sibling.
- c. Grandparent.
- d. Aunt or uncle.
- e. Cousin.
- f. Clan member.
- g. Band member.
- h. Brother-in-law.
- i. Sister-in-law.
- j. Niece.
- k. Nephew.
- l. Stepparent.

8. "*Indian child's tribe*" means a tribe in which an Indian child is a member or eligible for membership.

9. "*Indian custodian*" means an Indian person who under tribal law, tribal custom, or state law, has legal or temporary physical custody of an Indian child.

10. "*Indian organization*" means any of the following entities that is owned or controlled by Indians, or a majority of the members are Indians:

- a. A group.
- b. An association.
- c. A partnership.
- d. A corporation.
- e. Other legal entity.

11. "*Indian tribe*" or "*tribe*" means an Indian tribe, band, nation, or other organized Indian group, or a community of Indians, including any Alaska native village as defined in 43 U.S.C. § 1602(c) recognized as eligible for services provided to Indians by the United States secretary of the interior because of the community members' status as Indians.

12. "*Parent*" means a biological parent of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. "*Parent*" does not include an unwed father whose paternity has not been acknowledged or established. Except for purposes of the federal Indian Child Welfare Act as codified in 25 U.S.C. § 1913(b), (c), and (d), 1916, 1917, and 1951, "*parent*" does not include a person whose parental rights to that child have been terminated.

13. "*Preadoptive placement*" means the temporary placement of an Indian child in an

individual or agency foster care placement after the termination of parental rights, but prior to or in lieu of an adoptive placement. “*Preadoptive placement*” does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child’s parents.

14. “*Reservation*” means Indian country as defined in 18 U.S.C. § 1151 or land that is not covered under that definition but the title to which is either held by the United States in trust for the benefit of an Indian tribe or Indian person or held by an Indian tribe or Indian person subject to a restriction by the United States against alienation.

15. “*Secretary of the interior*” means the secretary of the United States department of the interior.

16. “*Termination of parental rights*” means any action resulting in the termination of the parent-child relationship. “*Termination of parental rights*” does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child’s parents.

17. “*Tribal court*” means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings.

2003 Acts, ch 153, §4

Referred to in §232.7, 600.1, 600A.3

#### **232B.4 Application of chapter — determination of Indian status.**

1. This chapter applies to child custody proceedings involving an Indian child whether the child is in the physical or legal custody of an Indian parent, Indian custodian, or an Indian extended family member or another person at the commencement of the proceedings or whether the child has resided or domiciled on or off an Indian reservation.

2. The court shall require a party seeking the foster care placement of, termination of parental rights over, or the adoption of, an Indian child to seek to determine whether the child is an Indian child through contact with any Indian tribe in which the child may be a member or eligible for membership, the child’s parent, any person who has custody of the child or with whom the child resides, and any other person that reasonably can be expected to have information regarding the child’s possible membership or eligibility for membership in an Indian tribe, including but not limited to the United States department of the interior.

3. A written determination by an Indian tribe that a child is a member of or eligible for membership in that tribe, or testimony attesting to such status by a person authorized by the tribe to provide that determination, shall be conclusive. A written determination by an Indian tribe, or testimony by a person authorized by the tribe to provide that determination or testimony, that a child is not a member of or eligible for membership in that tribe shall be conclusive as to that tribe. If an Indian tribe does not provide evidence of the child’s status as an Indian child, the court shall determine the child’s status.

4. The determination of the Indian status of a child shall be made as soon as practicable in order to serve the best interest of the child and to ensure compliance with the notice requirements of this chapter.

2003 Acts, ch 153, §5

#### **232B.5 Indian child custody proceedings — jurisdiction — notice — transfer of proceedings.**

1. An Indian tribe has jurisdiction exclusive as to this state over any child custody proceeding held in this state involving an Indian child who resides or is domiciled within the reservation of that tribe, except when the jurisdiction is otherwise vested in this state by existing federal law. If an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

2. The federal Indian Child Welfare Act and this chapter are applicable without exception in any child custody proceeding involving an Indian child. A state court does not have discretion to determine the applicability of the federal Indian Child Welfare Act or this

chapter to a child custody proceeding based upon whether an Indian child is part of an existing Indian family.

3. In a child custody proceeding, the court or any party to the proceeding shall be deemed to know or have reason to know that an Indian child is involved whenever any of the following circumstances exist:

a. A party to the proceeding or the court has been informed by any interested person, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family that the child is or may be an Indian child.

b. The child who is the subject of the proceeding gives the court reason to believe the child is an Indian child.

c. The court or a party to the proceeding has reason to believe the residence or domicile of the child is in a predominantly Indian community.

4. In any involuntary child custody proceeding, including review hearings following an adjudication, the court shall establish in the record that the party seeking the foster care placement of, or termination of parental rights over, or the adoption of an Indian child has sent notice by registered mail, return receipt requested, to all of the following:

a. The child's parents.

b. The child's Indian custodians.

c. Any tribe in which the child may be a member or eligible for membership.

5. If the identity or location of the child's parent, Indian custodian, or tribe cannot be determined, the notice under subsection 4 shall be provided to the secretary of the interior, who shall have fifteen days after receipt of the notice to provide the notice to the child's parent, Indian custodian, and tribe. A foster care placement or termination of parental rights proceeding involving the child shall not be held until at least ten days after receipt of notice by the child's parent, Indian custodian, and tribe, or the secretary of the interior. Upon request, the child's parent or Indian custodian or tribe shall be granted up to twenty additional days after receipt of the notice to prepare for the proceeding.

6. The court shall also establish in the record that a notice of any involuntary custody proceeding has been sent to the Indian child's tribe. The tribe may provide notice of the proceeding to any of the child's extended family members.

7. The notice in any involuntary child custody proceeding involving an Indian child shall be written in clear and understandable language and shall include all of the following information:

a. The name and tribal affiliation of the Indian child.

b. A copy of the petition by which the proceeding was initiated.

c. A statement listing the rights of the child's parents, Indian custodians, and tribes and, if applicable, the rights of the Indian child's family. The rights shall include all of the following:

(1) The right to intervene in the proceeding.

(2) The right to petition the court to transfer the proceeding to the tribal court of the Indian child's tribe.

(3) The right to be granted up to an additional twenty days from the receipt of the notice to prepare for the proceeding.

(4) The right to request that the court grant further extensions of time.

(5) In the case of an extended family member, the right to intervene and be considered as a preferred placement for the child.

d. A statement of the potential legal consequences of an adjudication on the future custodial rights of the child's parents or Indian custodians.

e. A statement that if the parents or Indian custodians are unable to afford counsel in an involuntary proceeding, counsel will be appointed to represent the parents or custodians.

f. A statement that the court may appoint counsel for the child upon a finding that the appointment is in the best interest of the child.

g. A statement that the information contained in the notice, petition, pleading, and other court documents is confidential.

h. A statement that the child's tribe may provide notice of the proceeding to any of the child's extended family members along with copies of other related documents.

8. In a voluntary child custody proceeding involving an Indian child, including but not

limited to a review hearing, the court shall establish in the record that the party seeking the foster care placement of, termination of parental rights to, or the permanent placement of, an Indian child has sent notice at least ten days prior to the hearing by registered mail, return receipt requested, to all of the following:

- a. The child's parents, except for a parent whose parental rights have been terminated.
- b. The child's Indian custodians, except for a custodian whose parental or Indian custodian rights have been terminated.
- c. Any tribe in which the child may be a member or eligible for membership.

9. The notice in a voluntary child custody proceeding involving an Indian child shall be written in clear and understandable language and shall include all of the following information:

- a. The name and tribal affiliation of the child.
- b. A copy of the petition by which the proceeding was initiated.
- c. A statement listing the rights of the child's parents, Indian custodians, Indian tribe or tribes, and, if applicable, extended family members. The rights shall include all of the following:

- (1) The right to intervene in the proceeding.
- (2) The right to petition the court to transfer a foster care placement or termination of parental rights proceeding to the tribal court of the Indian child's tribe.
- (3) In the case of extended family members, the right to intervene and be considered as a preferred placement for the child.

d. A statement that the information contained in the notice, petition, pleading, and any other court document shall be kept confidential.

e. A statement that the child's tribe may provide notice of the proceeding to any of the child's extended family members along with copies of other related documents.

10. Unless either of an Indian child's parents objects, in any child custody proceeding involving an Indian child who is not domiciled or residing within the jurisdiction of the Indian child's tribe, the court shall transfer the proceeding to the jurisdiction of the Indian child's tribe, upon the petition of any of the following persons:

- a. Either of the child's parents.
- b. The child's Indian custodian.
- c. The child's tribe.

11. Notwithstanding entry of an objection to a transfer of proceedings as described in subsection 10, the court shall reject any objection that is inconsistent with the purposes of this chapter, including but not limited to any objection that would prevent maintaining the vital relationship between Indian tribes and the tribes' children and would interfere with the policy that the best interest of an Indian child require that the child be placed in a foster or adoptive home that reflects the unique values of Indian culture.

12. A transfer of proceedings under subsection 10 may be declined by the tribal court of the Indian child's tribe. If the tribal court declines to assume jurisdiction, the state court shall reassume jurisdiction and shall apply all of the following in any proceeding:

- a. The requirements of the federal Indian Child Welfare Act.
- b. This chapter.
- c. The applicable provisions of any agreement between the Indian child's tribe and the state concerning the welfare, care, and custody of Indian children.

13. If a petition to transfer proceedings as described in subsection 10 is filed, the court shall find good cause to deny the petition only if one or more of the following circumstances are shown to exist:

- a. The tribal court of the child's tribe declines the transfer of jurisdiction.
- b. The tribal court does not have subject matter jurisdiction under the laws of the tribe or federal law.
- c. Circumstances exist in which the evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the

evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.

d. An objection to the transfer is entered in accordance with subsection 10.

14. The Indian child's tribe or tribes and Indian custodian have the right to intervene at any point in any foster care placement or termination of parental rights proceeding involving the child. The Indian child's tribe shall also have the right to intervene at any point in any adoption proceeding involving the child. Any member of the Indian child's family may intervene in an adoption proceeding involving the child for the purpose of petitioning the court for the adoptive placement of the child in accordance with the order of preference provided for in this chapter.

15. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to the Indian child custody proceedings.

16. In any proceeding in which the court determines indigency of the Indian child's parent or Indian custodian, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination of parental rights. The child shall also have the right to court-appointed counsel in any removal, placement, termination of parental rights, or other permanency proceedings.

17. Each party to a foster care placement or termination of parental rights proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceeding may be based.

18. Any person or court involved in the foster care, preadoptive placement, or adoptive placement of an Indian child shall use the services of the Indian child's tribe or tribes, whenever available through the tribe or tribes, in seeking to secure placement within the order of placement preference established in section 232B.9 and in the supervision of the placement.

19. A party seeking an involuntary foster care placement of or termination of parental rights over an Indian child shall provide evidence to the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The court shall not order the placement or termination, unless the evidence of active efforts shows there has been a vigorous and concerted level of casework beyond the level that typically constitutes reasonable efforts as defined in sections 232.57 and 232.102. Reasonable efforts shall not be construed to be active efforts. The active efforts must be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregivers. Active efforts shall include but are not limited to all of the following:

a. A request to the Indian child's tribe to convene traditional and customary support and resolution actions or services.

b. Identification and participation of tribally designated representatives at the earliest point.

c. Consultation with extended family members to identify family structure and family support services that may be provided by extended family members.

d. Frequent visitation in the Indian child's home and the homes of the child's extended family members.

e. Exhaustion of all tribally appropriate family preservation alternatives.

f. Identification and provision of information to the child's family concerning community resources that may be able to offer housing, financial, and transportation assistance and actively assisting the family in accessing the community resources.

20. The state of Iowa recognizes that an Indian tribe may contract with another Indian tribe for supervision regarding placement, case management, and the provision of services to an Indian child.

2003 Acts, ch 153, §6

**232B.6 Emergency removal of Indian child — foster care placement — termination of parental rights.**

1. This chapter shall not be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation, or is away from the child's parent or Indian custodian, or the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. In a case of emergency removal of an Indian child, regardless of residence or domicile of the child, the state shall ensure that the emergency removal or placement terminates immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this chapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the child's parent or Indian custodian, as may be appropriate.

2. Within three business days following the issuance of an order of emergency removal or placement of an Indian child, the court issuing the order shall notify the Indian child's tribe of the emergency removal or placement by registered mail, return receipt requested. The notice shall include the court order, the petition, if applicable, any information required by this chapter, and a statement informing the child's tribe of the tribe's right to intervene in the proceeding.

3. A motion, application, or petition commencing an emergency or temporary removal under section 232.79 or 232.95 or foster care placement proceeding under chapter 232 involving an Indian child shall be accompanied by all of the following:

a. An affidavit containing the names, tribal affiliations, and addresses of the Indian child, and of the child's parents and Indian custodians.

b. A specific and detailed account of the circumstances supporting the removal of the child.

c. All reports or other documents from each public or private agency involved with the emergency or temporary removal that are filed with the court and upon which any decision may be based. The reports shall include all of the following information, when available:

(1) The name of each agency.

(2) The names of agency administrators and professionals involved in the removal.

(3) A description of the emergency justifying the removal of the child.

(4) All observations made and actions taken by the agency.

(5) The date, time, and place of each such action.

(6) The signatures of all agency personnel involved.

(7) A statement of the specific actions taken and to be taken by each involved agency to effectuate the safe return of the child to the custody of the child's parent or Indian custodian.

4. An emergency removal or placement of an Indian child shall immediately terminate, and any court order approving the removal or placement shall be vacated, when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. In no case shall an emergency removal or placement order remain in effect for more than fifteen days unless, upon a showing that continuation of the order is necessary to prevent imminent physical damage or harm to the child, the court extends the order for a period not to exceed an additional thirty days. If the Indian child's tribe has been identified, the court shall notify the tribe of the date and time of any hearing scheduled to determine whether to extend an emergency removal or placement order.

5. Upon termination of the emergency removal or placement order, the child shall immediately be returned to the custody of the child's parent or Indian custodian unless any of the following circumstances exist:

a. The child is transferred to the jurisdiction of the child's tribe.

b. In an involuntary foster care placement proceeding pursuant to the federal Indian Child Welfare Act, the court orders that the child shall be placed in foster care upon a determination, supported by clear and convincing evidence, including testimony by qualified expert witnesses, that custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

c. The child's parent or Indian custodian voluntarily consents to the foster care placement of the child pursuant to the provisions of the federal Indian Child Welfare Act.

6. a. Termination of parental rights over an Indian child shall not be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including the testimony of qualified expert witnesses, that the continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

b. Foster care placement of an Indian child shall not be ordered in the absence of a determination, supported by clear and convincing evidence, including the testimony of qualified expert witnesses, that the continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

2003 Acts, ch 153, §7

### **232B.7 Parental rights — voluntary termination or foster care placement.**

1. If an Indian child's parent or Indian custodian voluntarily consents to a foster care placement of the child or to termination of parental rights, the consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Notwithstanding section 600A.4 or any other provision of law, any consent for release of custody given prior to, or within ten days after, the birth of the Indian child shall not be valid.

2. An Indian child's parent or Indian custodian may withdraw consent to a foster care placement at any time and, upon the withdrawal of consent, the child shall be returned to the parent or Indian custodian.

3. In a voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

4. After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate the decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate the decree and return the child to the parent. However, an adoption which has been effective for at least two years shall not be invalidated under the provisions of this subsection unless otherwise permitted under state law.

2003 Acts, ch 153, §8

### **232B.8 Return of custody — improper removal of child from custody — protection of rights of parent or Indian custodian.**

1. If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant the petition unless there is a showing, in a proceeding subject to the provisions of this chapter, that the return of custody is not in the best interest of the child.

2. If an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, the placement shall be in accordance with the provisions of this chapter, except when an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

3. If a petitioner in an Indian child custody proceeding before a state court has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's

parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to a substantial and immediate danger or threat of such danger.

4. If another state or federal law applicable to a child custody proceeding held under state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this chapter, the court shall apply the higher standard.

2003 Acts, ch 153, §9

#### **232B.9 Placement preferences.**

1. In any adoptive or other permanent placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

- a. A member of the Indian child's family.
- b. Other members of the Indian child's tribe.
- c. Another Indian family.
- d. A non-Indian family approved by the Indian child's tribe.
- e. A non-Indian family that is committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe.

2. An emergency removal, foster care, or preadoptive placement of an Indian child shall be in the least restrictive setting which most approximates a family situation and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given to the child's placement with one of the following, in descending priority order:

- a. A member of the child's extended family.
- b. A foster home licensed, approved, or specified by the child's tribe.
- c. An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
- d. A child foster care agency approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
- e. A non-Indian child foster care agency approved by the child's tribe.
- f. A non-Indian family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe.

3. To the greatest possible extent, a placement made in accordance with subsection 1 or 2 shall be made in the best interest of the child.

4. An adoptive placement of an Indian child shall not be ordered in the absence of a determination, supported by clear and convincing evidence including the testimony of qualified expert witnesses, that the placement of the child is in the best interest of the child.

5. Notwithstanding the placement preferences listed in subsections 1 and 2, if a different order of placement preference is established by the child's tribe or in a binding agreement between the child's tribe and the state entered into pursuant to section 232B.11, the court or agency effecting the placement shall follow the order of preference established by the tribe or in the agreement.

6. As appropriate, the placement preference of the Indian child or parent shall be considered. In applying the preferences, a consenting parent's request for anonymity shall also be given weight by the court or agency effecting the placement. Unless there is clear and convincing evidence that placement within the order of preference applicable under subsection 1, 2, or 5 would be harmful to the Indian child, consideration of the preference of the Indian child or parent or a parent's request for anonymity shall not be a basis for placing an Indian child outside of the applicable order of preference.

7. The prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which such parent or extended family members maintain social and cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied in qualifying any placement having a preference under this section. A determination of the applicable prevailing social and cultural standards shall be confirmed by the testimony or other documented support of qualified expert witnesses.

8. A record of each foster care placement, emergency removal, preadoptive placement, or adoptive placement of an Indian child, under the laws of this state, shall be maintained in perpetuity by the department of human services in accordance with section 232B.13. The record shall document the active efforts to comply with the applicable order of preference specified in this section.

9. The state of Iowa recognizes the authority of Indian tribes to license foster homes and to license agencies to receive children for control, care, and maintenance outside of the children's own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care or adoption. The department of human services and child-placing agencies licensed under chapter 238 may place children in foster homes and facilities licensed by an Indian tribe.

2003 Acts, ch 153, §10

Referred to in §232B.5, 232B.12, 232B.13

### **232B.10 Qualified expert witnesses — standard of proof — change of placement.**

1. For the purposes of this chapter, unless the context otherwise requires, a “qualified expert witness” may include, but is not limited to, a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, spiritual leader, historian, or elder.

2. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that qualified expert witnesses with specific knowledge of the child's Indian tribe testify regarding that tribe's family organization and child-rearing practices, and regarding whether the tribe's culture, customs, and laws would support the placement of the child in foster care or the termination of parental rights on the grounds that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

3. In the following descending order of preference, a qualified expert witness is a person who is one of the following:

a. A member of the child's Indian tribe who is recognized by the child's tribal community as knowledgeable regarding tribal customs as the customs pertain to family organization or child-rearing practices.

b. A member of another tribe who is formally recognized by the Indian child's tribe as having the knowledge to be a qualified expert witness.

c. A layperson having substantial experience in the delivery of child and family services to Indians, and substantial knowledge of the prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.

d. A professional person having substantial education and experience in the person's professional specialty and having substantial knowledge of the prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.

e. A professional person having substantial education and experience in the person's professional specialty and having extensive knowledge of the customs, traditions, and values of the Indian child's tribe as the customs, traditions, and values pertain to family organization and child-rearing practices. Prior to accepting the testimony of a qualified expert witness described in this lettered paragraph, the court shall document the efforts made to secure a qualified expert witness described in paragraphs “a”, “b”, “c”, and “d”. The efforts shall include but are not limited to contacting the Indian child's tribe's governing body, that tribe's Indian Child Welfare Act office, and the tribe's social service office.

2003 Acts, ch 153, §11; 2004 Acts, ch 1101, §29

### **232B.11 Agreements with tribes for care and custody of Indian children.**

1. The director of human services or the director's designee shall make a good faith effort to enter into agreements with Indian tribes regarding jurisdiction over child custody proceedings and the care and custody of Indian children whose tribes have land within Iowa, including but not limited to the Sac and Fox tribe, the Omaha tribe, the Ponca tribe, and the Winnebago tribe, and whose tribes have an Indian child who resides in the state of Iowa. An agreement shall seek to promote the continued existence and integrity of the

Indian tribe as a political entity and the vital interest of Indian children in securing and maintaining a political, cultural, and social relationship with their tribes. An agreement shall assure that tribal services and Indian organizations or agencies are used to the greatest extent practicable in planning and implementing any action pursuant to the agreement concerning the care and custody of Indian children. If tribal services are not available, an agreement shall assure that community services and resources developed specifically for Indian families will be used.

2. If an agreement entered into between the tribe and the department of human services pertaining to the funding of foster care placements for Indian children conflicts with any federal or state law, the state in a timely, good faith manner shall agree to amend the agreement in a way that prevents any interruption of services to eligible Indian children.

3. An agreement entered into under this section may be revoked by either party by giving one hundred eighty days' advance written notice to the other party. The revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

2003 Acts, ch 153, §12

Referred to in §232B.9

### **232B.12 Payment of foster care expenses.**

1. If the department of human services has legal custody of an Indian child and that child is placed in foster care according to the placement preferences under section 232B.9 the state shall pay, subject to any applicable federal funding limitations and requirements, the cost of the foster care in the manner and to the same extent the state pays for foster care of non-Indian children, including the administrative and training costs associated with the placement. In addition, the state shall pay the other costs related to the foster care placement of an Indian child as may be provided for in an agreement entered into between a tribe and the state.

2. The department of human services may, subject to any applicable federal funding limitations and requirements and within funds appropriated for foster care services, purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state court order; and the purchase of the care is subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

2003 Acts, ch 153, §13

### **232B.13 Records.**

1. The department of human services shall establish an automated database where a permanent record shall be maintained of every involuntary or voluntary foster care, preadoptive placement, or adoptive placement of an Indian child that is ordered by a court of this state and in which the department was involved. The automated record shall document the active efforts made to comply with the order of placement preference specified in section 232B.9. An Indian child's placement record shall be maintained in perpetuity by the department of human services and shall include but is not limited to the name, birthdate, and gender of the Indian child, and the location of the local department office that maintains the original file and documents containing the information listed in subsection 2.

2. Each county department of human services, state-licensed child-placing agency, private attorney, and medical facility involved in the involuntary or voluntary foster care placement, preadoptive placement, or adoptive placement of an Indian child shall maintain in perpetuity a record of the placement. The record shall include, but is not limited to, all of the following information:

- a. The name and tribal affiliation of the child.
- b. The location of the child's Indian tribe or tribes.
- c. The names and addresses of the child's biological parents.
- d. The child's certificate of degree of Indian blood.
- e. The child's tribal enrollment or other membership documentation, if any.
- f. The child's medical records.

- g. The social and medical history of the child's biological family.
  - h. The names, ages, and gender of the child's siblings.
  - i. The names, ages, and gender of the child's kinship or extended family members.
  - j. The names and addresses of the child's adoptive parents.
  - k. The identity of any agency having files or information relating to the placement.
  - l. All reports concerning the child or the child's family, including detailed information regarding case plans and other efforts to rehabilitate the parents of the child.
  - m. A record of efforts made to place the child within and outside of the placement preferences under section 232B.9.
  - n. A statement of the reason for the final placement decision.
3. If a court orders the foster care, preadoptive placement, or adoptive placement of an Indian child, the court and any state-licensed child-placing agency involved in the placement shall provide the department of human services with the records described in subsections 1 and 2.
4. A record maintained pursuant to this section by the department of human services, a county department of human services, state-licensed child-placing agency, private attorney, or medical facility shall be made available within seven days of a request for the record by the Indian child's tribe or the secretary of the interior.
5. Upon the request of an Indian individual who is eighteen years of age or older, or upon the request of an Indian child's parent, Indian custodian, attorney, guardian ad litem, guardian, legal custodian, or caseworker of the Indian child, the department of human services, a county department of human services, state-licensed child-placing agency, private attorney, or medical facility shall provide access to the records pertaining to the Indian individual or child maintained pursuant to this section. The records shall also be made available upon the request of the descendants of the Indian individual or child. A record shall be made available within seven days of a request for the record by any person authorized by this subsection to make the request.
6. Upon application of an Indian individual who is eighteen years of age or older and was the subject of an adoptive placement, the court that entered the final decree shall inform the individual regarding the individual's tribal affiliation and any of the individual's biological parents, and shall provide such other information as may be necessary to protect any rights arising from the individual's tribal affiliation. In addition, the court shall provide the individual, through an appropriate order, if necessary, with information described in subsection 2 as may be secured from the records maintained pursuant to subsection 2.
7. If a parent of an Indian child wishes to remain anonymous, identifying records concerning any such parent shall not be released unless necessary to secure, maintain, or enforce the Indian child's right to enrollment or membership in the child's Indian tribe, for determining a right or benefit associated with the enrollment or membership, or for determining a right to an inheritance.

2003 Acts, ch 153, §14

Referred to in §232B.9

### **232B.14 Compliance.**

1. The department of human services, in consultation with Indian tribes, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the federal Indian Child Welfare Act and this chapter. These standards and procedures and the monitoring methods shall be integrated into the department's structure and plan for the federal government's child and family service review process and any program improvement plan resulting from that process.
2. A court of competent jurisdiction shall vacate a court order and remand the case for appropriate disposition for any of the following violations of this chapter:
- a. Failure to notify an Indian parent, Indian custodian, or tribe.
  - b. Failure to recognize the jurisdiction of an Indian tribe.
  - c. Failure, without cause as specified under this chapter, to transfer jurisdiction to an Indian tribe appropriately seeking transfer.

- d. Failure to give full faith and credit to the public acts, records, or judicial proceedings of an Indian tribe.
  - e. Failure to allow intervention by an Indian custodian or Indian tribe, or if applicable, an extended family member.
  - f. Failure to return the child to the child’s parent or Indian custodian when removal or placement is no longer necessary to prevent imminent physical damage or harm.
  - g. Failure to provide the testimony of qualified expert witnesses as required by this chapter.
  - h. Any other violation that is not harmless error, including but not limited to a failure to comply with 25 U.S.C. § 1911, 1912, 1913, 1915, 1916, or 1917.
3. If a petitioner in an Indian child custody proceeding before a state court has improperly removed the child from the custody of the child’s parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child’s parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to a substantial and immediate danger or threat of such danger.

2003 Acts, ch 153, §15

## CHAPTER 232C

### EMANCIPATION OF MINORS

232C.1	Emancipation petition — hearing.	232C.3	Determination of emancipation
232C.2	Stay — mediation — referral to family in need of assistance.		— best interests of the minor.
		232C.4	Effect of emancipation order.

#### **232C.1 Emancipation petition — hearing.**

1. A minor who desires to become emancipated may file a petition for an order of emancipation in juvenile court if all of the following apply:
- a. The minor is sixteen years of age or older.
  - b. The minor is a resident of this state.
  - c. The minor is not in the care, custody, or control of the state.
2. A petition filed pursuant to this section shall contain the following:
- a. The petitioner’s name, mailing address, and date of birth.
  - b. The name and mailing address of the petitioner’s parents or legal guardian.
  - c. Specific facts to support the petition including but not limited to the following:
    - (1) The minor has demonstrated financial self-sufficiency, including proof of employment or other means of support, which does not include assistance or subsidies from a federal, state, or local governmental agency.
    - (2) The minor has demonstrated an ability to manage the personal affairs of the minor.
    - (3) The minor has demonstrated an ability and commitment to obtain and maintain education, vocational training, or employment.
    - (4) Any other information considered necessary to support the petition.
  - d. Any one of the following:
    - (1) Documentation that the minor has been living on the minor’s own for at least three consecutive months.
    - (2) A statement explaining the reasons the minor believes the home of the minor’s parents or legal guardian is not a healthy or safe environment.
    - (3) A notarized statement that contains written consent to emancipation by the minor’s parents or legal guardian.
3. The court shall hold a hearing on the petition within ninety days of the filing of the petition. Notice of the hearing, with a copy of the petition attached, shall be served by personal service on the minor’s parent or legal guardian at least thirty days prior to the

hearing date. Any other parties shall be notified as provided by the rules of civil procedure for service of an original notice.

4. The minor may participate in the court proceedings on the minor's own behalf, or may be represented by the minor's own counsel, or the court may appoint a guardian ad litem on behalf of the minor.

2009 Acts, ch 153, §3  
Referred to in §232C.2

#### **232C.2 Stay — mediation — referral to family in need of assistance.**

1. Prior to an emancipation hearing held pursuant to section 232C.1, the court, on its own motion, may stay the proceedings, and refer the parties to mediation or request that the department of human services investigate any allegations of child abuse or neglect contained in the petition, and order that a written report be prepared and filed by the department.

2. If a minor's parent or guardian objects to the petition filed pursuant to section 232C.1, the juvenile court shall stay the proceedings and refer the parties to mediation unless the juvenile court finds that mediation would not be in the best interests of the minor.

3. If an agreement is reached through mediation, the parties shall file the signed agreement with the juvenile court.

4. Notwithstanding subsections 1 through 3, the juvenile court, on its own motion, may discontinue emancipation proceedings pursuant to this chapter and interpret the petition as a petition to initiate family in need of assistance proceedings and consider the petition under sections 232.122 through 232.127.

2009 Acts, ch 153, §4  
Referred to in §232.125, 232C.3

#### **232C.3 Determination of emancipation — best interests of the minor.**

1. The juvenile court shall determine emancipation based on the best interests of the minor and shall consider all relevant factors including the following:

a. The potential risks and consequences of emancipation and whether the minor understands the risks and consequences of emancipation.

b. The ability of the minor to be financially self-sufficient.

c. The education level of the minor and success achieved in school.

d. The criminal record of the minor.

e. The desires of the minor.

f. The recommendations of the parents or guardian of the minor.

2. The minor has the burden of proving by clear and convincing evidence that the requirements for ordering emancipation under this section have been met.

3. The juvenile court shall carefully consider the best interests of the minor and after hearing and consideration of the factors enumerated in this section, the juvenile court may order the minor emancipated or deny the petition for emancipation.

4. If, after referral of a petition for the initiation of family in need of assistance proceedings pursuant to section 232C.2, the juvenile court finds, by clear and convincing evidence, that no remedy is available that would result in strengthening or maintaining the familial relationship under the family in need of assistance proceedings pursuant to sections 232.122 through 232.127, the juvenile court may order the minor emancipated as provided in this section.

2009 Acts, ch 153, §5  
Referred to in §232.127

#### **232C.4 Effect of emancipation order.**

1. An emancipation order shall have the same effect as a minor reaching the age of majority with respect to but not limited to the following:

a. The ability to sue or be sued in the minor's own name.

b. The right to enter into a binding contract.

c. The right to establish a legal residence.

d. The right to incur debts.

e. The right to consent to medical, dental, or psychiatric care.

2. An emancipation order shall have the same effect as the minor reaching the age of majority and the parents are exempt from the following:

- a. Future child support obligations for the emancipated minor.
- b. An obligation to provide medical support for the emancipated minor, unless deemed necessary by the court.
- c. A right to the income or property of the emancipated minor.
- d. A responsibility for the debts of the emancipated minor.

3. An emancipated minor shall remain subject to voting restrictions under chapter 48A, gambling restrictions under chapter 99B, 99D, 99F, 99G, or 725, alcohol restrictions under chapter 123, compulsory attendance requirements under chapter 299, and cigarette tobacco restrictions under chapter 453A.

4. An emancipated minor shall not be considered an adult for prosecution except as provided in section 232.8.

5. Notwithstanding sections 232.147 through 232.151, the emancipation order shall be released by the juvenile court subject to rules prescribed by the supreme court.

6. A parent who is absolved of child support obligations pursuant to an emancipation order shall notify the child support recovery unit of the department of human services of the emancipation.

2009 Acts, ch 153, §6; 2011 Acts, ch 34, §59

## CHAPTER 233

### NEWBORN INFANT CUSTODY RELEASE PROCEDURES (NEWBORN SAFE HAVEN ACT)

Referred to in §232.2, 232.111, 232.116

233.1	Newborn safe haven Act — definitions.	233.4	Rights of parents.
233.2	Newborn infant custody release procedures.	233.5	Confidentiality protections.
233.3	Immunity.	233.6	Educational and public information.

#### **233.1 Newborn safe haven Act — definitions.**

1. This chapter may be cited as the “*Newborn Safe Haven Act*”.

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

a. “*Institutional health facility*” means a hospital as defined in section 135B.1, including a facility providing medical or health services that is open twenty-four hours per day, seven days per week and is a hospital emergency room or a health care facility as defined in section 135C.1.

b. “*Newborn infant*” means a child who is, or who appears to be, fourteen days of age or younger.

2001 Acts, ch 67, §1, 13; 2002 Acts, ch 1119, §33

#### **233.2 Newborn infant custody release procedures.**

1. A parent of a newborn infant may voluntarily release custody of the newborn infant by relinquishing physical custody of the newborn infant, without expressing an intent to again assume physical custody, at an institutional health facility or by authorizing another person to relinquish physical custody on the parent’s behalf. If physical custody of the newborn infant is not relinquished directly to an individual on duty at the institutional health facility, the parent may take other actions to be reasonably sure that an individual on duty is aware that the newborn infant has been left at the institutional health facility. The actions may include but are not limited to making telephone contact with the institutional health facility or a 911 service. For the purposes of this chapter and for any judicial proceedings associated with the newborn infant, a rebuttable presumption arises that the person who relinquishes

physical custody at an institutional health facility in accordance with this section is the newborn infant's parent or has relinquished physical custody with the parent's authorization.

2. *a.* Unless the parent or other person relinquishing physical custody of a newborn infant clearly expresses an intent to return to again assume physical custody of the newborn infant, an individual on duty at the facility at which physical custody of the newborn infant was relinquished pursuant to subsection 1 shall take physical custody of the newborn infant. The individual on duty may request the parent or other person to provide the name of the parent or parents and information on the medical history of the newborn infant and the newborn infant's parent or parents. However, the parent or other person is not required to provide the names or medical history information to comply with this section. The individual on duty may perform reasonable acts necessary to protect the physical health or safety of the newborn infant. The individual on duty and the institutional health facility in which the individual was on duty are immune from criminal or civil liability for any acts or omissions made in good faith to comply with this section.

*b.* If the physical custody of the newborn infant is relinquished at an institutional health facility, the state shall reimburse the institutional health facility for the institutional health facility's actual expenses in providing care to the newborn infant and in performing acts necessary to protect the physical health or safety of the newborn infant. The reimbursement shall be paid from moneys appropriated for this purpose to the department of human services.

*c.* If the name of the parent is unknown to the institutional health facility, the individual on duty or other person designated by the institutional health facility at which physical custody of the newborn infant was relinquished shall submit the certificate of birth report as required pursuant to section 144.14. If the name of the parent is disclosed to the institutional health facility, the facility shall submit the certificate of birth report as required pursuant to section 144.13. The department of public health shall not file the certificate of birth with the county of birth and shall otherwise maintain the confidentiality of the birth certificate in accordance with section 144.43.

3. As soon as possible after the individual on duty assumes physical custody of a newborn infant released under subsection 1, the individual shall notify the department of human services and the department shall take the actions necessary to assume the care, control, and custody of the newborn infant. The department shall immediately notify the juvenile court and the county attorney of the department's action and the circumstances surrounding the action and request an ex parte order from the juvenile court ordering, in accordance with the requirements of section 232.78, the department to take custody of the newborn infant. Upon receiving the order, the department shall take custody of the newborn infant. Within twenty-four hours of taking custody of the newborn infant, the department shall notify the juvenile court and the county attorney in writing of the department's action and the circumstances surrounding the action.

4. *a.* Upon being notified in writing by the department under subsection 3, the county attorney shall file a petition alleging the newborn infant to be a child in need of assistance in accordance with section 232.87 and a petition for termination of parental rights with respect to the newborn infant in accordance with section 232.111, subsection 2, paragraph "a". A hearing on a child in need of assistance petition filed pursuant to this subsection shall be held at the earliest practicable time. A hearing on a termination of parental rights petition filed pursuant to this subsection shall be held no later than thirty days after the day the physical custody of the newborn child was relinquished in accordance with subsection 1 unless the juvenile court continues the hearing beyond the thirty days for good cause shown.

*b.* Notice of a petition filed pursuant to this subsection shall be provided to any known parent and others in accordance with the provisions of chapter 232 and shall be served upon any putative father registered with the state registrar of vital statistics pursuant to section 144.12A. In addition, prior to holding a termination of parental rights hearing with respect to the newborn infant, notice by publication shall be provided as described in section 600A.6, subsection 5.

5. Reasonable efforts, as defined in section 232.102, that are made in regard to the newborn infant shall be limited to the efforts made in a timely manner to finalize a permanency plan for the newborn infant.

6. An individual on duty at an institutional health facility who assumes custody of a newborn infant upon the release of the newborn infant under subsection 1 shall be provided notice of any hearing held concerning the newborn infant at the same time notice is provided to other parties to the hearing and the individual may provide testimony at the hearing.

2001 Acts, ch 67, §2, 13; 2005 Acts, ch 89, §34

Referred to in §233.3, 233.4, 233.6, 726.3, 726.6

### **233.3 Immunity.**

Any person authorized by the parent to assist with release of custody in accordance with section 233.2 by relinquishing physical custody of the newborn infant or to otherwise act on the parent's behalf is immune from criminal prosecution for abandonment or neglect of the newborn infant under section 726.3 or 726.6 and civil liability for any reasonable acts or omissions made in good faith in assisting with the release.

2001 Acts, ch 67, §3, 13

Parental immunity, see §726.3, 726.6

### **233.4 Rights of parents.**

Either parent of a newborn infant whose custody was released in accordance with section 233.2 may intervene in the child in need of assistance or termination of parental rights proceedings held regarding the newborn infant and request that the juvenile court grant custody of the newborn infant to the parent. The requester must show by clear and convincing evidence that the requester is the parent of the newborn infant. If the court determines that the requester is the parent of the newborn infant and that granting custody of the newborn infant to the parent is in the newborn infant's best interest, the court shall issue an order granting custody of the newborn infant to the parent. In addition to such order, the court may order services for the newborn infant and the parent as are in the best interest of the newborn infant.

2001 Acts, ch 67, §4, 13

Referred to in §233.6

### **233.5 Confidentiality protections.**

1. In addition to any other privacy protection established in law, a record that is developed, acquired, or held in connection with an individual's good faith effort to voluntarily release a newborn infant in accordance with this chapter and any identifying information concerning the individual shall be kept confidential. Such record shall not be inspected or the contents disclosed except as provided in this section.

2. A record described in subsection 1 may be inspected and the contents disclosed without court order to the following:

- a. The court and professional court staff, including juvenile court officers.
- b. The newborn infant and the newborn infant's counsel.
- c. The newborn infant's parent, guardian, custodian, and those persons' counsel.
- d. The newborn infant's court appointed special advocate and guardian ad litem.
- e. The county attorney and the county attorney's assistants.
- f. An agency, association, facility, or institution which has custody of the newborn infant, or is legally responsible for the care, treatment, or supervision of the newborn infant.
- g. The newborn infant's foster parent or an individual providing preadoptive care to the newborn infant.

3. Pursuant to court order a record described in subsection 1 may be inspected by and the contents may be disclosed to any of the following:

a. A person conducting bona fide research for research purposes under whatever conditions the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.

b. Persons who have a direct interest in a proceeding or in the work of the court.

4. Any person who knowingly discloses, receives, or makes use or permits the use of information derived directly or indirectly from such a record or discloses identifying

information concerning such individual, except as provided by this section, commits a serious misdemeanor.

2001 Acts, ch 67, §5, 13

### **233.6 Educational and public information.**

The department of human services, in consultation with the Iowa department of public health and the department of justice, shall develop and distribute the following:

1. An information card or other publication for distribution by an institutional health facility to a parent who releases custody of a newborn infant in accordance with this chapter. The publication shall inform the parent of a parent's rights under section 233.4, explain the request for medical history information under section 233.2, subsection 2, and provide other information deemed pertinent by the departments.

2. Educational materials, public information announcements, and other resources to develop awareness of the availability of the newborn safe haven Act among adolescents, young parents, and others who might avail themselves of this chapter.

3. Signage that may be used to identify the institutional health facilities at which physical custody of a newborn infant may be relinquished in accordance with this chapter.

2001 Acts, ch 67, §6, 13; 2002 Acts, ch 1119, §34

## CHAPTER 233A

### TRAINING SCHOOL

233A.1	State training school — Eldora and Toledo.	233A.9	Resuming custody of child.
233A.2	Superintendent — powers and duties.	233A.10	Unlawful interference.
233A.3	Salary.	233A.11	County attorney to appear for child.
233A.4	Education and training.	233A.12	Discharge or parole.
233A.5	Procedure to commit.	233A.13	Binding out or discharge.
233A.6	Visits.	233A.14	Transfers to other institutions.
233A.7	Placing in families.	233A.15	Transfers to work in parks.
233A.8	Articles of agreement.	233A.16	Reserved.
		233A.17	Cost of care.

### **233A.1 State training school — Eldora and Toledo.**

1. Effective January 1, 1992, a diagnosis and evaluation center and other units are established at Eldora to provide to juvenile delinquents a program which focuses upon appropriate developmental skills, treatment, placements, and rehabilitation.

2. The diagnosis and evaluation center which is used to identify appropriate treatment and placement alternatives for juveniles and any other units for juvenile delinquents which are located at Eldora and the unit for juvenile delinquents at Toledo shall together be known as the "*state training school*". For the purposes of this chapter "*director*" means the director of human services and "*superintendent*" means the administrator in charge of the diagnosis and evaluation center for juvenile delinquents and other units at Eldora and the unit for juvenile delinquents at Toledo.

3. The number of children present at any one time at the state training school at Eldora shall not exceed the population guidelines established under 1990 Iowa Acts, chapter 1239, section 21, as adjusted for subsequent changes in the capacity at the training school.

[S13, §2701-a; C24, 27, 31, 35, 39, §3685; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.1; 82 Acts, ch 1260, §25]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1239, §15, 16

C93, §233A.1

2005 Acts, ch 175, §102

**233A.2 Superintendent — powers and duties.**

The superintendent has charge and custody of the juveniles committed to the state training school. The superintendent shall administer the state training school and direct the staff in order to provide a positive living experience designed to prepare the juveniles for a productive future.

[C73, §1651, 1652; C97, §2707; S13, §2707; C24, 27, 31, 35, 39, §3686; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.2]

90 Acts, ch 1239, §17

C93, §233A.2

**233A.3 Salary.**

The salary of the superintendent of the state training school shall be determined by the administrator.

[S13, §2727-3a; C24, 27, 31, 35, 39, §3687; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.3; 82 Acts, ch 1260, §26]

C93, §233A.3

**233A.4 Education and training.**

The state training school shall provide a positive living experience for older juveniles who require secure custody and who live at the state training school for an extended period of time. The education and training programs provided to the juveniles shall reflect the age level and extended period of stay by focusing upon appropriate developmental skills to prepare the juveniles for productive living.

[C73, §1648; C97, §2706; C24, 27, 31, 35, 39, §3688; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.4; 82 Acts, ch 1260, §27]

85 Acts, ch 21, §37; 90 Acts, ch 1239, §18

C93, §233A.4

Referred to in §232.53

**233A.5 Procedure to commit.**

The procedure for the commitment of children to the state training school, except as otherwise provided, shall be the same as provided in chapter 232.

[C73, §1653 – 1659; C97, §2708, 2709; S13, §2708, 2709; C24, 27, 31, 35, 39, §3689; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.5]

C93, §233A.5

**233A.6 Visits.**

Members of the executive council, the attorney general, the lieutenant governor, members of the general assembly, judges of the supreme and district court and court of appeals, magistrates, county attorneys and persons ordained or designated as regular leaders of a religious community are authorized to visit the state training school at reasonable times. No other person shall be granted admission except by permission of the superintendent.

85 Acts, ch 21, §38

CS85, §242.6

C93, §233A.6

**233A.7 Placing in families.**

All children committed to and received in the state training school may be placed by the department under foster care arrangements, with any persons or in families of good standing and character where they will be properly cared for and educated. The cost of foster care provided under these arrangements shall be paid as provided in section 234.35.

[C73, §1649; C97, §2704; S13, §2704; C24, 27, 31, 35, 39, §3691; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.7; 82 Acts, ch 1260, §29]

90 Acts, ch 1270, §47

C93, §233A.7

Referred to in §233A.11

**233A.8 Articles of agreement.**

Such children shall be so placed under articles of agreement, approved by the administrator and signed by the person or persons taking them and by the superintendent. Said articles shall provide for the custody, care, education, maintenance, and earnings of said children for a time to be fixed in said articles, which shall not extend beyond the time when the persons bound shall attain the age of eighteen years.

[C73, §1649; C97, §2704; S13, §2704; C24, 27, 31, 35, 39, §3692; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.8]

C93, §233A.8

Referred to in §233A.11

**233A.9 Resuming custody of child.**

In case a child so placed be not given the care, education, treatment, and maintenance required by such agreement, the administrator may cause the child to be taken from the person with whom placed and returned to the institution, or may replace, release, or finally discharge the child as may seem best.

[C73, §1649; C97, §2704; S13, §2704; C24, 27, 31, 35, 39, §3693; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.9]

C93, §233A.9

Referred to in §233A.11

**233A.10 Unlawful interference.**

It shall be unlawful for any parent or other person not a party to such placing of a child to interfere in any manner or assume or exercise any control over such child or the child's earnings. Said earnings shall be used, held, or otherwise applied for the exclusive benefit of such child, in accordance with section 234.37.

[S13, §2704; C24, 27, 31, 35, 39, §3694; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.10]

C93, §233A.10

Referred to in §233A.11

**233A.11 County attorney to appear for child.**

In case legal proceedings are necessary to enforce any right conferred on any child by sections 233A.7 to 233A.10, inclusive, the county attorney of the county in which such proceedings should be instituted shall, on request of the superintendent, approved by the administrator, institute and carry on, in the name of the superintendent, the proceedings in behalf of the superintendent.

[S13, §2704; C24, 27, 31, 35, 39, §3695; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.11]

C93, §233A.11

Referred to in §331.756(50)

**233A.12 Discharge or parole.**

The administrator may at any time after one year's service order the discharge or parole of any inmate as a reward for good conduct, and may, in exceptional cases, discharge or parole inmates without regard to the length of their service or conduct, when satisfied that the reasons therefor are urgent and sufficient. If paroled upon satisfactory evidence of reformation, the order may remain in effect or terminate under such rules as the administrator may prescribe.

[C73, §1660, 1661; C97, §2711; S13, §2711; C24, 27, 31, 35, 39, §3696; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.12]

C93, §233A.12

**233A.13 Binding out or discharge.**

The binding out or the discharge of an inmate as reformed, or having arrived at the age of eighteen years, shall be a complete release from all penalties incurred by the conviction for the offense upon which the child was committed to the school.

[C73, §1661; C97, §2711; S13, §2711; C24, 27, 31, 35, 39, §3697; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §242.13]

C93, §233A.13

Referred to in §232.53

**233A.14 Transfers to other institutions.**

The administrator may transfer to the schools minor wards of the state from any institution under the administrator's charge but no person shall be so transferred who is mentally ill or has an intellectual disability. Any child in the schools who is mentally ill or has an intellectual disability may be transferred by the administrator to the proper state institution.

[C66, 71, 73, 75, 77, 79, 81, §242.14]

C93, §233A.14

2012 Acts, ch 1019, §90

**233A.15 Transfers to work in parks.**

The administrator may detail children, classed as trustworthy, from the state training school, to perform services for the department of natural resources within the state parks, state game and forest areas and other lands under the jurisdiction of the department of natural resources. The department of natural resources shall provide permanent housing and work guidance supervision, but the care and custody of the children so detailed shall remain under employees of the division of child and family services of the department of human services. All such programs shall have as their primary purpose and shall provide for inculcation or the activation of attitudes, skills and habit patterns which will be conducive to the habilitation of the youths involved.

The administrator is hereby authorized to use state-owned mobile housing equipment and facilities in performing such services at temporary locations in the above areas.

[C66, 71, 73, 75, 77, 79, 81, §242.15; 82 Acts, ch 1260, §30]

83 Acts, ch 96, §157, 159

C93, §233A.15

**233A.16 Reserved.****233A.17 Cost of care.**

If a child receives unearned income, the department shall reserve a portion of the unearned income for the use of the child as a personal allowance and apply the remaining portion to the cost of the child's custody, care, and maintenance provided pursuant to this chapter.

89 Acts, ch 283, §29

CS89, §242.17

C93, §233A.17

## CHAPTER 233B

## JUVENILE HOME

233B.1	Definitions — purpose — population limit.	233B.10	Placing child under contract.
233B.2	Salary.	233B.11	Recovery of possession.
233B.3	Admissions.	233B.12	Recovery of child — duty of county attorney.
233B.4	Procedure.	233B.13	Interference with child.
233B.5	Transfers.	233B.14	Counties liable.
233B.6	Profits and earnings.	233B.15	Reserved.
233B.7	Rules.	233B.16	Cost of care.
233B.8	and 233B.9 Reserved.		

**233B.1 Definitions — purpose — population limit.**

1. For the purpose of this chapter, unless the context otherwise requires:

- a. “Administrator” or “director” means the director of the department of human services.
- b. “Home” means the Iowa juvenile home.
- c. “Superintendent” means the superintendent of the Iowa juvenile home.

2. The Iowa juvenile home shall be maintained for the purpose of providing care, custody, and education of the children committed to the home. The children shall be wards of the state. The children’s education shall embrace instruction in the common school branches and in such other higher branches as may be practical and will enable the children to gain useful and self-sustaining employment. The administrator and the superintendent of the home shall assist all discharged children in securing suitable homes and proper employment.

3. The number of children present at any one time at the Iowa juvenile home shall not exceed the population guidelines established under 1990 Iowa Acts, chapter 1239, section 21, as adjusted for subsequent changes in the capacity at the home.

[C97, §2689; C24, 27, 31, 35, 39, §3698, 3706; C46, §243.1, 244.1; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.1]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1239, §19

C93, §233B.1

2005 Acts, ch 175, §103

**233B.2 Salary.**

The salary of the superintendent of the home shall be determined by the administrator.

[S13, §2727-3a; C24, 27, 31, 35, 39, §3707; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.2]

C93, §233B.2

**233B.3 Admissions.**

Admission to the home shall be granted to resident children of the state under seventeen years of age, as follows, giving preference in the order named:

1. Neglected or dependent children committed by the juvenile court.
2. Other destitute children.

[C97, §2685; S13, §2685; C24, 27, 31, 35, 39, §3699, 3708; C46, §243.2, 244.3; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.3; 82 Acts, ch 1260, §31]

85 Acts, ch 21, §39

C93, §233B.3

**233B.4 Procedure.**

The procedure for commitment to the home is as provided by chapter 232.

[C97, §2685; S13, §2685; C24, 27, 31, 35, 39, §3709; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.4]

90 Acts, ch 1239, §20

C93, §233B.4

**233B.5 Transfers.**

The administrator may transfer to the home minor wards of the state from any institution under the administrator's charge or under the charge of any other administrator of the department of human services; but no person shall be so transferred who is a person with mental illness or an intellectual disability, or who is incorrigible, or has any vicious habits, or whose presence in the home would be inimical to the moral or physical welfare of the other children within the home, and any such child in the home may be transferred to the proper state institution.

[C24, 27, 31, 35, 39, §3710; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.5]

83 Acts, ch 96, §157, 159

C93, §233B.5

96 Acts, ch 1129, §63; 2012 Acts, ch 1019, §91

**233B.6 Profits and earnings.**

Any money earned by a child who is admitted to or placed in foster care from the home shall be used, held or otherwise applied for the exclusive benefit of that child, in accordance with section 234.37.

[C97, §2689; S13, §2690-d; C24, 27, 31, 35, 39, §3711; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.6]

C93, §233B.6

**233B.7 Rules.**

All children admitted or committed to the home shall be wards of the state and subject to the rules of the home. Subject to the approval of the administrator, any child received under voluntary application may be expelled by the superintendent for disobedience and refusal to submit to proper discipline. Children shall be discharged upon arriving at the age of eighteen years, or sooner if possessed of sufficient means to provide for themselves.

[C73, §1634; C97, §2685, 2688; S13, §2685, 2688, 2690-b; C24, 27, 31, 35, 39, §3712; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.7]

C93, §233B.7

**233B.8 and 233B.9 Reserved.****233B.10 Placing child under contract.**

A child received in the home, unless adopted, may be placed by the department in foster care with any proper person or family. The foster care arrangement shall provide for the custody, care, education, maintenance, and earnings of the child for a fixed time which shall not extend beyond the age of majority, except that the time may extend beyond the child's eighteenth birthday until the child is twenty-one years of age if the child is regularly attending an accredited school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs.

[S13, §2690-b; C24, 27, 31, 35, 39, §3716; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.10]

86 Acts, ch 1245, §1420

C93, §233B.10

**233B.11 Recovery of possession.**

In case of a violation of the terms of such contract, the administrator may cause the child to be taken from the person or persons with whom placed, and may make such other disposition of the child as shall seem to be for the child's best interests.

[S13, §2690-c; C24, 27, 31, 35, 39, §3717; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.11]

C93, §233B.11

**233B.12 Recovery of child — duty of county attorney.**

In case legal proceedings are necessary to recover the possession of such child, they may be instituted and carried on in the name of the superintendent, and the county attorney of the county in which the child is placed shall, if requested by the superintendent, act as the superintendent's attorney in the proceedings.

[S13, §2690-c; C24, 27, 31, 35, 39, §3718; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.12]

C93, §233B.12

Referred to in §331.756(51)

**233B.13 Interference with child.**

It shall be unlawful for any parent or other person not a party to the placing of a child for a term of years, to interfere in any manner with or to assume or exercise any control over such child or the child's earnings while such contract is in force.

[S13, §2690-d; C24, 27, 31, 35, 39, §3719; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.13]

C93, §233B.13

**233B.14 Counties liable.**

Each county is liable for sums paid by the home in support of all its children to the extent of a sum equal to one-half of the net cost of the support and maintenance of its children. The superintendent shall certify to the director of the department of administrative services on the first day of each fiscal quarter the amount chargeable to each county for support. The sums for which each county is liable shall be charged to the county and collected as a part of the taxes due the state, and paid by the county at the same time state taxes are paid.

Should any county fail to pay these bills within sixty days from the date of certificate from superintendent, the director of the department of administrative services shall charge the delinquent county the penalty of one percent per month on and after sixty days from date of certificate until paid. Such penalties shall be credited to the general fund of the state.

[C97, §2692; SS15, §2692; C24, 27, 31, 35, 39, §3720; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §244.14]

83 Acts, ch 123, §94, 209

C93, §233B.14

2003 Acts, ch 145, §286

**233B.15 Reserved.****233B.16 Cost of care.**

If a child receives unearned income, the department shall reserve a portion of the unearned income for the use of the child as a personal allowance and apply the remaining portion equally to the state and county liability for the cost of the child's support and maintenance provided pursuant to this chapter.

89 Acts, ch 283, §30

CS89, §244.16

C93, §233B.16

## SUBTITLE 6

### CHILDREN AND FAMILIES

Referred to in §714.8

## CHAPTER 234

### CHILD AND FAMILY SERVICES

Referred to in §252B.3, 252B.14, 252C.1, 252D.1, 252D.8, 252D.16, 252D.16A, 252E.1, 252E.1A, 252E.16, 252H.2, 252H.4, 252H.21, 252I.2, 252J.1, 598.21C, 598.21G, 598.22, 598.22A, 598.22B, 598.23A, 600.11

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### GENERAL PROVISIONS

#### 234.1 Definitions.

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

1. “Administrator” means the administrator of the division.
2. *a.* “Child” means either a person less than eighteen years of age or a person eighteen or nineteen years of age who meets any of the following conditions:
  - (1) Is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma.
  - (2) Is attending an instructional program leading to a high school equivalency diploma.

(3) Has been identified by the director of special education of the area education agency as a child requiring special education as defined in section 256B.2, subsection 1.

b. A person over eighteen years of age who has received a high school diploma or a high school equivalency diploma is not a “child” within the definition in this subsection.

3. “*Division*” or “*state division*” means that division of the department of human services to which the director has assigned responsibility for income and service programs.

4. “*Food assistance program*” means the benefits provided through the United States department of agriculture program administered by the department of human services in accordance with 7 C.F.R. pts. 270 – 283.

5. “*Food programs*” means the food stamp and donated foods programs authorized by federal law under the United States department of agriculture.

[C71, 73, 75, 77, 79, 81, S81, §234.1; 81 Acts, ch 7, §11]

83 Acts, ch 96, §160; 86 Acts, ch 1245, §1419; 92 Acts, ch 1229, §20; 93 Acts, ch 54, §3; 2008 Acts, ch 1073, §1; 2009 Acts, ch 41, §263

Referred to in §217.36, 235.1, 237.1, 237.15, 238.1, 252.14, 425.15

### **234.2 Division created.**

Within the state department of human services, there is hereby created a division of child and family services which shall be administered by the administrator of said division and such other officers and employees as may be hereafter provided.

[C71, 73, 75, 77, 79, 81, §234.2]

**234.3 Child welfare advisory committee.** Repealed by 2010 Acts, ch 1031, § 393. See § 217.3A.

### **234.4 Education of children in departmental programs.**

If the department of human services has custody or has other responsibility for a child based upon the child’s involvement in a departmental program involving foster care, preadoption or adoption, or subsidized guardianship placement and the child is subject to the compulsory attendance law under chapter 299, the department shall fulfill the responsibilities outlined in section 299.1 and other responsibilities under federal and state law regarding the child’s school attendance. As part of fulfilling the responsibilities described in this section, if the department has custody or other responsibility for placement and care of a child and the child transfers to a different school during or immediately preceding the period of custody or other responsibility, within the first six weeks of the transfer date the department shall assess the student’s degree of success in adjusting to the different school.

2009 Acts, ch 120, §4

### **234.5 Reserved.**

### **234.6 Powers and duties of the administrator.**

The administrator shall be vested with the authority to administer the family investment program, state supplementary assistance, food programs, child welfare, and emergency relief, family and adult service programs, and any other form of public welfare assistance and institutions that are placed under the administrator’s administration. The administrator shall perform duties, formulate and adopt rules as may be necessary; shall outline policies, dictate procedure, and delegate such powers as may be necessary for competent and efficient administration. Subject to restrictions that may be imposed by the director of human services and the council on human services, the administrator may abolish, alter, consolidate, or establish subdivisions and may abolish or change offices previously created. The administrator may employ necessary personnel and fix their compensation; may allocate or reallocate functions and duties among any subdivisions now existing or later established; and may adopt rules relating to the employment of personnel and the allocation of their functions and duties among the various subdivisions as competent and efficient administration may require. The administrator shall:

1. Cooperate with the social security administration created by the Social Security

Act and codified at 42 U.S.C. § 901, or other agency of the federal government for public welfare assistance, in such reasonable manner as may be necessary to qualify for federal aid, including the making of such reports in such form and containing such information as the social security administration, from time to time, may require, and to comply with such regulations as such social security administration, from time to time, may find necessary to assure the correctness and verification of such reports.

2. Furnish information to acquaint the public generally with the operation of the acts under the jurisdiction of the administrator.

3. With the approval of the director of human services, the governor, the director of management, and the director of the department of administrative services, set up from the funds under the administrator's control and management an administrative fund and from the administrative fund pay the expenses of operating the division.

4. Notwithstanding any provisions to the contrary in chapter 239B relating to the consideration of income and resources of claimants for assistance, the administrator, with the consent and approval of the director of human services and the council on human services, shall make such rules as may be necessary to qualify for federal aid in the assistance programs administered by the administrator.

5. The department of human services shall have the power and authority to use the funds available to it, to purchase services of all kinds from public or private agencies to provide for the needs of children, including but not limited to psychiatric services, supervision, specialized group, foster homes and institutional care.

6. Have authority to use funds available to the department, subject to any limitations placed on the use thereof by the legislation appropriating the funds, to provide to or purchase, for families and individuals eligible therefor, services including but not limited to the following:

a. Child care for children or adult day services, in facilities which are licensed or are approved as meeting standards for licensure.

b. Foster care, including foster family care, group homes and institutions.

c. Family-centered services, as defined in section 232.102, subsection 10, paragraph "b".

d. Family planning.

e. Protective services.

f. Services or support provided to a child with an intellectual disability or other developmental disability or to the child's family.

g. Transportation services.

h. Any services, not otherwise enumerated in this subsection, authorized by or pursuant to the United States Social Security Act of 1934, as amended.

7. Administer the food programs authorized by federal law, and recommend rules necessary in the administration of those programs to the director for promulgation pursuant to chapter 17A.

8. Provide consulting and technical services to the director of the department of education, or the director's designee, upon request, relating to prekindergarten, kindergarten, and before and after school programming and facilities.

9. Recommend rules for their adoption by the council on human services for before and after school child care programs, conducted within and by or contracted for by school districts, that are appropriate for the ages of the children who receive services under the programs.

10. In determining the reimbursement rate for services purchased by the department of human services from a person or agency, the department shall not include private moneys contributed to the person or agency unless the moneys are contributed for services provided to a specific individual.

[C39, §3661.007; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §234.6]

88 Acts, ch 1134, §56; 89 Acts, ch 206, §2; 92 Acts, ch 1229, §21 – 23; 93 Acts, ch 97, §28; 97 Acts, ch 41, §32; 99 Acts, ch 111, §5, 7; 99 Acts, ch 192, §28; 2001 Acts, ch 64, §5; 2003 Acts,

ch 145, §286; 2007 Acts, ch 172, §10; 2010 Acts, ch 1061, §180; 2012 Acts, ch 1019, §92; 2013 Acts, ch 90, §60

Referred to in §234.38

See §13.6

Subsection 1 amended

### **234.7 Department duties.**

1. The department of human services shall comply with the provision associated with child foster care licensees under chapter 237 that requires that a child's foster parent be included in, and be provided timely notice of, planning and review activities associated with the child, including but not limited to permanency planning and placement review meetings, which shall include discussion of the child's rehabilitative treatment needs.

2. *a.* The department of human services shall submit a waiver request to the United States department of health and human services as necessary to provide coverage under the medical assistance program for children who are described by both of the following:

(1) The child needs behavioral health care services and qualifies for the care level provided by a psychiatric medical institution for children licensed under chapter 135H.

(2) The child is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unable to provide such treatment.

*b.* The waiver request shall provide for appropriately addressing the needs of children described in paragraph "a" by implementing any of the following options: using a wraparound services approach, renegotiating the medical assistance program contract provisions for behavioral health services, or applying another approach for appropriately meeting the children's needs.

*c.* If federal approval of the waiver request is not received, the department shall submit options to the governor and general assembly to meet the needs of such children through a state-funded program.

95 Acts, ch 182, §14; 2005 Acts, ch 117, §3; 2008 Acts, ch 1032, §38; 2011 Acts, ch 34, §60

### **234.8 Fees for child welfare services.**

The department of human services may charge a fee for child welfare services to a person liable for the cost of the services. The fee shall not exceed the reasonable cost of the services. The fee shall be based upon the person's ability to pay and consideration of the fee's impact upon the liable person's family and the goals identified in the case permanency plan. The department may assess the liable person for the fee and the means of recovery shall include a setoff against an amount owed by a state agency to the person assessed pursuant to section 8A.504. In addition the department may establish an administrative process to recover the assessment through automatic income withholding. The department shall adopt rules pursuant to chapter 17A to implement the provisions of this section. This section does not apply to court-ordered services provided to juveniles which are a charge upon the state pursuant to section 232.141 and services for which the department has established a support obligation pursuant to section 234.39.

92 Acts, ch 1229, §24; 2003 Acts, ch 145, §216

**234.9 through 234.11** Repealed by 93 Acts, ch 54, § 12.

### **234.12 Department to provide food programs.**

The department of human services is authorized to enter into such agreements with agencies of the federal government as are necessary in order to make available to the people of this state any federal food programs which may, under federal laws and regulations, be implemented in this state. Each such program shall be implemented in every county in the state, or in each county where implementation is permitted by federal laws and regulations.

The provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 115, shall not apply to an applicant for or recipient of food stamp benefits in this state. However, the department of human services may apply

contingent eligibility requirements as provided under state law and allowed under federal law.

Upon request by the department of human services, the department of inspections and appeals shall conduct investigations into possible fraudulent practices, as described in section 234.13, relating to food programs administered by the department of human services.

[C79, 81, §234.12]

90 Acts, ch 1204, §48; 97 Acts, ch 41, §1

#### **234.12A Electronic benefits transfer program.**

1. The department of human services shall maintain an electronic benefits transfer program utilizing electronic funds transfer systems for the food assistance program. The electronic benefits transfer program implemented under this section shall not require a retailer to make cash disbursements or to provide, purchase, or upgrade electronic funds transfer system equipment as a condition of participation in the program.

2. A point-of-sale terminal which is used only for purchases from a retailer by electronic benefits transfer utilizing electronic funds transfer systems is not a satellite terminal as defined in section 527.2.

3. For the purposes of this section, “*retailer*” means a business authorized by the United States department of agriculture to accept food assistance program benefits.

98 Acts, ch 1066, §1; 98 Acts, ch 1218, §75; 2001 Acts, ch 191, §39; 2005 Acts, ch 175, §104; 2008 Acts, ch 1073, §2, 3; 2009 Acts, ch 182, §130

#### **234.13 Fraudulent practices relating to food programs.**

For the purposes of this section, unless the context otherwise requires, “*benefit transfer instrument*” means a food stamp coupon, authorization-to-purchase card, or electronic benefits transfer card. A person commits a fraudulent practice if that person does any of the following:

1. With intent to gain financial assistance to which that person is not entitled, knowingly makes or causes to be made a false statement or representation or knowingly fails to report to an employee of the department of human services any change in income, resources or other circumstances affecting that person’s entitlement to such financial assistance.

2. As a beneficiary of the food programs, transfers any food stamp benefit transfer instrument to any other individual with intent that the benefit transfer instrument be used for the benefit of someone other than persons within the beneficiary’s food stamp household as certified by the department of human services.

3. Knowingly acquires, uses or attempts to use any food stamp benefit transfer instrument which was not issued for the benefit of that person’s food stamp household by the department of human services, or by an agency administering food programs in another state.

4. Acquires, alters, transfers, or redeems a food stamp benefit transfer instrument or possesses a benefit transfer instrument, knowing that the benefit transfer instrument has been received, transferred, or used in violation of this section or the provisions of the federal food stamp program under 7 U.S.C. ch. 51 or the federal regulations issued pursuant to that chapter.

[C79, 81, §234.13; 82 Acts, ch 1260, §120]

96 Acts, ch 1106, §15

Referred to in §234.12

Fraudulent practices, see §714.8 – 714.14

#### **234.14 Federal grants.**

The state treasurer is hereby authorized to receive such federal funds as may be made available for carrying out any of the activities and functions of the state division, and all such funds are hereby appropriated for expenditure upon authorization of the administrator.

[C39, §3661.015; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §234.14]

**234.15 through 234.20** Repealed by 80 Acts, ch 1050, § 40.

## FAMILY PLANNING SERVICES

**234.21 Services to be offered.**

The state division may offer, provide, or purchase family planning and birth control services to every person who is an eligible applicant or recipient of service or any financial assistance from the department of human services, or who is receiving federal supplementary security income as defined in section 249.1.

[C66, 71, 73, 75, 77, 79, 81, §234.21]

**234.22 Extent of services.**

Such family planning and birth control services may include interview with trained personnel; distribution of literature; referral to a licensed physician for consultation, examination, tests, medical treatment and prescription; and, to the extent so prescribed, the distribution of rhythm charts, drugs, medical preparations, contraceptive devices and similar products.

[C66, 71, 73, 75, 77, 79, 81, §234.22]

**234.23 Charge for services.**

In making provision for and offering such services, the state division may charge those persons to whom family planning and birth control services are rendered a fee sufficient to reimburse the state division all or any portion of the costs of the services rendered.

[C66, 71, 73, 75, 77, 79, 81, §234.23]

**234.24 Services may be refused.**

The refusal of any person to accept family planning and birth control services shall in no way affect the right of such person to receive public assistance or any other public benefit and every person to whom such services are offered shall be so advised initially both orally and in writing. Employees engaged in the administration of this section shall recognize that the right to make decisions concerning family planning and birth control is a fundamental personal right of the individual and nothing in this division shall in any way abridge such individual right, nor shall any individual be required to state the individual's reason for refusing the offer of family planning and birth control services.

[C66, 71, 73, 75, 77, 79, 81, §234.24]

**234.25 Language to be used.**

In all cases where the recipient does not speak or read the English language, the services shall not be given unless the interviews shall be conducted in, and all literature shall be written in, a language which the recipient understands.

[C66, 71, 73, 75, 77, 79, 81, §234.25]

**234.26 Construction.**

This division shall be liberally construed to protect the rights of all individuals to pursue their religious beliefs and to follow the dictates of their own consciences, and to prevent the imposition upon any individual of practices offensive to the individual's moral standards.

[C66, 71, 73, 75, 77, 79, 81, §234.26]

**234.27 Policy.**

The general assembly hereby finds, determines, and declares that this division is necessary for the immediate preservation of the public peace, health, and safety.

[C66, 71, 73, 75, 77, 79, 81, §234.27]

**234.28 Obscenity laws not applicable.**

The provisions of chapter 728 do not apply to services provided under the terms of this division.

[C66, 71, 73, 75, 77, 79, 81, §234.28]

**234.29 through 234.34** Reserved.

#### FOSTER CARE EXPENSE

##### **234.35 When state to pay foster care costs.**

1. The department of human services is responsible for paying the cost of foster care for a child, according to rates established pursuant to section 234.38, under any of the following circumstances:

a. When a court has committed the child to the director of human services or the director's designee.

b. When a court has transferred legal custody of the child to the department of human services.

c. When the department has agreed to provide foster care services for the child for a period of not more than ninety days on the basis of a signed placement agreement between the department and the child's parent or guardian.

d. When the child has been placed in emergency care for a period of not more than thirty days upon approval of the director or the director's designee.

e. When a court has entered an order transferring the legal custody of the child to a foster care placement pursuant to section 232.52, subsection 2, paragraph "d", or section 232.102, subsection 1. However, payment for a group foster care placement shall be limited to those placements which conform to a service area group foster care plan established pursuant to section 232.143.

f. When the department has agreed to provide foster care services for a child who is eighteen years of age or older on the basis of a signed placement agreement between the department and the child or the person acting on behalf of the child.

g. When the department has agreed to provide foster care services for the child on the basis of a signed placement agreement initiated before July 1, 1992, between the department and the child's parent or guardian.

h. When the child is placed in shelter care pursuant to section 232.20, subsection 1, or section 232.21.

i. When the court has entered an order in a voluntary foster care placement proceeding pursuant to section 232.182, subsection 5, placing the child into foster care.

2. Except as provided under section 234.38 for direct payment of foster parents, payment for foster care costs shall be limited to foster care providers with whom the department has a contract in force.

3. Payment for foster care services provided to a child who is eighteen years of age or older shall be limited to the following:

a. For a child who is eighteen years of age, family foster care or independent living arrangements.

b. For a child who is nineteen years of age, independent living arrangements.

c. For a child who is at imminent risk of becoming homeless or failing to graduate from high school or to obtain a general education development diploma, if the services are in the child's best interests, funding is available for the services, and an appropriate alternative service is unavailable.

4. The department shall report annually to the governor and general assembly by January 1 on the numbers of children for whom the state paid for independent living services during the immediately preceding fiscal year. The report shall detail the number of children, by county, who received such services, were discharged from such services, the voluntary or involuntary status of such services, and the reasons for discharge. The department shall

assess the report data as part of any evaluation of independent living services or consideration for improving the services.

[C75, 77, 79, 81, §234.35]

90 Acts, ch 1270, §42, 43; 92 Acts, ch 1229, §25; 93 Acts, ch 172, §37, 56; 2003 Acts, ch 117, §9; 2003 Acts, ch 175, §37; 2004 Acts, ch 1116, §15; 2011 Acts, ch 34, §61

Referred to in §225C.49, 233A.7, 234.37, 234.38, 234.39, 234.46, 237.15

See Iowa Acts for special provisions relating to foster care payments in a given fiscal year

Limitations on funding for state shelter care; inclusion of child welfare emergency services; 2008 Acts, ch 1187, §16, 79, 97; 2009 Acts, ch 182, §16; 2010 Acts, ch 1181, §7, 13; 2010 Acts, ch 1192, §19; 2011 Acts, ch 129, §15, 128, 156; 2012 Acts, ch 1133, §22; 2013 Acts, ch 138, §18, 148

Section not amended; footnote revised

**234.36** Repealed by 90 Acts, ch 1270, § 50.

**234.37 Department may establish accounts for certain children.**

The department of human services is authorized to establish an account in the name of any child committed to the director of human services or the director's designee, or whose legal custody has been transferred to the department, or who is voluntarily placed in foster care pursuant to section 234.35. Any money which the child receives from the United States government or any private source shall be placed in the child's account, unless a guardian of the child's property has been appointed and demands the money, in which case it shall be paid to the guardian. The account shall be maintained by the department as trustee for the child in an interest-bearing account at a reputable bank or savings association, except that if the child is residing at an institution administered by the department a limited amount of the child's funds may be maintained in a separate account, which need not be interest bearing, in the child's name at the institution. Any money held in an account in the child's name or in trust for the child under this section may be used, at the discretion of the department and subject to restrictions lawfully imposed by the United States government or other source from which the child receives the funds, for the purchase of personal incidentals, desires and comforts of the child. All of the money held for a child by the department under this section and not used in the child's behalf as authorized by law shall be promptly paid to the child or the child's parent or legal guardian upon termination of the commitment of the child to the director or the director's designee, or upon transfer or cessation of legal custody of the child by the department.

[C75, 77, 79, 81, §234.37]

2012 Acts, ch 1017, §58

Referred to in §233A.10, 233B.6

**234.38 Foster care reimbursement rates.**

The department of human services shall make reimbursement payments directly to foster parents for services provided to children pursuant to section 234.6, subsection 6, paragraph "b", or section 234.35. In any fiscal year, the reimbursement rate shall be based upon sixty-five percent of the United States department of agriculture estimate of the cost to raise a child in the calendar year immediately preceding the fiscal year. The department may pay an additional stipend for a child with special needs.

[C75, 77, 79, 81, §234.38]

90 Acts, ch 1270, §44; 92 Acts, ch 1229, §26; 92 Acts, ch 1247, §46; 92 Acts, 1st Ex, ch 1004,

§4

Referred to in §234.35

**234.39 Responsibility for cost of services.**

It is the intent of this chapter that an individual receiving foster care services and the individual's parents or guardians shall have primary responsibility for paying the cost of the care and services. The support obligation established and adopted under this section shall be consistent with the limitations on legal liability established under sections 222.78 and 230.15, and by any other statute limiting legal responsibility for support which may be imposed on a person for the cost of care and services provided by the department. The department shall notify an individual's parents or guardians, at the time of the placement

of an individual in foster care, of the responsibility for paying the cost of care and services. Support obligations shall be established as follows:

1. For an individual to whom section 234.35, subsection 1, is applicable, a dispositional order of the juvenile court requiring the provision of foster care, or an administrative order entered pursuant to chapter 252C, or any order establishing paternity and support for a child in foster care, shall establish, after notice and a reasonable opportunity to be heard is provided to a parent or guardian, the amount of the parent's or guardian's support obligation for the cost of foster care provided by the department. The amount of the parent's or guardian's support obligation and the amount of support debt accrued and accruing shall be established in accordance with the child support guidelines prescribed under section 598.21B. However, the court, or the department of human services in establishing support by administrative order, may deviate from the prescribed obligation after considering a recommendation by the department for expenses related to goals and objectives of a case permanency plan as defined under section 237.15, and upon written findings of fact which specify the reason for deviation and the prescribed guidelines amount. Any order for support shall direct the payment of the support obligation to the collection services center for the use of the department's foster care recovery unit. The order shall be filed with the clerk of the district court in which the responsible parent or guardian resides and has the same force and effect as a judgment when entered in the judgment docket and lien index. The collection services center shall disburse the payments pursuant to the order and record the disbursements. If payments are not made as ordered, the child support recovery unit may certify a default to the court and the court may, on its own motion, proceed under section 598.22 or 598.23 or the child support recovery unit may enforce the judgment as allowed by law. An order entered under this subsection may be modified only in accordance with the guidelines prescribed under section 598.21C, or under chapter 252H.

2. For an individual who is served by the department of human services under section 234.35, and is not subject to a dispositional order of the juvenile court requiring the provision of foster care, the department shall determine the obligation of the individual's parent or guardian pursuant to chapter 252C and in accordance with the child support guidelines prescribed under section 598.21B. However, the department may adjust the prescribed obligation for expenses related to goals and objectives of a case permanency plan as defined under section 237.15. An obligation determined under this subsection may be modified only in accordance with conditions under section 598.21C, or under chapter 252H.

3. A person entitled to periodic support payments pursuant to an order or judgment entered in any action for support, who also is or has a child receiving foster care services, is deemed to have assigned to the department current and accruing support payments attributable to the child effective as of the date the child enters foster care placement, to the extent of expenditure of foster care funds. The department shall notify the clerk of the district court when a child entitled to support payments is receiving foster care services pursuant to chapter 234. Upon notification by the department that a child entitled to periodic support payments is receiving foster care services, the clerk of the district court shall make a notation of the automatic assignment in the judgment docket and lien index. The notation constitutes constructive notice of assignment. The clerk of court shall furnish the department with copies of all orders and decrees awarding support when the child is receiving foster care services. At the time the child ceases to receive foster care services, the assignment of support shall be automatically terminated. Unpaid support accrued under the assignment of support rights during the time that the child was in foster care remains due to the department up to the amount of unreimbursed foster care funds expended. The department shall notify the clerk of court of the automatic termination of the assignment. Unless otherwise specified in the support order, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order or judgment for purposes of an assignment under this section.

4. The support debt for the costs of services, for which a support obligation is established pursuant to this section, which accrues prior to the establishment of the support debt, shall be collected, at a maximum, in the amount which is the amount of accrued support debt for the three months preceding the earlier of the following:

a. The provision by the child support recovery unit of the initial notice to the parent or guardian of the amount of the support obligation.

b. The date that the written request for a court hearing is received by the child support recovery unit as provided in section 252C.3 or 252F.3.

5. If the department makes a subsidized guardianship payment for a child, the payment shall be considered a foster care payment for purposes of child support recovery. All provisions of this and other sections, and of rules and orders adopted or entered pursuant to those sections, including for the establishment of a paternity or support order, for the amount of a support obligation, for the modification or adjustment of a support obligation, for the assignment of support, and for enforcement shall apply as if the child were receiving foster care services, or were in foster care placement, or as if foster care funds were being expended for the child. This subsection shall apply regardless of the date of placement in foster care or subsidized guardianship or the date of entry of an order, and foster care and subsidized guardianship shall be considered the same for purposes of child support recovery.

[C75, 77, 79, 81, §234.39]

83 Acts, ch 96, §160; 83 Acts, ch 153, §3; 89 Acts, ch 166, §1; 90 Acts, ch 1270, §45; 92 Acts, ch 1195, §303, 304; 92 Acts, ch 1229, §27; 94 Acts, ch 1171, §8; 95 Acts, ch 52, §1; 96 Acts, ch 1213, §36, 37; 97 Acts, ch 175, §227; 99 Acts, ch 127, §1; 2005 Acts, ch 69, §1

Referred to in §232.4, 232.78, 232.182, 234.8, 252A.13, 598.21C, 598.34, 600B.38

#### **234.40 Corporal punishment.**

The department of human services shall adopt rules prohibiting corporal punishment of foster children by foster parents licensed by the department. The rules shall allow foster parents to use reasonable physical force to restrain a foster child in order to prevent injury to the foster child, injury to others, the destruction of property, or extremely disruptive behavior. For the purposes of this section, “*corporal punishment*” means the intentional physical punishment of a foster child. A foster parent’s physical contact with the body of a foster child shall not be considered corporal punishment if the contact is reasonable and necessary under the circumstances and is not designed or intended to cause pain or if the foster parent uses reasonable force, as defined under section 704.1.

[C79, 81, §234.40]

92 Acts, ch 1241, §71

Referred to in §232.71B

#### **234.41 Tort actions.**

A foster parent licensed by the department of human services stands in the same relationship to the foster parent’s minor foster child, for purposes of tort actions by or on behalf of the foster child against the foster parent, as a biological parent to the biological parent’s minor child who resides at home. This section does not apply to a foster parent whose malicious, willful and wanton conduct causes injury or damage to a foster child or exposes the foster child to a danger caused by violation of a statute or the rules of the department of human services.

[C79, 81, §234.41]

94 Acts, ch 1046, §4

**234.42** Repealed effective July 1, 1994, by 93 Acts, ch 172, § 48, 56.

**234.43 and 234.44** Reserved.

### MARRIAGE INITIATIVE GRANT FUND

#### **234.45 Iowa marriage initiative grant fund.**

1. An Iowa marriage initiative grant fund is established in the state treasury under the authority of the department of human services. The grant fund shall consist of moneys appropriated to the fund and notwithstanding section 8.33 such moneys shall not revert

to the fund from which appropriated at the close of the fiscal year but shall remain in the Iowa marriage initiative grant fund. Moneys credited to the fund shall be used as directed in appropriations made by the general assembly for funding of services to support marriage and to encourage the formation and maintenance of two-parent families that are secure and nurturing.

2. It is the intent of the general assembly to credit to the Iowa marriage initiative grant fund, federal moneys provided to the state for the express purpose of supporting marriage or two-parent families.

2001 Acts, ch 191, §37

#### PREPARATION FOR ADULT LIVING PROGRAM

##### **234.46 Preparation for adult living program.**

1. For the purposes of this section, “*young adult*” means a person who is described by all of the following conditions:

- a. The person is a resident of this state.
- b. The person is age eighteen, nineteen, or twenty.
- c. At the time the person became age eighteen, the person received foster care services that were paid for by the state under section 234.35 and the person is no longer receiving such services.
- d. The person enters into and participates in an individual self-sufficiency plan that complements the person’s own efforts for achieving self-sufficiency and the plan provides for one or more of the following:
  - (1) The person attends an accredited school full-time pursuing a course of study leading to a high school diploma.
  - (2) The person attends an instructional program leading to a high school equivalency diploma.
  - (3) The person is enrolled in or pursuing enrollment in a postsecondary education or training program or work training.
  - (4) The person is employed or seeking employment.

2. The division shall establish a preparation for adult living program directed to young adults. The purpose of the program is to assist persons who are leaving foster care services at age eighteen or older in making the transition to self-sufficiency. The department shall adopt rules necessary for administration of the program, including but not limited to eligibility criteria for young adult participation and the services and other support available under the program. The services and other support available under the program may include but are not limited to any of the following:

- a. Support for the young adult continuing to reside with the family that provided family foster care to the young adult.
- b. Support for a supervised apartment living arrangement.
- c. Support for participation in education, training, or employment activities.
- d. Other assistance to enhance the young adult’s ability to achieve self-sufficiency.

3. This section shall not be construed as granting an entitlement for any program, services, or other support for the persons described in this section. Any state obligation to provide a program, services, or other support pursuant to this section is limited to the extent of the funds appropriated for the purposes of the program.

2006 Acts, ch 1159, §7

CHILD CARE ASSISTANCE  
AND ADOPTION SUBSIDIES  
— PROJECTED EXPENDITURES

**234.47 State child care assistance and adoption subsidy programs — expenditure projections.**

The department of human services, the department of management, and the legislative services agency shall utilize a joint process to arrive at consensus projections for expenditures for the state child care assistance program under section 237A.13 and adoption subsidy and other assistance provided under section 600.17.

2008 Acts, ch 1187, §115

CHAPTER 235

CHILD WELFARE

Referred to in §135B.17

235.1	Definitions.	235.4	Licenses.
235.2	Powers and duties of state division.	235.5	Inspections.
235.3	Powers and duties of administrator.	235.6	Short title.
		235.7	Transition committees.

**235.1 Definitions.**

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

1. “Administrator” means the same as defined in section 234.1.
2. “Child” means the same as defined in section 234.1.

3. “Child welfare services” means social welfare services for the protection and care of children who are homeless, dependent or neglected, or in danger of becoming delinquent, or who have a mental illness or an intellectual disability or other developmental disability, including, when necessary, care and maintenance in a foster care facility. Child welfare services are designed to serve a child in the child’s home whenever possible. If not possible, and the child is placed outside the child’s home, the placement should be in the least restrictive setting available and in close proximity to the child’s home.

4. “State division” means the same as defined in section 234.1.

[C39, §3661.016; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §235.1]

83 Acts, ch 101, §44; 92 Acts, ch 1229, §28; 94 Acts, ch 1023, §88; 2009 Acts, ch 133, §86; 2012 Acts, ch 1019, §93

**235.2 Powers and duties of state division.**

The state division, in addition to all other powers and duties given it by law, shall:

1. Administer and enforce the provisions of this chapter.
2. Join and cooperate with the government of the United States through its appropriate agency or instrumentality or with any other officer or agency of the federal government in planning, establishing, extending and strengthening public and private child welfare services within the state.
3. Make such investigations and to obtain such information as will permit the administrator to determine the need for public child welfare services within the state and within the several county departments thereof.
4. Apply for and receive any funds which are or may be allotted to the state by the United States or any agency thereof for the purpose of developing child welfare services.
5. Make such reports and budget estimates to the governor and to the general assembly

as are required by law or such as are necessary and proper to obtain the appropriation of state funds for child welfare services within the state and for all the purposes of this chapter.

6. Cooperate with the several county departments within the state, and all county boards of supervisors and other public or private agencies charged with the protection and care of children, in the development of child welfare services.

7. Aid in the enforcement of all laws of the state for the protection and care of children.

8. Cooperate with the juvenile courts of the state and with the other administrators and divisions of the department of human services regarding the management and control of state institutions and the inmates thereof.

[C39, §3661.017; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §235.2]

83 Acts, ch 96, §157, 159

### **235.3 Powers and duties of administrator.**

The administrator shall:

1. Plan and supervise all public child welfare services and activities within the state as provided by this chapter.

2. Make such reports and obtain and furnish such information from time to time as may be necessary to permit cooperation by the state division with the United States children's bureau, the social security administration, or any other federal agency which is now or may hereafter be charged with any duty regarding child care or child welfare services.

3. Adopt rules as necessary or advisable for the supervision of the private child-caring agencies or their officers which the administrator is empowered to license and supervise.

4. Supervise private institutions for the care of dependent, neglected, and delinquent children, and make reports regarding the institutions.

5. Designate and approve the private and county institutions within the state to which neglected, dependent, and delinquent children may be legally committed and to have supervision of the care of children committed thereto, and the right of visitation and inspection of said institutions at all times.

6. Receive and keep on file annual reports from all institutions to which children subject to the jurisdiction of the juvenile court are committed, compile statistics regarding juvenile delinquency, make reports regarding juvenile delinquency, and study prevention and cure of juvenile delinquency.

7. Require and receive from the clerks of the courts of record within the state duplicates of the findings of the courts upon petitions for adoption, and keep records and compile statistics regarding adoptions.

8. License private child-placing agencies, make reports regarding them, and revoke such licenses.

9. Make such rules and regulations as may be necessary for the distribution and use of funds appropriated for child welfare services.

[C27, 31, 35, §3661-a1, -a2; C39, §3661.018; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §235.3; 82 Acts, ch 1100, §8]

88 Acts, ch 1158, §52; 89 Acts, ch 19, §1; 90 Acts, ch 1204, §49; 2013 Acts, ch 30, §45

Referred to in §602.8102(43)

Subsection 2 amended

### **235.4 Licenses.**

Licenses issued to private boarding homes for children and private child-placing agencies by the administrator shall remain in effect for the period for which issued, unless sooner revoked according to law. Thereafter each of such agencies shall apply to the administrator for a new license, and shall submit to such rules regarding licensing as the administrator prescribes.

[C39, §3661.020; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §235.5]

90 Acts, ch 1204, §50

C91, §235.4

**235.5 Inspections.**

The department of inspections and appeals shall conduct inspections of private institutions for the care of dependent, neglected, and delinquent children in accordance with procedures established pursuant to chapters 10A and 17A.

90 Acts, ch 1204, §51

**235.6 Short title.**

This chapter shall be known and may be cited as “*The Child Welfare Act of 1937*”.

[C39, §3661.021; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §235.6]

**235.7 Transition committees.**

1. *Committees established.* The department of human services shall establish and maintain local transition committees to address the transition needs of those children receiving child welfare services who are age sixteen or older and have a case permanency plan as defined in section 232.2. The department shall adopt rules establishing criteria for transition committee membership, operating policies, and basic functions. The rules shall provide flexibility for a committee to adopt protocols and other procedures appropriate for the geographic area addressed by the committee.

2. *Membership.* The department may authorize the governance boards of decategorization of child welfare and juvenile justice funding projects established under section 232.188 to appoint the transition committee membership and may utilize the boundaries of decategorization projects to establish the service areas for transition committees. The committee membership may include but is not limited to department of human services staff involved with foster care, child welfare, and adult services, juvenile court services staff, staff involved with county general relief under chapter 251 or 252, or of the central point of coordination process implemented under section 331.440,\* school district and area education agency staff involved with special education, and a child’s court appointed special advocate, guardian ad litem, service providers, and other persons knowledgeable about the child.

3. *Duties.* A transition committee shall review and approve the written plan of services required for the child’s case permanency plan in accordance with section 232.2, subsection 4, paragraph “f”, which, based upon an assessment of the child’s needs, would assist the child in preparing for the transition from foster care to adulthood. In addition, a transition committee shall identify and act to address any gaps existing in the services or other support available to meet the child and adult needs of individuals for whom service plans are approved.

2003 Acts, ch 117, §10; 2004 Acts, ch 1090, §33; 2005 Acts, ch 95, §3

Referred to in §232.2

\*Section 331.440 is repealed; corrective legislation is pending

Section not amended; footnote added

## CHAPTER 235A

## CHILD ABUSE

Referred to in §135.43, 232.2, 232.71D, 232.96, 272.2

	CHILD ABUSE PREVENTION	235A.16	Requests for child abuse information.
235A.1	Child abuse prevention program.	235A.17	Redissemination of child abuse information.
235A.2	Child abuse prevention program fund.	235A.18	Sealing and expungement of founded child abuse information.
235A.3	through 235A.11 Reserved.	235A.19	Examination, requests for correction or expungement and appeal.
	CHILD ABUSE INFORMATION REGISTRY	235A.20	Civil remedy.
235A.12	Legislative findings and purposes.	235A.21	Criminal penalties.
235A.13	Definitions.	235A.22	Education program.
235A.14	Creation and maintenance of a central registry.	235A.23	Reports.
235A.15	Authorized access — procedures involving other states.	235A.24	Order for disclosure or release of child abuse information.

## CHILD ABUSE PREVENTION

**235A.1 Child abuse prevention program.**

1. *a.* A program for the prevention of child abuse is established within the state department of human services. Any moneys appropriated by the general assembly for child abuse prevention shall be used by the department of human services solely for the purposes of child abuse prevention and shall not be expended for treatment or other service delivery programs regularly maintained by the department. Moneys appropriated for child abuse prevention shall be used by the department through contract with an agency or organization which shall administer the funds with maximum use of voluntary administrative services for the following:

(1) Matching federal funds to purchase services relating to community-based programs for the prevention of child abuse and neglect.

(2) Funding the establishment or expansion of community-based prevention projects or educational programs for the prevention of child abuse and neglect.

(3) To study and evaluate community-based prevention projects and educational programs for the problems of families and children.

*b.* Funds for the programs or projects shall be applied for and received by a community-based volunteer coalition or council.

2. The director of human services may accept grants, gifts, and bequests from any source for the purposes designated in subsection 1. The director shall remit funds so received to the treasurer of state who shall deposit them in the general fund of the state for the use of the child abuse prevention program.

[82 Acts, ch 1259, §1]

83 Acts, ch 96, §157, 159; 87 Acts, ch 153, §8; 2009 Acts, ch 41, §263; 2010 Acts, ch 1031, §392

Referred to in §144.13A, 217.3A, 235A.2

**235A.2 Child abuse prevention program fund.**

1. A child abuse prevention program fund is created in the state treasury under the control of the department of human services. The fund is composed of moneys appropriated or available to and obtained or accepted by the treasurer of state for deposit in the fund. The fund shall include moneys transferred to the fund pursuant to an income tax checkoff provided in chapter 422, division II, if applicable. All interest earned on moneys in the fund shall be credited to and remain in the fund. Section 8.33 does not apply to moneys in the fund.

2. Moneys in the fund that are authorized by the department for expenditure are appropriated, and shall be used, for the purposes described in section 235A.1 of preventing child abuse and neglect.

2008 Acts, ch 1129, §4, 8, 9; 2010 Acts, ch 1193, §158, 163; 2012 Acts, ch 1097, §3, 6

Referred to in §422.12K

2010 amendment to subsection 1 applies retroactively to January 1, 2010, for tax years beginning on or after that date; 2010 Acts, ch 1193, §163

2012 amendment to subsection 1 applies retroactively to tax years beginning on or after January 1, 2012; 2012 Acts, ch 1097, §6

**235A.3 through 235A.11** Reserved.

## CHILD ABUSE INFORMATION REGISTRY

Definitions applicable to this division, see §232.68

### **235A.12 Legislative findings and purposes.**

1. The general assembly finds and declares that a central registry is required to provide a single source for the statewide collection, maintenance, and dissemination of child abuse information. The existence of the central registry is imperative for increased effectiveness in dealing with the problem of child abuse. The general assembly also finds that vigorous protection of rights of individual privacy is an indispensable element of a fair and effective system of collecting, maintaining, and disseminating child abuse information.

2. The purposes of this section and sections 235A.13 through 235A.24 are to facilitate the identification of victims or potential victims of child abuse by making available a single, statewide source of child abuse data; to facilitate research on child abuse by making available a single, statewide source of child abuse data; and to provide maximum safeguards against the unwarranted invasions of privacy which such a registry might otherwise entail.

[C75, 77, 79, 81, §235A.12]

84 Acts, ch 1035, §1; 2004 Acts, ch 1153, §2

Referred to in §232.68

### **235A.13 Definitions.**

As used in chapter 232, division III, part 2, and sections 235A.13 to 235A.24, unless the context otherwise requires:

1. “*Assessment data*” means any of the following information pertaining to the department’s evaluation of a family:

a. Identification of the strengths and needs of the child, and of the child’s parent, home, and family.

b. Identification of services available from the department and informal and formal services and other support available in the community to meet identified strengths and needs.

2. “*Child abuse information*” means any or all of the following data maintained by the department in a manual or automated data storage system and individually identified:

a. Report data.

b. Assessment data.

c. Disposition data.

3. “*Confidentiality*” means the withholding of information from any manner of communication, public or private.

4. “*Department*” means the department of human services.

5. “*Disposition data*” means information pertaining to an opinion or decision as to the occurrence of child abuse, including:

a. Any intermediate or ultimate opinion or decision reached by assessment personnel.

b. Any opinion or decision reached in the course of judicial proceedings.

c. The present status of any case.

6. “*Expungement*” means the process of destroying child abuse information.

7. “*Individually identified*” means any report, assessment, or disposition data which names the person or persons responsible or believed responsible for the child abuse.

8. “*Multidisciplinary team*” means a group of individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of child abuse cases and who are professionals practicing in the disciplines of medicine, nursing, public health, substance abuse, domestic violence, mental health, social work, child development, education, law, juvenile probation, or law enforcement, or a group established pursuant to section 235B.1, subsection 1.

9. “*Near fatality*” means an injury to a child that, as certified by a physician, placed the child in serious or critical condition.

10. “*Report data*” means any of the following information pertaining to an assessment of an allegation of child abuse in which the department has determined the alleged child abuse meets the definition of child abuse:

a. The name and address of the child and the child’s parents or other persons responsible for the child’s care.

b. The age of the child.

c. The nature and extent of the injury, including evidence of any previous injury.

d. Additional information as to the nature, extent, and cause of the injury, and the identity of the person or persons alleged to be responsible for the injury.

e. The names and conditions of other children in the child’s home.

f. A recording made of an interview conducted under chapter 232 in association with a child abuse assessment.

g. Any other information believed to be helpful in establishing the information in paragraph “d”.

11. “*Sealing*” means the process of removing child abuse information from authorized access as provided by this chapter.

[C75, 77, 79, 81, §235A.13; 82 Acts, ch 1066, §1]

84 Acts, ch 1035, §2; 87 Acts, ch 153, §9; 87 Acts, ch 182, §1; 92 Acts, ch 1143, §2; 97 Acts, ch 35, §13, 25; 97 Acts, ch 176, §6, 7, 27 – 31, 43; 99 Acts, ch 96, §26; 2000 Acts, ch 1137, §5, 14; 2002 Acts, ch 1074, §2; 2003 Acts, ch 44, §51; 2003 Acts, ch 62, §1; 2004 Acts, ch 1153, §3

Referred to in §135.43, 232.68, 232.71B, 235A.12, 331.909  
For additional definitions, see §232.68

#### **235A.14 Creation and maintenance of a central registry.**

1. There is created within the state department of human services a central registry for certain child abuse information. The department shall organize and staff the registry and adopt rules for its operation.

2. The registry shall collect, maintain and disseminate child abuse information as provided for by this chapter.

3. The department shall maintain a toll-free telephone line, which shall be available on a twenty-four hour a day, seven-day a week basis and which the department of human services and all other persons may use to report cases of suspected child abuse and that all persons authorized by this chapter may use for obtaining child abuse information.

4. An oral report of suspected child abuse initially made to the central registry shall be immediately transmitted by the department to the appropriate county department of social services or law enforcement agency, or both.

5. The registry, upon receipt of a report of suspected child abuse, shall search the records of the registry, and if the records of the registry reveal any previous report of child abuse involving the same child or any other child in the same family, or if the records reveal any other pertinent information with respect to the same child or any other child in the same family, the appropriate office of the department of human services or law enforcement agency shall be immediately notified of that fact.

6. The central registry shall include report data and disposition data which is subject to

placement in the central registry under section 232.71D. The central registry shall not include assessment data.

[C75, 77, 79, 81, §235A.14]

83 Acts, ch 96, §157, 159; 97 Acts, ch 176, §8; 2013 Acts, ch 115, §11, 19

Referred to in §232.68, 235A.12, 235A.13, 279.13, 279.69, 321.375

2013 amendment to subsection 1 takes effect January 1, 2014; transition to full implementation may begin prior to that date; 2013 Acts, ch 115, §19

Subsection 1 amended

**235A.15 Authorized access — procedures involving other states.**

1. Notwithstanding chapter 22, the confidentiality of all child abuse information shall be maintained, except as specifically provided by this section.

2. Access to report data and disposition data subject to placement in the central registry pursuant to section 232.71D is authorized only to the following persons or entities:

a. Subjects of a report as follows:

(1) To a child named in a report as a victim of abuse or to the child's attorney or guardian ad litem.

(2) To a parent or to the attorney for the parent of a child named in a report as a victim of abuse.

(3) To a guardian or legal custodian, or that person's attorney, of a child named in a report as a victim of abuse.

(4) To a person or the attorney for the person named in a report as having abused a child.

b. Persons involved in an assessment of child abuse as follows:

(1) To a health practitioner or mental health professional who is examining, attending, or treating a child whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to a child believed to have been the victim of abuse is requested by the department.

(2) To an employee or agent of the department of human services responsible for the assessment of a child abuse report.

(3) To a law enforcement officer responsible for assisting in an assessment of a child abuse allegation or for the temporary emergency removal of a child from the child's home.

(4) To a multidisciplinary team, or to parties to an interagency agreement entered into pursuant to section 280.25, if the department of human services approves the composition of the multidisciplinary team or the relevant provisions of the interagency agreement and determines that access to the team or to the parties to the interagency agreement is necessary to assist the department in the diagnosis, assessment, and disposition of a child abuse case.

(5) In an individual case, to each mandatory reporter who reported the child abuse.

(6) To the county attorney.

(7) To the juvenile court.

(8) To a licensing authority for a facility providing care to a child named in a report, if the licensing authority is notified of a relationship between facility policy and the alleged child abuse under section 232.71B.

(9) To the child protection assistance team established in accordance with section 915.35 for the county in which the report was made.

c. Individuals, agencies, or facilities providing care to a child, but only with respect to disposition data and, if authorized in law to the extent necessary for purposes of an employment evaluation, report data, for cases of founded child abuse placed in the central registry in accordance with section 232.71D as follows:

(1) To an administrator of a psychiatric medical institution for children licensed under chapter 135H.

(2) To an administrator of a child foster care facility licensed under chapter 237 if the data concerns a person employed or being considered for employment by the facility.

(3) To an administrator of a child care facility registered or licensed under chapter 237A if the data concerns a person employed or being considered for employment by or living in the facility.

(4) To the superintendent of the Iowa braille and sight saving school if the data concerns a person employed or being considered for employment or living in the school.

(5) To the superintendent of the school for the deaf if the data concerns a person employed or being considered for employment or living in the school.

(6) To an administrator of a community mental health center accredited under chapter 230A if the data concerns a person employed or being considered for employment by the center.

(7) To an administrator of a facility or program operated by the state, a city, or a county which provides services or care directly to children, if the data concerns a person employed by or being considered for employment by the facility or program.

(8) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the data concerns a person employed by or being considered by the agency for employment.

(9) To the administrator of an agency providing mental health, intellectual disability, or developmental disability services under a county management plan developed pursuant to section 331.439,\* if the data concerns a person employed by or being considered by the agency for employment.

(10) To an administrator of a child care resource and referral agency which has entered into an agreement authorized by the department to provide child care resource and referral services. Access is authorized if the data concerns a person providing child care services or a person employed by a provider of such services and the agency includes the provider as a referral or the provider has requested to be included as a referral.

(11) To an administrator of a hospital licensed under chapter 135B if the data concerns a person employed or being considered for employment by the hospital.

(12) To an area education agency or other person responsible for providing early intervention services to children that is funded under part C of the federal Individuals with Disabilities Education Act.

(13) To a federal, state, or local governmental unit, or agent of the unit, that has a need for the information in order to carry out its responsibilities under law to protect children from abuse and neglect.

(14) To a nursing program that is approved by the state board of nursing under section 152.5, if the data relates to a record check performed pursuant to section 152.5.

d. Report data and disposition data, and assessment data to the extent necessary for resolution of the proceeding, relating to judicial and administrative proceedings as follows:

(1) To a juvenile court involved in an adjudication or disposition of a child named in a report.

(2) To a district court upon a finding that data is necessary for the resolution of an issue arising in any phase of a case involving child abuse.

(3) To a court or the department hearing an appeal for correction of report data and disposition data as provided in section 235A.19.

(4) To an expert witness at any stage of an appeal necessary for correction of report data and disposition data as provided in section 235A.19.

(5) To a probation or parole officer, juvenile court officer, court appointed special advocate as defined in section 232.2, or adult correctional officer having custody or supervision of, or conducting an investigation for a court or the board of parole regarding, a person named in a report as a victim of child abuse or as having abused a child.

(6) To the department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

(7) Each licensing board specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

e. Others as follows, but only with respect to report data and disposition data for cases of founded child abuse subject to placement in the registry pursuant to section 232.71D:

(1) To a person conducting bona fide research on child abuse, but without data identifying individuals named in a child abuse report, unless having that data open to review is essential

to the research or evaluation and the authorized registry officials give prior written approval and the child, the child's guardian or guardian ad litem and the person named in a report as having abused a child give permission to release the data.

(2) To registry or department personnel when necessary to the performance of their official duties or to a person or agency under contract with the department to carry out official duties and functions of the department.

(3) To the department of justice for the sole purpose of the filing of a claim for restitution or compensation pursuant to sections 915.21 and 915.84. Data provided pursuant to this subparagraph is subject to the provisions of section 915.90.

(4) To a legally constituted child protection agency of another state which is investigating or assessing or treating a child named in a report as having been abused or which is investigating or assessing or treating a person named as having abused a child.

(5) To a public or licensed child-placing agency of another state responsible for an adoptive or foster care preplacement or placement evaluation.

(6) To the attorney for the department of human services who is responsible for representing the department.

(7) To the child advocacy and local citizen foster care review boards created pursuant to sections 237.16 and 237.19.

(8) To an employee or agent of the department of human services regarding a person who is providing child care if the person is not registered or licensed to operate a child care facility.

(9) To the board of educational examiners created under chapter 272 for purposes of determining whether a license, certificate, or authorization should be issued, denied, or revoked.

(10) To a legally constituted child protection agency in another state if the agency is conducting a records check of a person who is providing care or has applied to provide care to a child in the other state.

(11) To the legally authorized protection and advocacy agency recognized in section 135C.2, if a person identified in the information as a victim or a perpetrator of abuse resides in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(12) To the department of human services for a record check relating to employment or residence pursuant to section 218.13.

(13) To the Iowa board for the treatment of sexual abusers for purposes of certifying sex offender treatment providers.

(14) To an employee or agent of the department responsible for registering or licensing or approving the registration or licensing of an agency or facility, or to an individual providing care to a child and regulated by the department.

(15) To an employee of the department responsible for an adoptive placement, a certified adoption investigator, or licensed child-placing agency responsible for an adoptive placement.

(16) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(17) To the department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

(18) To a person or agency responsible for the care or supervision of a child named in a report as an alleged victim of abuse or a person named in a report as having allegedly abused a child, if the juvenile court or department deems access to report data and disposition data by the person or agency to be necessary.

(19) To the Iowa veterans home for purposes of record checks of potential volunteers and volunteers in the Iowa veterans home.

(20) To the administrator of a certified nurse aide program, if the data relates to a record check of a student of the program performed pursuant to section 135C.33.

(21) To the administrator of a juvenile detention or shelter care home, if the data relates to a record check of an existing or prospective employee, resident, or volunteer for or in the home.

(22) To the employer or prospective employer of a school bus driver for purposes of an employment record check.

(23) To the administrator of a family support program receiving public funds, if the data relates to a record check of an employee working directly with families.

(24) To an intake officer making a preliminary inquiry pursuant to section 232.28, subsection 3.

*f.* Only with respect to disposition data for cases of founded child abuse subject to placement in the central registry pursuant to section 232.71D, to a person who submits written authorization from an individual allowing the person access to data pursuant to this subsection on behalf of the individual in order to verify whether the individual is named in a founded child abuse report as having abused a child.

3. Access to report data and disposition data for a case of child abuse determined to meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following persons:

*a.* Subjects of a report identified in subsection 2, paragraph “a”.

*b.* Persons involved in an assessment of child abuse identified in subsection 2, paragraph “b”, subparagraphs (2), (3), (4), (6), and (7).

*c.* Others identified in subsection 2, paragraph “e”, subparagraphs (2), (3), (6), and (18).

*d.* The department of justice for purposes of review by the prosecutor’s review committee or the commitment of sexually violent predators as provided in chapter 229A.

4. Access to report data for a case of child abuse determined to not meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following:

*a.* Subjects of a report identified in subsection 2, paragraph “a”.

*b.* Persons involved in an assessment of child abuse identified in subsection 2, paragraph “b”, subparagraphs (2), (6), and (7).

*c.* Others identified in subsection 2, paragraph “e”, subparagraphs (2) and (18).

*d.* The department of justice for purposes of review by the prosecutor’s review committee or the commitment of sexually violent predators as provided in chapter 229A.

5. Access to disposition data subject to placement in the central registry pursuant to section 232.71D is authorized to the department of administrative services or to the personnel office of a public employer, as defined in section 20.3, as necessary for presentation in grievance or arbitration procedures provided for in sections 8A.415 and 20.18. Disposition data introduced into a grievance or arbitration proceeding shall not be considered a part of the public record of a case.

6. *a.* If a child who is a legal resident of another state is present in this state and a report of child abuse is made concerning the child, the department shall act to ensure the safety of the child. The department shall contact the child’s state of legal residency to coordinate the assessment of the report. If the child’s state of residency refuses to conduct an assessment, the department shall commence an appropriate assessment.

*b.* If a report of child abuse is made concerning an alleged perpetrator who resides in this state and a child who resides in another state, the department shall assist the child’s state of residency in conducting an assessment of the report. The assistance shall include but is not limited to an offer to interview the alleged perpetrator and any other relevant source. If the child’s state of residency refuses to conduct an assessment of the report, the department shall commence an appropriate assessment. The department shall seek to develop protocols with states contiguous to this state for coordination in the assessment of a report of child abuse when a person involved with the report is a resident of another state.

7. If the director of human services receives a written request for information regarding a specific case of child abuse involving a fatality or near fatality to a child from the majority or minority leader of the senate or the speaker or the minority leader of the house of representatives, the director or the director’s designee shall arrange for a confidential meeting with the requestor or the requestor’s designee. In the confidential meeting the director or the director’s designee shall share all pertinent information concerning the case, including but not limited to child abuse information. Any written document distributed by the director or the director’s designee at the confidential meeting shall not be removed

from the meeting and a participant in the meeting shall be subject to the restriction on redissemination of confidential information applicable to a person under section 235A.17, subsection 3, for confidential information disclosed to the participant at the meeting. A participant in the meeting may issue a report to the governor or make general public statements concerning the department's handling of the case of child abuse.

8. Upon the request of the governor, the department shall disclose child abuse information to the governor or the governor's designee relating to a specific case of child abuse reported to the department.

9. If, apart from a request made pursuant to subsection 7 or 8, the department receives from a member of the public a request for information relating to a case of founded child abuse involving a fatality or near fatality to a child, the response to the request shall be made in accordance with this subsection and subsections 10 and 11. If the request is received before or during performance of an assessment of the case in accordance with section 232.71B, the director of human services or the director's designee shall initially disclose whether or not the assessment will be or is being performed. Otherwise, within five business days of receiving the request or completing the assessment, whichever is later, the director of human services or the director's designee shall consult with the county attorney responsible for prosecution of any alleged perpetrator of the fatality or near fatality and shall disclose information, including but not limited to child abuse information, relating to the case, except for the following:

a. The substance or content of any mental health or psychological information that is confidential under chapter 228.

b. Information that constitutes the substance or contains the content of an attorney work product or is a privileged communication under section 622.10.

c. Information that would reveal the identity of any individual who provided information relating to a report of child abuse or an assessment of such a report involving the child.

d. Information that the director or the director's designee reasonably believes is likely to cause mental or physical harm to a sibling of the child or to another child residing in the child's household.

e. Information that the director or the director's designee reasonably believes is likely to jeopardize the prosecution of any alleged perpetrator of the fatality or near fatality.

f. Information that the director or the director's designee reasonably believes is likely to jeopardize the rights of any alleged perpetrator of the fatality or near fatality to a fair trial.

g. Information that the director or the director's designee reasonably believes is likely to undermine an ongoing or future criminal investigation.

h. Information, the release of which is a violation of federal law or regulation.

10. The information released by the director of human services or the director's designee pursuant to a request made under subsection 9 relating to a case of founded child abuse involving a fatality or near fatality to a child shall include all of the following, unless such information is excepted from disclosure under subsection 9:

a. Any relevant child abuse information concerning the child or the child's family and the department's response and findings.

b. A summary of information, that would otherwise be confidential under section 217.30, as to whether or not the child or a member of the child's family was utilizing social services provided by the department at the time of the child fatality or near fatality or within the five-year period preceding the fatality or near fatality.

c. Any recommendations made by the department to the county attorney or the juvenile court.

d. If applicable, a summary of an evaluation of the department's responses in the case.

11. a. If a person who made a request for information under subsection 9 does not believe the department has substantially complied with the request, the person may apply to the juvenile court under section 235A.24 for an order for disclosure of additional information.

b. If release of social services information in addition to that released under subsection 10, paragraph "b", is believed to be in the public's interest and right to know, the director of human services or the director's designee may apply to the court under section 235A.24 requesting a review of the information proposed for release and an order authorizing release of the information. A release of information that would otherwise be confidential under

section 217.30 concerning social services provided to the child or the child's family shall not include information concerning financial or medical assistance provided to the child or the child's family.

12. If an individual who is the subject of a child abuse report listed in subsection 2, paragraph "a", or another party involved in an assessment under section 232.71B releases in a public forum or to the media information concerning a case of child abuse including but not limited to child abuse information which would otherwise be confidential, the director of human services, or the director's designee, may respond with relevant information concerning the case of child abuse that was the subject of the release. Prior to releasing the response, the director or the director's designee shall consult with the child's parent or guardian, or the child's guardian ad litem, and apply to the court under section 235A.24 requesting a review of the information proposed for release and an order authorizing release of the information.

[C75, 77, 79, 81, §235A.15; 82 Acts, ch 1066, §2]

83 Acts, ch 96, §157, 159; 85 Acts, ch 173, §16; 85 Acts, ch 174, §1; 86 Acts, ch 1177, §2; 87 Acts, ch 153, §10, 11; 88 Acts, ch 1158, §53; 89 Acts, ch 65, §1; 89 Acts, ch 283, §25; 90 Acts, ch 1221, §3, 4; 90 Acts, ch 1248, §1; 90 Acts, ch 1249, §1; 91 Acts, ch 97, §30; 91 Acts, ch 138, §5, 6; 92 Acts, ch 1141, §4; 92 Acts, ch 1143, §3, 4; 93 Acts, ch 76, §3, 4; 94 Acts, ch 1023, §43; 94 Acts, ch 1156, §1; 95 Acts, ch 93, §1 – 3; 95 Acts, ch 182, §15, 16; 96 Acts, ch 1175, §4; 96 Acts, ch 1183, §28; 97 Acts, ch 176, §9, 32 – 37, 43; 98 Acts, ch 1090, §64, 84; 98 Acts, ch 1100, §97; 98 Acts, ch 1115, §3; 99 Acts, ch 61, §10 – 12, 14; 99 Acts, ch 111, §8; 99 Acts, ch 141, §31; 99 Acts, ch 192, §33; 2000 Acts, ch 1123, §3; 2000 Acts, ch 1137, §6 – 9, 14; 2000 Acts, ch 1153, §1; 2001 Acts, ch 8, §2; 2002 Acts, ch 1034, §2; 2002 Acts, ch 1162, §19; 2003 Acts, ch 107, §2; 2003 Acts, ch 145, §217, 286; 2004 Acts, ch 1116, §27; 2004 Acts, ch 1153, §4 – 7; 2005 Acts, ch 19, §37; 2005 Acts, ch 121, §4 – 8; 2006 Acts, ch 1008, §2; 2006 Acts, ch 1152, §1; 2007 Acts, ch 10, §166; 2007 Acts, ch 22, §55; 2009 Acts, ch 93, §2; 2011 Acts, ch 98, §8; 2012 Acts, ch 1019, §94; 2012 Acts, ch 1047, §1; 2012 Acts, ch 1132, §7; 2013 Acts, ch 42, §13; 2013 Acts, ch 115, §12, 19

Referred to in §135.43, 216A.136, 217.30, 232.28, 232.68, 232.71B, 232.71D, 235A.12, 235A.13, 235A.16, 235A.17, 235A.19, 235A.21, 235A.24, 237.21

See §235A.24

\*Section 331.439 is repealed; corrective legislation is pending

2013 amendment to subsection 12 takes effect January 1, 2014; transition to full implementation may begin prior to that date; 2013 Acts, ch 115, §19

Subsection 2, paragraph e, NEW subparagraph (24)

Subsection 12 amended

### **235A.16 Requests for child abuse information.**

1. Requests for child abuse information shall be in writing on forms prescribed by the department, except as otherwise provided by subsection 2. Request forms shall require information sufficient to demonstrate authorized access.

2. a. Requests for child abuse information may be made orally by telephone where a person making such a request believes that the information is needed immediately and where information sufficient to demonstrate authorized access is provided. In the event that a request is made orally by telephone, a written request form shall nevertheless be filed within seventy-two hours.

b. The department of inspections and appeals may provide access to the single contact repository established under section 135C.33, subsection 6, for criminal and abuse history checks made by those employers, agencies, and other persons that are authorized access to child abuse information under section 235A.15 and are required by law to perform such checks.

3. Subsections 1 and 2 do not apply to child abuse information that is disseminated to an employee of the department of human services, to a juvenile court, or to the attorney representing the department as authorized by section 235A.15.

[C75, 77, 79, 81, §235A.16]

87 Acts, ch 153, §12; 2001 Acts, ch 191, §40

Referred to in §216A.136, 232.68, 235A.12, 235A.13

**235A.17 Redissemination of child abuse information.**

1. A person, agency or other recipient of child abuse information authorized to receive such information shall not redisseminate such information, except that redissemination shall be permitted when all of the following conditions apply:

a. The redissemination is for official purposes in connection with prescribed duties or, in the case of a health practitioner, pursuant to professional responsibilities.

b. The person to whom such information would be redisseminated would have independent access to the same information under section 235A.15.

c. A written record is made of the redissemination, including the name of the recipient and the date and purpose of the redissemination.

d. The written record is forwarded to the registry within thirty days of the redissemination.

2. The department of human services may notify orally the mandatory reporter in an individual child abuse case of the results of the case assessment and of the confidentiality provisions of sections 235A.15 and 235A.21. The department shall subsequently transmit a written notice to the mandatory reporter of the results and confidentiality provisions. If the report data and disposition data have been placed in the registry as founded child abuse pursuant to section 232.71D, a copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in section 235A.18. Otherwise, a copy of the written notice shall be retained by the department with the case file.

3. For the purposes of this subsection, “*subject of a child abuse report*” means any individual listed in section 235A.15, subsection 2, paragraph “a”, other than the attorney or guardian ad litem of such individual. An individual who is the subject of a child abuse report may redisseminate to the governor or the governor’s designee or to a member of the general assembly or an employee of the general assembly designated by the member, child abuse information that was disseminated to the individual by the department or other official source. The child abuse information may also include the following related information that the individual is allowed under law to possess: department of human services information described in section 217.30, subsection 1; mental health information as defined in section 228.1; and juvenile court social records and other information in official juvenile court records described in section 232.147. A person who receives confidential child abuse information and related information redisseminated under this subsection shall not further disseminate, communicate, or attempt to communicate the information to a person who is not authorized by this section or other provision of law to have access to the information.

[C75, 77, 79, 81, §235A.17]

84 Acts, ch 1279, §23; 87 Acts, ch 153, §13; 97 Acts, ch 35, §17, 25; 97 Acts, ch 176, §10, 38, 43; 2000 Acts, ch 1137, §10, 14

Referred to in §216A.136, 232.68, 235A.12, 235A.13, 235A.15, 235A.21

**235A.18 Sealing and expungement of founded child abuse information.**

1. Report data and disposition data relating to a particular case of alleged abuse which has been determined to be founded child abuse and placed in the central registry in accordance with section 232.71D shall be maintained in the registry as follows:

a. (1) Report and disposition data relating to a particular case of alleged child abuse shall be sealed ten years after the initial placement of the data in the registry unless good cause be shown why the data should remain open to authorized access. If a subsequent report of an alleged case of child abuse involving the child named in the initial data placed in the registry as the victim of abuse or a person named in the data as having abused a child is received by the department within this ten-year period, or within the period in which the person’s name is in the central registry, the data shall be sealed ten years after receipt of the subsequent report unless good cause be shown why the data should remain open to authorized access. Report and disposition data shall be made available to the department of justice if the department requests access to the alleged child abuse records for purposes of review by the prosecutor’s review committee or commitment of sexually violent predators under chapter 229A.

(2) Notwithstanding subparagraph (1), a person named in the initial data placed in the registry as having abused a child shall have the person’s name removed from the registry after ten years, if not previously removed from the registry pursuant to the other provisions of this

subsection, if that person has not had a subsequent case of alleged abuse which resulted in the person's name being placed in the registry as the person responsible for the abuse within the ten-year period.

(3) (a) A person named in the initial data placed in the registry as having abused a child shall have the person's name removed from the registry after five years if the department determined in the report and disposition data that the person committed child abuse as defined in section 232.68, subsection 2, paragraph "a", subparagraph (1), (4), or (6).

(b) Subparagraph division (a) shall not apply, and the name of a person named in the initial data as having abused a child shall remain in the registry as described in subparagraph (1), if the department determined in the initial report and disposition data the person committed child abuse as defined in section 232.68, subsection 2, paragraph "a", subparagraph (1), (4), or (6), and the child abuse resulted in the child's death or a serious injury.

b. Data sealed in accordance with this section shall be expunged eight years after the date the data was sealed. However, if the report data and the disposition data involve child abuse as defined in section 232.68, subsection 2, paragraph "a", subparagraph (3) or (5), the data shall not be expunged for a period of thirty years. Sealed data shall be made available to the department of justice upon request if the prosecutor's review committee is reviewing records or if a prosecuting attorney has filed a petition to commit a sexually violent predator under chapter 229A.

2. The juvenile or district court and county attorney shall expunge child abuse information upon notice from the registry. The supreme court shall prescribe rules establishing the period of time child abuse information is retained by the juvenile and district courts. A county attorney shall not retain child abuse information in excess of the time period the information would be retained under the rules prescribed by the supreme court. Child abuse information relating to a particular case of child abuse placed in the central registry that a juvenile or district court determines is unfounded in a written finding based upon a preponderance of evidence shall be expunged from the central registry.

3. The department of human services shall adopt rules establishing the period of time child abuse information which is not maintained in the central registry is retained by the department.

[C75, 77, 79, 81, §235A.18]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §24; 85 Acts, ch 173, §17; 89 Acts, ch 230, §20; 90 Acts, ch 1221, §5, 6; 93 Acts, ch 76, §5, 6; 97 Acts, ch 176, §11; 99 Acts, ch 61, §13, 14; 2000 Acts, ch 1137, §11, 14; 2000 Acts, ch 1154, §18; 2011 Acts, ch 28, §5; 2012 Acts, ch 1082, §2; 2013 Acts, ch 115, §13, 19, 20

Referred to in §216A.136, 232.68, 235A.12, 235A.13, 235A.17, 235A.20, 235A.21

2013 amendment to subsection 1, paragraph a, relating to removal of the name of a person named in the initial data placed in the central registry for child abuse information as having abused a child, applies to the name of an alleged perpetrator of the alleged child abuse which is placed in the central registry pursuant to section 232.71D on or after January 1, 2014; 2013 Acts, ch 115, §20

2013 amendment to subsection 1, paragraph a takes effect January 1, 2014; transition to full implementation may begin prior to that date; 2013 Acts, ch 115, §19

Subsection 1, paragraph a amended

### **235A.19 Examination, requests for correction or expungement and appeal.**

1. A subject of a child abuse report, as identified in section 235A.15, subsection 2, paragraph "a", shall have the right to examine report data and disposition data which refers to the subject. The department may prescribe reasonable hours and places of examination. A subject of a child abuse report may provide additional information to the department that is relevant to the report data and disposition data and may request that the department revise the report data and disposition data.

2. At the time the notice of the results of a child abuse assessment performed in accordance with section 232.71B is issued, the department shall provide notice to a person named in the report as having abused a child of the right to a contested case hearing and shall provide notice to subjects other than the person named in the report as having abused a child of the right to intervene in a contested case proceeding, as provided in subsection 3.

3. a. A subject of a child abuse report may file with the department within ninety days of the date of the notice of the results of a child abuse assessment performed in accordance

with section 232.71B, a written statement to the effect that report data and disposition data referring to the subject is in whole or in part erroneous, and may request a correction of that data or of the findings of the child abuse assessment report.

b. The department shall provide a person named in a child abuse report as having abused a child, who has been adversely affected by a founded child abuse disposition, notwithstanding the placement of the report data in the central registry pursuant to section 232.71D, with an opportunity for a contested case hearing pursuant to chapter 17A to correct the data or the findings, unless the department corrects the data or findings as requested.

c. The department shall provide a subject of a child abuse report, other than the person named in the report as having abused a child, with an opportunity to file a motion to intervene in the contested case proceeding.

d. The department may defer the hearing until the conclusion of the adjudicatory phase of a pending juvenile or district court case relating to the data or findings. Upon request of any party to the contested case proceeding, the presiding officer may stay the hearing until the conclusion of the adjudicatory phase of a pending juvenile or district court case relating to the data or findings. An adjudication of a child in need of assistance or a criminal conviction in a district court case relating to the child abuse data or findings may be determinative in a contested case proceeding.

e. A party to a contested case proceeding shall file an appeal of the presiding officer's proposed decision to the director within ten days of the presiding officer's proposed decision. If an appeal is not filed within ten days from the date of a proposed decision, the proposed decision shall be the final agency action. If a party files an appeal within ten days from the date of the proposed decision, the director has forty-five days from the date of the proposed decision to issue a ruling. Upon the director's failure to issue a ruling within forty-five days of the date of the proposed decision, the proposed decision shall be the final agency action.

f. The department shall not disclose any report data or disposition data until the conclusion of the proceeding to correct the data or findings, except as follows:

- (1) As necessary for the proceeding itself.
- (2) To the parties and attorneys involved in a judicial proceeding.
- (3) For the regulation of child care or child placement.
- (4) Pursuant to court order.
- (5) To the subject of an assessment or a report.
- (6) For the care or treatment of a child named in a report as a victim of abuse.
- (7) To persons involved in an assessment of child abuse.
- (8) For statutorily authorized record checks for employment of an individual by a provider of adult home care, adult health facility care, or other adult placement facility care.
- (9) For others identified in section 235A.15, subsection 2, paragraph "d", subparagraph (7), and section 235A.15, subsection 2, paragraph "e", subparagraphs (9) and (16).

4. A person named in a child abuse report as having abused a child, who has been adversely affected by a founded child abuse disposition, notwithstanding the placement of the report data in the central registry pursuant to section 232.71D, may appeal the decision resulting from a hearing held pursuant to subsection 3 to the district court of Polk county or to the district court of the district in which the person named in the report as having abused a child resides. Immediately upon appeal the court shall order the department to file with the court a certified copy of the report data or disposition data. Appeal shall be taken in accordance with chapter 17A.

5. Upon the request of the appellant, the record and evidence in such cases shall be closed to all but the court and its officers, and access to the record and evidence shall be prohibited unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. A person other than the appellant shall not permit a copy of any of the testimony or pleadings or the substance of the testimony or pleadings to be made available to any person other than a party to the action or the party's attorney. Violation of the provisions of this subsection shall be a public offense punishable under section 235A.21.

6. Whenever the department corrects or eliminates data as requested or as ordered by the court, the department shall advise all persons who have received the incorrect data of such fact. Upon application to the court and service of notice on the department, any subject of a

child abuse report may request and obtain a list of all persons who have received report data or disposition data referring to the subject.

7. In the course of any proceeding provided for by this section, the identity of the person who reported the disputed data and the identity of any person who has been reported as having abused a child may be withheld upon a determination by the department that disclosure of their identities would be detrimental to their interests.

[C75, 77, 79, 81, §235A.19]

85 Acts, ch 173, §18; 89 Acts, ch 230, §21; 92 Acts, ch 1143, §5; 94 Acts, ch 1130, §10; 95 Acts, ch 49, §3; 97 Acts, ch 35, §21, 25; 97 Acts, ch 176, §12, 39, 40, 43; 98 Acts, ch 1100, §98; 2000 Acts, ch 1067, §2; 2005 Acts, ch 121, §9; 2011 Acts, ch 28, §6; 2012 Acts, ch 1082, §3 – 5; 2013 Acts, ch 115, §14, 15, 19

Referred to in §216A.136, 232.68, 232.71B, 232.71D, 235A.12, 235A.13, 235A.15

2013 amendments to subsection 2 and subsection 3, paragraph a, take effect January 1, 2014; transition to full implementation may begin prior to that date; 2013 Acts, ch 115, §19

Subsection 2 amended

Subsection 3, paragraph a amended

### **235A.20 Civil remedy.**

Any aggrieved person may institute a civil action for damages under chapter 669 or 670 or to restrain the dissemination of child abuse information in violation of this chapter, and any person, agency or other recipient proven to have disseminated or to have requested and received child abuse information in violation of this chapter, or any employee of the department who knowingly destroys assessment data except in accordance with rule as established by the department for retention of child abuse information under section 235A.18 shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorney's fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars.

[C75, 77, 79, 81, §235A.20]

97 Acts, ch 176, §13, 41, 43

Referred to in §232.68, 235A.12, 235A.13

### **235A.21 Criminal penalties.**

1. Any person who willfully requests, obtains, or seeks to obtain child abuse information under false pretenses, or who willfully communicates or seeks to communicate child abuse information to any agency or person except in accordance with sections 235A.15 and 235A.17, or any person connected with any research authorized pursuant to section 235A.15 who willfully falsifies child abuse information or any records relating to child abuse information, or any employee of the department who knowingly destroys assessment data except in accordance with rule as established by the department for retention of child abuse information under section 235A.18 is guilty of a serious misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate child abuse information except in accordance with sections 235A.15 and 235A.17 shall be guilty of a simple misdemeanor.

2. Any reasonable grounds for belief that a person has violated any provision of this chapter shall be grounds for the immediate withdrawal of any authorized access such person might otherwise have to child abuse information.

[C75, 77, 79, 81, §235A.21]

97 Acts, ch 176, §14, 42, 43

Referred to in §232.68, 235A.12, 235A.13, 235A.17, 235A.19

### **235A.22 Education program.**

The department of human services shall require an educational program for employees of the department with access to child abuse information on the proper use and control of child abuse information.

[C75, 77, 79, 81, §235A.22]

97 Acts, ch 176, §15

Referred to in §232.68, 235A.12, 235A.13

**235A.23 Reports.**

1. The department of human services may compile statistics, conduct research, and issue reports on child abuse, provided identifying details of the subject of child abuse reports are deleted from any report issued.

2. The department shall issue an annual report on its administrative operation, including information as to the number of requests for child abuse data, the proportion of requests attributable to each type of authorized access, the frequency and nature of irregularities, and other pertinent matters.

[C75, 77, 79, 81, §235A.23]

87 Acts, ch 153, §14; 97 Acts, ch 176, §16

Referred to in §232.68, 235A.12, 235A.13

**235A.24 Order for disclosure or release of child abuse information.**

1. *a.* If a person's request for information relating to a case of founded child abuse under section 235A.15, subsection 9, is denied or such person does not believe the department has substantially complied with the request and seeks additional information, the person may apply to the juvenile court for an order compelling disclosure of the information.

*b.* The director of human services or the director's designee may apply, if the conditions under section 235A.15, subsection 11 or 12, are met, to the court requesting a review of confidential information proposed for release and an order authorizing the release of information. A release of information that would otherwise be confidential under section 217.30 concerning social services provided to the child or the child's family shall not include information concerning financial or medical assistance provided to the child or the child's family.

2. The application shall state in reasonable detail the factors in support of the application. The juvenile court shall have jurisdiction to issue the order. A hearing shall be set immediately upon filing of an application under this section and subsequent proceedings shall be accorded priority by other courts.

3. In considering the application, the court shall weigh the public's interest and right to know the information against the privacy rights of the victim of the child abuse and other individuals who may be affected by the release of the information relating to the case of child abuse.

4. After the court has reviewed the information relating to the case in camera, unless the court finds that a restriction listed in section 235A.15, subsection 9, is applicable, the court may issue an order compelling disclosure or authorizing release of the information relating to the case.

2000 Acts, ch 1137, §12, 14; 2004 Acts, ch 1153, §8

Referred to in §232.68, 235A.12, 235A.13, 235A.15

## CHAPTER 235B

### DEPENDENT ADULT ABUSE SERVICES — INFORMATION REGISTRY

Referred to in §216A.136, 235E.2, 235E.4, 272.2

See also chapter 235E  
Legislative services agency to monitor reporting of dependent adult abuse, investigations, and workload and performance of personnel, and report annually by February 1; department on aging and departments of human services and inspections and appeals to cooperate; 87 Acts, ch 182, §11; 2003 Acts, ch 35, §46, 49; 2009 Acts, ch 182, §137

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#### GENERAL PROVISIONS

##### **235B.1 Dependent adult abuse services.**

The department shall establish and operate a dependent adult abuse services program. The program shall emphasize the reporting and evaluation of cases of abuse of a dependent adult who is unable to protect the adult's own interests or unable to perform activities necessary to meet essential human needs. The program shall include but is not limited to:

1. The establishment of local or regional multidisciplinary teams to assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to victims of dependent adult abuse. The membership of a team shall include individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of dependent adult abuse cases and who are professionals practicing in the disciplines of medicine, public health, mental health, social work, law, law enforcement, or other disciplines relative to dependent adults. Members of a team shall include but are not limited to persons representing the area agencies on aging, county attorneys, health care providers, and other persons involved in advocating or providing services to dependent adults.

2. Provisions for information sharing and case consultation among service providers, care providers, and victims of dependent adult abuse.

3. Procedures for referral of cases among service providers, including the referral of victims of dependent adult abuse residing in licensed health care facilities.

4. *a.* The establishment of a dependent adult protective advisory council. The advisory council shall do all of the following:

(1) Advise the director of human services, the director of the department on aging, the director of inspections and appeals, the director of public health, the director of the department of corrections, and the director of human rights regarding dependent adult abuse.

(2) Evaluate state law and rules and make recommendations to the general assembly and to executive branch departments regarding laws and rules concerning dependent adults.

(3) Receive and review recommendations and complaints from the public, health care facilities, and health care programs concerning the dependent adult abuse services program.

b. (1) The advisory council shall consist of twelve members. Eight members shall be appointed by and serve at the pleasure of the governor. Four of the members appointed shall be appointed on the basis of knowledge and skill related to expertise in the area of dependent adult abuse including professionals practicing in the disciplines of medicine, public health, mental health, long-term care, social work, law, and law enforcement. Two of the members appointed shall be members of the general public with an interest in the area of dependent adult abuse and two of the members appointed shall be members of the Iowa caregivers association. In addition, the membership of the council shall include the director or the director's designee of the department of human services, the department on aging, the Iowa department of public health, and the department of inspections and appeals.

(2) The members of the advisory council shall be appointed to terms of four years beginning May 1. Appointments shall comply with sections 69.16 and 69.16A. Vacancies shall be filled in the same manner as the original appointment.

(3) Members shall receive actual expenses incurred while serving in their official capacity.

(4) The advisory council shall select a chairperson, annually, from its membership.

83 Acts, ch 96, §159, 160; 83 Acts, ch 153, §4; 84 Acts, ch 1178, §3; 85 Acts, ch 180, §1; 87 Acts, ch 182, §2 – 8; 88 Acts, ch 1238, §2; 89 Acts, ch 24, §2, 3; 90 Acts, ch 1204, §52; 90 Acts, ch 1271, §1509; 91 Acts, ch 231, §1; 96 Acts, ch 1130, §1; 2004 Acts, ch 1116, §16; 2008 Acts, ch 1093, §1, 2; 2009 Acts, ch 23, §50; 2010 Acts, ch 1069, §28; 2011 Acts, ch 34, §62; 2013 Acts, ch 30, §46

Referred to in §235A.13, 235B.16A, 235E.5

Subsection 4, paragraph a, subparagraph (1) amended

### **235B.2 Definitions.**

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

1. “*Caretaker*” means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

2. “*Court*” means the district court.

3. “*Department*” means the department of human services.

4. “*Dependent adult*” means a person eighteen years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule.

5. a. “*Dependent adult abuse*” means:

(1) Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

(a) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.

(b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.

(c) Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

(d) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health.

(2) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

(3) (a) Sexual exploitation of a dependent adult by a caretaker.

(b) "*Sexual exploitation*" means any consensual or nonconsensual sexual conduct with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. "*Sexual exploitation*" includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation, or investigation. Sexual exploitation does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.

b. "*Dependent adult abuse*" does not include any of the following:

(1) Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

(2) Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

(3) The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin, attorney in fact, or guardian pursuant to the applicable procedures under chapter 125, 144A, 144B, 222, 229, or 633.

6. "*Emergency shelter services*" means and includes, but is not limited to, secure crisis shelters or housing for victims of dependent adult abuse.

7. "*Family or household member*" means a spouse, a person cohabiting with the dependent adult, a parent, or a person related to the dependent adult by consanguinity or affinity, but does not include children of the dependent adult who are less than eighteen years of age.

8. "*Immediate danger to health or safety*" means a situation in which death or severe bodily injury could reasonably be expected to occur without intervention.

9. "*Individual employed as an outreach person*" means a natural person who, in the course of employment, makes regular contacts with dependent adults regarding available community resources.

10. "*Legal holiday*" means a legal public holiday as defined in section 1C.1.

11. "*Person*" means person as defined in section 4.1.

12. "*Recklessly*" means that a person acts or fails to act with respect to a material element of a public offense, when the person is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the act or omission. The risk must be of such a nature and degree that disregard of the risk constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation.

13. "*Serious injury*" means the same as defined in section 702.18.

14. "*Support services*" includes but is not limited to community-based services including area agency on aging assistance, mental health services, fiscal management, home health services, housing-related services, counseling services, transportation services, adult day services, respite services, legal services, and advocacy services.

87 Acts, ch 182, §9; 88 Acts, ch 1238, §3; 91 Acts, ch 231, §2; 92 Acts, ch 1143, §6, 7; 93 Acts, ch 76, §7; 95 Acts, ch 51, § 3; 96 Acts, ch 1130, §2; 2001 Acts, ch 64, §7; 2006 Acts, ch 1030, §26; 2008 Acts, ch 1093, §3; 2009 Acts, ch 107, §1; 2010 Acts, ch 1073, §1

Referred to in §231B.10, 231D.5, 235B.3, 235B.16A, 692A.102, 726.8, 915.84

**235B.3 Dependent adult abuse reports.**

1. *a.* (1) The department shall receive dependent adult abuse reports and shall collect, maintain, and disseminate the reports by establishing a central registry for dependent adult abuse information. The department shall evaluate the reports expeditiously.

(2) However, the department of inspections and appeals is solely responsible for the evaluation and disposition of dependent adult abuse cases within facilities and programs pursuant to chapter 235E and shall inform the department of human services of such evaluations and dispositions pursuant to section 235E.2.

(3) If, in the course of an assessment or evaluation of a report of dependent adult abuse, the department of human services or the department of inspections and appeals determines the case involves wages, workplace safety, or other labor and employment matters under the jurisdiction of the division of labor services of the department of workforce development, the relevant portions of the case shall be referred to the division.

(4) If, in the course of an assessment or evaluation of a report of dependent adult abuse, the department of human services or the department of inspections and appeals determines that the case involves discrimination under the jurisdiction of the civil rights commission, the relevant portions of the case shall be referred to the commission.

*b.* Reports of dependent adult abuse which is the result of the acts or omissions of the dependent adult shall be collected and maintained in the files of the dependent adult as assessments only and shall not be included in the central registry.

*c.* A report of dependent adult abuse that meets the definition of dependent adult abuse under section 235B.2, subsection 5, paragraph “*a*”, subparagraph (1), subparagraph division (a) or (d), which the department determines is minor, isolated, and unlikely to reoccur shall be collected and maintained by the department as an assessment only for a five-year period and shall not be included in the central registry and shall not be considered to be founded dependent adult abuse. However, a subsequent report of dependent adult abuse that meets the definition of dependent adult abuse under section 235B.2, subsection 5, paragraph “*a*”, subparagraph (1), subparagraph division (a) or (d), that occurs within the five-year period and that is committed by the caretaker responsible for the act or omission which was the subject of the previous report of dependent adult abuse which the department determined was minor, isolated, and unlikely to reoccur shall not be considered minor, isolated, and unlikely to reoccur.

2. A person who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered abuse, shall report the suspected dependent adult abuse to the department. Persons required to report include all of the following:

- a.* A member of the staff of a community mental health center.
- b.* A peace officer.
- c.* An in-home homemaker-home health aide.
- d.* An individual employed as an outreach person.
- e.* A health practitioner, as defined in section 232.68.
- f.* A member of the staff or an employee of a supported community living service, sheltered workshop, or work activity center.
- g.* A social worker.
- h.* A certified psychologist.

3. *a.* If a staff member or employee is required to report pursuant to this section, the person shall immediately notify the department and shall also immediately notify the person in charge or the person’s designated agent.

*b.* The employer or supervisor of a person who is required to or may make a report pursuant to this section shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

4. An employee of a financial institution may report suspected financial exploitation of a dependent adult to the department.

5. Any other person who believes that a dependent adult has suffered abuse may report the suspected abuse to the department of human services.

6. Following the reporting of suspected dependent adult abuse, the department of human services or an agency approved by the department shall complete an assessment of necessary services and shall make appropriate referrals for receipt of these services. The assessment shall include interviews with the dependent adult, and, if appropriate, with the alleged perpetrator of the dependent adult abuse and with any person believed to have knowledge of the circumstances of the case. The department may provide necessary protective services and may establish a sliding fee schedule for those persons able to pay a portion of the protective services.

7. Upon a showing of probable cause that a dependent adult has been abused, a court may authorize a person, also authorized by the department, to make an evaluation, to enter the residence of, and to examine the dependent adult. Upon a showing of probable cause that a dependent adult has been financially exploited, a court may authorize a person, also authorized by the department, to make an evaluation, and to gain access to the financial records of the dependent adult.

8. If the department determines that disclosure is necessary for the protection of a dependent adult, the department may disclose to a subject of a dependent adult abuse report referred to in section 235B.6, subsection 2, paragraph “a”, that an individual is listed in the child or dependent adult abuse registry or is required to register with the sex offender registry in accordance with chapter 692A.

9. The department shall inform the appropriate county attorneys of any reports of dependent adult abuse. The department may request information from any person believed to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, a social services agency in the state, or any person who is required pursuant to subsection 2 to report dependent adult abuse, whether or not the person made the specific dependent adult abuse report, shall cooperate and assist in the evaluation upon the request of the department. If the department’s assessment reveals that dependent adult abuse exists which might constitute a criminal offense, a report shall be made to the appropriate law enforcement agency. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

a. If, upon completion of the evaluation or upon referral from the department of inspections and appeals, the department determines that the best interests of the dependent adult require court action, the department shall initiate action for the appointment of a guardian or conservator or for admission or commitment to an appropriate institution or facility pursuant to the applicable procedures under chapter 125, 222, 229, or 633, or shall pursue other remedies provided by law. The appropriate county attorney shall assist the department in the preparation of the necessary papers to initiate the action and shall appear and represent the department at all district court proceedings.

b. The department shall assist the court during all stages of court proceedings involving a suspected case of dependent adult abuse.

c. In every case involving abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult if necessary to protect the dependent adult’s best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to this section, the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

10. A person participating in good faith in reporting or cooperating with or assisting the department in evaluating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making

the report or giving the assistance. The person has the same immunity with respect to participating in good faith in a judicial proceeding resulting from the report or cooperation or assistance or relating to the subject matter of the report, cooperation, or assistance.

11. It shall be unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to subsection 2 or 5, or cooperating with, or assisting the department of human services in evaluating a case of dependent adult abuse, or participating in judicial proceedings relating to the reporting or cooperation or assistance based solely upon the person's reporting or assistance relative to the instance of dependent adult abuse. A person or employer found in violation of this subsection is guilty of a simple misdemeanor.

12. A person required by this section to report a suspected case of dependent adult abuse who knowingly and willfully fails to do so commits a simple misdemeanor. A person required by this section to report a suspected case of dependent adult abuse who knowingly fails to do so or who knowingly, in violation of subsection 3, interferes with the making of such a report or applies a requirement that results in such a failure is civilly liable for the damages proximately caused by the failure.

13. The department of inspections and appeals shall adopt rules which require facilities or programs to separate an alleged dependent adult abuser from a victim following an allegation of perpetration of abuse and prior to the completion of an investigation of the allegation.

91 Acts, ch 231, §3; 92 Acts, ch 1143, §8, 9; 93 Acts, ch 72, §6; 95 Acts, ch 51, §4; 96 Acts, ch 1130, §3 – 5; 98 Acts, ch 1181, §13; 99 Acts, ch 129, §17; 2001 Acts, ch 122, §7 – 10; 2003 Acts, ch 98, §2; 2003 Acts, ch 123, §2; 2003 Acts, ch 166, §27; 2003 Acts, ch 179, §69; 2004 Acts, ch 1116, §17, 18; 2006 Acts, ch 1030, §27; 2007 Acts, ch 159, §15; 2008 Acts, ch 1093, §4 – 6; 2009 Acts, ch 41, §263; 2009 Acts, ch 136, §7

Referred to in §235B.16

### **235B.3A Prevention of additional abuse — notification of rights.**

If a peace officer has reason to believe that dependent adult abuse, which is criminal in nature, has occurred, the officer shall use all reasonable means to prevent further abuse, including but not limited to any of the following:

1. If requested, remaining on the scene as long as there is a danger to the dependent adult's physical safety without the presence of a peace officer, including but not limited to staying in the dwelling unit, or if unable to remain at the scene, assisting the dependent adult in leaving the residence and securing support services or emergency shelter services.

2. Assisting the dependent adult in obtaining medical treatment necessitated by the dependent adult abuse, including providing assistance to the dependent adult in obtaining transportation to the emergency room of the nearest hospital.

3. Providing a dependent adult with immediate and adequate notice of the dependent adult's rights. The notice shall consist of handing the dependent adult a document that includes the telephone numbers of shelters, support groups, and crisis lines operating in the area and contains a copy of the following written statement; requesting the dependent adult to read the card; and asking the dependent adult whether the dependent adult understands the rights:

- a. You have the right to ask the court for the following help on a temporary basis:
  - (1) Keeping the alleged perpetrator away from you, your home, and your place of work.
  - (2) The right to stay at your home without interference from the alleged perpetrator.
  - (3) Professional counseling for you, your family, or household members, and the alleged perpetrator of the dependent adult abuse.
- b. If you are in need of medical treatment, you have the right to request that the peace officer present assist you in obtaining transportation to the nearest hospital or otherwise assist you.

c. If you believe that police protection is needed for your physical safety, you have the right to request that the peace officer present remain at the scene until you and other affected parties can leave or safety is otherwise ensured.

96 Acts, ch 1130, §6; 2009 Acts, ch 133, §87, 88

## DEPENDENT ADULT ABUSE INFORMATION REGISTRY

### **235B.4 Legislative findings and purposes.**

The general assembly finds and declares that a central registry is required to provide a single source for the statewide collection, maintenance, and dissemination of dependent adult abuse information. Such a registry is imperative for increased effectiveness in dealing with the problem of dependent adult abuse. The general assembly also finds that vigorous protection of rights of individual privacy is an indispensable element of a fair and effective system of collecting, maintaining, and disseminating dependent adult abuse information.

The purposes of this section and sections 235B.5 to 235B.13 are to facilitate the identification of victims or potential victims of dependent adult abuse by making available a single, statewide source of dependent adult abuse data; to facilitate research on dependent adult abuse by making available a single, statewide source of dependent adult abuse data; and to provide maximum safeguards against the unwarranted invasions of privacy which such a registry might otherwise entail.

91 Acts, ch 231, §4

Referred to in §235E.4

### **235B.5 Creation and maintenance of a central registry.**

1. There is created within the department a central registry for dependent adult abuse information. The department shall organize and staff the registry and adopt rules for its operation.

2. The registry shall collect, maintain, and disseminate dependent adult abuse information as provided in this chapter.

3. The department shall maintain a toll-free telephone line, which shall be available on a twenty-four-hour-a-day, seven-day-a-week basis and which the department and all other persons may use to report cases of suspected dependent adult abuse and that all persons authorized by this chapter may use for obtaining dependent adult abuse information.

4. An oral report of suspected dependent adult abuse initially made to the central registry shall be immediately transmitted by the department to the appropriate county department of human services or law enforcement agency, or both.

5. An oral report of suspected dependent adult abuse initially made to the central registry regarding a facility or program as defined in section 235E.1 shall be transmitted by the department to the department of inspections and appeals on the first working day following the submitting of the report.

6. The registry, upon receipt of a report of suspected dependent adult abuse, shall search the records of the registry, and if the records of the registry reveal any previous report of dependent adult abuse involving the same adult or if the records reveal any other pertinent information with respect to the same adult, the appropriate office of the department of human services or the appropriate law enforcement agency shall be immediately notified of that fact.

7. The central registry shall include but not be limited to report data, investigation data, and disposition data.

91 Acts, ch 231, §5; 2008 Acts, ch 1093, §7

Referred to in §235B.4, 235E.4, 279.13, 279.69, 321.375

### **235B.6 Authorized access.**

1. Notwithstanding chapter 22, the confidentiality of all dependent adult abuse information shall be maintained, except as specifically provided by subsections 2 and 3.

2. Access to dependent adult abuse information other than unfounded dependent adult abuse information is authorized only to the following persons:

a. A subject of a report including all of the following:

(1) To an adult named in a report as a victim of abuse or to the adult's attorney or guardian ad litem.

(2) To a guardian or legal custodian, or that person's attorney, of an adult named in a report as a victim of abuse.

(3) To the person or the attorney for the person named in a report as having abused an adult.

b. A person involved in an investigation of dependent adult abuse including all of the following:

(1) A health practitioner or mental health professional who is examining, attending, or treating an adult whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to an adult believed to have been the victim of abuse is requested by the department.

(2) An employee or agent of the department responsible for the investigation of a dependent adult abuse report or for the purpose of performing record checks as required under section 135C.33.

(3) A representative of the department involved in the certification or accreditation of an agency or program providing care or services to a dependent adult believed to have been a victim of abuse.

(4) A law enforcement officer responsible for assisting in an investigation of a dependent adult abuse allegation.

(5) A multidisciplinary team, if the department of human services approves the composition of the multidisciplinary team and determines that access to the team is necessary to assist the department in the investigation, diagnosis, assessment, and disposition of a case of dependent adult abuse.

(6) The mandatory reporter who reported the dependent adult abuse in an individual case.

(7) Each board specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

c. A person providing care to an adult including all of the following:

(1) A licensing authority for a facility, including a facility or program defined in section 235E.1, providing care to an adult named in a report.

(2) A person authorized as responsible for the care or supervision of an adult named in a report as a victim of abuse or a person named in a report as having abused an adult if the court or registry deems access to dependent adult abuse information by such person to be necessary.

(3) An employee or agent of the department responsible for registering or licensing or approving the registration or licensing of a person, or to an individual providing care to an adult and regulated by the department.

(4) The legally authorized protection and advocacy agency recognized pursuant to section 135C.2 if a person identified in the information as a victim or a perpetrator of abuse resided in or receives services from a facility, including a facility or program defined in section 235E.1, or agency because the person is diagnosed as having a developmental disability or a mental illness.

(5) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the information concerns a person employed by or being considered by the agency for employment.

(6) To the administrator of an agency providing mental health, intellectual disability, or developmental disability services under a county management plan developed pursuant to section 331.439,\* if the information concerns a person employed by or being considered by the agency for employment.

(7) To an administrator of a hospital licensed under chapter 135B if the data concerns a person employed or being considered for employment by the hospital.

(8) An employee of an agency requested by the department to provide case management or other services to the dependent adult.

d. Relating to judicial and administrative proceedings, persons including all of the following:

(1) A court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving dependent adult abuse.

(2) A court or agency hearing an appeal for correction of dependent adult abuse information as provided in section 235B.10.

(3) An expert witness or a witness who testifies at any stage of an appeal necessary for correction of dependent adult abuse information as provided in section 235B.10.

(4) A court or administrative agency making a determination regarding an unemployment compensation claim pursuant to section 96.6.

e. Other persons including all of the following:

(1) A person conducting bona fide research on dependent adult abuse, but without information identifying individuals named in a dependent adult abuse report, unless having that information open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the adult, the adult's guardian or guardian ad litem, and the person named in a report as having abused an adult give permission to release the information.

(2) Registry or department personnel when necessary to the performance of their official duties or a person or agency under contract with the department to carry out official duties and functions of the registry.

(3) The department of justice for the sole purpose of the filing of a claim for reparation pursuant to sections 915.21 and 915.84.

(4) A legally constituted adult protection agency of another state which is investigating or treating an adult named in a report as having been abused.

(5) The attorney for the department who is responsible for representing the department.

(6) A health care facility administrator or the administrator's designee, following the appeals process, for the purpose of hiring staff or continued employment of staff.

(7) To the administrator of an agency providing care to a dependent adult in another state, for the purpose of performing an employment background check.

(8) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(9) The department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

(10) The state or a local long-term care ombudsman if the victim resides in or the alleged perpetrator is an employee of a long-term care facility as defined in section 231.4.

(11) The state office or a local office of substitute decision maker as defined in section 231E.3, if the information relates to the provision of legal services for a client served by the state or local office of substitute decision maker.

(12) A nursing program that is approved by the state board of nursing under section 152.5, if the information relates to a record check performed pursuant to section 152.5.

(13) To the board of educational examiners created under chapter 272 for purposes of determining whether a license, certificate, or authorization should be issued, denied, or revoked.

(14) The department on aging for the purposes of conducting background checks of applicants for employment with the department on aging.

(15) To the Iowa veterans home for purposes of record checks of potential volunteers and volunteers in the Iowa veterans home.

(16) To the administrator of a certified nurse aide program, if the data relates to a record check of a student of the program performed pursuant to section 135C.33.

(17) To the administrator of a juvenile detention or shelter care home, if the data relates

to a record check of an existing or prospective employee, resident, or volunteer for or in the home.

(18) To the employer or prospective employer of a school bus driver for purposes of an employment record check.

f. To a person who submits written authorization from an individual allowing the person access to information on the determination only on whether or not the individual who authorized the access is named in a founded dependent adult abuse report as having abused a dependent adult.

3. Access to unfounded dependent adult abuse information is authorized only to those persons identified in subsection 2, paragraph “a”, paragraph “b”, subparagraphs (2), (5), and (6), and paragraph “e”, subparagraphs (2) and (10).

91 Acts, ch 231, §6; 92 Acts, ch 1163, §50; 95 Acts, ch 50, §1; 95 Acts, ch 93, §4; 96 Acts, ch 1183, §29; 97 Acts, ch 42, §2; 98 Acts, ch 1090, §65, 84; 99 Acts, ch 141, §32; 2000 Acts, ch 1067, §3; 2000 Acts, ch 1153, §2; 2001 Acts, ch 8, §3; 2001 Acts, ch 20, §4, 5; 2002 Acts, ch 1034, §3; 2003 Acts, ch 98, §3 – 5; 2005 Acts, ch 46, §1; 2005 Acts, ch 175, §143; 2006 Acts, ch 1008, §3; 2006 Acts, ch 1030, §28; 2006 Acts, ch 1152, §2; 2007 Acts, ch 10, §167; 2008 Acts, ch 1093, §8, 9; 2008 Acts, ch 1187, §116; 2009 Acts, ch 23, §51, 52; 2009 Acts, ch 93, §3; 2010 Acts, ch 1062, §9; 2011 Acts, ch 98, §9; 2012 Acts, ch 1019, §95; 2012 Acts, ch 1047, §2; 2013 Acts, ch 18, §32

Referred to in §235B.3, 235B.4, 235B.7, 235B.8, 235B.12, 235E.2, 235E.4, 331.909

\*Section 331.439 is repealed; corrective legislation is pending

Subsection 2, paragraph e, subparagraph (10) amended

### **235B.7 Requests for dependent adult abuse information.**

1. Requests for dependent adult abuse information shall be in writing on forms prescribed by the department, except as otherwise provided by subsection 2. Request forms shall require information sufficient to demonstrate authorized access.

2. Requests for dependent adult abuse information may be made orally by telephone if a person making the request believes that the information is needed immediately and if information sufficient to demonstrate authorized access is provided. If a request is made orally by telephone, a written request form shall be filed within seventy-two hours of the oral request.

3. Subsections 1 and 2 do not apply to dependent adult abuse information that is disseminated to an employee of the department or to the attorney representing the department as authorized by section 235B.6.

91 Acts, ch 231, §7

Referred to in §235B.4, 235B.12, 235E.4

### **235B.8 Redissemination of dependent adult abuse information.**

1. A recipient of dependent adult abuse information authorized to receive the information shall not redisseminate the information, except that redissemination shall be permitted when all of the following conditions apply:

a. The redissemination is for official purposes in connection with prescribed duties or, in the case of a health practitioner, pursuant to professional responsibilities.

b. The person to whom such information would be redisseminated would have independent access to the same information under section 235B.6.

c. A written record is made of the redissemination, including the name of the recipient and the date and purpose of the redissemination.

d. The written record is forwarded to the registry within thirty days of the redissemination.

2. The department may notify, orally, the mandatory reporter in an individual dependent adult abuse case of the results of the case investigation and of the confidentiality provisions of sections 235B.6 and 235B.12. The department shall subsequently transmit a written notice to the mandatory reporter of the results and confidentiality provisions. A copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in section 235B.9.

91 Acts, ch 231, §8

Referred to in §235B.4, 235B.12, 235E.4

**235B.9 Sealing and expungement of dependent adult abuse information.**

1. Dependent adult abuse information which is determined by a preponderance of the evidence to be founded, shall be sealed ten years after the receipt of the initial report of such abuse by the registry unless good cause is shown why the information should remain open to authorized access. If a subsequent report of founded dependent adult abuse involving the adult named in the initial report as the victim of abuse or a person named in such report as having abused an adult is received by the registry within the ten-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause is shown why the information should remain open to authorized access.

2. a. Dependent adult abuse reports that are rejected for evaluation, assessment, or disposition for failure to meet the definition of dependent adult abuse shall be expunged three years from the rejection date.

b. Dependent adult abuse information which is determined by a preponderance of the evidence to be unfounded shall be expunged five years from the date it is determined to be unfounded.

3. However, if a correction of dependent adult abuse information is requested under section 235B.10 and the issue is not resolved at the end of one year the information shall be retained until the issue is resolved and if the dependent adult abuse information is not determined to be founded, the information shall be expunged one year from the date it is determined to be unfounded.

4. The registry, at least annually, shall review and determine the current status of dependent adult abuse reports which are at least one year old and in connection with which no investigatory report has been filed by the department. If no investigatory report has been filed, the registry shall request the department to file a report. If a report is not filed within ninety days subsequent to a request, the report and relative information shall be sealed and remain sealed unless good cause is shown why the information should remain open to authorized access.

5. Dependent adult abuse information which is determined to be minor, isolated, and unlikely to reoccur shall be expunged five years after the receipt of the initial report by the department. If a subsequent report of dependent adult abuse committed by the caretaker responsible for the act or omission which was the subject of the previous report of dependent adult abuse which the department determined was minor, isolated, and unlikely to reoccur is received by the department within the five-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause can be shown why the information should remain open to authorized access.

91 Acts, ch 231, §9; 2003 Acts, ch 98, §6; 2007 Acts, ch 159, §16; 2009 Acts, ch 136, §8

Referred to in §235B.4, 235B.8, 235E.4

**235B.10 Examination, requests for correction or expungement and appeal.**

1. Any person or that person's attorney shall have the right to examine dependent adult abuse information in the registry which refers to that person. The registry may prescribe reasonable hours and places of examination.

2. A person may file with the department within six months of the date of the notice of the results of an investigation, a written statement to the effect that dependent adult abuse information referring to the person is in whole or in part erroneous, and may request a correction of that information or of the findings of the investigation report. The department shall provide the person with an opportunity for an evidentiary hearing pursuant to chapter 17A to correct the information or the findings, unless the department corrects the information or findings as requested. The department shall delay the expungement of information which is not determined to be founded until the conclusion of a proceeding to correct the information or findings. The department may defer the hearing until the conclusion of a court case relating to the information or findings.

3. The decision resulting from the hearing may be appealed to the court of Polk county by the person requesting the correction or to the court of the district in which the person resides. Immediately upon appeal the court shall order the department to file with the court a

certified copy of the dependent adult abuse information. Appeal shall be taken in accordance with chapter 17A.

4. Upon the request of the appellant, the record and evidence in such cases shall be closed to all but the court and its officers, and access to the record and evidence shall be prohibited unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. A person other than the appellant shall not permit a copy of the testimony or pleadings or the substance of the testimony or pleadings to be made available to any person other than a party to the action or the party's attorney. Violation of the provisions of this subsection shall be a public offense punishable under section 235B.12.

5. If the registry corrects or eliminates information as requested or as ordered by the court, the registry shall advise all persons who have received the incorrect information of the fact. Upon application to the court and service of notice on the registry, an individual may request and obtain a list of all persons who have received dependent adult abuse information referring to the individual.

6. In the course of any proceeding provided for by this section, the identity of the person who reported the disputed information and the identity of any person who has been reported as having abused an adult may be withheld upon a determination by the registry that disclosure of the person's identity would be detrimental to the person's interest.

91 Acts, ch 231, §10

Referred to in §235B.4, 235B.6, 235B.9, 235E.4

#### **235B.11 Civil remedy.**

Any aggrieved person may institute a civil action for damages under chapter 669 or 670 or to restrain the dissemination of dependent adult abuse information in violation of this chapter, and any person proven to have disseminated or to have requested and received dependent adult abuse information in violation of this chapter shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorney's fees incurred by the party bringing the action. In no case shall the award for damages be less than five hundred dollars.

91 Acts, ch 231, §11

Referred to in §235B.4, 235E.4

#### **235B.12 Criminal penalties.**

1. Any person who willfully requests, obtains, or seeks to obtain dependent adult abuse information under false pretenses, or who willfully communicates or seeks to communicate dependent adult abuse information to any person except in accordance with sections 235B.6 through 235B.8, or any person connected with any research authorized pursuant to section 235B.6 who willfully falsifies dependent adult abuse information or any records relating to the information is guilty of a serious misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate dependent adult abuse information except in accordance with sections 235B.6 through 235B.8 is guilty of a simple misdemeanor.

2. Any reasonable grounds for belief that a person has violated any provision of this chapter is grounds for the immediate withdrawal of any authorized access the person might otherwise have to dependent adult abuse information.

91 Acts, ch 231, §12

Referred to in §235B.4, 235B.8, 235B.10, 235E.2, 235E.4

#### **235B.13 Registry reports.**

1. The registry may compile statistics, conduct research, and issue reports on dependent adult abuse, provided identifying details of the subjects of dependent adult abuse reports are deleted from any report issued.

2. The registry shall issue an annual report on its administrative operation, including information as to the number of requests for dependent adult abuse data, the proportion

of requests attributable to each type of authorized access, the frequency and nature of irregularities, and other pertinent matters.

91 Acts, ch 231, §13

Referred to in §235B.4, 235E.4

**235B.14 and 235B.15** Reserved.

**235B.16 Information, education, and training requirements.**

1. The department on aging, in cooperation with the department, shall conduct a public information and education program. The elements and goals of the program include but are not limited to:

a. Informing the public regarding the laws governing dependent adult abuse and the reporting requirements for dependent adult abuse.

b. Providing caretakers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caretaker and dependent adult relationship.

c. Affecting public attitudes regarding the role of a dependent adult in society.

2. The department, in cooperation with the department on aging and the department of inspections and appeals, shall institute a program of education and training for persons, including members of provider groups and family members, who may come in contact with dependent adult abuse. The program shall include but is not limited to instruction regarding recognition of dependent adult abuse and the procedure for the reporting of suspected abuse.

3. The content of the continuing education required pursuant to chapter 272C for a licensed professional providing care or service to a dependent adult shall include, but is not limited to, the responsibilities, obligations, powers, and duties of a person regarding the reporting of suspected dependent adult abuse, and training to aid the professional in identifying instances of dependent adult abuse.

4. The department of inspections and appeals shall provide training to investigators regarding the collection and preservation of evidence in the case of suspected dependent adult abuse.

5. a. For the purposes of this subsection, “licensing board” means a board designated in section 147.13, the board of educational examiners created in section 272.2, or a licensing board as defined in section 272C.1.

b. A person required to report cases of dependent adult abuse pursuant to sections 235B.3 and 235E.2, other than a physician whose professional practice does not regularly involve providing primary health care to adults, shall complete two hours of training relating to the identification and reporting of dependent adult abuse within six months of initial employment or self-employment which involves the examination, attending, counseling, or treatment of adults on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person’s employer or, if self-employed, from the department. The person shall complete at least two hours of additional dependent adult abuse identification and reporting training every five years.

c. If the person is an employee of a hospital or similar public or private facility, the employer shall be responsible for providing the training. To the extent that the employer provides approved training on the employer’s premises, the hours of training completed by employees shall be included in the calculation of nursing or service hours required to be provided to a patient or resident per day. If the person is self-employed, employed in a licensed or certified profession, or employed by a facility or program that is subject to licensure, regulation, or approval by a state agency, the person shall obtain the training as provided in paragraph “d”.

d. The person may complete the initial or additional training requirements as a part of any of the following that are applicable to the person:

(1) A continuing education program required under chapter 272C and approved by the appropriate licensing board.

(2) A training program using a curriculum approved by the director of public health pursuant to section 135.11.

(3) A training program using such an approved curriculum offered by the department of human services, the department on aging, the department of inspections and appeals, the Iowa law enforcement academy, or a similar public agency.

e. A person required to complete both child abuse and dependent adult abuse mandatory reporter training may complete the training through a program which combines child abuse and dependent adult abuse curricula and thereby meet the training requirements of both this subsection and section 232.69 simultaneously. A person who is a mandatory reporter for both child abuse and dependent adult abuse may satisfy the combined training requirements of this subsection and section 232.69 through completion of a two-hour training program, if the training program curriculum is approved by the appropriate licensing board or the director of public health pursuant to section 135.11.

f. A licensing board with authority over the license of a person required to report cases of dependent adult abuse pursuant to sections 235B.3 and 235E.2 shall require as a condition of licensure that the person is in compliance with the requirements for abuse training under this subsection. The licensing board shall require the person upon licensure renewal to accurately document for the licensing board the person's completion of the training requirements. However, the licensing board may adopt rules providing for waiver or suspension of the compliance requirements, if the waiver or suspension is in the public interest, applicable to a person who is engaged in active duty in the military service of this state or of the United States, to a person for whom compliance with the training requirements would impose a significant hardship, or to a person who is practicing a licensed profession outside this state or is otherwise subject to circumstances that would preclude the person from encountering dependent adult abuse in this state.

g. For persons required to report cases of dependent adult abuse pursuant to sections 235B.3 and 235E.2, who are not engaged in a licensed profession that is subject to the authority of a licensing board but are employed by a facility or program subject to licensure, registration, or approval by a state agency, the agency shall require as a condition of the renewal of the facility's or program's licensure, registration, or approval, that such persons employed by the facility or program are in compliance with the training requirements of this subsection.

h. For peace officers, the elected or appointed official designated as the head of the agency employing the peace officer shall ensure compliance with the training requirements of this subsection.

i. For persons required to report cases of dependent adult abuse pursuant to sections 235B.3 and 235E.2 who are employees of state departments and political subdivisions of the state, the department director or the chief administrator of the political subdivision shall ensure the persons' compliance with the training requirements of this subsection.

6. The department shall require an educational program for employees of the registry on the proper use and control of dependent adult abuse information.

91 Acts, ch 231, §14; 92 Acts, ch 1143, §10; 92 Acts, ch 1163, §51; 2001 Acts, ch 122, §11; 2002 Acts, ch 1119, §35; 2007 Acts, ch 10, §168 – 170; 2008 Acts, ch 1093, §10; 2009 Acts, ch 23, §53, 54; 2013 Acts, ch 129, §55, 56

Referred to in §235E.4

Subsection 5, paragraph d, subparagraph (2) amended

Subsection 5, paragraph e amended

### **235B.16A Dependent adults — dependency assessments — interagency training.**

1. The dependent adult protective advisory council established pursuant to section 235B.1 shall recommend a uniform assessment instrument and process for adoption and use by the department of human services and other agencies involved with assessing a dependent adult's degree of dependency and determining whether dependent adult abuse has occurred. However, this section shall not apply to dependent adult abuse assessments and determinations made under chapter 235E.

2. The instrument and process design under subsection 1 shall address but is not limited to all of the following:

a. Evaluation of conformity with applicable federal law and regulations on the part of the persons employing, housing, or providing services to the dependent adult.

b. Provision for the final step in the dependency assessment of a dependent adult to be a formal assessment of the existence of risk to the health or safety of the individual or of the degree of the individual's impairment in ability under the definition of dependent adult in section 235B.2.

c. If the assessment under paragraph "b" determines that a risk to the health or safety of the individual exists or the individual has a significant impairment in ability, and the individual being assessed agrees, provision for a case manager to be assigned to assist in preparing and implementing a safety plan which includes protective services for the individual.

d. If the assessment under paragraph "b" determines that a risk to the health or safety of the individual exists or the individual has a significant impairment in ability, the individual being assessed does not agree to the safety plan provisions under paragraph "c" or accept other services, and the options available under sections 235B.17, 235B.18, and 235B.19 are not utilized, provision for the department of human services to maintain periodic contact with the individual in accordance with rules adopted for this purpose. The purpose of the contact is to assess any increased risk or impairment and to monitor the individual's goals, feelings, and concerns so that the department can intervene when necessary or offer services and other support to maintain or sustain the individual's safety and independence when the individual is ready to agree to a safety plan or accept services.

3. The department of human services and other agencies involved with assessing a dependent adult's degree of dependency and whether dependent adult abuse has occurred shall adopt rules and take other steps necessary to implement the uniform assessment instrument and process addressed by this section on or before July 1, 2010.

4. The department of human services shall cooperate with the department on aging, the departments of inspections and appeals, public health, public safety, and workforce development, the civil rights commission, and other state and local agencies performing inspections or otherwise visiting residential settings where dependent adults live, to regularly provide training to the appropriate staff in the agencies concerning each agency's procedures involving dependent adults, and to build awareness concerning dependent adults and reporting of dependent adult abuse.

2009 Acts, ch 136, §9; 2013 Acts, ch 30, §47

Referred to in §235E.4  
Subsection 4 amended

### **235B.17 Provision of protective services with the consent of dependent adult — caretaker refusal.**

1. If a caretaker of a dependent adult, who consents to the receipt of protective services, refuses to allow provision of the services, the department may petition the court with probate jurisdiction in the county in which the dependent adult resides for an order enjoining the caretaker from interfering with the provision of services.

2. The petition shall be verified and shall allege specific facts sufficient to demonstrate that the dependent adult is in need of protective services and consents to the provision of services and that the caretaker refuses to allow provision of the services. The petition shall include all of the following:

a. The name, date of birth, and address of the dependent adult alleged to be in need of protective services.

b. The protective services required.

c. The name and address of the caretaker refusing to allow the provision of services.

3. The court shall set the case for hearing within fourteen days of the filing of the petition. The dependent adult and the caretaker refusing to allow the provision of services shall receive at least five days' notice of the hearing.

4. If the judge finds by clear and convincing evidence that the dependent adult is in need of protective services and consents to the services and that the caretaker refuses to allow

the services, the judge may issue an order enjoining the caretaker from interfering with the provision of the protective services.

96 Acts, ch 1130, §7; 2009 Acts, ch 107, §2

Referred to in §235B.16A, 235E.4

**235B.18 Provision of services to dependent adult who lacks capacity to consent — hearing — findings.**

1. If the department reasonably determines that a dependent adult is a victim of dependent adult abuse and lacks capacity to consent to the receipt of protective services, the department may petition the district court in the county in which the dependent adult resides for an order authorizing the provision of protective services. The petition shall allege specific facts sufficient to demonstrate that the dependent adult is in need of protective services and lacks capacity to consent to the receipt of services.

2. The petition specified in subsection 1 shall be verified and shall include all of the following:

a. The name, date of birth, and address of the dependent adult alleged to be in need of protective services.

b. The nature of the dependent adult abuse.

c. The protective services required.

3. The court shall set the case for hearing within fourteen days of the filing of the petition. The dependent adult shall receive at least five days' notice of the hearing. The dependent adult has the right to be present and represented by counsel at the hearing. If the dependent adult, in the determination of the judge, lacks the capacity to waive the right of counsel, the court may appoint a guardian ad litem for the dependent adult.

4. If, at the hearing, the judge finds by clear and convincing evidence that the dependent adult is in need of protective services and lacks the capacity to consent to the receipt of protective services, the judge may issue an order authorizing the provision of protective services. The order may include the designation of a person to be responsible for performing or obtaining protective services on behalf of the dependent adult or otherwise consenting to the receipt of protective services on behalf of the dependent adult. Within sixty days of the appointment of such a person the court shall conduct a review to determine if a petition shall be initiated in accordance with section 633.552 for good cause shown. The court may extend the sixty-day period for an additional sixty days, at the end of which the court shall conduct a review to determine if a petition shall be initiated in accordance with section 633.552. A dependent adult shall not be committed to a mental health facility under this section.

5. A determination by the court that a dependent adult lacks the capacity to consent to the receipt of protective services under this chapter shall not affect incompetency proceedings under sections 633.552 through 633.556 or any other proceedings, and incompetency proceedings under sections 633.552 through 633.556 shall not have a conclusive effect on the question of capacity to consent to the receipt of protective services under this chapter. A person previously adjudicated as incompetent under the relevant provisions of chapter 633 is entitled to the care, protection, and services under this chapter.

6. This section shall not be construed and is not intended as and shall not imply a grant of entitlement for services to persons who are not otherwise eligible for the services or for utilization of services which do not currently exist or are not otherwise available.

96 Acts, ch 1130, §8; 2005 Acts, ch 50, §1; 2009 Acts, ch 107, §3

Referred to in §235B.16A, 235E.4, 633.701

**235B.19 Emergency order for protective services.**

1. If the department determines that a dependent adult is suffering from dependent adult abuse which presents an immediate danger to the health or safety of the dependent adult or which results in irreparable harm to the physical or financial resources or property of the dependent adult, and that the dependent adult lacks capacity to consent to receive protective services and that no consent can be obtained, the department may petition the court with probate jurisdiction in the county in which the dependent adult resides for an emergency order authorizing protective services.

2. The petition shall be verified and shall include all of the following:
  - a. The name, date of birth, and address of the dependent adult who needs protective services.
  - b. The nature of the dependent adult abuse.
  - c. The services required.
3. a. The department shall serve a copy of the petition and any order authorizing protective services, if issued, on the dependent adult and on persons who are competent adults and reasonably ascertainable at the time the petition is filed in accordance with the following priority:
  - (1) An attorney in fact named by the dependent adult in a durable power of attorney for health care pursuant to chapter 144B.
  - (2) The dependent adult's spouse.
  - (3) The dependent adult's children.
  - (4) The dependent adult's grandchildren.
  - (5) The dependent adult's siblings.
  - (6) The dependent adult's aunts and uncles.
  - (7) The dependent adult's nieces and nephews.
  - (8) The dependent adult's cousins.
- b. When the department has served a person in one of the categories specified in paragraph "a", the department shall not be required to serve a person in any other category.
- c. The department shall serve the dependent adult's copy of the petition and order personally upon the dependent adult. Service of the petition and all other orders and notices shall be in a sealed envelope with the proper postage on the envelope, addressed to the person being served at the person's last known post office address, and deposited in a mail receptacle provided by the United States postal service. The department shall serve such copies of emergency orders authorizing protective services and notices within three days after filing the petition and receiving such orders.
- d. The department and all persons served by the department with notices under this subsection shall be prohibited from all of the following without prior court approval after the department's petition has been filed:
  - (1) Selling, removing, or otherwise disposing of the dependent adult's personal property.
  - (2) Withdrawing funds from any bank, savings association, credit union, or other financial institution, or from an account containing securities in which the dependent adult has an interest.
4. Upon finding that there is probable cause to believe that the dependent adult abuse presents an immediate threat to the health or safety of the dependent adult or which results in irreparable harm to the physical or financial resources or property of the dependent adult, and that the dependent adult lacks capacity to consent to the receipt of services, the court may do any of the following:
  - a. Order removal of the dependent adult to safer surroundings.
  - b. Order the provision of medical services.
  - c. Order the provision of other available services necessary to remove conditions creating the danger to health or safety, including the services of peace officers or emergency services personnel and the suspension of the powers granted to a guardian or conservator and the subsequent appointment of a new temporary guardian or new temporary conservator pursuant to subsection 5 pending a decision by the court on whether the powers of the initial guardian or conservator should be reinstated or whether the initial guardian or conservator should be removed.
5. a. Notwithstanding sections 633.552 and 633.573, upon a finding that there is probable cause to believe that the dependent adult abuse presents an immediate danger to the health or safety of the dependent adult or is producing irreparable harm to the physical or financial resources or property of the dependent adult, and that the dependent adult lacks capacity to consent to the receipt of services, the court may order the appointment of a temporary guardian or temporary conservator without notice to the dependent adult or the dependent adult's attorney if all of the following conditions are met:
  - (1) It clearly appears from specific facts shown by affidavit or by the verified petition that a

dependent adult's decision-making capacity is so impaired that the dependent adult is unable to care for the dependent adult's personal safety or to attend to or provide for the dependent adult's basic necessities or that immediate and irreparable injury, loss, or damage will result to the physical or financial resources or property of the dependent adult before the dependent adult or the dependent adult's attorney can be heard in opposition.

(2) The department certifies to the court in writing any efforts the department has made to give the notice or the reasons supporting the claim that notice should not be required.

(3) The department files with the court a request for a hearing on the petition for the appointment of a temporary guardian or temporary conservator.

(4) The department certifies that the notice of the petition, order, and all filed reports and affidavits will be sent to the dependent adult by personal service within the time period the court directs but not more than seventy-two hours after entry of the order of appointment.

b. An order of appointment of a temporary guardian or temporary conservator entered by the court under paragraph "a" shall expire as prescribed by the court but within a period of not more than thirty days unless extended by the court for good cause.

c. A hearing on the petition for the appointment of a temporary guardian or temporary conservator shall be held within the time specified in paragraph "b". If the department does not proceed with a hearing on the petition, the court, on the motion of any party or on its own motion, may dismiss the petition.

6. The emergency order expires at the end of seventy-two hours from the time of the order unless the seventy-two-hour period ends on a Saturday, Sunday, or legal holiday in which event the order is automatically extended to 4:00 p.m. on the first succeeding business day. An order may be renewed for not more than fourteen additional days. A renewal order that ends on a Saturday, Sunday, or legal holiday is automatically extended to 4:00 p.m. on the first succeeding business day. The court may modify or terminate the emergency order on the petition of the department, the dependent adult, or any person interested in the dependent adult's welfare.

7. If the department cannot obtain an emergency order under this section due to inaccessibility of the court, the department may contact law enforcement to remove the dependent adult to safer surroundings, authorize the provision of medical treatment, and order the provision of or provide other available services necessary to remove conditions creating the immediate danger to the health or safety of the dependent adult or which are producing irreparable harm to the physical or financial resources or property of the dependent adult. The department shall obtain an emergency order under this section not later than four p.m. on the first succeeding business day after the date on which protective or other services are provided. If the department does not obtain an emergency order within the prescribed time period, the department shall cease providing protective services and, if necessary, make arrangements for the immediate return of the person to the place from which the person was removed, to the person's place of residence in the state, or to another suitable place. A person, agency, or institution acting in good faith in removing a dependent adult or in providing services under this subsection, and an employer of or person under the direction of such a person, agency, or institution, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the removal or provision of services.

8. Upon a finding of probable cause to believe that dependent adult abuse has occurred and is either ongoing or is likely to reoccur, the court may also enter orders as may be appropriate to third persons enjoining them from specific conduct. The orders may include temporary restraining orders which impose criminal sanctions if violated. The court may enjoin third persons from any of the following:

- a. Removing the dependent adult from the care or custody of another.
- b. Committing dependent adult abuse on the dependent adult.
- c. Living at the dependent adult's residence.
- d. Contacting the dependent adult in person or by telephone.
- e. Selling, removing, or otherwise disposing of the dependent adult's personal property.
- f. Withdrawing funds from any bank, savings association, credit union, or other financial institution, or from a stock account in which the dependent adult has an interest.

- g. Negotiating any instruments payable to the dependent adult.
  - h. Selling, mortgaging, or otherwise encumbering any interest that the dependent adult has in real property.
  - i. Exercising any powers on behalf of the dependent adult through representatives of the department, any court-appointed guardian or guardian ad litem, or any official acting on the dependent adult's behalf.
  - j. Engaging in any other specified act which, based upon the facts alleged, would constitute harm or a threat of imminent harm to the dependent adult or would cause damage to or the loss of the dependent adult's property.
9. This section shall not be construed and is not intended as and shall not imply a grant of entitlement for services to persons who are not otherwise eligible for the services or for utilization of services which do not currently exist or are not otherwise available.
- 96 Acts, ch 1130, §9; 2005 Acts, ch 50, §2 – 5; 2006 Acts, ch 1080, §1; 2008 Acts, ch 1187, §117, 118; 2011 Acts, ch 129, §91, 156; 2012 Acts, ch 1017, §59, 60
- Referred to in §235B.16A, 235E.4, 633.573, 633.701

### **235B.20 Dependent adult abuse — initiation of charges — penalty.**

1. Charges of dependent adult abuse may be initiated upon complaint of private individuals or as a result of investigations by social service agencies or on the direct initiative of a county attorney or law enforcement agency.
2. A caretaker who intentionally commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class “C” felony if the intentional dependent adult abuse results in serious injury.
3. A caretaker who recklessly commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class “D” felony if the reckless dependent adult abuse results in serious injury.
4. A caretaker who intentionally commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class “C” felony if the intentional dependent adult abuse results in physical injury.
5. A caretaker who commits dependent adult abuse by exploiting a dependent adult in violation of this chapter is guilty of a class “D” felony if the value of the property, assets, or resources exceeds one hundred dollars.
6. A caretaker who recklessly commits dependent adult abuse on a person in violation of this chapter is guilty of an aggravated misdemeanor if the reckless dependent adult abuse results in physical injury.
7. A caretaker who otherwise intentionally or knowingly commits dependent adult abuse upon a dependent adult in violation of this chapter is guilty of a serious misdemeanor.
8. A caretaker who commits dependent adult abuse by exploiting a dependent adult in violation of this chapter is guilty of a simple misdemeanor if the value of the property, assets, or resources is one hundred dollars or less.
9. A caretaker alleged to have committed a violation of this chapter shall be charged with the respective offense cited, unless a charge may be brought based upon a more serious offense, in which case the charge of the more serious offense shall supersede the less serious charge.

96 Acts, ch 1130, §10; 2009 Acts, ch 107, §4

Referred to in §235E.4

## CHAPTER 235C

### COUNCIL ON CHEMICALLY EXPOSED INFANTS AND CHILDREN

Repealed by 2008 Acts, ch 1058, §25

CHAPTER 235D

DOMESTIC AND SEXUAL VIOLENCE CENTER EMPLOYMENT —  
CRIMINAL HISTORY CHECKS

235D.1 Criminal history check — applicants at domestic abuse or sexual assault centers.

**235D.1 Criminal history check — applicants at domestic abuse or sexual assault centers.**

An applicant for employment at a domestic abuse or sexual assault center shall be subject to a national criminal history check through the federal bureau of investigation. The domestic abuse or sexual assault center shall request the criminal history check and shall provide the applicant’s fingerprints to the department of public safety for submission through the state criminal history repository to the federal bureau of investigation. The applicant shall authorize release of the results of the criminal history check to the domestic abuse or sexual assault center. The applicant shall pay the actual cost of the fingerprinting and criminal history check, if any. Unless the criminal history check was completed within the ninety calendar days prior to the date the application is received by the domestic abuse or sexual assault center, the center shall reject and return the application to the applicant. The results of a criminal history check conducted pursuant to this subsection shall not be considered a public record under chapter 22. For purposes of this section, “domestic abuse or sexual assault center” means a crime victim center as defined in section 915.20A.

2005 Acts, ch 158, §44

CHAPTER 235E

DEPENDENT ADULT ABUSE IN FACILITIES AND PROGRAMS

Referred to in §235B.3, 235B.16A

235E.1	Definitions.	235E.5	Rulemaking authority.
235E.2	Dependent adult abuse reports in facilities and programs.	235E.6	Dependent adult abuse finding — notification to employer and employee.
235E.3	Prevention of additional dependent adult abuse — notification of rights.	235E.7	Appeal process — dependent adult abuse.
235E.4	Chapter 235B application.		

**235E.1 Definitions.**

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

1. “Caretaker” means a person who is a staff member of a facility or program who provides care, protection, or services to a dependent adult voluntarily, by contract, through employment, or by order of the court.
2. “Court” means the district court.
3. “Department” means the department of inspections and appeals.
4. “Dependent adult” means a person eighteen years of age or older whose ability to perform the normal activities of daily living or to provide for the person’s own care or protection is impaired, either temporarily or permanently.
5. a. “Dependent adult abuse” means:
  - (1) Any of the following as a result of the willful misconduct or gross negligence or reckless acts or omissions of a caretaker, taking into account the totality of the circumstances:
    - (a) A physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult which involves a breach of skill, care, and learning ordinarily exercised by a caretaker in similar circumstances. “Assault of a dependent adult” means the commission of any act

which is generally intended to cause pain or injury to a dependent adult, or which is generally intended to result in physical contact which would be considered by a reasonable person to be insulting or offensive or any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

(b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.

(c) Exploitation of a dependent adult. “*Exploitation*” means a caretaker who knowingly obtains, uses, endeavors to obtain to use, or who misappropriates, a dependent adult’s funds, assets, medications, or property with the intent to temporarily or permanently deprive a dependent adult of the use, benefit, or possession of the funds, assets, medication, or property for the benefit of someone other than the dependent adult.

(d) Neglect of a dependent adult. “*Neglect of a dependent adult*” means the deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult’s life or physical or mental health.

(2) Sexual exploitation of a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program. “*Sexual exploitation*” means any consensual or nonconsensual sexual conduct with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. “*Sexual exploitation*” includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing investigation. “*Sexual exploitation*” does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

b. “*Dependent adult abuse*” does not include any of the following:

(1) Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

(2) Circumstances in which the dependent adult’s caretaker, acting in accordance with the dependent adult’s stated or implied consent, declines medical treatment or care.

(3) The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult’s next of kin, attorney in fact, or guardian pursuant to the applicable procedures under chapter 125, 144A, 144B, 222, 229, or 633.

6. “*Facility*” means a health care facility as defined in section 135C.1 or a hospital as defined in section 135B.1.

7. “*Intimate relationship*” means a significant romantic involvement between two persons that need not include sexual involvement, but does not include a casual social relationship or association in a business or professional capacity. In determining whether persons are in an intimate relationship, the court may consider the following nonexclusive list of factors:

a. The duration of the relationship.

b. The frequency of interaction.

c. Whether the relationship has been terminated.

d. The nature of the relationship, characterized by either person’s expectation of sexual or romantic involvement.

8. “*Person*” means person as defined in section 4.1.

9. “*Program*” means an elder group home as defined in section 231B.1, an assisted living program certified under section 231C.3, or an adult day services program as defined in section 231D.1.

10. “*Recklessly*” means that a person acts or fails to act with respect to a material element of a public offense, when the person is aware of and consciously disregards a substantial

and unjustifiable risk that the material element exists or will result from the act or omission. The risk must be of such a nature and degree that disregard of the risk constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation.

11. “*Support services*” includes but is not limited to community-based services including area agency on aging assistance, mental health services, fiscal management, home health services, housing-related services, counseling services, transportation services, adult day services, respite services, legal services, and advocacy services.

2008 Acts, ch 1093, §11

Referred to in §231C.10, 235B.5, 235B.6, 235E.2

### **235E.2 Dependent adult abuse reports in facilities and programs.**

1. *a.* The department shall receive and evaluate reports of dependent adult abuse in facilities and programs. The department shall inform the department of human services of such evaluations and dispositions and those individuals who should be placed on the central registry for dependent adult abuse pursuant to section 235E.7. If the department believes the situation involves an immediate danger to the public health, safety, or welfare requiring immediate agency action to seek emergency placement on the central registry, the department may utilize emergency adjudicative proceedings pursuant to section 17A.18A.

*b.* Reports of dependent adult abuse which is the result of the acts or omissions of the dependent adult shall be collected and maintained in the files of the dependent adult as assessments only and shall not be included in the central registry.

*c.* A report of dependent adult abuse that meets the definition of dependent adult abuse under section 235E.1, subsection 5, paragraph “*a*”, subparagraph (1), subparagraph division (a) or (d), which the department determines is minor, isolated, and unlikely to reoccur shall be collected and maintained by the department of human services as an assessment only for a five-year period and shall not be included in the central registry and shall not be considered to be founded dependent adult abuse. A subsequent report of dependent adult abuse that meets the definition of dependent adult abuse under section 235E.1, subsection 5, paragraph “*a*”, subparagraph (1), subparagraph division (a) or (d), that occurs within the five-year period, and that is committed by the caretaker responsible for the act or omission which was the subject of the previous report of dependent adult abuse which the department determined was minor, isolated, and unlikely to reoccur, may be considered minor, isolated, and unlikely to reoccur depending on the circumstances of the report.

2. A staff member or employee of a facility or program who, in the course of employment, examines, attends, counsels, or treats a dependent adult in a facility or program and reasonably believes the dependent adult has suffered dependent adult abuse, shall report the suspected dependent adult abuse to the department.

3. *a.* If a staff member or employee is required to make a report pursuant to this section, the staff member or employee shall immediately notify the person in charge or the person’s designated agent who shall then notify the department within twenty-four hours of such notification. If the person in charge is the alleged dependent adult abuser, the staff member shall directly report the abuse to the department within twenty-four hours.

*b.* The employer or supervisor of a person who is required to or may make a report pursuant to this section shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

4. An employee of a financial institution may report suspected financial exploitation of a dependent adult to the department.

5. Any other person who believes that a dependent adult has suffered dependent adult abuse may report the suspected dependent adult abuse to the department of inspections and appeals. The department of inspections and appeals shall transfer any reports received of dependent adult abuse in the community to the department of human services. The department of human services shall transfer any reports received of dependent adult abuse in facilities or programs to the department of inspections and appeals.

6. The department shall inform the appropriate county attorneys of any reports of dependent adult abuse. The department may request information from any person believed

to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, a social services agency in the state, or any person who is required pursuant to subsection 2 to report dependent adult abuse, whether or not the person made the specific dependent adult abuse report, shall cooperate and assist in the evaluation upon the request of the department. If the department's assessment reveals that dependent adult abuse exists which might constitute a criminal offense, a report shall be made to the appropriate law enforcement agency. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

a. If, upon completion of an investigation, the department determines that the best interests of the dependent adult require court action, the department shall notify the department of human services of the potential need for a guardian or conservator or for admission or commitment to an appropriate institution or facility pursuant to the applicable procedures under chapter 125, 222, 229, or 633, or shall pursue other remedies provided by law. The appropriate county attorney shall assist the department of human services in the preparation of the necessary papers to initiate the action and shall appear and represent the department of human services at all district court proceedings.

b. Investigators within the department shall be specially trained to investigate cases of dependent adult abuse including but not limited to cases involving gerontological, dementia, and wound care issues.

c. The department shall assist the court during all stages of court proceedings involving a suspected case of dependent adult abuse.

d. In every case involving dependent adult abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult if necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to this paragraph, the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

7. A person participating in good faith in reporting or cooperating with or assisting the department in evaluating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participating in good faith in a judicial proceeding resulting from the report, cooperation, or assistance or relating to the subject matter of the report, cooperation, or assistance.

8. It shall be unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to subsection 2 or 5, or cooperating with, or assisting the department in evaluating a case of dependent adult abuse, or participating in judicial proceedings relating to the reporting or cooperation or assistance based solely upon the person's reporting or assistance relative to the instance of dependent adult abuse. A person or employer found in violation of this subsection is guilty of a simple misdemeanor.

9. A person required by this section to report a suspected case of dependent adult abuse pursuant to subsection 2 who knowingly and willfully fails to do so within twenty-four hours commits a simple misdemeanor. A person required by subsection 2 to report a suspected case of dependent adult abuse who knowingly fails to do so or who knowingly interferes with the making of such a report or applies a requirement that results in such a failure is civilly liable for the damages proximately caused by the failure.

10. The department shall adopt rules which require facilities and programs to separate an alleged dependent adult abuser from a victim following an allegation of perpetration

of dependent adult abuse and prior to the completion of an investigation of the allegation. Independent of the department's investigation, the facility or program employing the alleged dependent adult abuser shall conduct an investigation of the alleged dependent adult abuse and determine what, if any, employment action should be taken including but not limited to placing the alleged dependent adult abuser on administrative leave or reassigning or terminating the alleged dependent adult abuser as a result of the investigation by the facility or program. If the facility or program terminates the alleged dependent adult abuser as a result of the investigation by the facility or program or the alleged dependent adult abuser resigns, the alleged dependent adult abuser shall disclose such termination or investigation to any prospective facility or program employer. An alleged dependent adult abuser who fails to disclose such termination or investigation is guilty of a simple misdemeanor.

11. Upon receiving notice from a credible source, the department shall notify a facility or program that subsequently employs a dependent adult abuser when the notice of investigative findings has been issued. Such notification shall occur prior to the completion of an investigation that is founded for dependent adult abuse.

12. An inspector of the department may enter any facility or program without a warrant and may examine all records pertaining to residents, employees, former employees, and the alleged dependent adult abuser. If upon entry, the inspector has knowledge of or learns during the course of an investigation that alleged dependent adult abuse is suspected or is being investigated, the inspector shall inform the facility or program that the inspector is investigating an alleged case of dependent adult abuse. An inspector of the department may contact or interview any resident, employee, former employee, or any other person who might have knowledge about the alleged dependent adult abuse. Prior to the interview, the department shall provide written notification to the person under investigation for dependent adult abuse that the person is under investigation for dependent adult abuse, the nature of the abuse being investigated, the possible civil administrative consequences of founded abuse, the requirement that the department forward a report to law enforcement if the department's investigation reveals a potential criminal offense, that the person has the right to retain legal counsel at the person's expense and may choose to have legal counsel, union representation, or any other desired representative employed by the facility present during the interview, and the fact that the person has the right to decline to be interviewed or to terminate an interview at any time. The person under investigation shall inform the department of the representatives desired to be present during the interview and not delay the interview by more than five working days to make arrangements for the person's representatives to be present at the interview. Any employer representative shall be informed of the requirement to maintain strict confidentiality and of the prohibition against redissemination of such information pursuant to chapter 235B. At the interview, the department shall request and the alleged dependent adult abuser shall provide the alleged dependent adult abuser's most current contact information to facilitate provision of the findings to the alleged dependent adult abuser. An inspector may take or cause to be taken photographs of the dependent adult abuse victim and the vicinity involved. The department shall obtain consent from the dependent adult abuse victim or guardian or other person with a power of attorney over the dependent adult abuse victim prior to taking photographs of the dependent adult abuse victim.

13. *a.* Notwithstanding section 235B.6 and chapter 22, an employee organization or union representative may observe an investigative interview conducted by the department of an alleged dependent adult abuser if all of the following conditions are met:

(1) The alleged dependent adult abuser is part of a bargaining unit that is party to a collective bargaining agreement under chapter 20 or any other applicable state or federal law.

(2) The alleged dependent adult abuser requests the presence of an employee organization or union representative.

(3) The employee organization or union representative maintains the confidentiality of all information from the interview subject to the penalties provided in section 235B.12 if such confidentiality is breached.

*b.* This subsection shall only apply to interviews conducted pursuant to this chapter. This

subsection does not apply to interviews conducted pursuant to the regulatory activities of chapter 135B, 135C, 231B, 231C, or 231D, or any other state or federal law.

2008 Acts, ch 1093, §12; 2009 Acts, ch 41, §263; 2009 Acts, ch 133, §89; 2010 Acts, ch 1177, §2 – 4

Referred to in §235B.3, 235B.16

### **235E.3 Prevention of additional dependent adult abuse — notification of rights.**

If a peace officer has reason to believe that dependent adult abuse, which is criminal in nature, has occurred in a facility or program, the officer shall use all reasonable means to prevent further dependent adult abuse, including but not limited to any of the following:

1. If requested, remaining on the scene as long as there is a danger to the dependent adult's physical safety without the presence of a peace officer, including but not limited to staying in the facility or program, or if unable to remain at the scene, assisting the dependent adult in leaving the facility or program and securing support services or emergency shelter services.

2. Assisting the dependent adult in obtaining medical treatment necessitated by the dependent adult abuse, including providing assistance to the dependent adult in obtaining transportation to the emergency room of the nearest hospital.

3. Providing a dependent adult with immediate and adequate notice of the dependent adult's rights. The notice shall consist of handing the dependent adult a document that includes the telephone numbers of shelters, support groups, and crisis lines operating in the area and contains a copy of the following written statement; requesting the dependent adult to read the card; and asking the dependent adult whether the dependent adult understands the rights:

a. You have the right to ask the court for the following help on a temporary basis:

(1) Keeping the alleged perpetrator away from you, your home, your facility, and your place of work.

(2) The right to stay at your home or facility without interference from the alleged perpetrator.

(3) Professional counseling for you, your family, or household members, and the alleged perpetrator of the dependent adult abuse.

b. If you are in need of medical treatment, you have the right to request that the peace officer present assist you in obtaining transportation to the nearest hospital or otherwise assist you.

c. If you believe that police protection is needed for your physical safety, you have the right to request that the peace officer present remain at the scene until you and other affected parties can leave or safety is otherwise ensured.

2008 Acts, ch 1093, §13; 2009 Acts, ch 133, §90, 91

### **235E.4 Chapter 235B application.**

Sections 235B.4 through 235B.20, where not inconsistent with this chapter, shall apply to this chapter.

2008 Acts, ch 1093, §14; 2009 Acts, ch 41, §97; 2009 Acts, ch 133, §92

### **235E.5 Rulemaking authority.**

The department, in cooperation and consultation with the dependent adult protective advisory council established in section 235B.1, affected industry representatives, and professional and consumer groups, may adopt rules pursuant to chapter 17A to administer this chapter.

2008 Acts, ch 1093, §15

### **235E.6 Dependent adult abuse finding — notification to employer and employee.**

Upon a determination that an allegation of perpetration of dependent adult abuse by a caretaker is founded, the department shall provide written notification of the department's

findings to the caretaker and the caretaker's employer. In addition, the written notification shall detail the consequences of placement on the central abuse registry, the caretaker's appeal rights, and include a separate appeal request form. The written appeal request form shall clearly set forth that the caretaker shall not be placed on the central abuse registry until final agency action is taken if an appeal is filed within fifteen days.

2010 Acts, ch 1177, §5; 2013 Acts, ch 90, §61

Section amended

**235E.7 Appeal process — dependent adult abuse.**

1. If a request for an appeal is filed within fifteen days of the issuance of the written notification of a finding of dependent adult abuse, the department shall not place the caretaker on the central abuse registry until final agency action is taken. For a request for an appeal filed within fifteen days of the issuance of the written notification of the finding, the contested case hearing shall be held within sixty days of the request. The caretaker may extend the hearing timeframe by thirty days one time. Additional requests for an extension must be agreed upon by all parties or for good cause. The administrative law judge's proposed decision shall be issued within thirty days of the contested case hearing. If further review of the decision is not requested before the proposed decision becomes final, the proposed decision shall be deemed final agency action. If further review is requested, the department's final agency action shall occur within thirty days of the issuance of the administrative law judge's proposed decision. Upon final agency action, further appeal rights shall be governed by chapter 17A.

2. If a caretaker fails to request an appeal within fifteen days, the caretaker shall have sixty days from the issuance of the written notification of the abuse findings to file an appeal pursuant to chapter 17A. However, the caretaker's name shall be placed on the central abuse registry pending the outcome of the appeal.

3. If the caretaker requests an appeal within fifteen days, the caretaker may waive the expedited hearing under subsection 1 to proceed under chapter 17A, but the caretaker's name shall be placed on the central abuse registry pending the outcome of the appeal.

2010 Acts, ch 1177, §6

Referred to in §235E.2

## CHAPTER 236

## DOMESTIC ABUSE

Referred to in §13.2, 13.31, 135.108, 232.22, 232.52, 562A.27A, 562B.25A, 598.7, 602.6111, 602.6306, 664A.1, 664A.2, 664A.5, 664A.7, 915.23, 915.94

236.1	Short title.	236.13	Prohibition against referral.
236.2	Definitions.	236.14	Initial appearance required — contact to be prohibited — extension of no-contact order. Repealed by 2006 Acts, ch 1101, §21.
236.3	Commencement of actions — waiver to juvenile court.	236.15	Application for designation and funding as a provider of services for victims of domestic abuse.
236.3A	Plaintiffs proceeding pro se — provision of forms and assistance.	236.15A	Repealed by 97 Acts, ch 158, §48; 97 Acts, ch 209, §13, 15.
236.3B	Assistance by county attorney.	236.15B	Income tax checkoff for domestic abuse services. Repealed by 2003 Acts, ch 44, §111.
236.4	Hearings — temporary orders.	236.16	Department powers and duties.
236.5	Disposition.	236.17	Domestic abuse training requirements.
236.6	Emergency orders.	236.18	Reference to certain criminal provisions.
236.7	Procedure.	236.19	Foreign protective orders — registration — enforcement.
236.8	Violation of order — contempt — penalties — hearings. Repealed by 2006 Acts, ch 1101, §21.	236.20	Mutual protective orders prohibited — exceptions.
236.9	Domestic abuse information.		
236.10	Plaintiff's address — confidentiality of records.		
236.11	Duties of peace officer — magistrate.		
236.12	Prevention of further abuse — notification of rights — arrest — liability.		

**236.1 Short title.**

This chapter may be cited as the “*Domestic Abuse Act*”.  
[C81, §236.1]

**236.2 Definitions.**

For purposes of this chapter, unless a different meaning is clearly indicated by the context:

1. “*Department*” means the department of justice.
2. “*Domestic abuse*” means committing assault as defined in section 708.1 under any of the following circumstances:
  - a. The assault is between family or household members who resided together at the time of the assault.
  - b. The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault.
  - c. The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.
  - d. The assault is between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault.
  - e. (1) The assault is between persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault. In determining whether persons are or have been in an intimate relationship, the court may consider the following nonexclusive list of factors:
    - (a) The duration of the relationship.
    - (b) The frequency of interaction.
    - (c) Whether the relationship has been terminated.
    - (d) The nature of the relationship, characterized by either party’s expectation of sexual or romantic involvement.
  - (2) A person may be involved in an intimate relationship with more than one person at a time.

3. “*Emergency shelter services*” include but are not limited to secure crisis shelters or housing for victims of domestic abuse.

4. a. “*Family or household members*” means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity.

b. “*Family or household members*” does not include children under age eighteen of persons listed in paragraph “a”.

5. “*Intimate relationship*” means a significant romantic involvement that need not include sexual involvement. An intimate relationship does not include casual social relationships or associations in a business or professional capacity.

6. “*Plaintiff*” includes a person filing an action on behalf of an unemancipated minor.

7. “*Pro se*” means a person proceeding on the person’s own behalf without legal representation.

8. “*Support services*” include but are not limited to legal services, counseling services, transportation services, child care services, and advocacy services.

[C81, §236.2]

85 Acts, ch 175, §2; 87 Acts, ch 154, §1; 89 Acts, ch 279, §2, 3; 91 Acts, ch 218, §4; 93 Acts, ch 157, §1; 95 Acts, ch 180, §7; 2002 Acts, ch 1004, §1, 2; 2003 Acts, ch 44, §52; 2009 Acts, ch 41, §263

Referred to in §135B.7, 236.5, 236.13, 507B.4, 598.16, 598.41, 598.41D, 611.23, 708.2A, 708.2B, 804.7

### **236.3 Commencement of actions — waiver to juvenile court.**

1. A person, including a parent or guardian on behalf of an unemancipated minor, may seek relief from domestic abuse by filing a verified petition in the district court. Venue shall lie where either party resides. The petition shall state the:

a. Name of the plaintiff and the name and address of the plaintiff’s attorney, if any. If the plaintiff is proceeding pro se, the petition shall state a mailing address for the plaintiff. A mailing address may be provided by the plaintiff pursuant to section 236.10.

b. Name and address of the parent or guardian filing the petition, if the petition is being filed on behalf of an unemancipated minor. A mailing address may be provided by the plaintiff pursuant to section 236.10.

c. Name and address, if known, of the defendant.

d. Relationship of the plaintiff to the defendant.

e. Nature of the alleged domestic abuse.

f. Name and age of each child under eighteen whose welfare may be affected by the controversy.

g. Desired relief, including a request for temporary or emergency orders.

2. A temporary or emergency order shall be based on a showing of a prima facie case of domestic abuse. If the factual basis for the alleged domestic abuse is contested, the court shall issue a protective order based upon a finding of domestic abuse by a preponderance of the evidence.

3. The filing fee and court costs for an order for protection and in a contempt action under this chapter shall be waived for the plaintiff. The clerk of court, the sheriff of any county in this state, and other law enforcement and corrections officers shall perform their duties relating to service of process without charge to the plaintiff. When an order for protection is entered by the court, the court may direct the defendant to pay to the clerk of court the fees for the filing of the petition and reasonable costs of service of process if the court determines the defendant has the ability to pay the plaintiff’s fees and costs.

4. If the person against whom relief from domestic abuse is being sought is seventeen years of age or younger, the district court shall waive its jurisdiction over the action to the juvenile court.

[C81, §236.3]

85 Acts, ch 175, §3; 86 Acts, ch 1237, §12; 91 Acts, ch 218, §5; 95 Acts, ch 180, §8 – 10; 96 Acts, ch 1034, §12; 2000 Acts, ch 1119, §1; 2001 Acts, ch 43, §1; 2002 Acts, ch 1004, §3; 2002 Acts, ch 1119, §36; 2003 Acts, ch 44, §53; 2003 Acts, ch 151, §7; 2009 Acts, ch 41, §263

Referred to in §232.8, 236.6, 236.19, 598.16, 598.41, 598.41D, 915.50

For future amendment to subsection 3, effective April 1, 2014, see 2013 Acts, ch 16, §1, 3

Section not amended; footnote added

**236.3A Plaintiffs proceeding pro se — provision of forms and assistance.**

1. The department shall prescribe standard forms to be used by plaintiffs seeking protective orders by proceeding pro se in actions under this chapter. The standard forms shall include language in fourteen point boldface type. Standard forms prescribed by the department shall be the exclusive forms used by plaintiffs proceeding pro se, and may be used by other plaintiffs. The department shall distribute the forms to the clerks of the district courts.

2. The clerk of the district court shall furnish the required forms to persons seeking protective orders through pro se proceedings pursuant to this chapter.

91 Acts, ch 218, §6; 2004 Acts, ch 1131, §1

Referred to in §232.8, 915.50

**236.3B Assistance by county attorney.**

A county attorney's office may provide assistance to a person wishing to initiate proceedings pursuant to this chapter or to a plaintiff at any stage of a proceeding under this chapter, if the individual does not have sufficient funds to pay for legal assistance and if the assistance does not create a conflict of interest for the county attorney's office. The assistance provided may include, but is not limited to, assistance in obtaining or completing forms, filing a petition or other necessary pleading, presenting evidence to the court, and enforcing the orders of the court entered pursuant to this chapter. Providing assistance pursuant to this section shall not be considered the private practice of law for the purposes of section 331.752.

93 Acts, ch 157, §2

Referred to in §232.8, 915.50

**236.4 Hearings — temporary orders.**

1. Not less than five and not more than fifteen days after commencing a proceeding and upon notice to the other party, a hearing shall be held at which the plaintiff must prove the allegation of domestic abuse by a preponderance of the evidence.

2. The court may enter any temporary order it deems necessary to protect the plaintiff from domestic abuse prior to the hearing, including temporary custody or visitation orders pursuant to subsection 3, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection. A temporary order issued pursuant to this subsection shall specifically include notice that the person may be required to relinquish all firearms, offensive weapons, and ammunition upon the issuance of a permanent order pursuant to section 236.5.

3. The court may award temporary custody of or establish temporary visitation rights with regard to children under eighteen years of age. In awarding temporary custody or temporary visitation rights, the court shall give primary consideration to the safety of the alleged victim and the children. If the court finds that the safety of the alleged victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall set conditions or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children. The court shall also determine whether any other existing orders awarding custody or visitation should be modified.

4. If a hearing is continued, the court may make or extend any temporary order under subsection 2 or 3 that it deems necessary.

5. Upon application of a party, the court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers.

6. The court shall advise the defendant of a right to be represented by counsel of the defendant's choosing and to have a continuance to secure counsel.

7. Prior to the entry of a temporary order under this section that involves a child-custody determination as defined in section 598B.102, the plaintiff shall furnish information to the court in compliance with section 598B.209.

8. Hearings shall be recorded.

[C81, §236.4]

93 Acts, ch 157, §3; 2010 Acts, ch 1083, §1; 2010 Acts, ch 1159, §1 – 4

Referred to in §232.8, 236.6, 915.50

**236.5 Disposition.**

1. Upon a finding that the defendant has engaged in domestic abuse:

a. The court may order that the plaintiff, the defendant, and the children who are members of the household receive professional counseling, either from a private source approved by the court or from a source appointed by the court. Costs of counseling shall be paid in full or in part by the parties and taxed as court costs. If the court determines that the parties are unable to pay the costs, they may be paid in full or in part from the county treasury.

b. The court may grant a protective order or approve a consent agreement which may contain but is not limited to any of the following provisions:

(1) That the defendant cease domestic abuse of the plaintiff.

(2) That the defendant not knowingly possess, ship, transport, or receive firearms, offensive weapons, and ammunition in violation of section 724.26, subsection 2.

(3) That the defendant grant possession of the residence to the plaintiff to the exclusion of the defendant or that the defendant provide suitable alternate housing for the plaintiff.

(4) That the defendant stay away from the plaintiff's residence, school, or place of employment.

(5) The awarding of temporary custody of or establishing temporary visitation rights with regard to children under eighteen.

(a) In awarding temporary custody or temporary visitation rights, the court shall give primary consideration to the safety of the victim and the children.

(b) If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children.

(c) The court shall also determine whether any other existing orders awarding custody or visitation rights should be modified.

(d) Prior to entry of an order or agreement under this section that involves a child-custody determination as defined in section 598B.102, the parties shall furnish information to the court in compliance with section 598B.209.

(6) Unless prohibited pursuant to 28 U.S.C. § 1738B, that the defendant pay the clerk a sum of money for the separate support and maintenance of the plaintiff and children under eighteen.

2. An order for counseling, a protective order, or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend or extend its order or a consent agreement at any time upon a petition filed by either party and after notice and hearing. The court may extend the order if the court, after hearing at which the defendant has the opportunity to be heard, finds that the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim's immediate family. At the time of the extension, the parties need not meet the requirement in section 236.2, subsection 2, paragraph "d", that the parties lived together during the last year if the parties met the requirements of section 236.2, subsection 2, paragraph "d", at the time of the original order. The number of extensions that can be granted by the court is not limited.

3. The order shall state whether a person is to be taken into custody by a peace officer for a violation of the terms stated in the order.

4. The court may order that the defendant pay the plaintiff's attorney fees and court costs.

5. An order or consent agreement under this section shall not affect title to real property.

6. A copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant, the county sheriff of the county in which the order or consent decree is initially entered, and the twenty-four-hour dispatcher for the county sheriff. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and the county sheriff previously notified.

7. The clerk shall notify the county sheriff and the twenty-four-hour dispatcher for the county sheriff in writing so that the county sheriff and the county sheriff's dispatcher receive written notice within six hours of filing the order, approved consent agreement, amendment, or revocation. The clerk may fulfill this requirement by sending the notice by facsimile or

other electronic transmission which reproduces the notice in writing within six hours of filing the order.

8. The county sheriff's dispatcher shall notify all law enforcement agencies having jurisdiction over the matter and the twenty-four-hour dispatcher for the law enforcement agencies upon notification by the clerk.

[C81, §236.5]

83 Acts, ch 123, §93, 209; 86 Acts, ch 1179, §1; 87 Acts, ch 154, §2, 3; 89 Acts, ch 85, §1; 91 Acts, ch 218, §7, 8; 91 Acts, ch 219, §3; 93 Acts, ch 157, §4; 95 Acts, ch 180, §11; 96 Acts, ch 1019, §1; 97 Acts, ch 175, §228; 99 Acts, ch 57, §1; 2006 Acts, ch 1129, §2; 2008 Acts, ch 1032, §39, 40; 2009 Acts, ch 133, §222; 2010 Acts, ch 1083, §2; 2010 Acts, ch 1159, §5, 6

Referred to in §236.4, 236.6, 236.19, 331.424, 598.16, 598.41, 598.41D, 598.42, 664A.4, 708.2A, 915.22, 915.50

For restrictions concerning issuance of mutual protective orders, see §236.20

### **236.6 Emergency orders.**

1. When the court is unavailable from the close of business at the end of the day or week to the resumption of business at the beginning of the day or week, a petition may be filed before a district judge, or district associate judge designated by the chief judge of the judicial district, who may grant emergency relief in accordance with section 236.5, subsection 1, paragraph "b", if the district judge or district associate judge deems it necessary to protect the plaintiff from domestic abuse, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection.

2. An emergency order issued under subsection 1 shall expire seventy-two hours after issuance. When the order expires, the plaintiff may seek a temporary order from the court pursuant to section 236.4.

3. A petition filed and emergency order issued under this section and any documentation in support of the petition and order shall be immediately certified to the court. The certification shall commence a proceeding for purposes of section 236.3.

[C81, §236.6]

2009 Acts, ch 133, §231

Referred to in §232.8, 598.16, 598.41, 598.41D, 915.50

### **236.7 Procedure.**

1. A proceeding under this chapter shall be held in accordance with the rules of civil procedure, except as otherwise set forth in this chapter and in chapter 664A, and is in addition to any other civil or criminal remedy.

2. The plaintiff's right to relief under this chapter is not affected by leaving the residence or household to avoid domestic abuse.

[C81, §236.7]

2006 Acts, ch 1101, §1

Referred to in §915.50

**236.8 Violation of order — contempt — penalties — hearings.** Repealed by 2006 Acts, ch 1101, § 21. See § 664A.7.

### **236.9 Domestic abuse information.**

Criminal or juvenile justice agencies, as defined in section 692.1, shall collect and maintain information on incidents involving domestic abuse and shall provide the information to the department of public safety in the manner prescribed by the department of public safety.

The department of public safety may compile statistics and issue reports on domestic abuse in Iowa, provided individual identifying details of the domestic abuse are deleted. The statistics and reports may include nonidentifying information on the personal characteristics of perpetrators and victims. The department of public safety may request the cooperation of the department of justice in compiling the statistics and issuing the reports. The department of public safety may provide nonidentifying information on individual incidents of domestic

abuse to persons conducting bona fide research, including but not limited to personnel of the department of justice.

[C81, §236.9]

83 Acts, ch 96, §157, 159; 85 Acts, ch 175, §4; 89 Acts, ch 279, §4; 91 Acts, ch 19, §1; 96 Acts, ch 1034, §13

Referred to in §915.50

#### **236.10 Plaintiff's address — confidentiality of records.**

1. A person seeking relief from domestic abuse under this chapter may use any of the following addresses as a mailing address for purposes of filing a petition under this chapter, as well as for the purpose of obtaining any utility or other service:

- a. The mailing address of a shelter or other agency.
- b. A public or private post office box.
- c. Any other mailing address, with the permission of the resident of that address.

2. A person shall report any change of address, whether designated according to subsection 1 or otherwise, to the clerk of court no more than five days after the previous address on record becomes invalid.

3. The entire file or a portion of the file in a domestic abuse case shall be sealed by the clerk of court as ordered by the court to protect the privacy interest or safety of any person.

4. Notwithstanding subsection 3, court orders and support payment records shall remain public records, although the court may order that address and location information be redacted from the public records.

[C81, §236.10]

97 Acts, ch 175, §229; 98 Acts, ch 1170, §1; 2000 Acts, ch 1119, §2; 2000 Acts, ch 1132, §1

Referred to in §236.3, 915.50

#### **236.11 Duties of peace officer — magistrate.**

A peace officer shall use every reasonable means to enforce an order or court-approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, an order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault, or a protective order under chapter 232. If a peace officer has reason to believe that domestic abuse has occurred, the peace officer shall ask the abused person if any prior orders exist, and shall contact the twenty-four hour dispatcher to inquire if any prior orders exist. If a peace officer has probable cause to believe that a person has violated an order or approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, an order establishing conditions of release or a protective or sentencing order in a criminal prosecution arising from a domestic abuse assault, or, if the person is an adult, a violation of a protective order under chapter 232, the peace officer shall take the person into custody and shall take the person without unnecessary delay before the nearest or most accessible magistrate in the judicial district in which the person was taken into custody. The magistrate shall make an initial preliminary determination whether there is probable cause to believe that an order or consent agreement existed and that the person taken into custody has violated its terms. The magistrate's decision shall be entered in the record.

If a peace officer has probable cause to believe that a person has violated an order or approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, an order establishing conditions of release or a protective or sentencing order in a criminal prosecution arising from a domestic abuse assault, or a protective order under chapter 232, and the peace officer is unable to take the person into custody within twenty-four hours of making the probable cause determination, the peace officer shall either request a magistrate to make a determination as to whether a rule to show cause or arrest warrant should be issued, or refer the matter to the county attorney.

If the magistrate finds probable cause, the magistrate shall order the person to appear either before the court which issued the original order or approved the consent agreement, or before

the court in the jurisdiction where the alleged violation took place, at a specified time not less than five days nor more than fifteen days after the initial appearance under this section. The magistrate shall cause the original court to be notified of the contents of the magistrate's order.

A peace officer shall not be held civilly or criminally liable for acting pursuant to this section provided that the peace officer acts in good faith, on probable cause, and the officer's acts do not constitute a willful and wanton disregard for the rights or safety of another.

[C81, §236.11]

86 Acts, ch 1179, §2; 87 Acts, ch 154, §5; 88 Acts, ch 1065, §2; 88 Acts, ch 1218, §17, 18; 91 Acts, ch 218, §10; 93 Acts, ch 157, §6; 96 Acts, ch 1134, §4; 2004 Acts, ch 1131, §3

Referred to in §664A.3, 664A.6, 664A.7

### **236.12 Prevention of further abuse — notification of rights — arrest — liability.**

1. If a peace officer has reason to believe that domestic abuse has occurred, the officer shall use all reasonable means to prevent further abuse including but not limited to the following:

a. If requested, remaining on the scene as long as there is a danger to an abused person's physical safety without the presence of a peace officer, including but not limited to staying in the dwelling unit, or if unable to remain on the scene, assisting the person in leaving the residence.

b. Assisting an abused person in obtaining medical treatment necessitated by an assault, including providing assistance to the abused person in obtaining transportation to the emergency room of the nearest hospital.

c. Providing an abused person with immediate and adequate notice of the person's rights. The notice shall consist of handing the person a document that includes the telephone numbers of shelters, support groups, and crisis lines operating in the area and contains a copy of the following statement written in English and Spanish; asking the person to read the card; and asking whether the person understands the rights:

You have the right to ask the court for the following help on a temporary basis:

- (1) Keeping your attacker away from you, your home and your place of work.
- (2) The right to stay at your home without interference from your attacker.
- (3) Getting custody of children and obtaining support for yourself and your minor children if your attacker is legally required to provide such support.
- (4) Professional counseling for you, the children who are members of the household, and the defendant.

You have the right to seek help from the court to seek a protective order with or without the assistance of legal representation. You have the right to seek help from the courts without the payment of court costs if you do not have sufficient funds to pay the costs.

You have the right to file criminal charges for threats, assaults, or other related crimes.

You have the right to seek restitution against your attacker for harm to yourself or your property.

If you are in need of medical treatment, you have the right to request that the officer present assist you in obtaining transportation to the nearest hospital or otherwise assist you.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and other affected parties can leave or until safety is otherwise ensured.

2. a. A peace officer may, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph "a", if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed which did not result in any injury to the alleged victim.

b. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph "b", if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any,

the officer has probable cause to believe that a domestic abuse assault has been committed which resulted in the alleged victim's suffering a bodily injury.

c. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph "c", if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed with the intent to inflict a serious injury.

d. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph "c", if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed and that the alleged abuser used or displayed a dangerous weapon in connection with the assault.

e. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 2, paragraph "d", if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed by knowingly impeding the normal breathing or circulation of the blood of another by applying pressure to the throat or neck of the other person or by obstructing the nose or mouth of the other person.

f. Except as otherwise provided in subsection 3, a peace officer shall, with or without a warrant, arrest a person under section 708.2A, subsection 5, if, upon investigation, including a reasonable inquiry of the alleged victim and other witnesses, if any, the officer has probable cause to believe that a domestic abuse assault has been committed by knowingly impeding the normal breathing or circulation of the blood of another by applying pressure to the throat or neck of the other person or by obstructing the nose or mouth of the other person, and causing bodily injury.

3. As described in subsection 2, paragraph "b", "c", "d", "e", or "f", the peace officer shall arrest the person whom the peace officer believes to be the primary physical aggressor. The duty of the officer to arrest extends only to those persons involved who are believed to have committed an assault. Persons acting with justification, as defined in section 704.3, are not subject to mandatory arrest. In identifying the primary physical aggressor, a peace officer shall consider the need to protect victims of domestic abuse, the relative degree of injury or fear inflicted on the persons involved, and any history of domestic abuse between the persons involved. A peace officer's identification of the primary physical aggressor shall not be based on the consent of the victim to any subsequent prosecution or on the relationship of the persons involved in the incident, and shall not be based solely upon the absence of visible indications of injury or impairment.

4. A peace officer is not civilly or criminally liable for actions pursuant to this section taken in good faith.

84 Acts, ch 1258, §1; 85 Acts, ch 175, §5; 86 Acts, ch 1179, §3; 87 Acts, ch 154, §6; 89 Acts, ch 85, §2; 90 Acts, ch 1056, §1, 2; 91 Acts, ch 218, §11; 92 Acts, ch 1163, §52; 2009 Acts, ch 133, §93, 94; 2012 Acts, ch 1002, §1, 2

Referred to in §236.16, 236.17, 664A.3, 664A.6, 804.7, 915.50

### **236.13 Prohibition against referral.**

In a criminal action arising from domestic abuse, as defined in section 236.2, the prosecuting attorney or court shall not refer or order the parties involved to mediation or other nonjudicial procedures prior to judicial resolution of the action.

86 Acts, ch 1179, §4

**236.14 Initial appearance required — contact to be prohibited — extension of no-contact order.** Repealed by 2006 Acts, ch 1101, § 21. See chapter 664A.

**236.15 Application for designation and funding as a provider of services for victims of domestic abuse.**

Upon receipt of state or federal funding designated for victims of domestic abuse by the department, a public or private nonprofit organization may apply to the department for designation and funding as a provider of emergency shelter services and support services to victims of domestic abuse or sexual assault. The application shall be submitted on a form prescribed by the department and shall include, but not be limited to, information regarding services to be provided, budget, and security measures.

85 Acts, ch 175, §6; 89 Acts, ch 279, §5; 91 Acts, ch 218, §13

**236.15A** Repealed by 97 Acts, ch 158, § 48; 97 Acts, ch 209, § 13, 15.

**236.15B Income tax checkoff for domestic abuse services.** Repealed by 2003 Acts, ch 44, § 111.

**236.16 Department powers and duties.**

1. The department shall:

a. Designate and award grants for existing and pilot programs pursuant to this chapter to provide emergency shelter services and support services to victims of domestic abuse.

b. Design and implement a uniform method of collecting data from domestic abuse organizations funded under this chapter.

c. Designate and award moneys for publicizing and staffing a statewide, toll-free telephone hotline for use by victims of domestic abuse. The department may award a grant to a public agency or a private, nonprofit organization for the purpose of operating the hotline. The operation of the hotline shall include informing victims of their rights and of various community services that are available, referring victims to service providers, receiving complaints concerning misconduct by peace officers and encouraging victims to refer such complaints to the office of ombudsman, providing counseling services to victims over the telephone, and providing domestic abuse victim advocacy.

d. Advertise the toll-free telephone hotline through the use of public service announcements, billboards, print and broadcast media services, and other appropriate means, and contact media organizations to encourage the provision of free or inexpensive advertising concerning the hotline and its services.

e. Develop, with the assistance of the entity operating the telephone hotline and other domestic abuse victim services providers, brochures explaining the rights of victims set forth under section 236.12 and the services of the telephone hotline, and distribute the brochures to law enforcement agencies, victim service providers, health practitioners, charitable and religious organizations, and other entities that may have contact with victims of domestic abuse.

2. The department shall consult and cooperate with all public and private agencies which may provide services to victims of domestic abuse, including but not limited to, legal services, social services, prospective employment opportunities, and unemployment benefits.

3. The department may accept, use, and dispose of contributions of money, services, and property made available by an agency or department of the state or federal government, or a private agency or individual.

85 Acts, ch 175, §7; 89 Acts, ch 279, §6; 91 Acts, ch 218, §15; 2013 Acts, ch 10, §30

Subsection 1, paragraph c amended

**236.17 Domestic abuse training requirements.**

The department, in cooperation with victim service providers, shall work with various professional organizations to encourage organizations to establish training programs for professionals who work in the area of domestic abuse prevention and services. Domestic abuse training may include, but is not limited to, the following areas:

1. The enforcement of both civil and criminal remedies in domestic abuse matters.

2. The nature, extent, and causes of domestic abuse.

3. The legal rights and remedies available to domestic abuse victims, including crime victim compensation.

4. Services available to domestic abuse victims and their children, including the domestic abuse telephone hotline.

5. The mandatory arrest provisions of section 236.12, and other duties of peace officers pursuant to this chapter.

6. Techniques for intervention in domestic abuse cases.

91 Acts, ch 218, §16; 91 Acts, ch 219, §33

### **236.18 Reference to certain criminal provisions.**

In addition to the provisions contained in this chapter, certain criminal penalties and provisions pertaining to domestic abuse assaults are set forth in chapter 664A and sections 708.2A and 708.2B.

91 Acts, ch 218, §17; 2012 Acts, ch 1021, §52

### **236.19 Foreign protective orders — registration — enforcement.**

1. As used in this section, “*foreign protective order*” means a protective order entered by a court of another state, Indian tribe, or United States territory that would be an order or court-approved consent agreement entered under this chapter, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or an order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault if it had been entered in Iowa.

2. A certified or authenticated copy of a permanent foreign protective order may be filed with the clerk of the district court in any county that would have venue if the original action was being commenced in this state or in which the person in whose favor the order was entered may be present.

a. The clerk shall file foreign protective orders that are not certified or authenticated, if supported by an affidavit of a person with personal knowledge, subject to the penalties for perjury. The person protected by the order may provide this affidavit.

b. The clerk shall provide copies of the order as required by section 236.5, except that notice shall not be provided to the respondent without the express written direction of the person in whose favor the order was entered.

3. a. A valid foreign protective order has the same effect and shall be enforced in the same manner as a protective order issued in this state whether or not filed with a clerk of court or otherwise placed in a registry of protective orders.

b. A foreign protective order is valid if it meets all of the following:

(1) The order states the name of the protected individual and the individual against whom enforcement is sought.

(2) The order has not expired.

(3) The order was issued by a court or tribunal that had jurisdiction over the parties and subject matter under the law of the foreign jurisdiction.

(4) The order was issued in accordance with the respondent’s due process rights, either after the respondent was provided with reasonable notice and an opportunity to be heard before the court or tribunal that issued the order; or in the case of an *ex parte* order, the respondent was granted notice and opportunity to be heard within a reasonable time after the order was issued.

c. Proof that a foreign protective order failed to meet all of the factors listed in paragraph “b” shall be an affirmative defense in any action seeking enforcement of the order.

4. A peace officer shall treat a foreign protective order as a valid legal document and shall make an arrest for a violation of the foreign protective order in the same manner that a peace officer would make an arrest for a violation of a protective order issued within this state.

a. The fact that a foreign protective order has not been filed with the clerk of court or otherwise placed in a registry shall not be grounds to refuse to enforce the terms of the order unless it is apparent to the officer that the order is invalid on its face.

b. A peace officer acting reasonably and in good faith in connection with the enforcement

of a foreign protective order shall be immune from civil and criminal liability in any action arising in connection with such enforcement.

5. Filing and service costs in connection with foreign protective orders are waived as provided in section 236.3.

95 Acts, ch 180, §13; 99 Acts, ch 57, §2; 2000 Acts, ch 1132, §2; 2001 Acts, ch 43, §2  
 Referred to in §664A.1

**236.20 Mutual protective orders prohibited — exceptions.**

A court in an action under this chapter shall not issue mutual protective orders against the victim and the abuser unless both file a petition requesting a protective order.

95 Acts, ch 180, §14

**CHAPTER 236A**

**CONFIDENTIAL COMMUNICATIONS — COUNSELORS AND VICTIMS**

Repealed by 99 Acts, ch 114, §54; see §915.20A

**CHAPTER 237**

**CHILD FOSTER CARE FACILITIES**

Referred to in §232.69, 232.196, 234.7, 235A.15, 237A.3A, 237B.1, 261.2, 335.25, 414.22, 423.3

Multidimensional treatment level foster care pilot project for children transitioning from psychiatric medical institutions for children; 2006 Acts, ch 1123, §1; 2007 Acts, ch 218, §46, 47

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237.10	Repealed by 82 Acts, ch 1213, §6.	237.22	Case permanency plan.
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DIVISION I

CHILD FOSTER CARE

**237.1 Definitions.**

As used in this chapter:

1. “Administrator” means the administrator of that division of the department designated by the director of human services to administer this chapter or the administrator’s designee.

2. “Agency” means a person, as defined in section 4.1, subsection 20, which provides child foster care and which does not meet the definition of an individual in subsection 7.

3. “Child” means child as defined in section 234.1, subsection 2.

4. “Child foster care” means the provision of parental nurturing, including but not limited to the furnishing of food, lodging, training, education, supervision, treatment or other care, to a child on a full-time basis by a person other than a relative or guardian of the child, but does not include:

a. Care furnished by an individual person who receives the child of a personal friend as an occasional and personal guest in the individual person’s home, free of charge and not as a business.

b. Care furnished by an individual person with whom a child has been placed for lawful adoption, unless that adoption is not completed within two years after placement.

c. Care furnished by a private boarding school subject to approval by the state board of education pursuant to section 256.11.

d. Child care furnished by a child care center, a child development home, or a child care home as defined in section 237A.1.

e. Care furnished in a hospital licensed under chapter 135B or care furnished in a nursing facility licensed under chapter 135C.

5. “Department” means the department of human services.

6. “Facility” means the personnel, program, physical plant, and equipment of a licensee.

7. “Individual” means an individual person or a married couple who provides child foster care in a single-family home environment and which does not meet the definition of an agency in subsection 2.

8. “Licensee” means an individual or an agency licensed by the administrator under this chapter.

[C27, 31, 35, §3661-a42, -a43; C39, §3661.056, 3661.057; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.1, 237.2; C81, §237.1; 82 Acts, ch 1016, §1]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1245, §1418; 87 Acts, ch 44, §1; 90 Acts, ch 1039, §14; 99 Acts, ch 192, §29; 2002 Acts, ch 1142, §2, 31

Referred to in §16.1, 237.4, 237.13, 282.19, 423.3

### **237.2 Purpose.**

It is the policy of this state to provide appropriate protection for children who are separated from the direct personal care of their parents, relatives, or guardians and, as a result, are subject to difficulty in achieving appropriate physical, mental, emotional, educational, or social development. This chapter shall be construed and administered to further that policy by assuring that child foster care is adequately provided by competently staffed and well-equipped child foster care facilities, including but not limited to residential treatment centers, group homes, and foster family homes.

[C81, §237.2]

### **237.3 Rules.**

1. Except as otherwise provided by subsections 3 and 4, the administrator shall promulgate, after their adoption by the council on human services, and enforce in accordance with chapter 17A, administrative rules necessary to implement this chapter. Formulation of the rules shall include consultation with representatives of child foster care providers, and other persons affected by this chapter. The rules shall encourage the provision of child foster care in a single-family, home environment, exempting the single-family, home facility from inappropriate rules.

2. Rules applicable to licensees shall include but are not limited to:

a. Types of facilities which include but are not limited to group foster care facilities and family foster care homes.

b. The number, qualifications, character, and parenting ability of personnel necessary to assure the health, safety and welfare of children receiving child foster care.

c. Programs for education and in-service training of personnel.

d. The physical environment of a facility.

e. Policies for intake, assessment, admission and discharge.

f. Housing, health, safety, and medical care policies for children receiving child foster care. The medical care policies shall include but are not limited to all of the following:

(1) Provision by the department to the foster care provider at or before the time of a child's placement of the child's health records and any other information possessed or known about the health of the child or about a member of the child's family that pertains to the child's health.

(2) If the health records supplied in accordance with the child's case permanency plan to the foster care provider are incomplete or the provider requests specific health information, provision for obtaining additional health information from the child's parent or other source and supplying the additional information to the foster care provider.

(3) Provision for emergency health coverage of the child while the child is engaged in temporary out-of-state travel with the child's foster family.

g. (1) The adequacy of programs available to children receiving child foster care provided by agencies, including but not limited to:

(a) Dietary services.

(b) Social services.

(c) Activity programs.

(d) Behavior management procedures.

(e) Educational programs, including special education as defined in section 256B.2, subsection 1, paragraph "b", where appropriate, which are approved by the state board of education.

(2) The department shall not promulgate rules which regulate individual licensees in the subject areas enumerated in this paragraph "g".

h. Policies for involvement of biological parents.

i. Records a licensee is required to keep, and reports a licensee is required to make to the administrator.

j. Prior to the licensing of an individual as a foster family home, a required, written social assessment of the quality of the living situation in the home of the individual, and a required compilation of personal references for the individual other than those references given by the individual.

k. Elements of a foster care placement agreement outlining rights and responsibilities associated with an individual providing family foster care. The rights and responsibilities shall include but are not limited to all of the following:

(1) Receiving information prior to the child's placement regarding risk factors concerning the child that are known to the department, including but not limited to notice if the child is required to register under chapter 692A.

(2) Having regularly scheduled meetings with each case manager assigned to the child.

(3) Receiving access to any reports prepared by a service provider who is working with the child unless the access is prohibited by state or federal law.

3. Rules governing fire safety in facilities with child foster care provided by agencies shall be promulgated by the state fire marshal pursuant to section 100.1, subsection 5 after consultation with the administrator.

4. Rules governing sanitation, water and waste disposal standards for facilities shall be promulgated by the Iowa department of public health pursuant to section 135.11, subsection 12, after consultation with the administrator.

5. In case of a conflict between rules promulgated pursuant to subsections 3 and 4 and local rules, the more stringent requirement applies.

6. Rules of the department shall not prohibit the licensing, as foster family homes, of individuals who are departmental employees not directly engaged in the administration of the child foster care program pursuant to this chapter.

7. If an agency is accredited by the joint commission on the accreditation of health care organizations under the commission's consolidated standards for residential settings or by the council on accreditation of services for families and children, the department shall modify facility licensure standards applied to the agency in order to avoid duplicating standards applied through accreditation.

8. The department, in consultation with the judicial branch, the division of criminal and juvenile justice planning of the department of human rights, residential treatment providers, the foster care provider association, and other parties which may be affected, shall review the licensing rules pertaining to residential treatment facilities, and examine whether the rules allow the facilities to accept and provide effective treatment to juveniles with serious problems who might not otherwise be placed in those facilities.

9. The department shall adopt rules specifying the elements of a preadoptive care agreement outlining the rights and responsibilities associated with a person providing preadoptive care, as defined in section 232.2.

10. The department shall adopt rules to administer the exception to the definition of child care in section 237A.1, subsection 3, paragraph “m”, allowing a child care facility, for purposes of providing respite care to a foster family home, to provide care, supervision, or guidance of a child for a period of twenty-four hours or more who is placed with the licensed foster family home.

[C27, 31, 35, §3661-a52; C39, §3661.066; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.11; C81, §237.3]

83 Acts, ch 96, §157, 159; 89 Acts, ch 283, §26; 90 Acts, ch 1023, §1; 92 Acts, ch 1231, §39; 93 Acts, ch 172, §40; 94 Acts, ch 1046, §5; 97 Acts, ch 164, §5, 6; 98 Acts, ch 1047, §25; 2001 Acts, ch 105, §1, 2, 4; 2002 Acts, ch 1102, §1, 2; 2006 Acts, ch 1160, §2; 2009 Acts, ch 41, §241; 2009 Acts, ch 133, §232; 2010 Acts, ch 1193, §115, 116

Referred to in §135H.4, 135H.6

2006 amendment to subsection 2, paragraph k, may be cited as the “Foster Parents Bill of Rights”; 2006 Acts, ch 1160, §1

#### **237.4 License required — exceptions.**

An individual or an agency, as defined in section 237.1, shall not provide child foster care unless the individual or agency obtains a license issued by the administrator under this chapter. However, a license is not required of the following:

1. An individual providing child foster care for a total of not more than twenty days in one calendar year.
2. A residential care facility licensed under chapter 135C which is approved for the care of children.
3. A hospital licensed under chapter 135B.
4. A health care facility licensed under chapter 135C.
5. A juvenile detention home or juvenile shelter care home approved under section 232.142.
6. An institution listed in section 218.1.
7. A facility licensed under chapter 125.
8. An individual providing child care as a babysitter at the request of a parent, guardian or relative having lawful custody of the child.

[C27, 31, 35, §3661-a49; C39, §3661.063; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.8; C81, §237.4; 82 Acts, ch 1016, §2]

84 Acts, ch 1050, §1; 87 Acts, ch 44, §2

Referred to in §709.16

#### **237.5 License application and issuance — denial, suspension, or revocation — provisional licenses.**

1. An individual or an agency shall apply for a license by completing an application to the administrator upon forms furnished by the administrator. The administrator shall issue or reissue a license if the administrator determines that the applicant or licensee is or upon commencing operation will provide child foster care in compliance with this chapter. An initial license for an individual is valid for one year from the date of issuance. After the first two years of licensure, a license for an individual is valid for two years from the most recent date of issuance except that the administrator, within the administrator’s discretion and based upon the performance of the licensee, may require annual renewal of the license or may issue a provisional license pursuant to subsection 3. A license for an agency is valid for up to three years from the date of issuance for the period determined by the administrator in accordance with administrative rules providing criteria for making the determination. The license shall

state on its face the name of the licensee, the type of facility, the particular premises for which the license is issued, and the number of children who may be cared for by the facility on the premises at one time. The license shall be posted in a conspicuous place in the physical plant of the facility, except that if the facility is in a single-family home the license may be kept where it is readily available for examination upon request.

2. The administrator, after notice and opportunity for an evidentiary hearing, may deny an application for a license, and may suspend or revoke a license, if the applicant or licensee violates this chapter or the rules promulgated pursuant to this chapter, or knowingly makes a false statement concerning a material fact or conceals a material fact on the license application or in a report regarding operation of the facility submitted to the administrator.

3. The administrator may issue a provisional license for not more than one year to a licensee whose facility does not meet the requirements of this chapter, if written plans to bring the facility into compliance with the applicable requirements are submitted to and approved by the administrator. The plans shall state a specific time when compliance will be achieved. Only one provisional license shall be issued for a facility by reason of the same deficiency.

[C27, 31, 35, §3661-a44, -a46, -a51, -a53, -a54; C39, §3661.058, 3661.060, 3661.065, 3661.067, 3661.068; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.3, 237.5, 237.10, 237.12, 237.13; C81, §237.5]

87 Acts, ch 153, §15; 2002 Acts, ch 1102, §3; 2012 Acts, ch 1039, §1

#### **237.5A Foster parent training.**

1. As a condition for initial licensure, each individual licensee shall complete thirty hours of foster parent training offered or approved by the department. However, if the licensee has completed relevant training or has a combination of completed relevant training and experience, and the department deems such training or combination to be an acceptable equivalent to all or a portion of the initial licensure training requirement, or based upon the circumstances of the child and the licensee the department finds there is other good cause, the department may waive all or a portion of the training requirement. Prior to renewal of licensure, each individual licensee shall also annually complete six hours of foster parent training. The training shall include but is not limited to physical care, education, learning disabilities, referral to and receipt of necessary professional services, behavioral assessment and modification, self-assessment, self-living skills, and biological parent contact. An individual licensee may complete the training as part of an approved training program offered by a public or private agency with expertise in the provision of child foster care or in related subject areas. The department shall adopt rules to implement and enforce this training requirement.

2. A licensee who is unable to complete six hours of foster parent training annually prior to licensure renewal because the licensee is engaged in active duty in the military service shall be considered to be in compliance with the training requirement for licensure renewal.

84 Acts, ch 1279, §25; 87 Acts, ch 117, §1; 2002 Acts, ch 1102, §4; 2004 Acts, ch 1116, §19; 2006 Acts, ch 1159, §6; 2012 Acts, ch 1039, §2

#### **237.6 Restricted use of facility.**

A licensee shall not furnish child foster care in a building or on premises not designated in the license. A licensee shall not furnish child foster care to a greater number of children than is designated in the license, unless the administrator so authorizes. Multiple licenses authorizing separate and distinct parts of a facility to provide different categories of child foster care may be issued.

[C27, 31, 35, §3661-a50; C39, §3661.064; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.9; C81, §237.6]

#### **237.7 Reports and inspections.**

The administrator may require submission of reports by a licensee, and shall cause at least one annual unannounced inspection of each facility to assess the quality of the living situation and to determine compliance with applicable requirements and standards. The

inspections shall be conducted by the department of inspections and appeals. The director of the department of inspections and appeals may examine records of a licensee, including but not limited to corporate records and board minutes, and may inquire into matters concerning a licensee and its employees relating to requirements and standards for child foster care under this chapter.

[C27, 31, 35, §3661-a55; C39, §3661.069; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.14; C81, §237.7]

90 Acts, ch 1204, §53

### **237.8 Personnel.**

1. A person shall not be allowed to provide services in a facility if the person has a disease which is transmissible to other persons through required contact in the workplace, which presents a significant risk of infecting other persons, which presents a substantial possibility of harming other persons, or for which no reasonable accommodation can eliminate the risk of infecting other persons.

2. *a.* (1) If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a licensee under this chapter, or if a person will reside in a facility utilized by a licensee, and if the person has been convicted of a crime or has a record of founded child abuse, the department and the licensee for an employee of the licensee shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

(2) For an individual subject to licensure under this chapter as a foster parent, in addition to the record checks conducted under subparagraph (1), the individual's fingerprints shall be provided to the department of public safety for submission through the state criminal history repository to the United States department of justice, federal bureau of investigation for a national criminal history check. The cost of the criminal history check conducted under this subparagraph is the responsibility of the department of human services.

(3) If the criminal and child abuse record checks conducted in this state under subparagraph (1) for an individual being considered for licensure as a foster parent have been completed and the individual either does not have a record of crime or founded abuse or the department's evaluation of the record has determined that prohibition of the individual's licensure is not warranted, the individual may be provisionally approved for licensure pending the outcome of the fingerprint-based criminal history check conducted pursuant to subparagraph (2).

(4) An individual applying to be a foster parent licensee shall not be granted a license and an evaluation shall not be performed under this subsection if the individual has been convicted of any of the following felony offenses:

- (a) Within the five-year period preceding the application date, a drug-related offense.
- (b) Child endangerment or neglect or abandonment of a dependent person.
- (c) Domestic abuse.
- (d) A crime against a child, including but not limited to sexual exploitation of a minor.
- (e) A forcible felony.

*b.* Except as otherwise provided in paragraph "a", if the department determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a licensee, or resides in a licensed facility the department shall notify the licensee that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

*c.* In an evaluation, the department and the licensee for an employee of the licensee shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded

child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department may permit a person who is evaluated to be licensed, employed, or to reside, or to continue to be licensed, employed, or to reside in a licensed facility, if the person complies with the department's conditions relating to the person's licensure, employment, or residence, which may include completion of additional training. For an employee of a licensee, these conditional requirements shall be developed with the licensee. The department has final authority in determining whether prohibition of the person's licensure, employment, or residence is warranted and in developing any conditional requirements under this paragraph.

d. If the department determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed under this chapter and shall not be employed by a licensee or reside in a licensed facility.

3. In addition to the record checks required under subsection 2, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of subsection 2, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random check conducted under this subsection.

4. On or after July 1, 1994, a licensee shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

5. On or after July 1, 1994, a licensee shall include the following inquiry in an application for employment:

Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?

[C81, §237.8]

87 Acts, ch 153, §16; 88 Acts, ch 1134, §57; 89 Acts, ch 283, §27; 90 Acts, ch 1221, §7; 91 Acts, ch 138, §7; 94 Acts, ch 1130, §14; 98 Acts, ch 1190, §29; 2007 Acts, ch 172, §12

Referred to in §232.142

### **237.9 Confidential information.**

A person who receives information from or through the department concerning a child who has received or is receiving child foster care, a relative or guardian of the child, a single-family, home licensee, or an individual employee of a licensee, shall not disclose that information directly or indirectly, except as authorized by section 217.30, or as authorized or required by section 232.69.

[C81, §237.9]

**237.10** Repealed by 82 Acts, ch 1213, § 6.

### **237.11 Penalty.**

An individual or an agency who provides child foster care without obtaining a license under this chapter or who knowingly violates this chapter or the rules promulgated pursuant to this chapter is guilty of a serious misdemeanor.

[C27, 31, 35, §3661-a57; C39, §3661.071; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §237.16; C81, §237.11]

### **237.12 Injunctive relief.**

An individual or an agency who provides child foster care without obtaining a license under this chapter or who knowingly violates this chapter or the rules promulgated pursuant to this chapter may be temporarily or permanently enjoined by a court in an action brought by the state, a political subdivision of the state or an interested person.

[C58, 62, 66, 71, 73, 75, 77, 79, §237.16; C81, §237.12]

**237.13 Foster home insurance fund.**

1. For the purposes of this section, “*foster home*” means an individual, as defined in section 237.1, subsection 7, who is licensed to provide child foster care and shall also be known as a “*licensed foster home*”.

2. The foster home insurance fund is created within the office of the treasurer of state to be administered by the department of human services. The fund consists of all moneys appropriated by the general assembly for deposit in the fund. The general fund of the state is not liable for claims presented against the fund. The department may contract with another state agency, or private organization, to perform the administrative functions necessary to carry out this section.

3. Except as provided in this section, the fund shall pay, on behalf of each licensed foster home, any valid and approved claim of foster children, their parents, guardians, or guardians ad litem, for damages arising from the foster care relationship and the provision of foster care services. The fund shall also compensate licensed foster homes for property damage, at replacement cost, or for bodily injury, as a result of the activities of the foster child, and reasonable and necessary legal fees incurred in defense of civil claims filed pursuant to subsection 6, paragraph “d”, and any judgments awarded as a result of such claims.

4. The fund is not liable for any of the following:

a. A loss arising out of a foster parent’s dishonest, fraudulent, criminal, or intentional act.

b. An occurrence which does not arise from the foster care relationship.

c. A bodily injury arising out of the operation or use of a motor vehicle, aircraft, recreational vehicle, or watercraft owned, operated by, rented, leased, or loaned to, a foster parent.

d. A loss arising out of a foster parent’s lascivious acts, indecent contact, or sexual activity, as defined in chapters 702 and 709. Notwithstanding any definition to the contrary in chapters 702 and 709, for purposes of this subsection a child is a person under the age of eighteen.

e. A loss or damage arising out of occurrences prior to July 1, 1988.

f. Exemplary or punitive damages.

g. A loss or damage arising out of conduct which is in violation of administrative rules.

5. The fund is not liable for the first one hundred dollars for all claims arising out of one or more occurrences during a fiscal year related to a single foster home. The fund is not liable for damages in excess of three hundred thousand dollars for all claims arising out of one or more occurrences during a fiscal year related to a single home.

6. Procedures for claims against the fund:

a. A claim against the fund shall be filed in accordance with the claims procedures and on forms prescribed by the department of human services.

b. A claim shall be submitted to the fund within the applicable period of limitations for the appropriate civil action underlying the claim. If a claim is not submitted to the fund within the applicable time, the claim shall be rejected.

c. The department shall issue a decision on a claim within one hundred eighty days of its presentation.

d. A person shall not bring a civil action against a foster parent for which the fund may be liable unless that person has first filed a claim against the fund and the claim has been rejected, or the claim has been filed, approved, and paid in part, and damages in excess of the payment are claimed.

7. All processing of decisions and reports, payment of claims, and other administrative actions relating to the fund shall be conducted by the department of human services.

8. The department of human services shall adopt rules, pursuant to chapter 17A, to carry out the provisions of this section.

88 Acts, ch 1223, §1; 89 Acts, ch 178, §4; 93 Acts, ch 172, §41; 99 Acts, ch 55, §1 – 5; 2001 Acts, ch 135, §1, 2; 2011 Acts, ch 98, §2, 3

**237.14 Enhanced foster care services.**

The department shall provide for enhanced foster care services by establishing supplemental per diem or performance-based contracts which include payment of costs relating to payments of principal and interest for bonds and notes issued pursuant to

section 16.155 with facilities licensed under this chapter which provide special services to children who would otherwise be placed in a state juvenile institution or an out-of-state program. Before completion of the department's budget estimate as required by section 8.23, the department shall determine and include in the estimate the amount which should be appropriated for enhanced foster care services for the forthcoming fiscal year in order to provide sufficient services.

90 Acts, ch 1239, §14

## DIVISION II FOSTER CARE REVIEW

### **237.15 Definitions.**

For the purposes of this division unless otherwise defined:

1. "*Case permanency plan*" means the same as defined in section 232.2, subsection 4, except the plan shall also include the following:

a. The efforts to place the child with a relative.  
b. The rationale for an out-of-state placement, and the efforts to prevent such placement, if the child has been placed out-of-state.

c. Time frames to meet the stated permanency goal and short-term objectives.

2. "*Child receiving foster care*" means a child defined in section 234.1 who is described by any of the following circumstances:

a. The child's foster care placement is the financial responsibility of the state pursuant to section 234.35.

b. The child is under the guardianship of the department.

c. The child has been involuntarily hospitalized for mental illness pursuant to chapter 229.

d. The child is at-risk of being placed outside the child's home, the department or court is providing or planning to provide services to the child, and the department or court has requested the involvement of the state or local board.

3. "*Court appointed special advocate*" means the same as defined in section 232.2.

4. "*Family*" means the social unit consisting of the child and the biological or adoptive parent, stepparent, brother, sister, stepbrother, stepsister, and grandparent of the child.

5. "*Local board*" means a local citizen foster care review board created pursuant to section 237.19.

6. "*Person or court responsible for the child*" means the department, including but not limited to the department of human services, agency, or individual who is the guardian of a child by court order issued by the juvenile or district court and has the responsibility of the care of the child, or the court having jurisdiction over the child.

7. "*State board*" means the child advocacy board created pursuant to section 237.16.

84 Acts, ch 1279, §26; 88 Acts, ch 1233, §1, 2; 89 Acts, ch 296, §22; 90 Acts, ch 1270, §46; 91 Acts, ch 232, §11; 92 Acts, ch 1141, §5; 92 Acts, ch 1231, §40; 94 Acts, ch 1046, §6; 95 Acts, ch 182, §18, 19; 2000 Acts, ch 1067, §13; 2002 Acts, ch 1162, §20, 21

Referred to in §234.39

### **237.16 Child advocacy board.**

1. The child advocacy board is created within the department of inspections and appeals. The state board consists of nine members appointed by the governor, subject to confirmation by the senate and directly responsible to the governor. One member shall be an active court appointed special advocate volunteer, one member shall be an active member of a local citizen foster care review board, and one member shall be a judicial branch employee or judicial officer appointed from nominees submitted by the judicial branch. The appointment is for a term of four years that begins and ends as provided in section 69.19. Vacancies on the state board shall be filled in the same manner as original appointments are made.

2. The members of the state board shall annually select a chairperson, vice chairperson, and other officers the members deem necessary. The members may be entitled to receive

reimbursement for actual and necessary expenses incurred in the performance of their duties, subject to available funding. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The state board shall meet at least twice a year.

3. An employee of the department or of the department of inspections and appeals, an employee of a child-placing agency, an employee of an agency with which the department contracts for services for children under foster care, a foster parent providing foster care, or an employee of the district court is not eligible to serve on the state board. However, the judicial branch employee or judicial officer appointed from nominees submitted by the judicial branch in accordance with subsection 1 shall be eligible to serve on the state board.

84 Acts, ch 1279, §27; 86 Acts, ch 1245, §549; 88 Acts, ch 1233, §3; 89 Acts, ch 296, §23; 92 Acts, ch 1141, §6; 92 Acts, ch 1242, §27; 2002 Acts, ch 1162, §22; 2002 Acts, 2nd Ex, ch 1003, §239, 262; 2006 Acts, ch 1049, §1

Referred to in §10A.104, 232.2, 232.13, 232.147, 232.149A, 235A.15, 237.15  
Confirmation, see §2.32

### **237.17 Foster care registry.**

The state board shall establish a registry of the placements of all children receiving foster care. The department shall notify the state board of each placement within five working days of the department's notification of the placement. The notification to the state board shall include information identifying the child receiving foster care and placement information for that child.

Within thirty days of the placement or two days after the dispositional hearing the agency responsible for the placement shall submit the case permanency plan to the state board. All subsequent revisions of the case permanency plan shall be submitted when the revisions are developed.

84 Acts, ch 1279, §28; 88 Acts, ch 1233, §4

### **237.18 Duties of state board.**

The state board shall:

1. Review the activities and actions of local boards.
2. Adopt rules pursuant to chapter 17A to:
  - a. Establish a recordkeeping system for the files of local review boards including individual case reviews.
  - b. Accumulate data and develop an annual report regarding children in foster care. The report shall include:
    - (1) Personal data regarding the total number of days of foster care provided and the characteristics of the children receiving foster care.
    - (2) The number of placements of children in foster care.
    - (3) The frequency and results of court reviews.
  - c. Evaluate the judicial and administrative data collected on foster care and disseminate the data to the governor, the supreme court, the chief judge of each judicial district, the department, and child-placing agencies.
  - d. Establish mandatory training programs for members of the state and local review boards including an initial training program and periodic in-service training programs. Training shall focus on, but not be limited to, the following:
    - (1) The history, philosophy and role of the juvenile court in the child protection system.
    - (2) Juvenile court procedures under the juvenile justice act.
    - (3) The foster care administrative review process of the department of human services.
    - (4) The role and procedures of the citizen's foster care review system.
    - (5) The Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272.
    - (6) The purpose of case permanency plans, and the type of information that will be available in those plans.
    - (7) The situations where the goals of either reuniting the child with the child's family or adoption would be appropriate.
    - (8) The legal processes that may lead to foster care placement.
    - (9) The types and number of children involved in those legal processes.

(10) The types of foster care placement available, with emphasis on the types and number of facilities available on a regional basis.

(11) The impact of specific physical or mental conditions of a child on the type of placement most appropriate and the kind of progress that should be expected in those situations.

e. Establish procedures for the local review board consistent with the provisions of section 237.20.

f. Establish grounds and procedures for removal of a local review board member.

g. Establish procedures and protocols for administering the court appointed special advocate program in accordance with subsection 7.

3. Assign the cases of children receiving foster care to the appropriate local boards.

4. Assist local boards in reviewing cases of children receiving foster care, as provided in section 237.20.

5. Employ appropriate staff in accordance with available funding. The board shall coordinate with the department of inspections and appeals regarding administrative functions of the board.

6. In conjunction with the legislative services agency and in consultation with the department of human services, supreme court, and private foster care providers, develop and maintain an evaluation program regarding citizen foster care review programming. The evaluation program shall be designed to evaluate the effectiveness of citizen reviews in improving case permanency planning and meeting case permanency planning goals, identify the amount of time children spend in foster care placements, and identify problem issues in the foster care system. The state board shall submit an annual evaluation report to the governor and the general assembly.

7. Administer the court appointed special advocate program, including but not limited to performance of all of the following:

a. Establish standards for the program, including but not limited to standards for selection and screening of volunteers, preservice training, ongoing education, and assignment and supervision of volunteers. Identifying information concerning a court appointed special advocate, other than the advocate's name, shall not be considered to be a public record under chapter 22.

b. Implement the court appointed special advocate program in additional areas of the state.

c. Promote adherence to the national guidelines for state and local court appointed special advocate programs.

d. Issue an annual report of the court appointed special advocate program for submission to the general assembly, the governor, and the supreme court.

e. Employ appropriate court appointed special advocate program staff in accordance with available funding. The state board shall coordinate with the department of inspections and appeals the performance of the administrative functions of the state board.

8. Receive gifts, grants, or donations made for any of the purposes of the state board's programs and disburse and administer the funds received in accordance with the terms of the donor and under the direction of program staff. The funds received shall be used according to any restrictions attached to the funds and any unrestricted funds shall be retained and applied to the applicable program budget for the next succeeding fiscal year.

9. Make recommendations to the general assembly, the department, to child-placing agencies, the governor, the supreme court, the chief judge of each judicial district, and to the judicial branch. The recommendations shall include but are not limited to identification of systemic problems in the foster care and the juvenile justice systems, specific proposals for improvements that assist the systems in being more cost-effective and better able to protect the best interests of children, and necessary changes relating to the data collected and the annual report made under subsection 2, paragraph "b".

84 Acts, ch 1279, §29; 88 Acts, ch 1233, §5 – 8; 92 Acts, ch 1141, §7; 92 Acts, ch 1242, §28; 98 Acts, ch 1047, §26; 2002 Acts, ch 1162, §23, 24; 2003 Acts, ch 35, §45, 49; 2009 Acts, ch 41, §98; 2009 Acts, ch 181, §113

**237.19 Local citizen foster care review boards.**

1. The state board shall establish local citizen foster care review boards to review cases of children receiving foster care. The department shall discontinue its foster care review process for those children reviewed by local boards as local boards are established and operating. The state board shall select five members and two alternate members to serve on each local board in consultation with the chief judge of each judicial district. The actual number of local boards needed and established shall be determined by the state board. The members of each local board shall consist of persons of the various social, economic, racial, and ethnic groups and various occupations of their district. A person employed by the state board or the department, the department of inspections and appeals, the district court, an employee of an agency with which the department contracts for services for children under foster care, a foster parent providing foster care, or a child-placing agency shall not serve on a local board. The state board shall provide the names of the members of the local boards to the department.

2. Vacancies on a local board shall be filled in the same manner as original appointments. The members shall not receive per diem but shall receive reimbursement for actual and necessary expenses incurred in their duties as members.

84 Acts, ch 1279, §30; 88 Acts, ch 1233, §9; 92 Acts, ch 1141, §8

Referred to in §232.13, 232.147, 232.149A, 235A.15, 237.15

Local boards to be established in additional judicial districts as moneys become available; 88 Acts, ch 1233, §21

**237.20 Local board duties.**

A local board shall, except in delinquency cases, do the following:

1. Review the case of each child receiving foster care assigned to the local board by the state board to determine whether satisfactory progress is being made toward the goals of the case permanency plan pursuant to section 237.22. The timing and frequency of a review of each case by a local board shall take into consideration the permanency goals, placement setting, and frequency of any court reviews of the case.

a. During each review, the agency responsible for the placement of or services provided to the child shall attend the review and the local board shall review all of the following:

(1) The past, current, and future status of the child and placement as shown through the case permanency plan and case progress reports submitted by the agency responsible for the placement of the child and other information the board may require.

(2) The efforts of the agency responsible for the placement of the child to locate and provide services to the biological or adoptive parents of the child.

(3) The efforts of the agency responsible for the placement of the child to facilitate the return of the child to the home or to find an alternative permanent placement other than foster care if reunion with the parent or previous custodian is not feasible. The agency shall report to the board all factors which either favor or mitigate against a decision or alternative with regard to these matters.

(4) Any problems, solutions, or alternatives which may be capable of investigation, or other matters with regard to the child which the agency responsible for the placement of the child or the board feels should be investigated with regard to the best interests of the state or of the child.

(5) The compliance of the interested parties with the decision-making rights and responsibilities contained in the family foster care or preadoptive care agreement applicable to a child.

b. The review shall include issues pertaining to the case permanency plan and shall not include issues that do not pertain to the case permanency plan. A person notified pursuant to subsection 4 shall either attend the review or submit testimony as requested by the local board or in accordance with a written protocol jointly developed by the state board and the department. Oral testimony may, upon the request of the testifier or upon motion of the local board, be given in a private setting when to do so would facilitate the presentation of evidence. Local board questions shall pertain to the permanency plan and shall not include issues that do not pertain to the permanency plan.

c. A person who gives oral testimony has the right to representation by counsel at the review.

d. An agency or individual providing services to the child shall submit testimony as requested by the board. The testimony may be written or oral, or may be a tape recorded telephone call. Written testimony from other interested parties may also be considered by the board in its review.

2. a. Submit to the appropriate court within fifteen days after the review under subsection 1, the findings and recommendations of the review. The local board shall ensure that the most recent report is available for a court hearing. The report to the court shall include information regarding the case permanency plan and the progress in attaining the permanency goals. The report shall not include issues that do not pertain to the case permanency plan. The findings and recommendations shall include the proposed date of the next review by the local board. The local board shall notify the persons specified in subsection 4 of the findings and recommendations.

b. If the person or agency responsible for services provided to the child disagrees with the review findings or recommendations, the person or agency shall respond during the review or submit a statement to the local board and the court within ten working days of receiving the local board's report. The response shall explain the reasons the person or agency disagrees with the board's findings or does not plan to implement the board's recommendations.

3. Encourage placement of the child in the most appropriate setting reflecting the provisions of chapter 232.

4. a. Notify the following persons at least ten days before the review of a case of a child receiving foster care:

(1) The person, court, or agency responsible for the child.

(2) The parent or parents of the child unless termination of parental rights has occurred pursuant to section 232.117.

(3) The foster care provider of the child.

(4) The child receiving foster care if the child is fourteen years of age or older. The child shall be informed of the review's purpose and procedure, and of the right to have a guardian ad litem present.

(5) The guardian ad litem of the foster child. An attorney appointed as guardian ad litem shall be eligible for compensation under section 232.141, subsection 2.

(6) The department.

(7) The county attorney.

(8) The person providing services to the child or the child's family.

b. The notice shall include a statement that the person notified has the right to representation by counsel at the review.

84 Acts, ch 1279, §31; 88 Acts, ch 1233, §10 – 15; 89 Acts, ch 64, §1 – 3; 92 Acts, ch 1141, §9 – 12; 97 Acts, ch 164, §7; 99 Acts, ch 135, §22; 2003 Acts, ch 151, §8; 2009 Acts, ch 41, §263; 2009 Acts, ch 181, §114

Referred to in §237.18

### **237.21 Confidentiality of records — penalty.**

1. The information and records of or provided to a local board, state board, or court appointed special advocate regarding a child receiving foster care and the child's family when relating to the foster care placement are not public records pursuant to chapter 22. The state board and local boards, with respect to hearings involving specific children receiving foster care and the child's family, are not subject to chapter 21.

2. Information and records relating to a child receiving foster care and to the child's family shall be provided to a local board or the state board by the department or child-care agency receiving purchase-of-service funds from the department upon request by either board. A court having jurisdiction of a child receiving foster care shall release the information and records the court deems necessary to determine the needs of the child, if the information and records are not obtainable elsewhere, to a local board or the state board upon request by either board. If confidential information and records are distributed to individual members in advance of a meeting of the state board or a local board, the information and records shall be clearly identified as confidential and the members shall take appropriate steps to prevent unauthorized disclosure.

3. Members of the state board and local boards, court appointed special advocates, and the employees of the department and the department of inspections and appeals are subject to standards of confidentiality pursuant to sections 217.30, 228.6, subsection 1, sections 235A.15, 600.16, and 600.16A. Members of the state and local boards, court appointed special advocates, and employees of the department and the department of inspections and appeals who disclose information or records of the board or department, other than as provided in subsection 2, are guilty of a simple misdemeanor.

84 Acts, ch 1279, §32; 87 Acts, ch 117, §2; 88 Acts, ch 1233, §16, 17; 89 Acts, ch 64, §4; 92 Acts, ch 1196, §1; 2005 Acts, ch 55, §3

Referred to in §135H.13

### **237.22 Case permanency plan.**

The agency responsible for the placement of the child shall create a case permanency plan. The plan shall include, but not be limited to:

1. Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.
2. Time frames to meet the stated permanency goal and short-term objectives.
3. The type and appropriateness of the placement and services to be provided to the child.
4. The care and services that will be provided to the child, biological parents, and foster parents.
5. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.
6. The efforts to place the child with a relative.
7. The rationale for an out-of-state placement, and the efforts to prevent such placement, if the child has been placed out of state.

84 Acts, ch 1279, §33; 88 Acts, ch 1233, §18, 19; 94 Acts, ch 1046, §7

Referred to in §237.20

**237.23** Repealed by 94 Acts, ch 1186, § 37, 38.

## CHAPTER 237A

### CHILD CARE FACILITIES

Referred to in §235A.15, 239B.24, 256C.3, 256I.8, 279.49

237A.1	Definitions.	237A.21	State child care advisory council. Repealed by 2010 Acts, ch 1031, §360, 361.
237A.2	Licensing of child care centers.		
237A.3	Child care homes.	237A.22	Duties of state child care advisory council and department. Repealed by 2010 Acts, ch 1031, §360, 361.
237A.3A	Child development homes.		
237A.3B	Smoking prohibited.	237A.23	Child care training and development system.
237A.4	Inspection and evaluation.	237A.24	Reserved.
237A.4A	Child care regulatory fee — child care facility fund.	237A.25	Consumer information.
237A.5	Personnel.	237A.26	Statewide resource and referral services.
237A.6	Consultative services.	237A.27	Crisis child care. Repealed by 2002 Acts, ch 1142, §29, 31.
237A.7	Confidential information.	237A.28	Child care credit fund. Repealed by 2009 Acts, ch 182, §138.
237A.8	Violations — actions against license or registration.	237A.29	Public funding of child care — sanctions.
237A.9	through 237A.11 Repealed by 75 Acts, ch 144, §11.	237A.30	Voluntary child care quality rating system.
237A.12	Rules.		
237A.13	State child care assistance.		
237A.14	through 237A.18 Repealed by 93 Acts, ch 54, §12.		
237A.19	Penalty.		
237A.20	Injunction.		

**237A.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “*Administrator*” means the administrator of the division of the department designated by the director to administer this chapter.
2. “*Child*” means either of the following:
  - a. A person twelve years of age or younger.
  - b. A person thirteen years of age or older but younger than nineteen years of age who has a developmental disability as defined under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Pub. L. No. 106-402, as codified in 42 U.S.C. § 15002(8).
3. “*Child care*” means the care, supervision, and guidance of a child by a person other than the child’s parent, guardian, or custodian for periods of less than twenty-four hours per day per child on a regular basis, but does not include care, supervision, and guidance of a child by any of the following:
  - a. An instructional program for children who are attending prekindergarten as defined by the state board of education under section 256.11 or a higher grade level and are at least four years of age administered by any of the following:
    - (1) A public or nonpublic school system accredited by the department of education or the state board of regents.
    - (2) A nonpublic school system which is not accredited by the department of education or the state board of regents.
  - b. A program provided under section 279.49 or 280.3A.
  - c. Any of the following church-related programs:
    - (1) An instructional program.
    - (2) A youth program other than a preschool, before or after school child care program, or other child care program.
    - (3) A program providing care to children on church premises while the children’s parents are attending church-related or church-sponsored activities on the church premises.
  - d. Short-term classes of less than two weeks’ duration held between school terms or during a break within a school term.
  - e. A child care center for sick children operated as part of a pediatrics unit in a hospital licensed by the department of inspections and appeals pursuant to chapter 135B.
  - f. A program operated not more than one day per week by volunteers which meets all of the following conditions:
    - (1) Not more than eleven children are served per volunteer.
    - (2) The program operates for less than four hours during any twenty-four-hour period.
    - (3) The program is provided at no cost to the children’s parent, guardian, or custodian.
  - g. A program administered by a political subdivision of the state which is primarily for recreational or social purposes and is limited to children who are five years of age or older and attending school.
  - h. An after school program continuously offered throughout the school year calendar to children who are at least five years of age and are enrolled in school, and attend the program intermittently or a summer-only program for such children. The program must be provided through a nominal membership fee or at no cost.
  - i. A special activity program which meets less than four hours per day for the sole purpose of the special activity. Special activity programs include but are not limited to music or dance classes, organized athletic or sports programs, recreational classes, scouting programs, and hobby or craft clubs or classes.
  - j. A nationally accredited camp.
  - k. A structured program for the purpose of providing therapeutic, rehabilitative, or supervisory services to children under any of the following:
    - (1) A purchase of service or managed care contract with the department.
    - (2) A contract approved by a governance board of a decategorization of child welfare and juvenile justice funding project created under section 232.188.
    - (3) An arrangement approved by a juvenile court order.
  - l. Care provided on-site to children of parents residing in an emergency, homeless, or domestic violence shelter.

m. A child care facility providing respite care to a licensed foster family home for a period of twenty-four hours or more to a child who is placed with that licensed foster family home.

n. A program offered to a child whose parent, guardian, or custodian is engaged solely in a recreational or social activity, remains immediately available and accessible on the physical premises on which the child's care is provided, and does not engage in employment while the care is provided. However, if the recreational or social activity is provided in a fitness center or on the premises of a nonprofit organization, the parent, guardian, or custodian of the child may be employed to teach or lead the activity.

4. "Child care center" or "center" means a facility providing child care or preschool services for seven or more children, except when the facility is registered as a child development home.

5. "Child care facility" or "facility" means a child care center, preschool, or a registered child development home.

6. "Child care home" means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under section 237A.3.

7. "Child development home" means a person or program registered under section 237A.3A that may provide child care to six or more children at any one time.

8. "Department" means the department of human services.

9. "Director" means the director of human services.

10. "Infant" means a child who is less than twenty-four months of age.

11. "Involvement with child care" means licensed or registered under this chapter, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, or providing child care as a child care home provider, or residing in a child care home.

12. "Licensed center" means a center issued a full or provisional license by the department under the provisions of this chapter or a center for which a license is being processed.

13. "Poverty level" means the poverty level defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

14. "Preschool" means a child care facility which provides to children ages three through five, for periods of time not exceeding three hours per day, programs designed to help the children to develop intellectual skills, social skills, and motor skills, and to extend their interest and understanding of the world about them.

15. "School" means kindergarten or a higher grade level.

16. "State child care advisory committee" means the state child care advisory committee established pursuant to section 135.173A.

[C75, 77, 79, 81, §237A.1; 82 Acts, ch 1213, §1 – 3]

83 Acts, ch 96, §157, 159; 87 Acts, ch 115, §34; 88 Acts, ch 1097, §1; 89 Acts, ch 206, §3; 90 Acts, ch 1005, §1 – 3; 91 Acts, ch 151, §1; 92 Acts, ch 1083, §1; 92 Acts, ch 1109, §1; 93 Acts, ch 54, §4; 93 Acts, ch 76, §8, 9; 94 Acts, ch 1129, §1; 94 Acts, ch 1175, §1; 97 Acts, ch 151, §1; 99 Acts, ch 192, §1; 2000 Acts, ch 1067, §14; 2001 Acts, ch 105, §3, 4; 2002 Acts, ch 1142, §3 – 8, 31; 2003 Acts, ch 81, §1; 2005 Acts, ch 95, §4; 2010 Acts, ch 1031, §355, 361; 2011 Acts, ch 129, §92, 156

Referred to in §135.119, 237.1, 237.3, 237A.2, 237A.13, 237A.26, 422.12C, 692A.101

### **237A.2 Licensing of child care centers.**

1. A person shall not establish or operate a child care center without obtaining a license under the provisions of this chapter. A center may operate for a specified period of time, to be established by rule of the department, if application for a license has been made. If the department denies an application for an initial license, notwithstanding section 17A.18, the applicant center shall not continue to provide child care pending the outcome of an evidentiary hearing. The department shall issue a license if it determines that all of the following conditions have been met:

a. An application for a license or a renewal has been filed with the administrator on forms provided by the department.

b. The center is maintained to comply with state health and fire laws.

c. The center is maintained to comply with rules adopted under section 237A.12.

2. a. A person denied a license under this section shall receive written notice of the denial stating the reasons for denial and shall be provided with an opportunity for an evidentiary hearing.

b. A license issued under this chapter shall be valid for twenty-four months from the date of issuance. A license shall remain valid unless it is revoked or suspended in accordance with the provisions of section 237A.8 or is reduced to a provisional license under subsection 3. The department may inspect a licensed center at any time. A record of the license shall be kept by the department.

c. The license shall be posted in a conspicuous place in the center and shall state the particular premises in which child care may be offered and the number of individuals who may be received for care at any one time. A greater number of children than is authorized by the license shall not be kept in the center at any one time.

3. The administrator may reduce a previously issued license to a provisional license or issue a provisional license for a period of time not to exceed one year if the center does not meet standards required under this section. A provisional license shall not be renewable in regard to the same standards for more than two consecutive years. A provisional license shall be posted in a conspicuous place in the center as provided in this section. If written plans to bring the center up to standards, giving specific dates for completion of work, are submitted to and approved by the department, the provisional license shall be renewable as provided in this subsection.

4. A program which is not a child care center by reason of the exceptions to the definition of child care in section 237A.1, subsection 3, but which provides care, supervision, and guidance to a child may be issued a license if the program complies with all the provisions of this chapter.

5. If the department has denied or revoked a license because the applicant or person has continually or repeatedly failed to operate a licensed center in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not own or operate a child care center for a period of twelve months from the date the license is denied or revoked. The department shall not act on an application for a license submitted by the applicant or person during the twelve-month period. The applicant or person shall be prohibited from involvement with child care unless the involvement is specifically permitted by the department.

[C75, §237A.2, 237A.3; C77, 79, 81, §237A.2]

90 Acts, ch 1005, §4; 91 Acts, ch 232, §12; 92 Acts, ch 1163, §54; 99 Acts, ch 192, §2; 2002 Acts, ch 1142, §9, 10, 31; 2003 Acts, ch 44, §54; 2003 Acts, ch 81, §2

### **237A.3 Child care homes.**

1. A person or program providing child care to five children or fewer at any one time is a child care home provider and is not required to register under section 237A.3A as a child development home. However, the person or program may register as a child development home.

2. If a person or program has been prohibited by the department from involvement with child care, the person or program shall not provide child care as a child care home provider and is subject to penalty under section 237A.19 or injunction under section 237A.20 for doing so.

3. The location at which the child care is provided shall be a single-family residence that is owned, rented, or leased by the person or program providing the child care. For purposes of this subsection, a “*single-family residence*” includes an apartment, condominium, townhouse, or other individual unit within a multiple unit residential dwelling, but does not include a commercial or industrial building that is primarily used for purposes other than a residence.

[C75, 77, 79, 81, §237A.3; 82 Acts, ch 1016, §3, ch 1213, §4]

90 Acts, ch 1005, §5; 91 Acts, ch 151, §2; 91 Acts, ch 232, §13; 91 Acts, ch 267, §142; 92 Acts, ch 1163, §55; 93 Acts, ch 76, §10, 11; 94 Acts, ch 1129, §2, 3; 97 Acts, ch 151, §2; 99 Acts, ch

192, §3; 2001 Acts, ch 135, §3; 2002 Acts, ch 1142, §11, 31; 2003 Acts, ch 81, §3; 2008 Acts, ch 1187, §119

Referred to in §237A.1, 237A.19

### **237A.3A Child development homes.**

#### **1. Registration.**

a. A person shall not establish or operate a child development home unless the person obtains a certificate of registration. The department shall issue a certificate of registration upon receipt of a statement from the person or upon completion of an inspection conducted by the department or a designee of the department verifying that the person complies with applicable rules adopted by the department pursuant to this section and section 237A.12.

b. The certificate of registration shall be posted in a conspicuous place in the child development home and shall state the name of the registrant, the registration category of the child development home, the maximum number of children who may be present for child care at any one time, and the address of the child development home. In addition, the certificate shall include a checklist of registration compliances.

c. The registration process for a child development home shall be repeated every twenty-four months as provided by rule.

d. A person who holds a child foster care license under chapter 237 shall register as a child development home provider in order to provide child care.

2. *Revocation or denial of registration.* If the department has denied or revoked a certificate of registration because a person has continually or repeatedly failed to operate a registered or licensed child care facility in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not operate or establish a registered child development home for a period of twelve months from the date the registration or license was denied or revoked. The department shall not act on an application for registration submitted by the person during the twelve-month period. The applicant or person shall be prohibited from involvement with child care unless the involvement is specifically permitted by the department.

#### **3. Rules.**

a. Three categories of standards shall be applicable to child development homes. The initial designations of the categories, which may be revised by the department, shall be "A", "B", and "C", as ranked from less stringent standards and capacity to more stringent standards and capacity. The "C" registration category standards shall require the highest level of provider qualifications and allow the greatest capacity of the three categories. The department of human services, in consultation with the Iowa department of public health, shall adopt rules applying standards to each category specifying provider qualifications and training, health and safety requirements, capacity, amount of space available per child, and other minimum requirements. The capacity requirements shall take into consideration the provider's own children, children who have a mild illness, children receiving part-time child care, and children served as a sibling group in overnight care.

b. The rules shall allow a child development home to be registered in a particular category for which the provider is qualified even though the amount of space required to be available for the maximum number of children authorized for that category exceeds the actual amount of space available in that home. However, the total number of children authorized for the child development home at that category of registration shall be limited by the amount of space available per child.

c. In consultation with the state fire marshal, the department shall adopt rules relating to the provision of fire extinguishers, smoke detectors, and two exits accessible to children in a child development home.

d. The rules shall require a child development home to be located in a single-family residence that is owned, rented, or leased by the person or, for dual registrations, at least one of the persons who is named on the child development home's certificate of registration. For purposes of this paragraph, a "single-family residence" includes an apartment, condominium, townhouse, or other individual unit within a multiple unit residential dwelling, but does not

include a commercial or industrial building that is primarily used for purposes other than a residence.

e. If the department adopts rules establishing a limitation on the number of hours for which substitute care may be utilized by the provider, such a limitation shall not apply to or incorporate substitute care utilized when the provider is engaged in jury duty or in official duties connected with the provider's membership on a state board, committee, or other policy-related body.

4. *Number of children.*

a. In determining the number of children present for child care at any one time in a child development home, each child present in the child development home shall be considered as being provided child care unless the child is described by one of the following exceptions:

(1) The child's parent, guardian, or custodian operates or established the child development home and the child is attending school or the child is provided child care full-time on a regular basis by another person.

(2) The child has been present in the child development home for more than seventy-two consecutive hours and the child is attending school or the child is provided child care full-time on a regular basis by another person.

b. For purposes of determining the number of children present for child care in a child development home, a child receiving foster care from a child development home provider shall be considered to be the child of the provider.

97 Acts, ch 151, §3; 98 Acts, ch 1127, §1, 2, 6; 99 Acts, ch 192, §4 – 11, 37; 2001 Acts, ch 135, §4; 2002 Acts, ch 1142, §12, 31; 2003 Acts, ch 81, §4; 2008 Acts, ch 1084, §12; 2008 Acts, ch 1187, §120; 2010 Acts, ch 1192, §81

Referred to in §237A.1, 237A.3, 237A.19, 237A.20

Legislative intent to enact required licensure of child development homes commencing on July 1, 2013, with certain exceptions; transition activities to begin on July 1, 2009, for implementation of intended licensure requirement; department is to develop and submit a plan by December 15, 2010, for creating sustainable funding sources to support home-based child care providers in meeting intended licensing requirement; 2009 Acts, ch 179, §210

**237A.3B Smoking prohibited.**

Smoking, as defined in section 142D.2, shall not be permitted in a child care facility or child care home.

2008 Acts, ch 1084, §13

**237A.4 Inspection and evaluation.**

The department shall make periodic inspections of licensed centers to ensure compliance with licensing requirements provided in this chapter, and the local boards of health may make periodic inspections of licensed centers to ensure compliance with health-related licensing requirements provided in this chapter. The department may inspect records maintained by a licensed center and may inquire into matters concerning these centers and the persons in charge. The department shall require that the center be inspected by the state fire marshal or a designee for compliance with rules relating to fire safety before a license is granted or renewed. The department or a designee may periodically visit registered child development homes for the purpose of evaluation of an inquiry into matters concerning compliance with rules adopted under section 237A.12. Evaluation of child development homes under this section may include consultative services provided pursuant to section 237A.6.

[C75, 77, 79, 81, §237A.4]

85 Acts, ch 173, §19; 99 Acts, ch 192, §12; 2002 Acts, ch 1142, §13, 31

**237A.4A Child care regulatory fee — child care facility fund.**

1. a. The department shall implement a regulatory fee for licensure of child care facilities. The fee requirements shall provide for tiered amounts based upon a child care facility's capacity and a child development home's regulatory category at the time of licensure.

b. The regulatory fee for centers shall not exceed one hundred fifty dollars.

c. The regulatory fee for category "A" and "B" child development homes shall not exceed one hundred fifty dollars and the fee for category "C" child development homes shall not exceed one hundred eighty-seven dollars.

d. The department shall adopt rules for implementation of the fee.

2. Regulatory fees collected shall augment existing funding for regulation of child care facilities in order to phase in annual inspections of child development homes and improve inspections of child care centers. The department shall not supplant existing funding for regulation of child care with funding derived from the regulatory fee. The department shall seek to meet the following target percentages of the total number of child development homes in the state inspected annually in phasing in the annual inspection of all child development homes:

- a. For the fiscal year beginning July 1, 2009, twenty percent.
- b. For the fiscal year beginning July 1, 2010, forty percent.
- c. For the fiscal year beginning July 1, 2011, sixty percent.
- d. For the fiscal year beginning July 1, 2012, eighty percent.
- e. For the fiscal year beginning July 1, 2013, and succeeding fiscal years, one hundred percent.

3. a. In phasing in the inspection of child development homes, the department shall give priority to child development homes that have recently become licensed and have paid the regulatory fee implemented pursuant to this section.

b. The results of an inspection of a child care facility shall be made publicly available on the internet page or site implemented by the department in accordance with section 237A.25 and through other means.

4. The target time frame for the department's issuance of the report concerning an inspection or other regulatory visit to a child care facility is sixty calendar days.

5. A child care facility fund is created in the state treasury under the authority of the department. The fund is separate from the general fund of the state. Regulatory fees collected under subsection 1 shall be credited to the fund. Moneys credited to the fund shall not revert to any other fund and are not subject to transfer except as specifically provided by law. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund. Moneys in the fund are annually appropriated to the department to be used for staffing dedicated to monitoring and regulation of child care facilities, contracting, related technology costs, record checks, grants and fee waivers, and other expenses for inspection and regulation of child care facilities. Any full-time equivalent positions paid for out of the fund shall be in addition to other such positions authorized for the department.

2009 Acts, ch 179, §208

#### **237A.5 Personnel.**

1. All personnel in licensed or registered facilities shall have good health as evidenced by a report following a preemployment physical examination taken within six months prior to beginning employment. The examination shall include communicable disease tests by a licensed physician as defined in section 135C.1 and shall be repeated every three years after initial employment. Controlled medical conditions which would not affect the performance of the employee in the capacity employed shall not prohibit employment.

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

(1) "*Person subject to a record check*" means a person who is described by any of the following:

(a) The person is being considered for licensure or registration or is registered or licensed under this chapter.

(b) The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone or is employed with such responsibilities.

(c) The person will reside or resides in a child care facility.

(d) The person has applied for or receives public funding for providing child care.

(e) The person will reside or resides in a child care home that is not registered under this chapter but that receives public funding for providing child care.

(2) "*Person subject to an evaluation*" means a person subject to a record check whose record indicates that the person has committed a transgression.

(3) "*Transgression*" means the existence of any of the following in a person's record:

(a) Conviction of a crime.  
(b) A record of having committed founded child or dependent adult abuse.  
(c) Listing in the sex offender registry under chapter 692A.  
(d) A record of having committed a public or civil offense.  
(e) The department has revoked a child care facility registration or license due to the person's continued or repeated failure to operate the child care facility in compliance with this chapter and rules adopted pursuant to this chapter.

b. If an individual person subject to a record check is being considered for employment by a child care facility or child care home provider, in lieu of requesting a record check in this state to be conducted by the department under paragraph "c", the child care facility or child care home may access the single contact repository established pursuant to section 135C.33 as necessary to conduct a criminal and child abuse record check of the individual in this state. A copy of the results of the record check conducted through the single contact repository shall also be provided to the department. If the record check indicates the individual is a person subject to an evaluation, the child care facility or child care home may request that the department perform an evaluation as provided in this subsection. Otherwise, the individual shall not be employed by the child care facility or child care home.

c. Unless a record check has already been conducted in accordance with paragraph "b", the department shall conduct a criminal and child abuse record check in this state for a person who is subject to a record check and may conduct such a check in other states. In addition, the department may conduct a dependent adult abuse, sex offender registry, or other public or civil offense record check in this state or in other states for a person who is subject to a record check.

d. (1) For a person subject to a record check, in addition to any other record check conducted pursuant to this subsection, the person's fingerprints shall be provided to the department of public safety for submission through the state criminal history repository to the United States department of justice, federal bureau of investigation for a national criminal history check. The department may adopt rules specifying criteria in the public interest for requiring the national criminal history check of a person to be repeated.

(2) Except as otherwise provided by law, the cost of a national criminal history check conducted in accordance with subparagraph (1) and the state record checks conducted in accordance with paragraph "c" that are conducted in connection with a person's involvement with a child care center are not the responsibility of the department. The department is responsible for the cost of such checks conducted in connection with a person's involvement with a child development home or child care home.

(3) If record checks under paragraph "b" or "c" have been conducted on a person subject to a record check and the results do not warrant prohibition of the person's involvement with child care or otherwise present protective concerns, the person may be involved with child care on a provisional basis until the record check under subparagraph (1) has been completed.

e. (1) If a record check performed pursuant to this subsection identifies an individual as a person subject to an evaluation, an evaluation shall be performed to determine whether prohibition of the person's involvement with child care is warranted. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

(2) Prior to performing an evaluation, the department shall notify the affected person, licensee, registrant, or child care home applying for or receiving public funding for providing child care, that an evaluation will be conducted to determine whether prohibition of the person's involvement with child care is warranted.

f. If a record check performed in accordance with paragraph "b" or "c" identifies that an individual is a person subject to an evaluation, the department shall perform the evaluation in accordance with this subsection, even if the application which made the person subject to the record check is withdrawn or the circumstances which made the person subject to the record check are no longer applicable. If the department's evaluation determines that prohibition of the person's involvement with child care is warranted, the provisions of this subsection regarding such a prohibition shall apply.

g. A person subject to a record check who is or was employed by a child care facility or child care home provider and is hired by another child care facility or child care home

provider shall be subject to a record check in accordance with this subsection. However, if the person was subject to an evaluation because of a transgression in the person's record and the evaluation determined that the transgression did not warrant prohibition of the person's involvement with child care and the latest record checks do not indicate there is a transgression that was committed subsequent to that evaluation, the person may commence employment with the other child care facility or provider in accordance with the department's evaluation and an exemption from any requirements for reevaluation of the latest record checks is authorized. Authorization of an exemption under this paragraph "g" from requirements for reevaluation of the latest record checks by the department is subject to all of the following provisions:

(1) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

(2) Any restrictions placed on the person's employment in the previous evaluation by the department shall remain applicable in the person's subsequent employment.

(3) The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, the record checks shall be reevaluated.

(4) Although an exemption under this paragraph "g" may be authorized, the subsequent employer may instead request a reevaluation of the record checks and may employ the person while the reevaluation is being performed.

*h.* In an evaluation, the department shall consider the nature and seriousness of the transgression in relation to the position sought or held, the time elapsed since the commission of the transgression, the circumstances under which the transgression was committed, the degree of rehabilitation, the likelihood that the person will commit the transgression again, and the number of transgressions committed by the person involved. In addition to record check information, the department may utilize information from the department's case records in performing the evaluation. The department may permit a person who is evaluated to maintain involvement with child care, if the person complies with the department's conditions and corrective action plan relating to the person's involvement with child care. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

*i.* (1) A person subject to an evaluation shall be prohibited from involvement with child care if the person has a record of founded child or dependent adult abuse that was determined to be sexual abuse, the person is listed on the sex offender registry under chapter 692A, or the person has committed any of the following felony-level offenses:

(a) Child endangerment or neglect or abandonment of a dependent person.

(b) Domestic abuse.

(c) A crime against a child including but not limited to sexual exploitation of a minor.

(d) A forcible felony.

(2) If, within five years prior to the date of application for registration or licensure under this chapter, for employment or residence in a child care facility or child care home, or for receipt of public funding for providing child care, a person subject to an evaluation has been convicted of a controlled substance offense under chapter 124 or has been found to have committed physical abuse, the person shall be prohibited from involvement with child care for a period of five years from the date of conviction or founded abuse. After the five-year prohibition period, the person may submit an application for registration or licensure under this chapter, or to receive public funding for providing child care or may request an evaluation, and the department shall perform an evaluation and, based upon the criteria in paragraph "h", shall determine whether prohibition of the person's involvement with child care continues to be warranted.

*j.* If the department determines, through an evaluation of a person's transgression, that the person's prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care. The department may identify a period of time

after which the person may request that another record check and evaluation be performed. A person who continues involvement with child care in violation of this subsection is subject to penalty under section 237A.19 or injunction under section 237A.20.

k. If it has been determined that a child receiving child care from a child care facility or a child care home is the victim of founded child abuse committed by an employee, license or registration holder, child care home provider, or resident of the child care facility or child care home for which a report is placed in the central registry pursuant to section 232.71D, the administrator shall provide notification at the time of the determination to the parents, guardians, and custodians of children receiving care from the child care facility or child care home. A notification made under this paragraph shall identify the type of abuse but shall not identify the victim or perpetrator or circumstances of the founded abuse.

3. On or after July 1, 1994, a licensee or registrant shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

4. On or after July 1, 1994, a licensee or registrant shall include the following inquiry in an application for employment:

Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?

5. A person who serves as an unpaid volunteer in a child care facility shall not be required to complete training as a mandatory reporter of child abuse under section 232.69 or under any other requirement.

[C75, 77, 79, 81, §237A.5]

83 Acts, ch 153, §5; 85 Acts, ch 184, §1; 87 Acts, ch 153, §17; 88 Acts, ch 1134, §58; 90 Acts, ch 1221, §8; 91 Acts, ch 138, §8; 94 Acts, ch 1130, §15; 97 Acts, ch 45, §1; 98 Acts, ch 1127, §3, 6; 99 Acts, ch 192, §13; 2003 Acts, ch 81, §5, 6; 2006 Acts, ch 1098, §1; 2006 Acts, ch 1184, §108 – 111; 2008 Acts, ch 1187, §121; 2009 Acts, ch 41, §99; 2009 Acts, ch 179, §209; 2010 Acts, ch 1042, §1; 2012 Acts, ch 1074, §2

Referred to in §237A.19

Strike of subsection 2, paragraph d, subparagraph (4) pursuant to its own terms takes effect July 1, 2013; 2009 Acts, ch 179, §209  
Subsection 2, paragraph d, subparagraph (4) stricken

### **237A.6 Consultative services.**

The department shall, and the director of public health may provide consultative services to a person applying for a license or registration, or licensed or registered by the administrator under this chapter.

[C75, 77, 79, 81, §237A.6]

Referred to in §237A.4

### **237A.7 Confidential information.**

Anyone who acquires through the administration of this chapter information relative to an individual in a child care facility or to a relative of the individual shall not, directly or indirectly, disclose the information except upon inquiry before a court of law or with the written consent of the individual or, in the case of a child, the written consent of the parent or guardian or as otherwise specifically required or allowed by law.

This section shall not prohibit the disclosure of information relative to the structure and operation of a facility nor shall it prohibit the statistical analysis by duly authorized persons of data collected by virtue of this chapter, or the publication of the results of the analysis in a manner which does not disclose information identifying individual persons.

[C75, 77, 79, 81, §237A.7]

99 Acts, ch 192, §14

### **237A.8 Violations — actions against license or registration.**

The administrator, after notice and opportunity for an evidentiary hearing before the department of inspections and appeals, may suspend or revoke a license or certificate of registration issued under this chapter or may reduce a license to a provisional license if

the person to whom a license or certificate is issued violates a provision of this chapter or if the person makes false reports regarding the operation of the child care facility to the administrator or a designee of the administrator. The administrator shall notify the parent, guardian, or legal custodian of each child for whom the person provides child care at the time of action to suspend or revoke a license or certificate of registration.

[C75, 77, 79, 81, §237A.8]

83 Acts, ch 153, §6; 90 Acts, ch 1204, §54; 99 Acts, ch 192, §15

Referred to in §237A.2

**237A.9 through 237A.11** Repealed by 75 Acts, ch 144, § 11.

**237A.12 Rules.**

1. Subject to the provisions of chapter 17A, the department shall adopt rules setting minimum standards to provide quality child care in the operation and maintenance of child care centers and registered child development homes, relating to all of the following:

a. The number and qualifications of personnel necessary to assure the health, safety, and welfare of children in the facilities. Rules for facilities which are preschools shall be drawn so that any staff-to-children ratios which relate to the age of the children enrolled shall be based on the age of the majority of the children served by a particular class rather than on the age of the youngest child served.

b. Physical facilities.

c. The adequacy of activity programs and food services available to the children. The department shall not restrict the use of or apply nutritional standards to a lunch or other meal which is brought to the center, child development home, or child care home by a school-age child for the child's consumption.

d. Policies established by the center for parental participation.

e. Programs for education and in-service training of staff.

f. Records kept by the facilities.

g. Administration.

h. Health, safety, and medical policies for children.

2. Rules adopted by the state fire marshal for buildings, other than school buildings, used as child care centers as an adjunct to the primary purpose of the building shall take into consideration that children are received for temporary care only and shall not differ from rules adopted for these buildings when they are used by groups of persons congregating from time to time in the primary use and occupancy of the buildings. However, the rules may require a fire-rated separation from the remaining portion of the building if the fire marshal determines that the separation is necessary for the protection of children from a specific flammable hazard.

3. Rules relating to fire safety for child care centers shall be adopted under this chapter by the state fire marshal in consultation with the department. Rules adopted by the state fire marshal for a building which is owned or leased by a school district or accredited nonpublic school and used as a child care facility shall not differ from standards adopted by the state fire marshal for school buildings under chapter 100. Rules relating to sanitation shall be adopted by the department in consultation with the director of public health. All rules shall be developed in consultation with the state child care advisory committee. The state fire marshal shall inspect the facilities.

4. If a building is owned or leased by a school district or accredited nonpublic school and complies with standards adopted by the state fire marshal for school buildings under chapter 100, the building is considered appropriate for use by a child care facility. The rules adopted by the administrator under this section shall not require the facility to comply with building requirements which differ from requirements for use of the building as a school.

5. Standards and requirements set by a city or county for a building which is owned or leased by a school district or accredited nonpublic school and used as a child care facility

shall take into consideration that children are received for temporary care only and shall not differ from standards and requirements set for use of the building as a school.

[C75, 77, 79, 81, §237A.12]

85 Acts, ch 173, §20; 91 Acts, ch 151, §3; 92 Acts, ch 1083, §2; 94 Acts, ch 1129, §4, 5; 94 Acts, ch 1175, §2; 99 Acts, ch 192, §16; 2002 Acts, ch 1142, §14 – 16, 31; 2010 Acts, ch 1031, §356, 361

Referred to in §237A.2, 237A.3A, 237A.4

### **237A.13 State child care assistance.**

1. A state child care assistance program is established in the department to assist children in families who meet eligibility guidelines and are described by any of the following circumstances:

a. The child's parent, guardian, or custodian is participating in approved academic or vocational training.

b. The child's parent, guardian, or custodian is seeking employment. Eligibility for assistance while seeking employment shall be limited to thirty days during a twelve-month period.

c. The child's parent, guardian, or custodian is employed and the family income meets income requirements.

d. The child's parent, guardian, or custodian is absent for a limited period of time due to hospitalization, physical illness, or mental illness, or is present but is unable to care for the child for a limited period as verified by a physician.

e. The child needs protective services to prevent or alleviate child abuse or neglect.

f. The person's family circumstances are described in paragraph "a", "b", "c", or "d", the person is thirteen years of age or older but younger than sixteen years of age, and state child care assistance is approved for the person by the director or the director's designee based on a request for an exception to policy made by the person's parent, guardian, or custodian because special family circumstances exist that would place the safety and well-being of the person at risk if the person is left home alone. The definition of child in section 237A.1 does not apply to child care supported by state child care assistance approved pursuant to this lettered paragraph.

2. Services under the program may be provided in a licensed child care center, a child development home, the home of a relative, the child's own home, a child care home, or in a facility exempt from licensing or registration.

3. The department shall set reimbursement rates as authorized by appropriations enacted for payment of the reimbursements. The department shall conduct a statewide reimbursement rate survey to compile information on each county and the survey shall be conducted at least every two years. The department shall set rates in a manner so as to provide incentives for an unregistered provider to become registered.

4. The department's billing and payment provisions for the program shall allow providers to elect either biweekly or monthly billing and payment for child care provided under the program. The department shall remit payment to a provider within ten business days of receiving a bill or claim for services provided. However, if the department determines that a bill has an error or omission, the department shall notify the provider of the error or omission and identify any correction needed before issuance of payment to the provider. The department shall provide the notice within five business days of receiving the billing from the provider and shall remit payment to the provider within ten business days of receiving the corrected billing.

5. On or before July 1, 2007, the department shall implement a system for making program payments by electronic funds transfer or other electronic means.

6. The department shall not apply waiting list requirements to any of the following persons:

a. Persons deemed to be eligible for benefits under the state child care assistance program in accordance with section 239B.24.

b. A family that is receiving state child care assistance at the time a child is born into the

family. The newborn child shall be approved for services when the family reports the birth of the child.

c. Children who need protective services to prevent or alleviate child abuse or neglect.

d. A child in a family that is eligible for state child care assistance and that receives a state adoption subsidy for the child.

7. Based upon the availability of the funding appropriated for state child care assistance for a fiscal year, the department shall establish waiting lists for state child care assistance in descending order of prioritization as follows:

a. Families with an income at or below one hundred percent of the federal poverty level whose members are employed at least twenty-eight hours per week, and parents with a family income at or below one hundred percent of the federal poverty level who are under the age of twenty-one years and are participating in an educational program leading to a high school diploma or the equivalent.

b. Parents with a family income at or below one hundred percent of the federal poverty level who are under the age of twenty-one years and are participating, at a satisfactory level, in an approved training program or in an educational program.

c. Families with an income of more than one hundred percent but not more than one hundred forty-five percent of the federal poverty level whose members are employed at least twenty-eight hours per week.

d. Families with an income at or below two hundred percent of the federal poverty level whose members are employed at least twenty-eight hours per week with a special needs child as a member of the family.

8. Nothing in this section shall be construed as or is intended as, or shall imply, a grant of entitlement for services to persons who are eligible for assistance due to an income level or other eligibility circumstance addressed in this section. Any state obligation to provide services pursuant to this section is limited to the extent of the funds appropriated for the purposes of state child care assistance.

2000 Acts, ch 1067, §15; 2002 Acts, ch 1142, §17, 18, 31; 2003 Acts, ch 81, §7, 8; 2006 Acts, ch 1016, §13; 2006 Acts, ch 1099, §1; 2007 Acts, ch 172, §1; 2007 Acts, ch 215, §99; 2008 Acts, ch 1187, §122

Referred to in §234.47, 239B.24

**237A.14 through 237A.18** Repealed by 93 Acts, ch 54, § 12.

#### **237A.19 Penalty.**

1. A person who establishes, conducts, manages, or operates a center without a license commits a serious misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, shall be considered a separate offense.

2. If registration is required under section 237A.3A, a person who establishes, conducts, manages, or operates a child development home without registering or a person who operates a child development home contrary to section 237A.5, commits a simple misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, is a separate offense. A single charge alleging continuing violation may be made in lieu of filing charges for each day of violation.

3. A person who establishes, conducts, manages, or operates a child care home in violation of section 237A.3, subsection 2, or a person or program that has been prohibited by the department from involvement with child care but continues that involvement commits a simple misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, is a separate offense. A single charge alleging continuing violation may be made in lieu of filing charges for each day of violation.

[C77, 79, 81, §237A.19; 82 Acts, ch 1213, §5]

85 Acts, ch 184, §2; 99 Acts, ch 192, §17; 2002 Acts, ch 1142, §19, 31; 2003 Acts, ch 81, §9

Referred to in §237A.3, 237A.5

**237A.20 Injunction.**

A person who establishes, conducts, manages, or operates a center without a license or a child development home without a certificate of registration, if registration is required under section 237A.3A, may be restrained by temporary or permanent injunction. A person who has been convicted of a crime against a person, a person with a record of founded child abuse, or a person who has been prohibited by the department from involvement with child care may be restrained by temporary or permanent injunction from providing unregistered, registered, or licensed child care or from other involvement with child care. The action may be instituted by the state, the county attorney, a political subdivision of the state, or an interested person.

[C77, 79, 81, §237A.20]

83 Acts, ch 153, §7; 90 Acts, ch 1248, §2; 99 Acts, ch 192, §18; 2002 Acts, ch 1142, §20, 31; 2003 Acts, ch 81, §10

Referred to in §237A.3, 237A.5

**237A.21 State child care advisory council.** Repealed by 2010 Acts, ch 1031, § 360, 361.

**237A.22 Duties of state child care advisory council and department.** Repealed by 2010 Acts, ch 1031, § 360, 361.

**237A.23 Child care training and development system.**

1. The departments of education, public health, and human services shall jointly establish a leadership council for child care training and development in this state. In addition to representatives of the three departments, the leadership council shall include but is not limited to representatives of community colleges, institutions of higher learning under the state board of regents and private institutions of higher education, the Iowa cooperative extension service in agriculture and home economics, and child care resource and referral service agencies.

2. The charge of the council is to develop a proposal for a statewide child care training and development system and to monitor implementation of the proposal. The purpose of the system is to improve support for persons providing or administering child care services. The system shall be developed in a manner so as to incorporate and enhance existing efforts to provide this support.

3. The proposal for the child care training and development system shall include all of the following elements:

a. Identification of core competencies for providers and administrators that may be incorporated into professional standards.

b. Establishing levels for professional development.

c. Implementing a professional experience registry to track the training, educational attainment, and experience of providers and administrators.

d. Implementing a unified training and technical assistance approach for identifying needs, ensuring equal access, and establishing minimum requirements for training and trainers.

e. Establishing an articulation process to permit recognition of training provided by entities that do not grant academic credit by entities that do grant academic credit.

f. Implementing a financing structure to support the training registry.

g. Identifying other means for enhancing the training and development of persons who provide and administer child care.

4. The proposal shall include an implementation plan and budget provisions and may provide for implementation through a contract with a private nonprofit agency.

99 Acts, ch 192, §21, 38; 2000 Acts, ch 1058, §26

**237A.24** Reserved.

**237A.25 Consumer information.**

1. The department shall develop consumer information material to assist parents in selecting a child care provider. In developing the material, the department shall consult

with department of human services staff, department of education staff, the state child care advisory committee, the Iowa empowerment board, and child care resource and referral services. In addition, the department may consult with other entities at the local, state, and national level.

2. The consumer information material developed by the department for parents and other consumers of child care services shall include but is not limited to all of the following:

a. A pamphlet or other printed material containing consumer-oriented information on locating a quality child care provider.

b. Information explaining important considerations a consumer should take into account in selecting a licensed or registered child care provider.

c. Information explaining how a consumer can identify quality services, including what questions to ask of providers and what a consumer might expect or demand to know before selecting a provider.

d. An explanation of the applicable laws and regulations written in layperson's terms.

e. An explanation of what it means for a provider to be licensed, registered, or unregistered.

f. An explanation of the information considered in registry and record background checks.

g. Other information deemed relevant to consumers.

3. The department shall implement and publicize an internet page or site that provides all of the following:

a. The written information developed pursuant to subsections 1 and 2.

b. Regular informational updates, including when a child care provider was last subject to a state quality review or inspection and, based upon a final score or review, the results indicating whether the provider passed or failed the review or inspection.

c. Capability for a consumer to be able to access information concerning child care providers, such as informational updates, identification of provider location, name, and capacity, and identification of providers participating in the state child care assistance program and those participating in the child care food program, by sorting the information or employing other means that provide the information in a manner that is useful to the consumer. Information regarding provider location shall identify providers located in the vicinity of an address selected by a consumer and provide contact information without listing the specific addresses of the providers.

d. Other information deemed appropriate by the department.

2003 Acts, 1st Ex, ch 2, §18, 209; 2010 Acts, ch 1031, §357, 361

Referred to in §237A.4A, 237A.30

### **237A.26 Statewide resource and referral services.**

1. The department shall administer the funding for a statewide grant program for child care resource and referral services. Grants shall only be awarded to community-based nonprofit incorporated agencies and public agencies. Grants shall be awarded to facilitate the establishment of regional resource and referral agencies throughout the state, based upon the distribution of the child population in the state.

2. The department shall provide oversight of and annually evaluate an agency which is awarded a grant to provide resource and referral services to a region.

3. An agency which receives a grant to provide resource and referral services shall perform both of the following functions:

a. Organize assistance to child care homes and child care facilities utilizing training levels based upon the child care providers' degrees of experience and interest.

b. Operate in partnership with both public and private interests and coordinate resource and referral services with existing community services.

4. An agency may be required by the department to match the grant with financial resources of not more than twenty-five percent of the amount of the grant. The financial resources may include a private donation, an in-kind contribution, or a public funding source other than a separate state grant for child care service improvement.

5. An agency, to be eligible to receive a grant to provide resource and referral services, must have a board of directors if the agency is an incorporated nonprofit agency or must have

an advisory board if the agency is a public agency, to oversee the provision of resource and referral services. The board shall include providers, consumers, and other persons interested in the provision or delivery of child care services.

6. An agency which receives a child care resource and referral grant may be awarded funding to provide various child care-related services, which may include but are not limited to any of the following services:

a. Assist families in selecting quality child care. The agency must provide referrals to registered and licensed child care facilities, and to persons providing care, supervision, and guidance of a child which is not defined as child care under section 237A.1 and may provide referrals to unregistered providers.

b. Assist child care providers in adopting appropriate program and business practices to provide quality child care services.

c. Provide information to the public regarding the availability of child care services in the communities within the agency's region.

d. Actively encourage the development of new and expansion of existing child care facilities in response to identified community needs.

e. Provide specialized services to employers, including the provision of resource and referral services to employee groups identified by the employer and the provision of technical assistance to develop employer-supported child care programs. The specialized services may include but are not limited to working with employers to identify networks of recommended registered and licensed child care providers for employee groups and to implement employer-supported quality improvement initiatives among the network providers.

f. Refer eligible child care facilities to the federal child care food programs.

g. Loan toys, other equipment, and resource materials to child care facilities.

7. The department may contract with an agency receiving a child care resource and referral grant to perform any of the following functions relating to publicly funded services providing care, supervision, and guidance of a child:

a. Determine an individual's eligibility for the services in accordance with income requirements.

b. Administer a voucher, certificate, or other system for reimbursing an eligible provider of the services.

8. For purposes of improving the quality and consistency of data collection, consultation, and other support to child care home and child development home providers, a resource and referral services agency grantee shall coordinate and assist with publicly and privately funded efforts administered at the community level to provide the support. The support and efforts addressed by a grantee may include but are not limited to community-funded child care home and child development home consultants. Community members involved with the assistance may include but are not limited to the efforts of an early childhood Iowa area board under chapter 256I, and of community representatives of education, health, human services, business, faith, and public interests.

90 Acts, ch 1248, §4; 92 Acts, ch 1083, §5; 99 Acts, ch 192, §22; 2002 Acts, ch 1142, §23 – 26, 31; 2010 Acts, ch 1031, §301; 2011 Acts, ch 98, §1

Referred to in §237A.30, 256C.3

**237A.27 Crisis child care.** Repealed by 2002 Acts, ch 1142, §29, 31.

**237A.28 Child care credit fund.** Repealed by 2009 Acts, ch 182, § 138.

Balance of fund transferred to general fund of state; 2009 Acts, ch 182, §§5, 87

**237A.29 Public funding of child care — sanctions.**

1. State funds and federal funds provided to the state in accordance with federal requirements shall not be used to pay for the care, supervision, and guidance of a child for periods of less than twenty-four hours per day on a regular basis unless the care, supervision, and guidance is defined as child care as used in this chapter.

2. a. For the purposes of this subsection, “*fraudulent means*” means knowingly making

or causing to be made a false statement or a misrepresentation of a material fact, knowingly failing to disclose a material fact, or committing a fraudulent practice.

b. A child care provider that has been found by the department of inspections and appeals in an administrative proceeding or in a judicial proceeding to have obtained, or has agreed to entry of a civil judgment or judgment by confession that includes a conclusion of law that the child care provider has obtained, by fraudulent means, public funding for provision of child care in an amount equal to or in excess of the minimum amount for a fraudulent practice in the second degree under section 714.10, subsection 1, paragraph “a”, shall be subject to sanction in accordance with this subsection. Such child care provider shall be subject to a period during which receipt of public funding for provision of child care is conditioned upon no further violations and to one or more of the following sanctions as determined by the department of human services:

- (1) Ineligibility to receive public funding for provision of child care.
- (2) Suspension from receipt of public funding for provision of child care.
- (3) Special review of the child care provider’s claims for providing publicly funded child care.

c. The following factors shall be considered in determining the sanction or sanctions to be imposed under paragraph “b”, subparagraphs (1) through (3):

- (1) Seriousness of the violation.
- (2) Extent of the violation.
- (3) History of prior violations.
- (4) Prior imposition of sanctions.
- (5) Prior provision of provider education.
- (6) Provider willingness to obey program rules.
- (7) Whether a lesser sanction will be sufficient to remedy the problem.

d. In determining the value of the public funding obtained by fraudulent means, if the public funding is obtained by two or more acts of fraudulent means by the same person or in the same location, or is obtained by different persons by two or more acts which occur in approximately the same location or time period so that the acts of fraudulent means used to obtain the public funding are attributable to a single scheme, plan, or conspiracy, these acts may be considered as a single instance of the use of fraudulent means and the value may be the total value of all moneys involved.

3. a. If a child care provider is subject to sanctions under subsection 2, within five business days of the date the sanctions are imposed, the provider shall submit to the department the names and addresses of children receiving child care from the provider. The department shall send information to the parents of the children regarding the provider’s actions leading to the imposition of the sanctions and the nature of the sanctions imposed.

b. If the child care provider fails to submit the names and addresses within the time period required by paragraph “a”, the department shall request that the attorney general file a petition with the district court of the county in which the provider is located for issuance of a temporary injunction enjoining the provider from providing child care until the names and addresses are submitted to the department. The attorney general may file the petition upon receiving the request from the department. Any temporary injunction may be granted without a bond being required from the department.

c. If the sanctions imposed under subsection 2 involve the provider’s suspension or ineligibility for receiving public funding for provision of child care, the department shall not impose those sanctions before the parents of the affected children are informed, and upon request, shall provide assistance to the parents in locating replacement child care.

93 Acts, ch 76, §13; 99 Acts, ch 192, §25; 2002 Acts, ch 1104, §1; 2003 Acts, ch 44, §55; 2003 Acts, ch 81, §11, 12; 2004 Acts, ch 1086, §44; 2013 Acts, ch 30, §241

Subsection 2, paragraph b amended

### **237A.30 Voluntary child care quality rating system.**

1. The department shall work with the community empowerment office of the department of management established in section 28.3 and the state child care advisory committee in

designing and implementing a voluntary quality rating system for each provider type of child care facility.

2. The criteria utilized for the rating system may include but are not limited to any of the following: facility type; provider staff experience, education, training, and credentials; facility director education and training; an environmental rating score or other direct assessment environmental methodology; national accreditation; facility history of compliance with law and rules; child-to-staff ratio; curriculum, including the extent to which the curriculum focuses on the stages of child development and on child outcomes; business practices; staff retention rates; evaluation of staff members and program practices; staff compensation and benefit practices; provider and staff membership in professional early childhood organizations; and parental involvement with the facility.

3. A facility's quality rating may be included on the internet site and in the consumer information provided by the department pursuant to section 237A.25 and shall be identified in the child care provider referrals made by child care resource and referral service grantees under section 237A.26.

99 Acts, ch 192, §33; 99 Acts, ch 203, §49; 2002 Acts, ch 1142, §27, 28, 31; 2005 Acts, ch 148, §20; 2006 Acts, ch 1010, §76; 2010 Acts, ch 1031, §302, 358, 361; 2013 Acts, ch 90, §257  
Code editor directive applied

## CHAPTER 237B

### CHILDREN'S CENTERS — FACILITY STANDARDS

237B.1 Children's centers.

#### **237B.1 Children's centers.**

1. For the purposes of this section, unless the context requires otherwise, "*children's center*" means a privately funded facility designed to serve seven or more children at any one time who are not under the custody or authority of the department of human services, juvenile court, or another governmental agency, and that offers one or more of the following services:

- a. Child care.
- b. Child care for children with a chronic illness.
- c. Respite care.
- d. Family support services.
- e. Medical equipment.
- f. Therapeutic day programming.
- g. Educational enrichment.
- h. Housing.

2. The department of human services shall consult with the department of inspections and appeals, department of education, Iowa department of public health, state fire marshal, and community-based providers of services to children in establishing certification or licensing standards for children's centers.

3. In establishing the initial and subsequent standards, the department of human services shall review other certification and licensing standards applicable to the centers. The standards established by the department shall be broad facility standards for the protection of children's safety. The department shall also apply criminal and abuse registry background check requirements for the persons who own, operate, staff, participate in, or otherwise have contact with the children receiving services from a children's center. The background check requirements shall be substantially equivalent to those applied under chapter 237 for a child foster care facility provider. The department of human services shall not establish program standards or other requirements under this section involving program development or oversight of the programs provided to the children served by children's centers.

99 Acts, ch 189, §1; 99 Acts, ch 192, §33; 2009 Acts, ch 182, §131

## CHAPTER 238

## CHILD-PLACING AGENCIES

Referred to in §232B.9, 422.9

Child and family services, see chapter 234

238.1	Definitions.	238.19	Inspection generally.
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238.9	Term of license.	238.31	Inspection of foster homes.
238.10	Revocation of license.	238.32	Authority to agencies.
238.11	Written charges — findings — notice.	238.33	through 238.41 Transferred to §232.158 – 232.166; 85 Acts, ch 173, §30.
238.12	Appeal — judicial review.	238.42	Agreement in child placements.
238.13	through 238.15 Repealed by 74 Acts, ch 1090, §211.	238.43	Exceptions.
238.16	Rules and regulations.	238.44	Contracts for services — liability for costs.
238.17	Forms for registration and record — preservation.	238.45	Penalty.
238.18	Duty of licensee.		

**238.1 Definitions.**

For the purpose of this chapter unless the context otherwise requires:

1. “*Administrator*” means the administrator of the division of child and family services of the department of human services.

2. “*Child*” means the same as defined in section 234.1.

3. “*Child-placing agency*” means any agency, whether public, semipublic, or private, which represents that the agency places children permanently or temporarily in private family homes or receives children for placement in private family homes, or which actually engages for gain or otherwise in the placement of children in private family homes.

4. “*Person*” or “*agency*” shall include individuals, institutions, partnerships, voluntary associations, and corporations, other than institutions under the management or control of any division or any administrator of the department of human services.

5. “*State division*” means the same as defined in section 234.1.

[C27, 31, 35, §3661-a58; C39, §3661.072; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.1]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1279, §41; 94 Acts, ch 1046, §8; 96 Acts, ch 1034, §14; 2009 Acts, ch 133, §95

Referred to in §238.17, 600A.2, 600A.6B

**238.2 “Child-placing agency” defined.** Repealed by 2009 Acts, ch 133, § 191.

**238.3 Authority to license.**

The administrator may grant a license under this chapter for the period specified in section 238.9 for the conduct of any child-placing agency in this state.

[C27, 31, 35, §3661-a60; C39, §3661.074; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.3]

2002 Acts, ch 1102, §5

**238.4 Granting of license conditional.**

No such license shall be issued unless the person applying shall have shown that the person and the person’s agents are properly equipped by training and experience to find and select

suitable temporary or permanent homes for children and to supervise such homes when children are placed in them, to the end that the health, morality, and general well-being of children placed by them shall be properly safeguarded.

[C27, 31, 35, §3661-a61; C39, §3661.075; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.4]

#### **238.5 License required.**

No person shall conduct a child-placing agency or solicit or receive funds for its support without an unrevoked license issued by the administrator within the twelve months preceding to conduct such agency.

[C27, 31, 35, §3661-a62; C39, §3661.076; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.5]

#### **238.6 Form of license.**

The license shall state the name of the licensee and the particular premises in which the business may be carried on.

[C27, 31, 35, §3661-a63; C39, §3661.077; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.6]

#### **238.7 Posting of license.**

Such license shall be kept posted in a conspicuous place on the licensed premises.

[C27, 31, 35, §3661-a64; C39, §3661.078; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.7]

#### **238.8 Record of license.**

A record of the licenses so issued shall be kept by the administrator.

[C27, 31, 35, §3661-a65; C39, §3661.079; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.8]

#### **238.9 Term of license.**

A license granted under this chapter shall be valid for three years from the date of issuance unless the license is revoked in accordance with section 238.10.

[C27, 31, 35, §3661-a66; C39, §3661.080; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.9]

2002 Acts, ch 1102, §6

Referred to in §238.3

#### **238.10 Revocation of license.**

The administrator may, after due notice and hearing, revoke the license:

1. In case the person to whom the same is issued violates any provision of this chapter.
2. When in the opinion of the administrator such agency is maintained in such a way as to waste or misuse funds contributed by the public or without due regard to sanitation or hygiene or to the health, comfort, or well-being of the child cared for or placed by the agency.
3. In case of violation by the licensee or the licensee's agents of any law of the state in a manner disclosing moral turpitude or unfitness to maintain such agency.
4. In case any such agency is conducted by a person of ill repute or bad moral character.
5. In case said agency operates in persistent violation of the reasonable regulations of the administrator governing such agencies.

[S13, §3260-k; C24, §3663; C27, 31, 35, §3661-a67; C39, §3661.081; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.10]

Referred to in §238.9

#### **238.11 Written charges — findings — notice.**

Written charges against the licensee shall be served upon the licensee at least ten days before hearing shall be had thereon and a written copy of the findings and decisions of the

administrator upon hearing shall be served upon the licensee in the manner prescribed for the service of original notice in civil actions.

[C27, 31, 35, §3661-a68; C39, §3661.082; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.11]

Service of notice, R.C.P. 1.302 – 1.315

#### **238.12 Appeal — judicial review.**

Any licensee feeling aggrieved by any decision of the administrator revoking the licensee's license may appeal to the council on human services in the manner of form prescribed by such council. The council shall, upon receipt of such an appeal give the licensee reasonable notice and opportunity for a fair hearing before such council or its duly authorized representative or representatives. Following such hearing the council on human services shall take its final action and notify the licensee in writing.

Judicial review of the actions of the council may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C27, 31, 35, §3661-a69; C39, §3661.083; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.12]

83 Acts, ch 96, §157, 159; 2003 Acts, ch 44, §114

**238.13 through 238.15** Repealed by 74 Acts, ch 1090, § 211.

#### **238.16 Rules and regulations.**

It shall be the duty of the administrator to provide such general regulations and rules for the conduct of all such agencies as shall be necessary to effect the purposes of this chapter and of all other laws of the state relating to children so far as the same are applicable, and to safeguard the well-being of children placed or cared for by such agencies.

[C27, 31, 35, §3661-a73; C39, §3661.087; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.16]

#### **238.17 Forms for registration and record — preservation.**

1. The administrator shall prescribe forms for the registration and record of persons cared for by any child-placing agency licensed under this chapter and for reports required by said administrator from the agencies.

2. If, for any reason, a child-placing agency as defined by section 238.1 shall cease to exist, all records of registration and placement and all other records of any kind and character kept by such child-placing agency shall be turned over to the administrator, for preservation, to be kept by the said administrator as a permanent record.

[C27, 31, 35, §3661-a74; C39, §3661.088; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.17]

2009 Acts, ch 133, §233

#### **238.18 Duty of licensee.**

A child-placing agency licensed under this chapter shall keep a record and make reports in the form to be prescribed by the administrator. For a child being placed by the agency, the agency's duties shall include compliance with the requirements of section 232.108 relating to visitation or ongoing interaction between the child and the child's siblings.

[C27, 31, 35, §3661-a75; C39, §3661.089; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.18]

2007 Acts, ch 67, §6

#### **238.19 Inspection generally.**

Authorized employees of the department of inspections and appeals may inspect the premises and conditions of the agency at any time and examine every part of the agency;

and may inquire into all matters concerning the agency and the children in the care of the agency.

[S13, §3260-j; C24, §3669, 3684; C27, 31, 35, §3661-a76; C39, §3661.090; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.19]

90 Acts, ch 1204, §55

**238.20 Minimum inspection — record.**

Authorized employees of the department of inspections and appeals shall visit and inspect the premises of licensed child-placing agencies at least once every twelve months and make and preserve written reports of the conditions found.

[C27, 31, 35, §3661-a77; C39, §3661.091; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.20]

90 Acts, ch 1204, §56; 2007 Acts, ch 172, §11

**238.21 Other inspecting agencies.**

Authorized agents of the local board of health in whose jurisdiction a licensed child-placing agency is located may make inspection of the premises.

[C27, 31, 35, §3661-a78; C39, §3661.092; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.21]

90 Acts, ch 1204, §57

**238.22 Licensee to aid inspection.**

The licensees shall give all reasonable information to such inspectors and afford them every reasonable facility for obtaining pertinent information.

[C27, 31, 35, §3661-a79; C39, §3661.093; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.22]

**238.23** Repealed by 2002 Acts, ch 1102, § 8.

**238.24 Information confidential — exceptions.**

1. Except as authorized by this section, a person who acquires under this chapter or from the records provided for in this chapter, information relative to any agency or relative to any individual cared for by the agency or relative to any relative of the individual, shall not directly or indirectly disclose the information.

2. Disclosure of information acquired under this chapter or from the records provided for in this chapter is authorized under any of the following circumstances:

a. Disclosure made upon inquiry before a court of law, or before some other tribunal, or for the information of the governor, general assembly, medical examiners, administrator, Iowa department of public health, or the local board of health in the jurisdiction where the agency is located.

b. Disclosure may be made by the administrator to proper persons as may be in the interest of a child cared for by the agency or in the interest of the child's parents or foster parents and not inimical to the child, or as may be necessary to protect the interests of the child's prospective foster parents. However, disclosure of termination and adoption records shall be governed by the provisions of sections 600.16 and 600.16A.

c. Disclosure for purposes of statistical analysis performed by duly authorized persons of data collected under this chapter or the publication of the results of such analysis in such manner as will not disclose confidential information.

[C27, 31, 35, §3661-a81; C39, §3661.095; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.24]

92 Acts, ch 1196, §2; 2002 Acts, ch 1102, §7

**238.25 through 238.29** Repealed by 76 Acts, ch 1229, § 38.

**238.30** Repealed by 97 Acts, ch 99, § 10.

**238.31 Inspection of foster homes.**

The administrator shall be satisfied that each licensed child-placing agency is maintaining proper standards in its work, and said administrator may at any time cause the child and home in which the child has been placed to be visited by the administrator's agents for the purpose of ascertaining whether the home is a suitable one for the child, and may continue to visit and inspect the foster home and the conditions therein as they affect said child.

[C27, 31, 35, §3661-a88; C39, §3661.102; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.31]

**238.32 Authority to agencies.**

Any institution incorporated under the laws of this state or maintained for the purpose of caring for, placing out for adoption, or otherwise improving the condition of unfortunate children may, under the conditions specified in this chapter and when licensed in accordance with the provisions of this chapter:

1. Receive children in need of assistance, or delinquent children who are under eighteen years of age, under commitment from the juvenile court, and control and dispose of them subject to the provisions of chapter 232 and chapter 600A.

2. Receive, control, and dispose of all minor children voluntarily surrendered to such institutions.

[S13, §254-a22, 3260-b; C24, §3662; C27, 31, 35, §3661-a89; C39, §3661.103; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §238.32]

Transferring legal custody of a child, §232.102, 232.103

**238.33 through 238.41** Transferred to § 232.158 – 232.166; 85 Acts, ch 173, § 30.

**238.42 Agreement in child placements.**

Every agency placing a child in a foster home shall enter into a written agreement with the person taking the child, which agreement shall provide that the agency placing the child shall have access at all reasonable times to such child and to the home in which the child is living, and for the return of the child by the person taking the child whenever, in the opinion of the agency placing such child, or in the opinion of the administrator, the best interests of the child shall require it.

[C27, 31, 35, §3661-a97; C39, §3661.111; C46, 50, 54, 58, 62, 66, §238.40; C71, 73, 75, 77, 79, 81, §238.42]

Referred to in §238.43

**238.43 Exceptions.**

The provisions of section 238.42 shall not apply to children who have been legally adopted.

[C27, 31, 35, §3661-a98; C39, §3661.112; C46, 50, 54, 58, 62, 66, §238.41; C71, 73, 75, 77, 79, 81, §238.43]

**238.44 Contracts for services — liability for costs.**

An agency which enters into a contract with a referral agency to provide child placement services is liable for the costs of services which are paid prior to the provision of services, if the services are not subsequently provided.

94 Acts, ch 1174, §5

**238.45 Penalty.**

Every person who violates any of the provisions of this chapter or who intentionally shall make any false statements or reports to the administrator with reference to the matters contained herein, shall be guilty of a fraudulent practice.

[C27, 31, 35, §3661-a100; C39, §3661.114; C46, 50, 54, 58, 62, 66, §238.43; C71, 73, 75, 77, 79, 81, §238.45]

## CHAPTER 239

RESERVED

## CHAPTER 239A

## PUBLIC WORKS POSITIONS FOR CERTAIN PERSONS

239A.1 Who may be placed.  
239A.2 Projects determined.

239A.3 Target areas selected.

**239A.1 Who may be placed.**

Any person who is receiving or has obtained approval of an application to receive assistance under chapter 239B, and who is eligible under the promoting independence and self-sufficiency through employment job opportunities and basic skills program, may be referred to the department of workforce development for placement in public works positions available pursuant to this chapter or to such other authority as may be applicable.

[C77, 79, 81, §239A.1]

96 Acts, ch 1186, §23; 97 Acts, ch 41, §32

Referred to in §239A.2, 239A.3

**239A.2 Projects determined.**

The department of workforce development, in consultation with the director of human services, shall establish a procedure for assignment of persons referred under section 239A.1 to positions available in public works projects. The department of workforce development shall arrange with units of local government for establishment of such projects, which may include any type of work or endeavor that is within the scope of authority of the unit of local government involved so long as the project meets the following requirements:

1. The project must create new employment opportunities and not fund existing employment of persons working for the local government unit or resume funding of projects for which the local government unit has, without fault, terminated employees within the previous six months and has not recalled those employees.

2. The benefits of the project result must inure primarily to the community or public at large.

3. The following conditions of employment must be satisfied:

a. The unit of local government with which the project is arranged must be the employer of the persons hired under the project.

b. The employees under the project must be paid at the same rate as other employees doing similar work for that unit of local government.

c. The employees must be considered regular employees of the unit of local government involved and must be entitled to participate in benefit programs of that unit of local government, including but not limited to workers' compensation, but shall not be entitled to qualify for unemployment compensation benefits on the basis of employment under the project.

[C77, 79, 81, §239A.2; 82 Acts, ch 1161, §27]

83 Acts, ch 96, §157, 159; 96 Acts, ch 1186, §23

Referred to in §239A.3

**239A.3 Target areas selected.**

The department of workforce development shall select not to exceed two target counties for implementation of sections 239A.1 and 239A.2. In selecting the target county or counties in which this chapter is to be implemented, the department of workforce development shall be guided by the following criteria:

1. The total number of unemployed persons in the county.

2. The number of unemployed persons in the county as a percentage of the available workforce there.
3. The total number of persons receiving assistance under chapter 239B in that county.
4. The number of persons receiving assistance under chapter 239B in that county as a percentage of the total population of the county.
5. The number of unemployed heads of households receiving assistance under chapter 239B in that county.
6. The number of unemployed heads of households receiving assistance under chapter 239B in that county as a percentage of all recipients of such assistance in that county.  
 [C77, 79, 81, §239A.3]  
 96 Acts, ch 1186, §23; 97 Acts, ch 41, §32

## CHAPTER 239B

### FAMILY INVESTMENT PROGRAM

Referred to in §84A.6, 216A.107, 217.30, 217.36, 234.6, 239A.1, 239A.3, 249A.2, 252B.3, 252B.4, 252B.6A, 252B.20, 252C.1, 252D.8, 252E.1, 252E.2A, 422.9, 541A.2, 598.22A

239B.1	Definitions.	239B.11A	Transitional benefits. Repealed by 2008 Acts, ch 1187, §96, 97.
239B.2	Conditions of eligibility.	239B.12	Immunization.
239B.2A	School attendance. Repealed by 2004 Acts, ch 1043, §11.	239B.13	Needy relative payee — protective payee — vendor payment.
239B.2B	Eligibility of noncitizens.	239B.14	Fraudulent practices — recovery of overpayments.
239B.2C	Absence from home — incarceration.	239B.15	County attorney to enforce.
239B.3	Cash assistance.	239B.16	Appeal — judicial review.
239B.4	Departmental role.	239B.17	PROMISE JOBS program.
239B.5	Compliance with federal law — prohibited electronic benefit transfer transactions.	239B.18	JOBS program participation.
239B.6	Assignment of support rights or benefits.	239B.19	JOBS program availability.
239B.7	Income and resource exemptions, deductions, and disregards.	239B.20	JOBS program health and safety.
239B.8	Family investment agreements.	239B.21	JOBS program — workers' compensation law applicable.
239B.9	Limited benefit plan.	239B.22	JOBS program — participant not state employee.
239B.10	Minor and young parents — other requirements.	239B.23	Repealed by 98 Acts, ch 1218, §82.
239B.11	Family investment program account — diversion program subaccount — diversion program.	239B.24	State child care assistance eligibility.

**239B.1 Definitions.**

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

1. “*Applicant*” means a person who files an application for participation in the family investment program under this chapter.
2. “*Assistance*” means a family investment program payment.
3. “*Child*” means an unmarried person who is less than eighteen years of age or an unmarried person who is eighteen years of age and is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age.
4. “*Department*” means the department of human services.
5. “*Family*” means a family unit that includes at least one child and at least one parent or other specified relative of the child.
6. “*Family investment agreement*” means the agreement developed with a participant in accordance with section 239B.8.
7. “*Family investment program*” means the family investment program under this chapter.

8. “*Limited benefit plan*” means a period of time in which a participant or member of a participant’s family is either eligible for reduced assistance only or ineligible for any assistance under the family investment program, in accordance with section 239B.9.

9. “*Minor parent*” means an applicant or participant parent who is less than eighteen years of age and has never been married.

10. “*Participant*” means a person who is receiving full or partial family investment program assistance. For the purposes of sections 239B.8 and 239B.9, “*participant*” also includes each individual who does not directly receive assistance but who is required to be engaged in work or training options specified in the participant’s family investment agreement entered into under section 239B.8.

11. “*PROMISE JOBS program*” or “*JOBS program*” means the promoting independence and self-sufficiency through employment job opportunities and basic skills program created in section 239B.17.

12. “*Specified relative*” means a person who is, or was at any time, one of the following relatives of an applicant or participant child, by means of blood relationship, marriage, or adoption, or is a spouse of one of the following relatives:

- a. Parent.
- b. Grandparent.
- c. Great-grandparent.
- d. Great-great-grandparent.
- e. Stepparent of the child, but not the parent of the stepparent.
- f. Sibling.
- g. Stepsibling.
- h. Sibling by at least the half blood.
- i. Uncle or aunt by at least the half blood.
- j. Great-uncle or great-aunt.
- k. Great-great-uncle or great-great-aunt.
- l. First cousin.
- m. Nephew or niece.
- n. Second cousin.

97 Acts, ch 41, §2, 34; 2007 Acts, ch 124, §1  
Referred to in §252B.1

### **239B.2 Conditions of eligibility.**

Within available funding, the department shall make assistance available to eligible families under the family investment program. At a minimum, a family shall meet all of the following conditions of eligibility:

1. *Application.* An application for the program is made to the department. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department. The application shall be made by the specified relative with whom the child resides or will reside, and shall contain the information required on the application form. One application may be made for several children of the same family if the children reside or will reside with the same specified relative.

2. *Income and resources.* The family meets income and resource guidelines established by the department to attain or retain financial eligibility. In determining a family’s income and resources, the department shall consider the income and resources of the child, the child’s parent, the child’s stepparent living with the child, or any other specified relative with whom the child resides or will reside available to the family unless specifically exempted as provided in section 239B.7 or by rule or unless otherwise provided by federal law. A family’s failure to meet the income or resource guidelines shall result in denial of the family’s eligibility for the program.

3. *Unemployment.*

a. A determination of eligibility for a family with an unemployed parent shall not include consideration of either parent’s number of hours of employment. Both parents must enter into and participate in a family investment agreement and participate in JOBS program activities unless good cause not to participate is established in accordance with rules.

b. Any of the following reasons for refusing employment or training are not good cause:  
 (1) Unsuitable or unpleasant work or training, if the parent is able to perform the work or training without unusual danger to the parent's health.

(2) The amount of wages or compensation, unless the wages for employment are below the amount customary for the same work in the community.

4. *Written statement — family investment agreement.*

a. The department may require an applicant family to commit to the initial actions the applicant family will take to achieve self-sufficiency as contained in a signed, written statement. An applicant family which fails to commit to the actions as contained in the written statement shall be denied eligibility for the family investment program. If the applicant family becomes a participant family, the family's written statement may be replaced by, incorporated within, or become the family investment agreement for that family.

b. Unless exempt as provided in section 239B.8, a participant family which is eligible for the program shall continue to comply with the provisions of a written statement which contains actions committed to by the family under paragraph "a" or shall enter into a family investment agreement with the department. A participant family must comply with the provisions of the written statement or the conditions in the agreement in order to retain eligibility. A participant family which does not comply shall be deemed to have chosen a limited benefit plan.

5. *Provision of information.* The family provides requested information to the department. The department shall adopt rules specifying the conditions under which an applicant or participant family is denied eligibility for family investment program assistance for failure to provide requested information.

6. *Cooperation with child support requirements.* The department shall provide for prompt notification of the department's child support recovery unit if assistance is provided to a child whose parent is absent from the home. An applicant or participant shall cooperate with the child support recovery unit and the department as provided in 42 U.S.C. § 608(a)(2) unless the applicant or participant qualifies for good cause or other exception as determined by the department in accordance with the best interest of the child, parent, or specified relative, and with standards prescribed by rule. The authorized good cause or other exceptions shall include participation in a family investment agreement safety plan option to address or prevent family or domestic violence and other consideration given to the presence of family or domestic violence. If a specified relative with whom a child is residing fails to comply with these cooperation requirements, a sanction shall be imposed as defined by rule in accordance with state and federal law.

7. *Periodic reviews.* As a condition of eligibility, the department may require periodic reports from a participant concerning the participant's income, resources, family composition, and other circumstances. If the participant's circumstances change, the participant's assistance may be continued, renewed, suspended, changed in amount, or entirely withdrawn, as determined in accordance with rule.

8. *Out-of-state assistance.* Assistance shall be paid to a participant residing temporarily out-of-state if the participant retains residency in this state and remains otherwise eligible for assistance. The department shall periodically redetermine the eligibility of a participant who is temporarily residing out-of-state.

97 Acts, ch 41, §3, 34; 98 Acts, ch 1218, §50; 99 Acts, ch 100, §1; 2000 Acts, ch 1088, §2; 2009 Acts, ch 41, §263

Referred to in §239B.2B, 239B.3, 239B.9

**239B.2A School attendance.** Repealed by 2004 Acts, ch 1043, § 11.

**239B.2B Eligibility of noncitizens.**

A person who meets the conditions of eligibility under section 239B.2 and who meets either of the following requirements shall be eligible for participation in the family investment program:

1. The person is a conditional resident alien who was battered or subjected to extreme cruelty, or whose child was battered or subjected to extreme cruelty, perpetrated by the

person's spouse who is a United States citizen or lawful permanent resident as described in 8 C.F.R. § 216.5(a)(3).

2. The person was battered or subjected to extreme cruelty, or the person's child was battered or subjected to extreme cruelty, perpetrated by the person's spouse who is a United States citizen or lawful permanent resident and the person's petition has been approved or a petition is pending that sets forth a prima facie case that the person has noncitizen status under any of the following categories:

a. Status as a spouse or child of a United States citizen or lawful permanent resident under the federal Immigration and Nationality Act, § 204(a)(1), as codified in 8 U.S.C. § 1154(a)(1)(A).

b. Status as a spouse or child who was battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident, under the federal Immigration and Nationality Act, § 204(a)(iii), as codified in 8 U.S.C. § 1154(a)(1)(A)(iii).

c. Classification as a person lawfully admitted for permanent residence under the federal Immigration and Nationality Act.

d. Suspension of deportation and adjustment of status under the federal Immigration and Nationality Act, § 244(a), as in effect before the date of enactment of the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

e. Cancellation of removal or adjustment of status under the federal Immigration and Nationality Act, § 240A, as codified in 8 U.S.C. § 1229b.

f. Status as an asylee, if asylum is pending, under the federal Immigration and Nationality Act, § 208, as codified in 8 U.S.C. § 1158.

2002 Acts, ch 1175, §27

#### **239B.2C Absence from home — incarceration.**

An individual family member who is absent from the home for more than three months because the individual is incarcerated in jail or a correctional facility shall not be included in the family unit for purposes of assistance.

2012 Acts, ch 1133, §98

#### **239B.3 Cash assistance.**

1. a. Within available funding, the department shall provide an ongoing cash assistance grant under the family investment program to a family eligible under section 239B.2.

b. For an eligibility decision involving an applicant family with a specified relative, within thirty days of the date of an application, the department shall authorize issuance of notice of the department's decision to the specified relative.

2. For an applicant or participant family, the department shall calculate and pay the cash assistance grant on a monthly basis, taking into consideration all of the following:

a. The income and resources of the family.

b. Whether the family has entered into a limited benefit plan.

c. The size of the family.

d. Available funding.

3. The department may pay cash assistance and other cash benefits paid under this chapter by warrant, through a direct deposit to a financial institution of a participant, or through an electronic benefits transfer.

4. The department may pay, from funds appropriated for this purpose, a maximum of four hundred dollars toward funeral expenses on the death of a child who is a participant or has been authorized to participate in the family investment program, provided both of the following conditions apply:

a. The decedent does not leave an estate which may be probated with sufficient proceeds to allow for payment of the funeral expenses.

b. Payments which are due the decedent's estate or beneficiary by reason of the liability of a life insurance, death or funeral benefit company, association, or society, or in the form of United States social security, railroad retirement, or veterans' benefits upon the death of the decedent, are deducted from the department's payment under this section.

97 Acts, ch 41, §4, 34; 99 Acts, ch 100, §2

**239B.4 Departmental role.**

1. The department is the state entity designated to administer federal funds received for purposes of the family investment program and the JOBS program under this chapter, including but not limited to the funding received under the federal temporary assistance for needy families block grant as authorized under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, as reauthorized under the federal Deficit Reduction Act of 2005, Pub. L. No. 109-171, and as codified in 42 U.S.C. § 601 et seq., and as such is the lead agency in preparing and filing state plans, state plan amendments, and other reports required by federal law.

2. The department is responsible for a management information system, eligibility determination, participant grant calculations and issuance of payments, contracting for services, provision of an appeal or resolution process to applicants and participants, determining the suitability of a family home maintained by a specified relative applicant or participant, and other activities as necessary to administer the family investment program and the JOBS program.

3. The department shall develop and use a screening tool for determining the likely presence of family and domestic violence affecting applicant and participant families. The department shall require the use of the screening tool by trained employees.

4. The department shall continue to work with the department of workforce development and local community collaborative efforts to provide support services for participants. The support services shall be directed to those participant families who would benefit from the support services and are likely to have success in achieving economic independence.

5. The department shall continue to work with religious organizations and other charitable institutions to increase the availability of host homes, referred to as second chance homes, or other living arrangements under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 103, and any successor legislation. The purpose of the homes or arrangements is to provide a supportive and supervised living arrangement for minor parents receiving assistance who may receive assistance while living in an alternative setting other than with their parent or legal guardian.

6. The department may adopt rules pursuant to chapter 17A as necessary to administer this chapter.

97 Acts, ch 41, §5, 34; 98 Acts, ch 1218, §51; 2005 Acts, ch 175, §106; 2007 Acts, ch 124, §2

**239B.5 Compliance with federal law — prohibited electronic benefit transfer transactions.**

1. If, as a condition of receiving federal funds for the family investment program, federal law requires implementation and administration of certain activities during a period when the general assembly is not in session, the department shall proceed to implement and administer those provisions, even if in conflict with other existing state law. However, the period of implementation authorized under this subsection shall end upon the adjournment of the regular session of the general assembly immediately following the commencement of the period of implementation.

2. The department may submit waiver requests to the United States department of health and human services as necessary to implement and administer any provision under this chapter, or to implement any subsequent initiative that requires a waiver from federal law.

3. a. The provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 115, shall not apply to an applicant or participant.

b. However, unless exempt for good cause under rules adopted by the department for this purpose, an applicant or participant convicted under federal or state law of a felony offense, which has as an element the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. § 802(6), shall be required to participate in drug rehabilitation activities or to fulfill other requirements to verify that the applicant or participant does not illegally possess, use, or distribute a controlled substance.

4. a. The department shall implement policies and procedures as necessary to comply with provisions of the federal Middle Class Tax Relief and Job Creation Act

of 2012, Pub. L. No. 112-96, to prevent assistance provided under this chapter from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. For purposes of this paragraph, the definitions found in the federal Middle Class Tax Relief and Job Creation Act and related rules and statutes apply.

b. Unless otherwise precluded by federal law or regulation, policies and procedures implemented under this subsection shall at a minimum impose the prohibition described in paragraph “a” as a condition for continued eligibility for assistance under this chapter.

c. The department may implement additional measures as may be necessary to comply with federal regulations in implementing paragraph “a”.

d. The department shall adopt rules as necessary to implement this subsection.

97 Acts, ch 41, §6, 34; 2013 Acts, ch 138, §90

Referred to in §239B.14

NEW subsection 4

### **239B.6 Assignment of support rights or benefits.**

1. An assignment of support rights to the department is created by either of the following:

a. An applicant and other persons covered by an application are deemed to have assigned to the department at the time of application all rights to periodic support payments that accrue during the period the family receives assistance to the extent of the amount of assistance received by the applicant and by other persons covered by the application.

b. A determination that a child or another person covered by an application is eligible for assistance under this chapter creates an assignment by operation of law to the department of all rights to periodic support payments that accrue during the period the family receives assistance not to exceed the amount of assistance received by the child and other persons covered by the application.

2. An assignment takes effect upon determination that an applicant or another person covered by an application is eligible for assistance under this chapter, applies to both current and accruing support obligations, and terminates when an applicant or another person covered by an application ceases to receive assistance under this chapter, except with respect to the amount of unpaid support obligations accrued during the assignment. If an applicant or another person covered by an application ceases to receive assistance under this chapter and the applicant or other person covered by the application receives a periodic support payment, subject to limitations under federal law and subject to subsection 3, the department is entitled only to that amount of the periodic support payment above the current periodic support obligation.

3. Any rights to support payments assigned to the department on or before September 30, 2009, shall remain assigned to the department.

4. Assistance paid or payable under this chapter is not transferable or assignable at law or in equity, and none of the assistance paid or payable is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

97 Acts, ch 41, §7, 34; 2008 Acts, ch 1019, §1, 2, 7

Referred to in §252A.13, 252C.2, 598.21C, 598.34, 600B.38

### **239B.7 Income and resource exemptions, deductions, and disregards.**

In determining a family’s income and resources for purposes of the family’s initial and continuing eligibility for assistance and for determining grant amounts, the provisions of this section shall apply to the family and individual family members.

1. *Work expense deduction.* If an individual’s earned income is considered by the department, the individual shall be allowed a work expense deduction equal to twenty percent of the earned income. The work expense deduction is intended to include all work-related expenses other than child care. These expenses shall include but are not limited to all of the following: taxes, transportation, meals, uniforms, and other work-related expenses.

2. *Work-and-earn incentive.* If an individual’s earned income is considered by the department, the individual shall be allowed a work-and-earn incentive. The incentive

shall be equal to fifty-eight percent of the amount of earned income remaining after all other deductions are applied. The department shall disregard the incentive amount when considering the earned income available to the individual. The incentive shall not have a time limit. The work-and-earn incentive shall not be withdrawn as a penalty for failure to comply with family investment program requirements.

3. Reserved.

4. Reserved.

5. *Income consideration.* If an individual has timely reported an absence of income to the department, consideration of the individual's income shall cease beginning in the first month the income is absent.

6. *Interest income.* Interest income shall be disregarded.

7. *Individual development account deposits.* The department shall disregard as income any moneys an individual deposits in an individual development account established pursuant to chapter 541A.

8. *Motor vehicle disregard.* The department shall disregard the value of one motor vehicle. The countable equity value of any additional motor vehicle shall apply to the resource limitation established in subsection 9.

9. *Resource limitation.*

a. The resource limitation for an applicant family for the family investment program shall be two thousand dollars.

b. The resource limitation for a participant family shall be five thousand dollars.

c. The department shall disregard not more than ten thousand dollars of a self-employed individual's tools of the trade or capital assets in considering the individual's resources.

10. *Individual development account earnings and balance.* The department shall disregard any earnings and the balance of an individual development account established pursuant to chapter 541A in considering an individual's resources.

97 Acts, ch 41, §8, 34 – 36; 99 Acts, ch 192, §33, 34; 2004 Acts, ch 1043, §1, 12; 2007 Acts, ch 124, §3, 4, 6

Referred to in §239B.2

### **239B.8 Family investment agreements.**

The department shall establish a policy regarding the implementation of family investment agreements which limits the period of eligibility for the family investment program based upon the requirements of a family's plan for self-sufficiency. The policy shall require a family's plan to be specified in a family investment agreement between the family and the department. The department shall adopt rules to administer the policy. The components of the policy shall include but are not limited to all of the following:

1. *Participation — exemptions.* A parent living in a home with a child for whom an application for family investment program assistance has been made or for whom the assistance is provided, and all other individual members of the family whose needs are included in the assistance shall be subject to a family investment agreement unless exempt under rules adopted by the department or unless any of the following conditions exists:

a. The individual is less than sixteen years of age and is not a parent.

b. The individual is sixteen through eighteen years of age, is not a parent, and is attending elementary or secondary school, or the equivalent level of vocational or technical school, on a full-time basis. If an individual loses exempt status under this paragraph and the individual has signed a family investment agreement, the individual shall remain subject to the terms of the agreement until the terms are completed.

c. The individual is not a United States citizen and is not a qualified alien as defined in 8 U.S.C. § 1641.

2. *Agreement options.* A family investment agreement shall require an individual who is subject to the agreement to engage in one or more work or training options. An individual's level of engagement in one or more of the work or training options shall be equivalent to the level of commitment required for full-time employment or shall be significant so as to move the individual's level of engagement toward that level. The department shall adopt rules defining option requirements and establishing assistance provisions for child

care, transportation, and other support services. A leave from engagement in work or training options shall be offered to a participant parent to address the birth of a child or the placement of a child with the participant parent for adoption or foster care. If such a leave is requested by the parent the combined duration of the leave shall not exceed the minimum leave duration, as outlined in the federal Family and Medical Leave Act of 1993, § 102(a) and (b)(1), as codified in 29 U.S.C. § 2612(a) and (b)(1). The terms of the leave shall be incorporated into the family investment agreement. The work or training options shall include but are not limited to all of the following:

- a. *Employment.* Full-time or part-time employment.
  - b. *Employment search.* Active job search.
  - c. *JOBS.* Participation in the JOBS program.
  - d. *Education.* Participation in other education or training programming.
  - e. *Family development.* Participation in a family development and self-sufficiency grant program under section 216A.107 or other family development program.
  - f. *Work experience.* Work experience placement.
  - g. *Community service.* Unpaid community service.
  - h. *Parenting skills.* Participation in an arrangement which would strengthen the individual's ability to be a better parent, including but not limited to participation in a parenting education program.
  - i. *Family or domestic violence.* Participation in a safety plan to address or prevent family or domestic violence. The safety plan may include a temporary waiver period from required participation in the JOBS program or other employment-related activities, as appropriate for the situation of the applicant or participant. All applicants and participants shall be informed regarding the existence of this option. Participation in this option shall be subject to review in accordance with administrative rule.
  - j. *Incremental family investment agreements.* If an individual participant or the entire family has an acknowledged barrier, the plan for self-sufficiency may be specified in one or more incremental family investment agreements.
3. *Limited benefit plan.* If a participant fails to comply with the provisions of the participant's family investment agreement during the period of the agreement, the limited benefit plan provisions of section 239B.9 shall apply.
  4. *Completion of agreement.*
    - a. Upon the completion of the terms of the agreement, family investment program assistance to a participant family covered by the agreement shall cease or be reduced in accordance with rules.
    - b. However, if the period in which a participant family is without cash assistance is one month or less and the participant family has not become exempt from JOBS program participation at the time the participant family reapplies for cash assistance, the participant family's family investment agreement shall be reinstated at the time the participant family reapplies. The reinstated agreement may be revised to accommodate changed circumstances present at the time of reapplication.
    - c. The department shall adopt rules to administer this subsection and to determine when a family is eligible to reenter the family investment program.
  5. *Contracts.* The department may contract with the department of workforce development, economic development authority, or any other entity to provide services relating to a family investment agreement.
  6. *Confidential information disclosure.* If approved by the director of human services or the director's designee pursuant to a written request, the department shall disclose confidential information described in section 217.30, subsection 1, to other state agencies or to any other entity which is not subject to the provisions of chapter 17A and is providing services to a participant family who is subject to a family investment agreement, if necessary in order for the participant family to receive the services. The department shall adopt rules

establishing standards for disclosure of confidential information if disclosure is necessary in order for a participant to receive services.

97 Acts, ch 41, §9, 34; 98 Acts, ch 1218, §52; 99 Acts, ch 192, §33; 2000 Acts, ch 1088, §3; 2001 Acts, ch 128, §1; 2001 Acts, ch 191, §41; 2004 Acts, ch 1043, §2, 3; 2005 Acts, ch 121, §10; 2007 Acts, ch 124, §5; 2008 Acts, ch 1072, §4, 5; 2011 Acts, ch 118, §85, 89

Referred to in §239B.1, 239B.2, 239B.9, 239B.18

### **239B.9 Limited benefit plan.**

#### *1. General provisions.*

a. If a participant responsible for signing and fulfilling the terms of a family investment agreement, as defined by the director of human services in accordance with section 239B.8, chooses not to sign or fulfill the terms of the agreement, the participant's family, or the individual participant shall enter into a limited benefit plan. Initial actions in a written statement under section 239B.2, subsection 4, which were committed to by a participant during the application period and which commitment remains in effect, shall be considered to be a term of the participant's family investment agreement. A limited benefit plan shall apply for the period of time specified in this section. The first month of the limited benefit plan is the first month after the month in which timely and adequate notice of the limited benefit plan is given to the participant as defined by the director of human services. The elements of a limited benefit plan shall be specified in the department's rules.

b. For purposes of this lettered paragraph, "*significant contact with or action in regard to the JOBS program*" means the individual participant communicates to the JOBS program worker the desire to engage in JOBS program activities, signs a new or updated family investment agreement, and takes any other action required by the department in accordance with rules adopted for this purpose. A limited benefit plan applied in error shall not be considered to have been applied. A limited benefit plan is applicable to the individual participant choosing the limited benefit plan and to the individual participant's family members to which the plan is applicable under subsection 2. A limited benefit plan shall either be a first limited benefit plan or a subsequent limited benefit plan. A limited benefit plan shall be applied as follows:

(1) A first limited benefit plan shall provide for continuing ineligibility for assistance until the individual participant completes significant contact with or action in regard to the JOBS program.

(2) A limited benefit plan subsequent to a first limited benefit plan chosen by the same individual participant shall provide for a specified period of ineligibility of six months or less beginning with the effective date of the limited benefit plan and continuing indefinitely following the specified period until the individual participant completes significant contact with or action in regard to the JOBS program. The department shall adopt rules defining the circumstances for which a particular period of ineligibility will be specified.

(3) For a two-parent family in which both parents are responsible for a family investment agreement, a first or subsequent limited benefit plan shall remain applicable until both parents complete significant contact with or action in regard to the JOBS program. A limited benefit plan applied more than once to the same two-parent family shall be treated as a subsequent limited benefit plan.

2. *Plan applied.* The department shall apply the limited benefit plan to the participants responsible for the family investment agreement and other members of the participant's family as follows:

a. *Parent.* If the participant responsible for the family investment agreement is a parent, the limited benefit plan is applicable to the entire participant family.

b. *Needy relative or incapacitated stepparent.* If the participant choosing a limited benefit plan is a needy relative who acts as payee when the parent is in the home but is unable to act as payee, is a needy relative who assumes the role of parent, or is a dependent child's stepparent whose needs are included in the assistance because of incapacity, the limited benefit plan shall apply only to the individual participant choosing the plan.

c. *Minor parent living with adult parent or specified relative.* If the participant family includes a minor parent living with the minor parent's adult parent or specified relative

who receives family investment program assistance and both individuals are responsible for developing a family investment agreement, each individual is responsible for a separate family investment agreement, and the limited benefit plan shall be applied as follows:

(1) If the adult parent chooses the limited benefit plan, the requirements of the limited benefit plan shall apply to the entire participant family, even though the minor parent has not chosen the limited benefit plan. However, the minor parent may reapply for assistance as a minor parent living with self-supporting parents or living independently and continue in the family investment agreement process.

(2) If the minor parent chooses the limited benefit plan, the requirements of the limited benefit plan shall apply to the minor parent and any child of the minor parent.

(3) If the specified relative chooses the limited benefit plan, the requirements of the limited benefit plan shall apply only to the specified relative.

*d. Minor parent — only child.* If the minor parent is the only child in the adult parent's or specified relative's home and the minor parent chooses the limited benefit plan, assistance shall not be paid to the adult parent or specified relative in this instance.

*e. Children who are mandatory JOBS program participants.* If the participant family includes children who are mandatory JOBS program participants, the children shall not have a separate family investment agreement but shall be asked to sign the family investment agreement applicable to the family and to carry out the responsibilities of that family investment agreement. A limited benefit plan shall be applied as follows:

(1) If the parent or specified relative responsible for a family investment agreement meets the responsibilities of the family investment agreement but a child who is a mandatory JOBS program participant chooses an individual limited benefit plan, the family is eligible for reduced assistance during the child's limited benefit plan.

(2) If the child who chooses a limited benefit plan under subparagraph (1) is the only child in the participant family, assistance shall not be paid to the adult parent, parents, or specified relative in this instance.

*f. Exempt parent.* If a participant family includes a parent, parents, or specified relative who are exempt from JOBS program participation and children who are mandatory JOBS program participants, the children are responsible for completing a family investment agreement. If a child who is a mandatory JOBS program participant chooses the limited benefit plan, the limited benefit plan shall be applied in the manner provided in paragraph "e".

*g. Two parents.* If the participant family includes two parents, a limited benefit plan shall be applied as follows:

(1) If only one parent of a child in the family is responsible for a family investment agreement and that parent chooses the limited benefit plan, the limited benefit plan cannot be ended by the voluntary participation in a family investment agreement by the exempt parent. If the parent responsible for the family investment agreement chooses a limited benefit plan, the limited benefit plan applies to the entire family.

(2) If both parents of a child in the family are responsible for a family investment agreement, both parents shall sign the agreement. If either parent chooses the limited benefit plan, the limited benefit plan cannot be ended by the participation of the other parent in a family investment agreement.

(3) If the parents from a two-parent family in a limited benefit plan separate, the limited benefit plan shall follow only the parent who chose the limited benefit plan and any children in the home of that parent.

3. *Plan chosen.* A participant shall be considered to have chosen a limited benefit plan under any of the following circumstances:

*a.* A participant who does not establish an orientation appointment with the JOBS program or who fails to keep or reschedule an orientation appointment shall receive a reminder letter which informs the participant that those who do not attend orientation have elected to choose a limited benefit plan. A participant who chooses not to respond to the reminder letter within ten calendar days from the mailing date shall receive notice establishing the effective date of the limited benefit plan. If a participant is deemed to have

chosen a limited benefit plan, timely and adequate notice provisions, as determined by the director of human services, shall apply.

b. A participant who chooses not to sign the family investment agreement after attending a JOBS program orientation shall enter into a limited benefit plan as described in paragraph “a”.

c. A participant who has signed a family investment agreement but then chooses a limited benefit plan under circumstances defined by the director of human services.

4. *Reconsideration.* A participant who chooses a limited benefit plan may reconsider that choice as follows:

a. A participant who chooses a first limited benefit plan may reconsider at any time following the effective date of the limited benefit plan. The participant may contact the department or the appropriate JOBS program office any time to begin the reconsideration process.

b. A participant who chooses a subsequent limited benefit plan may reconsider that choice at any time following the period of ineligibility specified in accordance with subsection 1.

5. *Well-being visit.* If a participant has chosen a subsequent limited benefit plan, the department may conduct a well-being visit or contract for a well-being visit to be conducted, provided funding is available for the costs of such visits. A well-being visit shall meet all of the following criteria:

a. A qualified professional shall attempt to visit with the participant family with a focus upon the children’s well-being.

b. The visit shall be conducted during or within four weeks of the second month of the start of the subsequent limited benefit plan.

c. The visit shall serve as an extension of the family investment program and the family investment agreement philosophy of supporting families as they move toward self-sufficiency.

6. *Appeal.* A participant has the right to appeal the establishment of the limited benefit plan only once, at the time the department issues the timely and adequate notice that establishes the limited benefit plan. However, if the reason for the appeal is based on an incorrect grant computation, an error in determining the composition of the family, or another worker error, a hearing shall be granted, regardless of the person’s limited benefit plan status.

97 Acts, ch 41, §10, 34; 98 Acts, ch 1218, §55 – 60; 99 Acts, ch 100, §3; 2000 Acts, ch 1088, §4; 2002 Acts, ch 1015, §1, 4; 2004 Acts, ch 1043, §4; 2006 Acts, ch 1016, §9 – 11; 2008 Acts, ch 1111, §1, 2

Referred to in §239B.1, 239B.8

### **239B.10 Minor and young parents — other requirements.**

1. *Living arrangement.* Unless any of the following conditions apply, a minor parent shall be required to live with the minor’s parent or legal guardian:

a. The parent or guardian of the minor parent is deceased, missing, or living in another state.

b. The minor parent’s health or safety would be jeopardized if the minor parent is required to live with the parent or guardian.

c. The minor parent is in foster care.

d. The minor parent is participating in the job corps solo parent program or independent living program.

e. Other good cause exists, which is identified in rules adopted by the department for this purpose, for the minor parent to participate in the family investment program while living apart from the minor parent’s parent or guardian.

2. *Family development.* A minor parent who is a participant and is not required to live with the minor parent’s parent or guardian pursuant to subsection 1 shall be required to participate in a family development program identified in rules adopted by the department.

3. *Parenting classes.* Participant parents who are nineteen years of age or younger shall be required to attend parenting classes.

4. *Education.* The department shall require, subject to the availability of child care for a minor parent’s children, that a minor parent must either have graduated from high school or

have received a high school equivalency diploma, or be engaged full-time in completing high school graduation or equivalency requirements.

5. *Earnings disregard.* In determining family investment program eligibility and calculating the amount of assistance, the department shall disregard earnings of an applicant or a participant who is nineteen years of age or younger who is engaged full-time in completing high school graduation or equivalency requirements.

6. *Family planning.* The department shall do all of the following with newly eligible and existing participant parents:

a. Discuss orally and in writing the financial implications of newly born children on the participant's family.

b. Discuss orally and in writing the available family planning resources.

c. Include family planning counseling as an optional component of the JOBS program.

d. Include the participant's family planning objectives in the family investment agreement.

97 Acts, ch 41, §11, 34; 99 Acts, ch 192, §33

**239B.11 Family investment program account — diversion program subaccount — diversion program.**

1. An account is established in the state treasury to be known as the family investment program account under control of the department to which shall be credited all funds appropriated by the state for the payment of assistance and JOBS program expenditures. All other moneys received at any time for these purposes, including child support revenues, shall be deposited into the account as provided by law. All assistance and JOBS program expenditures under this chapter shall be paid from the account.

2. a. A diversion program subaccount is created within the family investment program account. The subaccount may be used to provide incentives to divert a family's participation in the family investment program if the family meets the department's income eligibility requirements for the diversion program. Incentives may be provided in the form of payment or services to help a family to obtain or retain employment. The diversion program subaccount may also be used for payments to participants as necessary to cover the expenses of removing barriers to employment and to assist in stabilizing employment. In addition, the diversion program subaccount may be used for funding of services and payments for persons whose family investment program eligibility has ended, in order to help the persons to stabilize or improve their employment status.

b. The diversion program shall be implemented statewide in a manner that preserves local flexibility in program design. The department shall assess and screen individuals who would most likely benefit from diversion program assistance. The department may adopt additional eligibility criteria for the diversion program as necessary for compliance with federal law and for screening those families who would be most likely to become eligible for the family investment program if diversion program incentives would not be provided to the families.

97 Acts, ch 41, §12, 34; 98 Acts, ch 1218, §76; 2000 Acts, ch 1088, §5; 2005 Acts, ch 175, §107  
Referred to in §252B.27

**239B.11A Transitional benefits.** Repealed by 2008 Acts, ch 1187, § 96, 97.

**239B.12 Immunization.**

1. To the extent feasible, the department shall determine the immunization status of children receiving assistance under this chapter. The status shall be determined in accordance with the immunization recommendations adopted by the Iowa department of public health under section 139A.8, including the exemption provisions in section 139A.8, subsection 4. If the department determines a child is not in compliance with the immunization recommendations, the department shall refer the child's parent or guardian to a local public health agency for immunization services for the child and other members of the child's family.

2. The department of human services shall cooperate with the Iowa department of public health to establish an interagency agreement allowing the sharing of pertinent client data, as permitted under federal law and regulation, for the purposes of determining

immunization rates of participants, evaluating family investment program efforts to encourage immunizations, and developing strategies to further encourage immunization of participants.

97 Acts, ch 41, §13, 34; 2000 Acts, ch 1066, §43

**239B.13 Needy relative payee — protective payee — vendor payment.**

1. The department may provide for a needy relative to act as a payee when the parent of a participant family is in the home but is unable to act as the payee.

2. The department may order the cash assistance under this chapter to be paid to a protective payee if it has been demonstrated that the specified relative with whom the child is residing is unable to manage the assistance in the best interest of the child. Protective payment of cash assistance shall not be made beyond a period of two years. The department may petition the district court sitting in probate to establish, pursuant to chapter 633, a conservatorship over a participant. If a conservatorship is established, the participant's cash assistance shall be paid to the conservator. In addition to the cash assistance, an amount not to exceed ten dollars per case per month may be allowed for conservatorship or guardianship fees if authorized by court order. The department may pay cash assistance or other cash benefits to a third party if the department determines that a third-party payment is essential to assure the proper use of the assistance or benefits.

97 Acts, ch 41, §14, 34

**239B.14 Fraudulent practices — recovery of overpayments.**

1. *a.* An individual who obtains, or attempts to obtain, or aids or abets an individual to obtain, by means of a willfully false statement or representation, by knowingly failing to disclose a material fact, or by impersonation, or any fraudulent device, any assistance or other benefits under this chapter to which the individual is not entitled, commits a fraudulent practice.

*b.* An individual who accesses benefits provided under this chapter in violation of any prohibition imposed by the department pursuant to section 239B.5, subsection 4, commits a fraudulent practice.

2. An individual who commits a fraudulent practice under this section is personally liable for the amount of assistance or other benefits fraudulently obtained. The amount of the assistance or other benefits may be recovered from the offender or the offender's estate in an action brought or by claim filed in the name of the state and the recovered funds shall be deposited in the family investment program account. The action or claim filed in the name of the state shall not be considered an election of remedies to the exclusion of other remedies.

3. The department shall adopt rules pursuant to chapter 17A as necessary to recover overpayments of assistance and benefits provided under this chapter. The recovery methods shall include but are not limited to reducing the amount of assistance or benefits provided.

97 Acts, ch 41, §15, 34; 2000 Acts, ch 1088, §6; 2013 Acts, ch 138, §91

Referred to in §217.35

Fraudulent practices; see §714.8 et seq.

Use of recovered moneys generated through fraud and recoupment activities for additional fraud and recoupment activities; see §217.35  
Subsection 1 amended

**239B.15 County attorney to enforce.**

Violations of law relating to the family investment program shall be prosecuted by county attorneys. Area prosecutors of the office of the attorney general shall provide prosecution assistance.

97 Acts, ch 41, §16, 34

Referred to in §331.756(49)

**239B.16 Appeal — judicial review.**

If an applicant's application is not acted upon within a reasonable time, if it is denied in whole or in part, or if a participant's assistance or other benefits under this chapter are modified, suspended, or canceled under a provision of this chapter, the applicant or participant may appeal to the department of human services which shall request the department of inspections and appeals to conduct a hearing. Upon completion of a hearing,

the department of inspections and appeals shall issue a decision which is subject to review by the department of human services. Judicial review of the actions of the department of human services may be sought in accordance with chapter 17A. Upon receipt of a notice of the filing of a petition for judicial review, the department of human services shall furnish the petitioner with a copy of any papers filed in support of the petitioner's position, a transcript of any testimony taken, and a copy of the department's decision.

97 Acts, ch 41, §17, 34

**239B.17 PROMISE JOBS program.**

1. *Program established.* The promoting independence and self-sufficiency through employment job opportunities and basic skills program is established for applicants and participants of the family investment program. The requirements of the JOBS program shall vary as provided in the family investment agreement applicable to a family. The department of workforce development, economic development authority, department of education, and all other state, county, and public educational agencies and institutions providing vocational rehabilitation, adult education, or vocational or technical training shall assist and cooperate in the JOBS program. The departments, agencies, and institutions shall make agreements and arrangements for maximum cooperation and use of all available resources in the program. The department of human services may contract with the department of workforce development, the economic development authority, or another appropriate entity to provide JOBS program services.

2. *Program activities.* The JOBS program shall include, but is not limited to, provision of the following activities:

- a. Placing applicants and participants in employment and on-the-job training.
- b. Institutional and work experience training for applicants and participants for whom the training is likely to lead to regular employment.
- c. Special work projects for applicants and participants for whom a job in the regular economy cannot be found.
- d. Incentives, opportunities, services, and other benefits to aid applicants and participants, which may include but are not limited to financial education.
- e. Providing services and payments for persons whose family investment program eligibility has ended, in order to help the persons to stabilize or improve their employment status.

97 Acts, ch 41, §18, 34; 2000 Acts, ch 1088, §7; 2006 Acts, ch 1046, §1; 2007 Acts, ch 218, §40; 2011 Acts, ch 118, §85, 89

Referred to in §216A.107, 239B.1

**239B.18 JOBS program participation.**

Except for participants who are exempt from the requirement to enter into a family investment agreement under section 239B.8, a participant in the family investment program shall participate in JOBS program activities as provided in the participant's family investment agreement. Except for an individual who is not a United States citizen and is not a qualified alien and exempt from the requirement to enter into a family investment agreement under section 239B.8, subsection 1, paragraph "c", a participant who is exempt may voluntarily participate in the JOBS program.

97 Acts, ch 41, §19, 34; 2000 Acts, ch 1088, §8

**239B.19 JOBS program availability.**

1. Within available funding, the department shall make JOBS program services and benefits available to individuals who are participating in the JOBS program.

2. An individual's efforts under the JOBS program to attain a certificate of general educational development, high school diploma, or adult basic literacy where the individual has not previously received the certification shall be optional except as otherwise required by this chapter or by federal law. The department shall provide incentives to encourage optional efforts to attain such certifications.

3. When needed, arrangements shall be made for the care of children during the absence from the home of an individual participating in the JOBS program.

97 Acts, ch 41, §20, 34

**239B.20 JOBS program health and safety.**

The director shall establish and maintain reasonable standards for health, safety, and other conditions under the JOBS program.

97 Acts, ch 41, §21, 34

**239B.21 JOBS program — workers’ compensation law applicable.**

A participant, with respect to employment performed under the JOBS program, shall be covered by the workers’ compensation law or shall otherwise be provided with comparable protection.

97 Acts, ch 41, §22, 34

**239B.22 JOBS program — participant not state employee.**

A participant shall not be deemed to be an employee of the state or any of its political subdivisions by reason of participation in the JOBS program. However, this section shall not prevent the participant from having the status of an employee for the purposes of workers’ compensation.

97 Acts, ch 41, §23, 34

**239B.23** Repealed by 98 Acts, ch 1218, § 82.

**239B.24 State child care assistance eligibility.**

1. The following persons are deemed to be eligible for benefits under the state child care assistance program administered by the department in accordance with section 237A.13, notwithstanding the program’s eligibility requirements or any waiting list:

- a. A participant who is employed.
- b. Any other person whose earned income is considered in determining eligibility and benefits for a participant.
- c. A person who is participating in activities approved under the JOBS program.

2. A person who is deemed to be eligible for state child care assistance program benefits under this section is subject to all other state child care assistance requirements, including but not limited to provider requirements under chapter 237A, provider reimbursement methodology and rates, and any other requirements established by the department in rule.

99 Acts, ch 192, §35; 2000 Acts, ch 1067, §16; 2000 Acts, ch 1232, §91  
 Referred to in §237A.13

CHAPTER 240

RESERVED

CHAPTER 241

DISPLACED HOMEMAKERS

Referred to in §249.1

241.1	Definitions.	241.3	Department powers and duties.
241.2	Application for designation and funding as a provider of services for displaced homemakers.	241.4	and 241.5 Repealed by 86 Acts, ch 1245, §2053.
		241.6	Project coordinator.

**241.1 Definitions.**

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

1. “*Displaced homemaker*” means an individual who meets all of the following criteria:
  - a. Has worked principally in the home providing unpaid household services for family members.
  - b. Is not gainfully employed.
  - c. Has had, or would apparently have, difficulty finding appropriate paid employment.
  - d. Has been dependent on the income of another family member but is no longer supported by that income, is or has been dependent on government assistance, or is supported as the parent of a child who is sixteen or seventeen years of age.
2. “*Department*” means the department of human services.
3. “*Director*” means the director of the department of human services.

[C81, §241.1]

83 Acts, ch 96, §157, 159

**241.2 Application for designation and funding as a provider of services for displaced homemakers.**

1. Upon receipt of state or federal funding designated to assist displaced homemakers, a public or private nonprofit group may apply to the director for designation and funding as a provider of services to displaced homemakers. The application shall be submitted on a form prescribed by the director and shall include all of the following:

a. A proposal for the establishment of a multipurpose service program for displaced homemakers which provides some or all of the following:

(1) Job counseling specifically designed for a person entering or reentering the job market after a number of years as a homemaker.

(2) Job training and placement services including but not limited to:

(a) Training programs for available jobs in the public and private sectors developed by working with public and private employers, taking into account the skills and job experiences of a homemaker.

(b) Assistance in locating available employment for displaced homemakers, some of which may be in existing job training and placement programs.

(c) Utilization of services of the state employment service, which shall cooperate with the department in locating employment opportunities.

(3) Utilization of services of existing agencies and programs to provide information on and assistance with financial management, legal problems, and health care.

(4) Utilization of services of existing agencies and programs to obtain educational services, including assistance in attaining high school equivalency diplomas and other courses which are of interest and benefit to displaced homemakers.

(5) Outreach and information services with respect to public employment, education, health and unemployment assistance programs which are of interest and benefit to displaced homemakers.

(6) Development and implementation of an educational program designed to promote public and professional awareness of the problems of displaced homemakers and of the availability of services for displaced homemakers.

(7) Development and implementation of a counseling program providing emotional support by qualified personnel or peer groups or both.

b. A proposed budget.

c. Assurance by the applicant that the uniform method of data collection and program evaluation established by the director pursuant to section 241.3, subsection 1, paragraph “c”, will be implemented.

d. Any other information the director may require.

2. A public or private nonprofit group which receives designation as a provider of services

to displaced homemakers under this chapter shall comply with all applicable department rules.

[C81, §241.2]

2009 Acts, ch 41, §263

Referred to in §241.3

### **241.3 Department powers and duties.**

1. The director shall do all of the following:

a. Designate and award grants for existing and pilot programs, pursuant to section 241.2, to provide services to displaced homemakers.

b. Designate an existing department staff member to perform the duties set forth in section 241.6.

c. Design and implement a uniform method of collecting data on displaced homemakers receiving services under this chapter and of evaluating funded programs.

2. The department shall consult and cooperate with the department of workforce development, the United States commissioner of social security administration, the office on the status of women of the department of human rights, the department of education, and other persons in the executive branch of the state government as the department considers appropriate to facilitate the coordination of multipurpose service programs established under this chapter with existing programs of a similar nature.

3. The director, in carrying out the provisions of this chapter, may accept, use, and dispose of contributions of money, services, and property made available to the department by an agency or department of the state or federal government, or a private agency or individual.

[C81, §241.3]

86 Acts, ch 1245, §938; 96 Acts, ch 1186, §23; 2001 Acts, ch 61, §16; 2012 Acts, ch 1023, §31

Referred to in §241.2

**241.4 and 241.5** Repealed by 86 Acts, ch 1245, § 2053.

### **241.6 Project coordinator.**

The director shall appoint a project coordinator who shall administer appropriated funds, coordinate funded programs, and perform other duties the director assigns to the coordinator.

[C81, §241.6]

Referred to in §241.3

## CHAPTERS 241A to 248A

RESERVED

## CHAPTER 249

## STATE SUPPLEMENTARY ASSISTANCE

Referred to in §63A.2, 142.1, 249A.4, 425.2, 483A.24

Child and family services, see chapter 234

249.1	Definitions.	249.9	Funeral expenses.
249.2	Agreement with federal authority.	249.10	Prior liens, claims, and assignments.
249.3	Eligibility.	249.11	Fraud — investigations and audits.
249.4	Application — amount of grant — retroactive benefits.	249.12	Cost-related system.
249.5	Judicial review.	249.13	County attorney to enforce.
249.6	Charge for cashing warrant unlawful.	249.14	Old-age assistance revolving fund.
249.7	Assistance inalienable.		
249.8	Cancellation of warrants.		

**249.1 Definitions.**

As used in this chapter:

1. “*Department*” means the department of human services.
2. “*Director*” means the director of human services.
3. “*Federal supplemental security income*” means cash payments made to individuals by the United States government under Tit. XVI of the Social Security Act as amended by Pub. L. No. 92-603, or any other amendments thereto.
4. “*Previous categorical assistance programs*” means the aid to the blind program authorized by chapter 241, the aid to the disabled program authorized by chapter 241A and the old-age assistance program authorized by chapter 249, Code 1973.
5. “*State supplementary assistance*” means cash payments made to individuals:
  - a. By the United States government on behalf of the state of Iowa pursuant to section 249.2.
  - b. By the state of Iowa directly pursuant to sections 249.3 to 249.5.  
[C35, §5926-f1; C39, §3684.01, 3828.001; C46, 50, 54, 58, §241.1, 249.1; C62, 66, 71, 73, §241.1, 241A.1, 249.1; C75, 77, 79, 81, §249.1]  
83 Acts, ch 96, §157, 159; 2005 Acts, ch 179, §122; 2006 Acts, ch 1010, §77; 2010 Acts, ch 1061, §180  
Referred to in §234.21, 249.3, 249A.3, 403A.23, 427.9

**249.2 Agreement with federal authority.**

The director may enter into an agreement with the United States secretary of health and human services for federal administration of a program of state supplementary assistance to prescribed categories of persons who are, or would be except for the amount of income they receive from other sources, receiving federal supplemental security income. The agreement may authorize the secretary to make rules, in addition to and not in conflict with state laws and regulations, respecting eligibility for or the amount of state supplementary assistance paid under this section as the secretary finds necessary to achieve efficient and effective administration of both the basic federal supplemental security income program and the state supplementary assistance program administered by the secretary under the agreement. The agreement shall provide for the state of Iowa to reimburse the federal government, from funds appropriated for that purpose, for state supplementary assistance paid by the federal government pursuant to the agreement.

- [C35, §5296-f4, -f36; C39, §3684.04, 3828.003, 3828.045; C46, 50, 54, 58, §241.4, 249.2, 249.42; C62, 66, 71, 73, §241.4, 241A.4, 249.2, 249.42; C75, 77, 79, 81, §249.2]  
83 Acts, ch 101, §56  
Referred to in §249.1

**249.3 Eligibility.**

The persons eligible to receive state supplementary assistance under section 249.1, subsection 5, paragraph “b”, are:

1. Any person whose needs were taken into account in computing the grant of a recipient, who was eligible for and was receiving assistance under a previous categorical assistance program during the month of December 1973, because the person was deemed essential to the well-being of the recipient in maintaining a living arrangement in the recipient's own home, so long as the person continues to act in the capacity of essential person to the former recipient and to be in financial need according to standards established by the department.

2. Any person who meets the criteria established by paragraphs "a", "b", and "c" of this subsection:

a. Is receiving either:

(1) Care in a licensed adult foster home, boarding home or custodial home, as defined by section 135C.1, or in another type of protective living arrangement as defined by the department; or

(2) Nursing care in the person's own home, certified by a physician as being required, so long as the cost of the nursing care does not exceed standards established by the department.

b. Is in fact receiving or would, except for income in excess of applicable maximums, be receiving federal supplemental security income.

c. Does not have sufficient income to meet the cost of care in one of the living arrangements defined in paragraph "a" of this subsection, which cost of care shall not exceed the amount established by the rules of the department for each of those living arrangements.

3. Any person living in any living arrangement other than as a patient or resident of a facility licensed under chapter 135C, who meets the criteria established by paragraphs "a", "b", and "c":

a. Lives with a dependent spouse, parent, child or adult child who is sharing the recipient's living arrangement, so long as the person continues in the relationship of dependent spouse, parent, child or adult child to the recipient and to be in financial need according to standards established by the department.

b. Is in fact receiving or would, except for income in excess of applicable maximums, be receiving federal supplemental security income.

c. Does not have sufficient income to meet the cost of providing for the dependent spouse, parent, child or adult child, according to standards established by the department.

4. At the discretion of the department, persons who meet the criteria listed in all of the following paragraphs:

a. Are either of the following:

(1) Sixty-five years of age or older.

(2) Disabled as defined by 42 U.S.C. § 1382c(a)(3), except that being engaged in substantial gainful activity shall not preclude a determination of disability for the purpose of this subparagraph.

b. Live in one of the following:

(1) The individual's own home.

(2) The home of another individual.

(3) A group living arrangement.

(4) A medical facility.

c. Would be eligible for supplemental security income benefits but for having excess income or but for being engaged in substantial gainful activity and having excess income.

d. Are not eligible for another state supplementary assistance group.

e. Receive full medical assistance benefits under chapter 249A and are not required to meet a spend-down or pay a premium to be eligible for such benefits.

f. Are currently eligible for Medicare part B.

g. Have income of at least one hundred twenty percent of the federal poverty level but not exceeding the medical assistance income limit for the eligibility group for the individual person's living arrangement.

[SS15, §2722-i, -j, -k; C24, 27, 31, §5379; C35, §5296-f9, -f12, 5379; C39, §3684.02, 3828.007, 3828.008; C46, 50, 54, 58, §241.2, 249.5, 249.6; C62, 66, 71, 73, §241.2, 241A.2, 249.5, 249.6; C75, 77, 79, 81, §249.3]

2004 Acts, ch 1085, §4, 10, 11; 2005 Acts, ch 175, §108

Referred to in §249.1, 249.4, 422.7

**249.4 Application — amount of grant — retroactive benefits.**

1. Applications for state supplementary assistance shall be made in the form and manner prescribed by the director or the director's designee, with the approval of the council on human services, pursuant to chapter 17A. Each person who so applies and is found eligible under section 249.3 shall, so long as the person's eligibility continues, receive state supplementary assistance on a monthly basis, from funds appropriated to the department for the purpose.

2. Any person who applies within fifteen months from the date of implementation of eligibility pursuant to section 249.3, subsection 4, and who would have been eligible under that subsection for any period on or after October 1, 2003, may be granted benefits retroactive to October 1, 2003.

[SS15, §2722-m, -p; C24, 27, 31, §5382, 5384; C35, § 5296-f17, -f18, 5382, 5384; C39, §3684.06, 3684.09, 3828.013, 3828.014; C46, 50, 54, 58, §241.6, 241.9, 249.10, 249.11; C62, 66, 71, 73, §241.6, 241.9, 241A.5, 241A.6, 249.10, 249.11; C75, 77, 79, 81, §249.4]

83 Acts, ch 96, §157, 159; 2004 Acts, ch 1085, §5, 10, 11

Referred to in §249.1

**249.5 Judicial review.**

If an application is not acted upon within a reasonable time, if it is denied in whole or in part, or if an award of assistance is modified, suspended, or canceled under a provision of this chapter, the applicant or recipient may appeal to the department of human services, which shall request the department of inspections and appeals to conduct a hearing. Upon completion of a hearing, the department of inspections and appeals shall issue a decision which is subject to review by the department of human services. Judicial review of the actions of the department of human services may be sought in accordance with chapter 17A. Upon receipt of the petition for judicial review, the department of human services shall furnish the petitioner with a copy of any papers filed by the petitioner in support of the petitioner's position, a transcript of any testimony taken, and a copy of the department's decision.

[C35, §5296-f18; C39, §3684.11, 3828.014; C46, 50, 54, 58, §241.11, 249.11; C62, 66, 71, 73, §241.11, 241A.8, 249.11; C75, 77, 79, 81, §249.5]

90 Acts, ch 1204, §59

Referred to in §249.1

**249.6 Charge for cashing warrant unlawful.**

It shall be unlawful for any person to charge a fee, service charge or exchange for the cashing of a warrant issued in payment of state supplementary assistance, or to discount or pay less than the face value of any warrant drawn in payment of such assistance, when cashing such a warrant or accepting it in payment of the purchase price of goods, services, rent, taxes or indebtedness.

[C35, §5296-g4; C39, §3828.036; C46, 50, 54, 58, 62, 66, 71, 73, §249.33; C75, 77, 79, 81, §249.6]

**249.7 Assistance inalienable.**

All rights to state supplementary assistance shall be absolutely inalienable by any assignment, sale, execution or otherwise and, in case of bankruptcy, the assistance shall not pass to or through any trustees or other persons acting on behalf of creditors.

[C35, §5296-f29; C39, §3684.10, 3828.037; C46, 50, 54, 58, §241.10, 249.34; C62, 66, 71, 73, §241.10, 241A.7, 249.34; C75, 77, 79, 81, §249.7]

**249.8 Cancellation of warrants.**

The director of the department of administrative services, as of January, April, July, and October 1 of each year, shall stop payment on and issue duplicates of all state supplementary assistance warrants which have been outstanding and unredeemed by the treasurer of state for six months or longer. No bond of indemnity shall be required for the issuance of such duplicate warrants which shall be canceled immediately by the director of the department of administrative services. If the original warrants are subsequently presented for payment, warrants in lieu thereof shall be issued by the director of the department of administrative

services at the discretion of and upon certification by the director of human services or the director's designee.

[C39, §3828.044; C46, 50, 54, 58, 62, 66, 71, 73, §249.41; C75, 77, 79, 81, §249.8]  
2003 Acts, ch 145, §286

#### **249.9 Funeral expenses.**

The department may pay, from funds appropriated to it for the purpose, a maximum of four hundred dollars toward funeral expenses on the death of a person receiving state supplementary assistance or who received assistance under a previous categorical assistance program prior to January 1, 1974, provided:

1. The decedent does not leave an estate which may be probated with sufficient proceeds to allow for payment of the funeral claim.

2. Payments which are due the decedent's estate or beneficiary by reason of the liability of a life insurance, death or funeral benefit company, association or society, or in the form of United States social security, railroad retirement, or veterans' benefits upon the death of the decedent, are deducted from the department's liability under this section.

[C35, §5296-f25; C39, §3684.17, 3828.021; C46, 50, 54, 58, §241.17, 249.18; C62, 66, 71, 73, §241.17, 241A.11, 249.18; C75, 77, 79, 81, §249.9]

83 Acts, ch 153, §11; 84 Acts, ch 1297, §1

#### **249.10 Prior liens, claims, and assignments.**

Any lien or claim against the estate of a decedent existing on January 1, 1974, which lien was perfected or which claim was filed under the provisions of section 249.19, 249.20, or 249.21, Code 1973, and prior Codes, and which liens or claims have not been satisfied, are void. Any assignment of personal property which was made under the provisions of chapter 249, Code 1973, and prior Codes, is void. The director may in furtherance of this section release any lien or claim created or existing under that chapter. Each release made pursuant to this section shall be executed and acknowledged by the director or the director's authorized designee, and when recorded shall be conclusive in favor of any third person dealing with or concerning the property affected by the release in reliance upon such record.

[C35, §5296-f15, -f16, -g1; C39, §3828.022, 3828.023, 3828.024; C46, 50, 54, 58, 62, 66, 71, 73, §249.19, 249.20, 249.21; C75, 77, 79, 81, §249.10]

2005 Acts, ch 179, §123

#### **249.11 Fraud — investigations and audits.**

Any person who obtains assistance under this chapter by misrepresentation or by failure with fraudulent intent to bring forth all of the facts required of an applicant for assistance under this chapter, or any person who shall knowingly make false statements concerning an applicant's eligibility for assistance under this chapter, is guilty of a fraudulent practice.

The department of inspections and appeals shall conduct investigations and audits as deemed necessary to ensure compliance with state supplementary assistance programs administered under this chapter. The department of inspections and appeals shall cooperate with the department of human services on the development of procedures relating to such investigations and audits to ensure compliance with federal and state single state agency requirements.

[C35, §5296-f31, -f32; C39, §3684.19, 3828.049, 3828.050; C46, 50, 54, 58, §241.19, 249.46, 249.47; C62, 66, 71, 73, §241.19, 241A.12, 249.46, 249.47; C75, 77, 79, 81, §249.11]

90 Acts, ch 1204, §60

Fraudulent practices, see §714.8 – 714.14

#### **249.12 Cost-related system.**

1. In order to assure that the necessary data is available to aid the general assembly to determine appropriate funding for the custodial care program, the department of human services shall develop a cost-related system for financial supplementation to individuals who need custodial care and who have insufficient resources to purchase the care needed.

2. All privately operated licensed custodial facilities in Iowa shall cooperate with

the department of human services to develop the cost-related plan. After the plan is implemented, state supplemental funds shall not be used for the care of any individual in facilities that have not submitted cost statements to the department of human services.

[C35, §5296-f37; C39, §3828.046; C46, 50, 54, 58, 62, 66, 71, 73, §249.43; C75, 77, 79, 81, §249.12]

83 Acts, ch 96, §157, 159; 2012 Acts, ch 1023, §157

**249.13 County attorney to enforce.**

It is the intent of the general assembly that violations of law relating to the family investment program, medical assistance, and supplemental assistance shall be prosecuted by county attorneys. Area prosecutors of the office of the attorney general shall provide such assistance in prosecution as may be required. It is the intent of the general assembly that the first priority for investigation and prosecution for which funds are provided shall be for fraudulent claims or practices by health care vendors and providers.

[C79, 81, §249.13]

93 Acts, ch 97, §36

Referred to in §331.756(49)

**249.14 Old-age assistance revolving fund.**

The old-age assistance revolving fund shall remain in the state treasury until all property managed by the department and maintained by the fund is disposed of, at which time all money in the fund shall be transferred to the general fund of the state and the fund shall be closed. If the balance of the fund exceeds fifteen thousand dollars at the end of any calendar quarter, the excess over that amount shall be transferred to the general fund of the state.

83 Acts, ch 191, §2, 27

**CHAPTER 249A**

**MEDICAL ASSISTANCE**

Referred to in §8A.512, 35D.7, 35D.10, 35D.18, 48A.19, 85.38, 135.22B, 135.61, 135.120, 135.152, 135C.1, 135C.4, 135C.6, 135C.20B, 135C.31, 135C.40, 135H.6, 144.13A, 147.136, 155A.32, 217.36, 222.86, 222.92, 225C.6B, 225C.12, 225C.35, 225D.1, 226.9B, 226.45, 231C.5A, 249.3, 249B.1, 249F.1, 249K.2, 249N.2, 249N.3, 249N.6, 252.23, 252B.20, 252C.2, 252E.2A, 252E.11, 256B.15, 283A.2, 331.390, 331.394, 331.395, 331.397, 422.9, 422.12M, 483A.24, 505.25, 509.1, 513C.3, 514.1, 514A.3B, 514B.31, 514C.8, 514E.7, 514H.5, 514I.8, 598.22A, 602.8102(82), 633.246A, 633.336, 633.641, 633.653A, 633C.2, 633C.3, 633E.15, 910.1, 910.2

See Iowa Acts for special provisions relating to medical assistance reimbursements in a given year

Brain injury services program, §135.22B

Health insurance data match program, §505.25

Modified price-based case-mix reimbursement for nursing facilities; 2001 Acts, ch 192, §4;

2002 Acts, ch 1172, §2; 2003 Acts, ch 112, §9;

2003 Acts, ch 175, §50; 2003 Acts, ch 179, §165;

2004 Acts, ch 1175, §154; 2005 Acts, ch 175, §31;

2006 Acts, ch 1184, §30; 2007 Acts, ch 218, §33, 67;

2008 Acts, ch 1187, §32, 33; 2009 Acts, ch 182, §32, 33;

2009 Acts, ch 183, §73; 2010 Acts, ch 1182, §20 - 23, 36;

2010 Acts, ch 1192, §33; 2010 Acts, ch 1193, §73;

2011 Acts, ch 129, §28, 141, 156; 2012 Acts, ch 1133, §32;

2013 Acts, ch 138, §29, 43, 159

Prescription drug copayments; 2005 Acts, ch 167, §42, 66

Department of human services to collaborate with affected Medicaid service providers to finalize and test a uniform cost report to be used in development of specified Medicaid reimbursement rates; report due by December 31, 2013; 2011 Acts, ch 129, §37, 156

Implementation of average acquisition cost reimbursement methodology for drugs covered under the medical assistance program; 2012 Acts, ch 1133, §33

<p>SUBCHAPTER I</p> <p>MEDICAL ASSISTANCE ELIGIBILITY AND MISCELLANEOUS PROVISIONS</p> <p>249A.1 Title.</p> <p>249A.2 Definitions.</p> <p>249A.3 Eligibility.</p>	<p>249A.3A Medical assistance — all income-eligible children.</p> <p>249A.4 Duties of director.</p> <p>249A.4A Garnishment. Transferred to §249A.52; 2013 Acts, ch 24, §14.</p>
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249A.4B	Medical assistance advisory council.	249A.26	State and county participation in funding for services to persons with disabilities — case management.
249A.5	Recovery of payment. Transferred to §249A.53; 2013 Acts, ch 24, §14.	249A.26A	State and county participation in funding for rehabilitation services for persons with chronic mental illness. Repealed by 2007 Acts, ch 218, §122.
249A.6	Assignment — lien. Transferred to §249A.54; 2013 Acts, ch 24, §14.	249A.27	Indemnity for case management and disallowed costs.
249A.6A	Restitution. Transferred to §249A.55; 2013 Acts, ch 24, §14.	249A.28	Reserved.
249A.7	Fraudulent practices — investigations and audits — Medicaid fraud fund. Transferred to §249A.50; 2013 Acts, ch 24, §14.	249A.29	Home and community-based services waiver providers — records checks.
249A.8	Fraudulent practice. Transferred to §249A.51; 2013 Acts, ch 24, §14.	249A.30	Home and community-based services waiver — service provider reimbursement rate adjustments.
249A.9	Repealed by 84 Acts, ch 1297, §7.	249A.30A	Medical assistance — personal needs allowance.
249A.10	Repealed by 81 Acts, ch 7, §17.	249A.31	Cost-based reimbursement.
249A.11	Payment for patient care segregated.	249A.32	Medical assistance home and community-based services waivers — consumer-directed attendant care — termination of contract.
249A.12	Assistance to persons with an intellectual disability.	249A.32A	Home and community-based services waivers — limitations.
249A.13	Repealed by 87 Acts, ch 28, §1.	249A.32B	Early and periodic screening, diagnosis, and treatment funding.
249A.14	County attorney to enforce. Transferred to §249A.56; 2013 Acts, ch 24, §14.	249A.33	Pharmaceutical settlement account — medical assistance program.
249A.15	Licensed psychologists eligible for payment.	249A.34	Medical assistance crisis intervention team. Repealed by 2005 Acts, ch 167, §40, 66.
249A.15A	Licensed marital and family therapists, licensed master social workers, licensed mental health counselors, and certified alcohol and drug counselors.	249A.35	Purchase of qualified long-term care insurance policy — computation under medical assistance program.
249A.15B	Speech pathologists eligible for payment.	249A.36	Medical assistance quality improvement council. Repealed by 2012 Acts, ch 1138, §111.
249A.16	New rates for services — effective date.	249A.37	Health care information sharing.
249A.17	Repealed by 97 Acts, ch 41, §29.	249A.38	Inmates of public institutions — suspension or termination of medical assistance.
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249A.18A	Resident assessment.		
249A.19	Health care facilities — penalty. Transferred to §249A.57; 2013 Acts, ch 24, §14.		
249A.20	Noninstitutional health providers — reimbursement.		
249A.20A	Preferred drug list program.		
249A.20B	Nursing facility quality assurance assessment. Repealed by 2005 Acts, ch 167, §40, 41, 66.		
249A.21	Intermediate care facilities for persons with an intellectual disability — assessment.		
249A.22	and 249A.23 Reserved.		
249A.24	Iowa medical assistance drug utilization review commission — created.		
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## SUBCHAPTER I

## MEDICAL ASSISTANCE ELIGIBILITY AND MISCELLANEOUS PROVISIONS

**249A.1 Title.**

This chapter may be cited as the “*Medical Assistance Act*”.

[C62, 66, 71, 73, 75, 77, 79, 81, §249A.1]

**249A.2 Definitions.**

As used in this chapter:

1. “*Department*” means the department of human services.
2. “*Director*” means the director of human services.
3. “*Discretionary medical assistance*” means mandatory medical assistance or optional medical assistance provided to medically needy individuals whose income and resources are in excess of eligibility limitations but are insufficient to meet all of the costs of necessary medical care and services, provided that if the assistance includes services in institutions for mental diseases or intermediate care facilities for persons with an intellectual disability, or both, for any group of such individuals, the assistance also includes for all covered groups of such individuals at least the care and services enumerated in Tit. XIX of the federal Social Security Act, section 1905(a), paragraphs (1) through (5), and (17), as codified in 42 U.S.C. § 1396d(a), paragraphs (1) through (5), and (17), or any seven of the care and services enumerated in Tit. XIX of the federal Social Security Act, section 1905(a), paragraphs (1) through (24), as codified in 42 U.S.C. § 1396d(a), paragraphs (1) through (24).
4. “*Family investment program*” means the family investment program eligibility requirements under chapter 239B, except to the extent federal law requires application of the eligibility requirements under chapter 239, Code 1997, as in effect on July 16, 1996.
5. “*Group health plan cost sharing*” means payment under the medical assistance program of a premium, a coinsurance amount, a deductible amount, or any other cost sharing obligation for a group health plan as required by Tit. XIX of the federal Social Security Act, section 1906, as codified in 42 U.S.C. § 1396e.
6. “*Mandatory medical assistance*” means payment of all or part of the costs of the care and services required to be provided by Tit. XIX of the federal Social Security Act, section 1905(a), paragraphs (1) through (5), (17), (21), and (28), as codified in 42 U.S.C. § 1396d(a), paragraphs (1) through (5), (17), (21), and (28).
7. “*Medical assistance*” or “*Medicaid*” means payment of all or part of the costs of the care and services made in accordance with Tit. XIX of the federal Social Security Act and authorized pursuant to this chapter.
8. “*Medical assistance program*” or “*Medicaid program*” means the program established under this chapter to provide medical assistance.
9. “*Medicare cost sharing*” means payment under the medical assistance program of a premium, a coinsurance amount, or a deductible amount for federal Medicare as provided by Tit. XIX of the federal Social Security Act, section 1905(p)(3), as codified in 42 U.S.C. § 1396d(p)(3).
10. “*Optional medical assistance*” means payment of all or part of the costs of any or all

of the care and services authorized to be provided by Tit. XIX of the federal Social Security Act, section 1905(a), paragraphs (6) through (16), (18) through (20), (22) through (27), and (29), as codified in 42 U.S.C. § 1396d(a), paragraphs (6) through (16), and (18) through (20), (22) through (27), and (29).

11. “*Overpayment*” means any funds that a provider receives or retains under the medical assistance program to which the person, after applicable reconciliation, is not entitled. To the extent the provider and the department disagree as to whether the provider is entitled to funds received or retained under the medical assistance program, “*overpayment*” includes such funds for which the provider’s administrative and judicial review remedies under 441 IAC ch. 7 and chapter 17A have been exhausted. For purposes of repayment, an overpayment may include interest in accordance with section 249A.41.

12. “*Provider*” means an individual, firm, corporation, association, or institution which is providing or has been approved to provide medical assistance to recipients under this chapter.

13. “*Recipient*” means a person who receives medical assistance under this chapter.

14. “*Retained life estate*” means any of the following:

a. A life estate created by the recipient or recipient’s spouse, in which either the recipient or the recipient’s spouse held any interest in the property at the time of the creation of the life estate.

b. A life estate created for the benefit of the recipient or the recipient’s spouse in property in which either the recipient or the recipient’s spouse held any interest in the property within five years prior to the creation of the life estate.

[C62, 66, 71, 73, 75, 77, 79, 81, §249A.2]

83 Acts, ch 96, §157, 159; 84 Acts, ch 1297, §2; 89 Acts, ch 104, §1; 90 Acts, ch 1039, §15; 91 Acts, ch 107, §11; 91 Acts, ch 158, §1, 2; 93 Acts, ch 54, §5; 96 Acts, ch 1129, §113; 97 Acts, ch 41, §25; 2002 Acts, ch 1086, §1, 21; 2010 Acts, ch 1061, §180; 2012 Acts, ch 1019, §96; 2013 Acts, ch 24, §2; 2013 Acts, ch 138, §62 – 64

Referred to in §249B.1, 249F.1, 633C.1

Subsection 1 stricken and former subsections 2 and 3 renumbered as 1 and 2

Subsection 4 amended and renumbered as 3 and former subsections 5 and 6 renumbered as 4 and 5

NEW subsection 6

Subsection 7 amended

NEW subsection 8 and former subsection 8 renumbered as 9

NEW subsections 10 and 11 and former subsections 9 – 11 renumbered as 12 – 14

### **249A.3 Eligibility.**

The extent of and the limitations upon eligibility for assistance under this chapter is prescribed by this section, subject to federal requirements, and by laws appropriating funds for assistance provided pursuant to this chapter.

1. Mandatory medical assistance shall be provided to, or on behalf of, any individual or family residing in the state of Iowa, including those residents who are temporarily absent from the state, who:

a. Is a recipient of federal supplemental security income or who would be eligible for federal supplemental security income if living in their own home.

b. Is an individual who is eligible for the family investment program or is an individual who would be eligible for unborn child payments under the family investment program, as authorized by Tit. IV-A of the federal Social Security Act, if the family investment program provided for unborn child payments during the entire pregnancy.

c. Was a recipient of one of the previous categorical assistance programs as of December 31, 1973, and would continue to meet the eligibility requirements for one of the previous categorical assistance programs as the requirements existed on that date.

d. Is a child up to one year of age who was born on or after October 1, 1984, to a woman receiving medical assistance on the date of the child’s birth, who continues to be a member of the mother’s household, and whose mother continues to receive medical assistance.

e. Is a pregnant woman whose pregnancy has been medically verified and who qualifies under either of the following:

(1) The woman would be eligible for cash assistance under the family investment program, if the child were born and living with the woman in the month of payment.

(2) The woman meets the income and resource requirements of the family investment

program, provided the unborn child is considered a member of the household, and the woman's family is treated as though deprivation exists.

*f.* Is a child who is less than seven years of age and who meets the income and resource requirements of the family investment program.

*g.* (1) Is a child who is one through five years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6401, whose income is not more than one hundred thirty-three percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

(2) Is a child who has attained six years of age but has not attained nineteen years of age, whose income is not more than one hundred thirty-three percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

*h.* Is a woman who, while pregnant, meets eligibility requirements for assistance under the federal Social Security Act, section 1902(l), and continues to meet the requirements except for income. The woman is eligible to receive assistance until sixty days after the date pregnancy ends.

*i.* Is a pregnant woman who is determined to be presumptively eligible by a health care provider qualified under the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9407. The woman is eligible for ambulatory prenatal care assistance until the last day of the month following the month of the presumptive eligibility determination. If the department receives the woman's medical assistance application by the last day of the month following the month of the presumptive eligibility determination, the woman is eligible for ambulatory prenatal care assistance until the department actually determines the woman's eligibility or ineligibility for medical assistance. The costs of services provided during the presumptive eligibility period shall be paid by the medical assistance program for those persons who are determined to be ineligible through the regular eligibility determination process.

*j.* Is a pregnant woman or infant less than one year of age whose income does not exceed the federally prescribed percentage of the poverty level in accordance with the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302.

*k.* Is a pregnant woman or infant whose income is more than the limit prescribed under the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302, but not more than two hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

*l.* (1) Is an infant whose income is not more than two hundred percent of the federal poverty level, as defined by the most recently revised income guidelines published by the United States department of health and human services.

(2) Is a pregnant woman or infant whose family income is at or below three hundred percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, if otherwise eligible.

*m.* Is a child for whom adoption assistance or foster care maintenance payments are paid under Tit. IV-E of the federal Social Security Act.

*n.* Is an individual or family who is ineligible for the family investment program because of requirements that do not apply under Tit. XIX of the federal Social Security Act.

*o.* Was a federal supplemental security income or a state supplementary assistance recipient, as defined by section 249.1, and a recipient of federal social security benefits at one time since August 1, 1977, and would be eligible for federal supplemental security income or state supplementary assistance but for the increases due to the cost of living in federal social security benefits since the last date of concurrent eligibility.

*p.* Is an individual whose spouse is deceased and who is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, due to the elimination of the actuarial reduction formula for federal social security benefits under the federal Social Security Act and subsequent cost of living increases.

q. Is an individual who is at least sixty years of age and is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of receipt of social security widow or widower benefits and is not eligible for federal Medicare, part A coverage.

r. Is an individual with a disability, and is at least eighteen years of age, who receives parental social security benefits under the federal Social Security Act and is not eligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of the receipt of the social security benefits.

s. Is an individual who is no longer eligible for the family investment program due to earned income. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

t. Is an individual who is no longer eligible for the family investment program due to the receipt of child or spousal support. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

u. As allowed under the federal Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 6062, is an individual who is less than nineteen years of age who meets the federal supplemental security income program rules for disability but whose income or resources exceed such program rules, who is a member of a family whose income is at or below three hundred percent of the most recently revised official poverty guidelines published by the United States department of health and human services for the family, and whose parent complies with the requirements relating to family coverage offered by the parent's employer. Such assistance shall be provided on a phased-in basis, based upon the age of the individual.

v. (1) Beginning January 1, 2014, in accordance with section 1902(a)(10)(A)(i)(VIII) of the federal Social Security Act, as codified in 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII), is an individual who is nineteen years of age or older and under sixty-five years of age; is not pregnant; is not entitled to or enrolled for Medicare benefits under part A, or enrolled for Medicare benefits under part B, of Tit. XVIII of the federal Social Security Act; is not otherwise described in section 1902(a)(10)(A)(i) of the federal Social Security Act; is not exempt pursuant to section 1902(k)(3), as codified in 42 U.S.C. § 1396a(k)(3), and whose income as determined under 1902(e)(14) of the federal Social Security Act, as codified in 42 U.S.C. § 1396a(e)(14), does not exceed one hundred thirty-three percent of the poverty line as defined in section 2110(c)(5) of the federal Social Security Act, as codified in 42 U.S.C. § 1397jj(c)(5) for the applicable family size.

(2) Notwithstanding any provision to the contrary, individuals eligible for medical assistance under this paragraph "v" shall receive coverage for benefits pursuant to 42 U.S.C. § 1396u-7(b)(1)(B); adjusted as necessary to provide the essential health benefits as required pursuant to section 1302 of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148; adjusted to provide prescription drugs and dental services consistent with the medical assistance state plan benefits package for individuals otherwise eligible under this subsection; and adjusted to provide habilitation services consistent with the state medical assistance program section 1915(i) waiver.

(3) (a) For individuals whose income as determined under this paragraph "v" is at or below one hundred percent of the federal poverty level, covered benefits under subparagraph (2) shall be administered consistent with program administration under this subsection.

(b) For individuals whose income as determined under this paragraph "v" is above one hundred percent but not in excess of one hundred thirty-three percent of the federal poverty level, covered benefits shall be administered through provision of premium assistance for the purchase of covered benefits through the American health benefits exchange created pursuant to the Affordable Care Act, as defined in section 249N.2.

w. Beginning January 1, 2014, is an individual who meets all of the following requirements:

(1) Is under twenty-six years of age.

(2) Was in foster care under the responsibility of the state on the date of attaining eighteen years of age or such higher age to which foster care is provided.

(3) Was enrolled in the medical assistance program under this chapter while in such foster care.

2. a. Mandatory medical assistance may also, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, other individuals and families who are not excluded under subsection 5 of this section and whose incomes and resources are insufficient to meet the cost of necessary medical care and services in accordance with the following order of priorities:

(1) (a) As allowed under 42 U.S.C. § 1396a(a)(10)(A)(ii)(XIII), individuals with disabilities, who are less than sixty-five years of age, who are members of families whose income is less than two hundred fifty percent of the most recently revised official poverty guidelines published by the United States department of health and human services for the family, who have earned income and who are eligible for mandatory medical assistance or optional medical assistance under this section if earnings are disregarded. As allowed by 42 U.S.C. § 1396a(r)(2), unearned income shall also be disregarded in determining whether an individual is eligible for assistance under this subparagraph. For the purposes of determining the amount of an individual's resources under this subparagraph and as allowed by 42 U.S.C. § 1396a(r)(2), a maximum of ten thousand dollars of available resources shall be disregarded, and any additional resources held in a retirement account, in a medical savings account, or in any other account approved under rules adopted by the department shall also be disregarded.

(b) Individuals eligible for assistance under this subparagraph, whose individual income exceeds one hundred fifty percent of the official poverty guidelines published by the United States department of health and human services for an individual, shall pay a premium. The amount of the premium shall be based on a sliding fee schedule adopted by rule of the department and shall be based on a percentage of the individual's income. The maximum premium payable by an individual whose income exceeds one hundred fifty percent of the official poverty guidelines shall be commensurate with the cost of state employees' group health insurance in this state. The payment to and acceptance by an automated case management system or the department of the premium required under this subparagraph shall not automatically confer initial or continuing program eligibility on an individual. A premium paid to and accepted by the department's premium payment process that is subsequently determined to be untimely or to have been paid on behalf of an individual ineligible for the program shall be refunded to the remitter in accordance with rules adopted by the department. Any unpaid premium shall be a debt owed the department.

(2) (a) As provided under the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000, Pub. L. No. 106-354, individuals who meet all of the following criteria:

(i) Are not described in 42 U.S.C. § 1396a(a)(10)(A)(i).

(ii) Have not attained age sixty-five.

(iii) Have been screened for breast and cervical cancer under the United States centers for disease control and prevention breast and cervical cancer early detection program established under 42 U.S.C. § 300k et seq., in accordance with the requirements of 42 U.S.C. § 300n, and need treatment for breast or cervical cancer. An individual is considered screened for breast and cervical cancer under this subparagraph subdivision if the individual is screened by any provider or entity, and the state grantee of the United States centers for disease control and prevention funds under Tit. XV of the federal Public Health Services Act has elected to include screening activities by that provider or entity as screening activities pursuant to Tit. XV of the federal Public Health Services Act. This screening includes breast or cervical cancer screenings or related diagnostic services provided or funded by family planning centers, community health centers, or nonprofit organizations, and the screenings or services are provided to individuals who meet the eligibility requirements established by the state grantee of the United States centers for disease control and prevention funds under Tit. XV of the federal Public Health Services Act.

(iv) Are not otherwise covered under creditable coverage as defined in 42 U.S.C. § 300gg(c).

(b) An individual who meets the criteria of this subparagraph (2) shall be presumptively eligible for medical assistance.

(3) Individuals who are receiving care in a hospital or in a basic nursing home, intermediate nursing home, skilled nursing home or extended care facility, as defined by section 135C.1, and who meet all eligibility requirements for federal supplemental security income except that their income exceeds the allowable maximum for such eligibility, but whose income is not in excess of the maximum established for eligibility for discretionary medical assistance and is insufficient to meet the full cost of their care in the hospital or health care facility on the basis of standards established by the department.

(4) Individuals under twenty-one years of age living in a licensed foster home, or in a private home pursuant to a subsidized adoption arrangement, for whom the department accepts financial responsibility in whole or in part and who are not eligible under subsection 1.

(5) Individuals who are receiving care in an institution for mental diseases, and who are under twenty-one years of age and whose income and resources are such that they are eligible for the family investment program, or who are sixty-five years of age or older and who meet the conditions for eligibility in paragraph "a", subparagraph (1).

(6) Individuals and families whose incomes and resources are such that they are eligible for federal supplemental security income or the family investment program, but who are not actually receiving such public assistance.

(7) Individuals who are receiving state supplementary assistance as defined by section 249.1.

(8) Individuals under twenty-one years of age who qualify on a financial basis for, but who are otherwise ineligible to receive assistance under the family investment program.

(9) Individuals eligible for family planning services under a federally approved demonstration waiver.

(10) Individuals and families who would be eligible under subsection 1 or this subsection except for excess income or resources, or a reasonable category of those individuals and families.

(11) Individuals who have attained the age of twenty-one but have not yet attained the age of sixty-five who qualify on a financial basis for, but who are otherwise ineligible to receive, federal supplemental security income or assistance under the family investment program.

b. Notwithstanding the provisions of this subsection establishing priorities for individuals and families to receive mandatory medical assistance, the department may determine within the priorities listed in this subsection which persons shall receive mandatory medical assistance based on income levels established by the department, subject to the limitations provided in subsection 4.

3. Optional medical assistance may, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, either of the following groups of individuals and families:

a. Only those individuals and families described in subsection 1.

b. Those individuals and families described in both subsections 1 and 2.

4. Discretionary medical assistance, within the limits of available funds and in accordance with section 249A.4, subsection 1, may be provided to or on behalf of those individuals and families described in subsection 2, paragraph "a", subparagraph (11), of this section.

5. Assistance shall not be granted under this chapter to:

a. An individual or family whose income, considered to be available to the individual or family, exceeds federally prescribed limitations.

b. An individual or family whose resources, considered to be available to the individual or family, exceed federally prescribed limitations.

5A. In determining eligibility for children under subsection 1, paragraphs "b", "f", "g", "j", "k", "n", and "s"; subsection 2, paragraph "a", subparagraphs (3), (5), (6), (8), and (11); and subsection 5, paragraph "b", all resources of the family, other than monthly income, shall be disregarded.

5B. In determining eligibility for adults under subsection 1, paragraphs "b", "e", "h", "j", "k", "n", "s", and "t"; subsection 2, paragraph "a", subparagraphs (4), (5), (8), (11), and (12); and subsection 5, paragraph "b", one motor vehicle per household shall be disregarded.

6. In determining the eligibility of an individual for medical assistance under this

chapter, for resources transferred to the individual's spouse before October 1, 1989, or to a person other than the individual's spouse before July 1, 1989, the department shall include, as resources still available to the individual, those nonexempt resources or interests in resources, owned by the individual within the preceding twenty-four months, which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance under this chapter.

a. A transaction described in this subsection is presumed to have been for the purpose of establishing eligibility for medical assistance under this chapter unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

b. The value of a resource or an interest in a resource in determining eligibility under this subsection is the fair market value of the resource or interest at the time of the transaction less the amount of any compensation received.

c. If a transaction described in this subsection results in uncompensated value exceeding twelve thousand dollars, the department shall provide by rule for a period of ineligibility which exceeds twenty-four months and has a reasonable relationship to the uncompensated value above twelve thousand dollars.

7. In determining the eligibility of an individual for medical assistance under this chapter, the department shall consider resources transferred to the individual's spouse on or after October 1, 1989, or to a person other than the individual's spouse on or after July 1, 1989, and prior to August 11, 1993, as provided by the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 303(b), as amended by the federal Family Support Act of 1988, Pub. L. No. 100-485, § 608(d)(16)(B), (D), and the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6411(e)(1).

8. Medicare cost sharing shall be provided in accordance with the provisions of Tit. XIX of the federal Social Security Act, section 1902(a)(10)(E), as codified in 42 U.S.C. § 1396a(a)(10)(E), to or on behalf of an individual who is a resident of the state or a resident who is temporarily absent from the state, and who is a member of any of the following eligibility categories:

a. A qualified Medicare beneficiary as defined under Tit. XIX of the federal Social Security Act, section 1905(p)(1), as codified in 42 U.S.C. § 1396d(p)(1).

b. A qualified disabled and working person as defined under Tit. XIX of the federal Social Security Act, section 1905(s), as codified in 42 U.S.C. § 1396d(s).

c. A specified low-income Medicare beneficiary as defined under Tit. XIX of the federal Social Security Act, section 1902(a)(10)(E)(iii), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iii).

d. An additional specified low-income Medicare beneficiary as described under Tit. XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(I), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iv)(I).

e. An additional specified low-income Medicare beneficiary described under Tit. XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(II), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iv)(II).

9. Beginning October 1, 1990, in determining the eligibility of an institutionalized individual for assistance under this chapter, the department shall establish a minimum community spouse resource allowance amount of twenty-four thousand dollars to be retained for the benefit of the institutionalized individual's community spouse in accordance with the federal Social Security Act, section 1924(f) as codified in 42 U.S.C. § 1396r-5(f).

10. Group health plan cost sharing shall be provided as required by Tit. XIX of the federal Social Security Act, section 1906, as codified in 42 U.S.C. § 1396e.

11. a. In determining the eligibility of an individual for medical assistance, the department shall consider transfers of assets made on or after August 11, 1993, as provided by the federal Social Security Act, section 1917(c), as codified in 42 U.S.C. § 1396p(c).

b. The department shall exercise the option provided in 42 U.S.C. § 1396p(c) to provide a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual. For noninstitutionalized individuals, the number of months of ineligibility shall be equal to the total, cumulative uncompensated value of all assets transferred by the individual or the

individual's spouse on or after the look-back date specified in 42 U.S.C. § 1396p(c)(1)(B)(i), divided by the average monthly cost to a private patient for nursing facility services in Iowa at the time of application. The services for which noninstitutionalized individuals shall be made ineligible shall include any long-term care services for which medical assistance is otherwise available. Notwithstanding section 17A.4, the department may adopt rules providing a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual without notice of opportunity for public comment, to be effective immediately upon filing under section 17A.5, subsection 2, paragraph "b", subparagraph (1).

c. A disclaimer of any property, interest, or right pursuant to section 633E.5 constitutes a transfer of assets for the purpose of determining eligibility for medical assistance in an amount equal to the value of the property, interest, or right disclaimed.

d. Unless a surviving spouse is precluded from making an election under the terms of a premarital agreement, the failure of a surviving spouse to take an elective share pursuant to chapter 633, division V, constitutes a transfer of assets for the purpose of determining eligibility for medical assistance to the extent that the value received by taking an elective share would have exceeded the value of the inheritance received under the will.

12. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established on or before August 10, 1993, as available to the individual, in accordance with the federal Comprehensive Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-272, § 9506(a), as amended by the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9435(c).

13. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established after August 10, 1993, as available to the individual, in accordance with 42 U.S.C. § 1396p(d) and sections 633C.2 and 633C.3.

14. Once initial ongoing eligibility for medical assistance is determined for a child under the age of nineteen, the department shall provide continuous eligibility for a period of up to twelve months regardless of changes in family circumstances, until the child's next annual review of eligibility under the medical assistance program, with the exception of the following children:

- a. A newborn child of a medical assistance-eligible woman.
- b. A child whose eligibility was determined under the medically needy program.
- c. A child who is eligible under a state-only funded program.
- d. A child who is no longer an Iowa resident.
- e. A child who is incarcerated in a jail or other correctional institution.

[C62, 66, §249A.3, 249A.4; C71, 73, 75, 77, 79, 81, §249A.3; 81 Acts, ch 7, §15, ch 82, §1] 84 Acts, ch 1297, §3 – 5; 85 Acts, ch 146, §2; 89 Acts, ch 104, §2 – 4; 89 Acts, ch 304, §202; 90 Acts, ch 1258, §6; 90 Acts, ch 1270, §48; 91 Acts, ch 158, §3, 4; 92 Acts, ch 1043, §4; 92 Acts, 2nd Ex, ch 1001, §420; 93 Acts, ch 97, §37; 94 Acts, ch 1120, §1, 8, 9, 16; 95 Acts, ch 68, §1; 96 Acts, ch 1129, §64; 97 Acts, ch 41, §26 – 28; 98 Acts, ch 1218, §77; 99 Acts, ch 94, §1; 99 Acts, ch 203, §50; 99 Acts, ch 208, §50; 2000 Acts, ch 1060, §1 – 3; 2000 Acts, ch 1221, §6; 2000 Acts, ch 1228, §41; 2001 Acts, ch 184, §9; 2003 Acts, ch 62, §2; 2004 Acts, ch 1015, §1; 2005 Acts, ch 38, §1, 55; 2006 Acts, ch 1104, §1; 2006 Acts, ch 1159, §4, 8; 2007 Acts, ch 218, §41 – 43, 124, 126; 2008 Acts, ch 1014, §1; 2008 Acts, ch 1188, §2, 3, 55; 2009 Acts, ch 41, §242; 2009 Acts, ch 118, §16; 2009 Acts, ch 182, §132, 134; 2011 Acts, ch 98, §16; 2011 Acts, ch 120, §3; 2013 Acts, ch 138, §65 – 71, 77, 92, 93, 106, 177, 178, 187

Referred to in §8A.504, 135.159, 217.34, 249N.2, 249N.5, 249N.6

Spousal support debt for medical assistance to institutionalized spouse; community spouse resource allowance; chapter 249B 2009 amendment to subsection 14 by 2009 Acts, ch 182, §132, takes effect May 26, 2009, and applies retroactively to July 1, 2008; 2009 Acts, ch 182, §134

Subsection 1, paragraph v, takes effect June 20, 2013, to be implemented effective January 1, 2014, contingent upon receipt of federal approval of medical assistance program state plan amendment or waiver request; 2013 Acts, ch 138, §187

2013 strike of subsection 2, paragraph a, subparagraph (9) by 2013 Acts, ch 138, §93, takes effect December 31, 2013; 2013 Acts, ch 138, §106

Department of human services required to submit a medical assistance state plan amendment to provide for applicability of the federal Breast and Cervical Cancer Prevention and Treatment Act of 2009, as referenced in subsection 2, paragraph a, subparagraph (2), to both men and women and implement upon receipt of approval; 2013 Acts, ch 138, §78

Subsection 1, unnumbered paragraph 1 amended

Subsection 1, paragraph 1, subparagraph (2) amended  
Subsection 1, NEW paragraphs v and w  
Subsection 2, paragraph a, unnumbered paragraph 1 amended  
Subsection 2, paragraph a, subparagraph (1), subparagraph division (a) amended  
Subsection 2, paragraph a, subparagraphs (2), (3), and (7) amended  
Subsection 2, paragraph a, subparagraph (9) stricken and former subparagraphs (10) – (12) renumbered as (9) – (11)  
Subsection 2, paragraph b amended  
Subsection 3 amended

#### **249A.3A Medical assistance — all income-eligible children.**

The department shall provide medical assistance to individuals under nineteen years of age who meet the income eligibility requirements for the state medical assistance program and for whom federal financial participation is or becomes available for the cost of such assistance.

2009 Acts, ch 118, §13

#### **249A.4 Duties of director.**

The director shall be responsible for the effective and impartial administration of this chapter and shall, in accordance with the standards and priorities established by this chapter, by applicable federal law, by the regulations and directives issued pursuant to federal law, by applicable court orders, and by the state plan approved in accordance with federal law, make rules, establish policies, and prescribe procedures to implement this chapter. Without limiting the generality of the foregoing delegation of authority, the director is hereby specifically empowered and directed to:

1. Determine the greatest amount, duration, and scope of assistance which may be provided, and the broadest range of eligible individuals to whom assistance may effectively be provided, under this chapter within the limitations of available funds. In so doing, the director shall at least every six months evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing a like program, and compare the probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period. After each evaluation of the scope of the program, the director shall report to the general assembly through the legislative council or in another manner as the general assembly may by resolution direct.

2. Reserved.

3. Have authority to provide for payment under this chapter of assistance rendered to any applicant prior to the date the application is filed.

4. Have authority to contract with any corporation authorized to engage in this state in insuring groups or individuals for all or part of the cost of medical, hospital, or other health care or with any corporation maintaining and operating a medical, hospital, or health service prepayment plan under the provisions of chapter 514 or with any health maintenance organization authorized to operate in this state, for any or all of the benefits to which any recipients are entitled under this chapter to be provided by such corporation or health maintenance organization on a prepaid individual or group basis.

5. May, to the extent possible, contract with a private organization or organizations whereby such organization will handle the processing of and the payment of claims for services rendered under the provisions of this chapter and under such rules and regulations as shall be promulgated by such department. The state department may give due consideration to the advantages of contracting with any organization which may be serving in Iowa as “intermediary” or “carrier” under Tit. XVIII of the federal Social Security Act, as amended.

6. Shall cooperate with any agency of the state or federal government in any manner as may be necessary to qualify for federal aid and assistance for medical assistance in conformity with the provisions of chapter 249, this chapter, and Tit. XVI and XIX of the federal Social Security Act, as amended.

7. Shall provide for the professional freedom of those licensed practitioners who determine the need for or provide medical care and services, and shall provide freedom of choice to recipients to select the provider of care and services, except when the recipient is

eligible for participation in a health maintenance organization or prepaid health plan which limits provider selection and which is approved by the department.

a. However, this shall not limit the freedom of choice to recipients to select providers in instances where such provider services are eligible for reimbursement under the medical assistance program but are not provided under the health maintenance organization or under the prepaid health plan, or where the recipient has an already established program of specialized medical care with a particular provider. The department may also restrict the recipient's selection of providers to control the individual recipient's overuse of care and services, provided the department can document this overuse. The department shall promulgate rules for determining the overuse of services, including rights of appeal by the recipient.

b. Advanced registered nurse practitioners licensed pursuant to chapter 152 shall be regarded as approved providers of health care services, including primary care, for purposes of managed care or prepaid services contracts under the medical assistance program. This paragraph shall not be construed to expand the scope of practice of an advanced registered nurse practitioner pursuant to chapter 152.

8. Implement the premium assistance program options described under the federal Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, for the medical assistance program. The department may adopt rules as necessary to administer these options.

9. Adopt rules pursuant to chapter 17A in determining the method and level of reimbursement for all medical and health services to be provided under the medical assistance program, after considering all of the following:

- a. The promotion of efficient and cost-effective delivery of medical and health services.
- b. Compliance with federal law and regulations.
- c. The level of state and federal appropriations for medical assistance.
- d. Reimbursement at a level as near as possible to actual costs and charges after priority is given to the considerations in paragraphs "a", "b", and "c".

10. a. Allow supplementation of the combination of client participation and payment made through the medical assistance program for those items and services identified in 42 C.F.R. § 483.10(c)(8)(ii), by the resident of a nursing facility or the resident's family. Supplementation under this subsection may include supplementation for provision of a private room not otherwise covered under the medical assistance program unless either of the following applies:

- (1) The private room is therapeutically required pursuant to 42 C.F.R. § 483.10(c)(8)(ii).
  - (2) No room other than the private room is available.
- b. The rules adopted to administer this subsection shall require all of the following if a nursing facility provides for supplementation for provision of a private room:
- (1) The nursing facility shall inform all current and prospective residents and residents' legal representatives of the following:
    - (a) If the resident desires a private room, the resident or resident's family may provide supplementation by directly paying the facility the amount of supplementation. Supplementation by a resident's family shall not be treated as income of the resident for purposes of medical assistance program eligibility or client participation.
    - (b) The nursing facility's policy if a resident residing in a private room converts from private pay to payment under the medical assistance program, but the resident or resident's family is not willing or able to pay supplementation for the private room.
    - (c) A description and identification of the private rooms for which supplementation is available.
    - (d) The process for an individual to take legal responsibility for providing supplementation, including identification of the individual and the extent of the legal responsibility.
  - (2) For a resident for whom the nursing facility receives supplementation, the nursing facility shall indicate in the resident's record all of the following:
    - (a) A description and identification of the private room for which the nursing facility is receiving supplementation.

(b) The identity of the individual making the supplemental payments.

(c) The private pay charge for the private room for which the nursing facility is receiving supplementation.

(d) The total charge to the resident for the private room for which the nursing facility is receiving supplementation, the portion of the total charge reimbursed under the medical assistance program, and the portion of the total charge reimbursed through supplementation.

(3) If the nursing facility only provides one type of room or all private rooms, the nursing facility shall not be eligible to request supplementation.

(4) A nursing facility may base the supplementation amount on the difference between the amount paid for a room covered under the medical assistance program and the private pay rate for the private room identified for supplementation. However, the total payment for the private room from all sources shall not be greater than the aggregate average private room rate for the type of rooms covered under the medical assistance program for which the resident would be eligible.

(5) Supplementation pursuant to this subsection shall not be required as a precondition of admission, expedited admission, or continued stay in a facility.

(6) Supplementation shall not be applicable if the facility's occupancy rate is less than eighty percent.

(7) The nursing facility shall ensure that all appropriate care is provided to all residents notwithstanding the applicability or availability of supplementation.

(8) A private room for which supplementation is required shall be retained for the resident consistent with existing bed-hold policies.

11. Shall provide an opportunity for a fair hearing before the department of inspections and appeals to an individual whose claim for medical assistance under this chapter is denied or is not acted upon with reasonable promptness. Upon completion of a hearing, the department of inspections and appeals shall issue a decision which is subject to review by the department of human services.

12. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, § 1902(l), resources which are used as tools of the trade shall not be considered.

13. In implementing subsection 9, relating to reimbursement for medical and health services under this chapter, when a selected out-of-state acute care hospital facility is involved, a contractual arrangement may be developed with the out-of-state facility that is in accordance with the requirements of Tit. XVIII and XIX of the federal Social Security Act. The contractual arrangement is not subject to other reimbursement standards, policies, and rate setting procedures required under this chapter.

14. A medical assistance copayment shall only be applied to those services and products specified in administrative rules of the department in effect on February 1, 1991, which under federal medical assistance requirements, are provided at the option of the state.

15. Establish appropriate reimbursement rates for community mental health centers that are accredited by the mental health and disability services commission.

Judicial review of the decisions of the department of human services may be sought in accordance with chapter 17A. If a petition for judicial review is filed, the department of human services shall furnish the petitioner with a copy of the application and all supporting papers, a transcript of the testimony taken at the hearing, if any, and a copy of its decision.

[C62, 66, §249A.5, 249A.10; C71, 73, 75, 77, 79, 81, §249A.4; 82 Acts, ch 1260, §121, 122]

83 Acts, ch 96, §157, 159; 83 Acts, ch 153, §12, 13; 83 Acts, ch 201, §13; 86 Acts, ch 1245, §2031; 89 Acts, ch 37, §1; 89 Acts, ch 104, §5; 89 Acts, ch 304, §203; 90 Acts, ch 1204, §61, 62; 90 Acts, ch 1223, §21; 90 Acts, ch 1256, §41; 90 Acts, ch 1264, §34; 91 Acts, ch 97, §32; 91 Acts, ch 158, §5; 92 Acts, ch 1229, §29, 30; 94 Acts, ch 1150, §1, 2; 97 Acts, ch 165, §1; 98 Acts, ch 1181, §4; 99 Acts, ch 96, §27; 2000 Acts, ch 1029, §1, 2; 2001 Acts, ch 24, §65, 74; 2001 Acts, ch 74, §17; 2003 Acts, ch 21, §1; 2004 Acts, ch 1090, §14; 2005 Acts, ch 120, §2; 2005 Acts, ch 167, §46, 66; 2009 Acts, ch 41, §243; 2009 Acts, ch 118, §18; 2010 Acts, ch 1031, §389; 2012 Acts, ch 1034, §1; 2013 Acts, ch 138, §72

Referred to in §249A.3

Subsection 9, unnumbered paragraph 1 amended

**249A.4A Garnishment.** Transferred to § 249A.52; 2013 Acts, ch 24, § 14.

**249A.4B Medical assistance advisory council.**

1. A medical assistance advisory council is created to comply with 42 C.F.R. § 431.12 based on section 1902(a)(4) of the federal Social Security Act and to advise the director about health and medical care services under the medical assistance program. The council shall meet no more than quarterly. The director of public health shall serve as chairperson of the council.

2. The council shall include all of the following members:

a. The president, or the president's representative, of each of the following professional or business entities, or a member of each of the following professional or business entities, selected by the entity:

- (1) The Iowa medical society.
- (2) The Iowa osteopathic medical association.
- (3) The Iowa academy of family physicians.
- (4) The Iowa chapter of the American academy of pediatrics.
- (5) The Iowa physical therapy association.
- (6) The Iowa dental association.
- (7) The Iowa nurses association.
- (8) The Iowa pharmacy association.
- (9) The Iowa podiatric medical society.
- (10) The Iowa optometric association.
- (11) The Iowa association of community providers.
- (12) The Iowa psychological association.
- (13) The Iowa psychiatric society.
- (14) The Iowa chapter of the national association of social workers.
- (15) The coalition for family and children's services in Iowa.
- (16) The Iowa hospital association.
- (17) The Iowa association of rural health clinics.
- (18) The Iowa primary care association.
- (19) Free clinics of Iowa.
- (20) The opticians' association of Iowa, inc.
- (21) The Iowa association of hearing health professionals.
- (22) The Iowa speech and hearing association.
- (23) The Iowa health care association.
- (24) The Iowa association of area agencies on aging.
- (25) AARP.
- (26) The Iowa caregivers association.
- (27) The Iowa coalition of home and community-based services for seniors.
- (28) The Iowa adult day services association.
- (29) Leading age Iowa.
- (30) The Iowa association for home care.
- (31) The Iowa council of health care centers.
- (32) The Iowa physician assistant society.
- (33) The Iowa association of nurse practitioners.
- (34) The Iowa nurse practitioner society.
- (35) The Iowa occupational therapy association.
- (36) The ARC of Iowa, formerly known as the association for retarded citizens of Iowa.
- (37) The alliance for the mentally ill of Iowa.
- (38) The Iowa state association of counties.
- (39) The Iowa developmental disabilities council.
- (40) The Iowa chiropractic society.
- (41) The Iowa academy of nutrition and dietetics.
- (42) The Iowa behavioral health association.
- (43) The midwest association for medical equipment services or an affiliated Iowa organization.

b. Public representatives which may include members of consumer groups, including

recipients of medical assistance or their families, consumer organizations, and others, equal in number to the number of representatives of the professional and business entities specifically represented under paragraph “a”, appointed by the governor for staggered terms of two years each, none of whom shall be members of, or practitioners of, or have a pecuniary interest in any of the professional or business entities specifically represented under paragraph “a”, and a majority of whom shall be current or former recipients of medical assistance or members of the families of current or former recipients.

c. The director of public health, or the director’s designee.

d. The director of the department on aging, or the director’s designee.

e. The dean of Des Moines university — osteopathic medical center, or the dean’s designee.

f. The dean of the university of Iowa college of medicine, or the dean’s designee.

g. The following members of the general assembly, each for a term of two years as provided in section 69.16B:

(1) Two members of the house of representatives, one appointed by the speaker of the house of representatives and one appointed by the minority leader of the house of representatives from their respective parties.

(2) Two members of the senate, one appointed by the president of the senate after consultation with the majority leader of the senate and one appointed by the minority leader of the senate.

3. a. An executive committee of the council is created and shall consist of the following members of the council:

(1) Five of the professional or business entity members designated pursuant to subsection 2, paragraph “a”, and selected by the members specified under that paragraph.

(2) Five of the public members appointed pursuant to subsection 2, paragraph “b”, and selected by the members specified under that paragraph. Of the five public members, at least one member shall be a recipient of medical assistance.

(3) The director of public health, or the director’s designee.

b. The executive committee shall meet on a monthly basis. The director of public health shall serve as chairperson of the executive committee.

c. Based upon the deliberations of the council and the executive committee, the executive committee shall make recommendations to the director regarding the budget, policy, and administration of the medical assistance program.

4. For each council meeting, other than those held during the time the general assembly is in session, each legislative member of the council shall be reimbursed for actual travel and other necessary expenses and shall receive a per diem as specified in section 7E.6 for each day in attendance, as shall the members of the council or the executive committee who are recipients or the family members of recipients of medical assistance, regardless of whether the general assembly is in session.

5. The department shall provide staff support and independent technical assistance to the council and the executive committee.

6. The director shall consider the recommendations offered by the council and the executive committee in the director’s preparation of medical assistance budget recommendations to the council on human services pursuant to section 217.3 and in implementation of medical assistance program policies.

2005 Acts, ch 120, §3; 2008 Acts, ch 1156, §36, 58; 2009 Acts, ch 23, §55; 2011 Acts, ch 129, §93, 156; 2012 Acts, ch 1023, §32; 2012 Acts, ch 1068, §1; 2013 Acts, ch 30, §48

Referred to in §217.3

Subsection 2, paragraph a, subparagraphs (29) and (41) amended

**249A.5 Recovery of payment.** Transferred to § 249A.53; 2013 Acts, ch 24, § 14.

**249A.6 Assignment — lien.** Transferred to § 249A.54; 2013 Acts, ch 24, § 14.

**249A.6A Restitution.** Transferred to § 249A.55; 2013 Acts, ch 24, § 14.

**249A.7 Fraudulent practices — investigations and audits — Medicaid fraud fund.** Transferred to § 249A.50; 2013 Acts, ch 24, § 14.

**249A.8 Fraudulent practice.** Transferred to § 249A.51; 2013 Acts, ch 24, § 14.

**249A.9** Repealed by 84 Acts, ch 1297, § 7.

**249A.10** Repealed by 81 Acts, ch 7, § 17.

**249A.11 Payment for patient care segregated.**

A state resource center or mental health institute, upon receipt of any payment made under this chapter for the care of any patient, shall segregate an amount equal to that portion of the payment which is required by law to be made from nonfederal funds. The money segregated shall be deposited in the medical assistance fund of the department of human services.

[C77, 79, 81, §249A.11]

83 Acts, ch 96, §157, 159; 85 Acts, ch 146, §3; 2000 Acts, ch 1112, §51; 2005 Acts, ch 167, §33, 66; 2010 Acts, ch 1141, §27

Referred to in §218.78, 222.92

**249A.12 Assistance to persons with an intellectual disability.**

1. Assistance may be furnished under this chapter to an otherwise eligible recipient who is a resident of a health care facility licensed under chapter 135C and certified as an intermediate care facility for persons with an intellectual disability.

2. If a county reimbursed the department for medical assistance provided under this section, Code 2011, and the amount of medical assistance is subsequently repaid through a medical assistance income trust or a medical assistance special needs trust as defined in section 633C.1, the department shall reimburse the county on a proportionate basis. The department shall adopt rules to implement this subsection.

3. *a.* Effective July 1, 1995, the state shall be responsible for all of the nonfederal share of the costs of intermediate care facility for persons with an intellectual disability services provided under medical assistance to minors. Notwithstanding contrary provisions of section 222.73, Code 2011, effective July 1, 1995, a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of such services provided to minors.

*b.* The state shall be responsible for all of the nonfederal share of medical assistance home and community-based services waivers for persons with an intellectual disability services provided to minors, and a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of the services.

*c.* Effective February 1, 2002, the state shall be responsible for all of the nonfederal share of the costs of intermediate care facility for persons with an intellectual disability services provided under medical assistance attributable to the assessment fee for intermediate care facilities for individuals with an intellectual disability imposed pursuant to section 249A.21. Effective February 1, 2003, a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of such services attributable to the assessment fee.

4. *a.* The mental health and disability services commission shall recommend to the department the actions necessary to assist in the transition of individuals being served in an intermediate care facility for persons with an intellectual disability, who are appropriate for the transition, to services funded under a medical assistance home and community-based services waiver for persons with an intellectual disability in a manner which maximizes the use of existing public and private facilities. The actions may include but are not limited to submitting any of the following or a combination of any of the following as a request for a revision of the medical assistance home and community-based services waiver for persons with an intellectual disability:

(1) Allow for the transition of intermediate care facilities for persons with an intellectual disability licensed under chapter 135C, to services funded under the medical assistance home

and community-based services waiver for persons with an intellectual disability. The request shall be for inclusion of additional persons under the waiver associated with the transition.

(2) Allow for reimbursement under the waiver for day program or other service costs.

(3) Allow for exception provisions in which an intermediate care facility for persons with an intellectual disability which does not meet size and other facility-related requirements under the waiver in effect on June 30, 1996, may convert to a waiver service for a set period of time such as five years. Following the set period of time, the facility would be subject to the waiver requirements applicable to services which were not operating under the exception provisions.

b. In implementing the provisions of this subsection, the mental health and disability services commission shall consult with other states. The waiver revision request or other action necessary to assist in the transition of service provision from intermediate care facilities for persons with an intellectual disability to alternative programs shall be implemented by the department in a manner that can appropriately meet the needs of individuals at an overall lower cost to counties, the federal government, and the state. In addition, the department shall take into consideration significant federal changes to the medical assistance program in formulating the department's actions under this subsection. The department shall consult with the mental health and disability services commission in adopting rules for oversight of facilities converted pursuant to this subsection. A transition approach described in paragraph "a" may be modified as necessary to obtain federal waiver approval.

5. a. The provisions of the home and community-based services waiver for persons with an intellectual disability shall include adult day care, prevocational, and transportation services. Transportation shall be included as a separately payable service.

b. The department of human services shall seek federal approval to amend the home and community-based services waiver for persons with an intellectual disability to include day habilitation services. Inclusion of day habilitation services in the waiver shall take effect upon receipt of federal approval.

6. When paying the necessary and legal expenses for intermediate care facility for persons with an intellectual disability services, the cost requirements of section 222.60 shall be considered fulfilled when payment is made in accordance with the medical assistance payment rates established by the department for intermediate care facilities for persons with an intellectual disability, and the state shall not be obligated for any amount in excess of the rates.

7. If services associated with the intellectual disability can be covered under a medical assistance home and community-based services waiver or other medical assistance program provision, the nonfederal share of the medical assistance program costs for such coverage shall be paid from the appropriation made for the medical assistance program.

[C77, 79, 81, §249A.12]

83 Acts, ch 123, §96, 209; 84 Acts, ch 1297, §6; 94 Acts, ch 1120, §2; 94 Acts, ch 1163, §1; 95 Acts, ch 68, §3; 96 Acts, ch 1129, §113; 96 Acts, ch 1183, §30, 31; 2002 Acts, ch 1146, §5, 6; 2003 Acts, ch 62, §4, 8; 2003 Acts, ch 118, §1; 2004 Acts, ch 1086, §45 – 47; 2004 Acts, ch 1090, §15, 16; 2005 Acts, ch 38, §55; 2005 Acts, ch 175, §109 – 111; 2006 Acts, ch 1066, §1; 2006 Acts, ch 1115, §15; 2007 Acts, ch 22, §56; 2010 Acts, ch 1031, §384 – 387, 389; 2012 Acts, ch 1019, §99 – 103; 2012 Acts, ch 1133, §58; 2012 Acts, ch 1138, §57; 2013 Acts, ch 30, §49, 50

Referred to in §331.402

Subsection 3, paragraph b amended

Subsection 5, paragraph b amended

**249A.13** Repealed by 87 Acts, ch 28, § 1.

**249A.14 County attorney to enforce.** Transferred to § 249A.56; 2013 Acts, ch 24, § 14.

**249A.15 Licensed psychologists eligible for payment.**

The department shall adopt rules pursuant to chapter 17A entitling psychologists who are licensed in the state where the services are provided and have a doctorate degree in psychology, have had at least two years of clinical experience in a recognized health setting,

or have met the standards of a national register of health service providers in psychology, to payment for services provided to recipients of medical assistance, subject to limitations and exclusions the department finds necessary on the basis of federal laws and regulations and of funds available for the medical assistance program.

[81 Acts, ch 7, §16]

**249A.15A Licensed marital and family therapists, licensed master social workers, licensed mental health counselors, and certified alcohol and drug counselors.**

1. The department shall adopt rules pursuant to chapter 17A entitling marital and family therapists who are licensed pursuant to chapter 154D to payment for behavioral health services provided to recipients of medical assistance, subject to limitations and exclusions the department finds necessary on the basis of federal laws and regulations.

2. The department shall adopt rules pursuant to chapter 17A entitling master social workers who hold a master's degree approved by the board of social work, are licensed as a master social worker pursuant to section 154C.3, subsection 1, paragraph "b", and provide treatment services under the supervision of an independent social worker licensed pursuant to section 154C.3, subsection 1, paragraph "c", to payment for behavioral health services provided to recipients of medical assistance, subject to limitations and exclusions the department finds necessary on the basis of federal laws and regulations.

3. The department shall adopt rules pursuant to chapter 17A entitling mental health counselors who are licensed pursuant to chapter 154D to payment for behavioral health services provided to recipients of medical assistance, subject to limitations and exclusions the department finds necessary on the basis of federal laws and regulations.

4. The department shall adopt rules pursuant to chapter 17A entitling alcohol and drug counselors who are certified by the nongovernmental Iowa board of substance abuse certification to payment for behavioral health services provided to recipients of medical assistance, subject to limitations and exclusions the department finds necessary on the basis of federal laws and regulations.

2008 Acts, ch 1187, §123; 2011 Acts, ch 29, §1

**249A.15B Speech pathologists eligible for payment.**

The department shall adopt rules pursuant to chapter 17A entitling speech pathologists who are licensed pursuant to chapter 154F, including those certified in independent practice, to payment for speech pathology services provided to recipients of medical assistance, subject to limitations and exclusions the department finds necessary on the basis of federal laws and regulations.

2012 Acts, ch 1092, §1

**249A.16 New rates for services — effective date.**

Health care facilities licensed under chapter 135C receiving assistance payments for persons provided services by the health care facility shall submit the financial report to the department as provided by rule. Payment at a new rate is effective for services rendered as of the first day of the month in which the report is postmarked, or if the report is personally delivered, in which the report is received by the department.

[81 Acts, ch 83, §1]

**249A.17 Repealed by 97 Acts, ch 41, § 29.**

**249A.18 Cost-based reimbursement — rural health clinics and federally qualified health centers.**

Rural health clinics and federally qualified health centers shall receive cost-based reimbursement for one hundred percent of the reasonable costs for the provision of services to recipients of medical assistance.

98 Acts, ch 1069, §1; 99 Acts, ch 203, §51

**249A.18A Resident assessment.**

A nursing facility as defined in section 135C.1 shall complete a resident assessment prior to initial admission of a resident and periodically during the resident's stay in the facility. The assessment shall be completed for each prospective resident and current resident regardless of payor source. The nursing facility may utilize the same resident assessment tool required for certification of the facility under the medical assistance and federal Medicare programs to comply with this section.

2000 Acts, ch 1004, §12, 22

**249A.19 Health care facilities — penalty.** Transferred to § 249A.57; 2013 Acts, ch 24, § 14.

**249A.20 Noninstitutional health providers — reimbursement.**

Beginning November 1, 2000, the department shall use the federal Medicare resource-based relative value scale methodology to reimburse all applicable noninstitutional health providers, excluding anesthesia and dental services, that on June 30, 2000, are reimbursed on a fee-for-service basis for provision of services under the medical assistance program. The department shall apply the federal Medicare resource-based relative value scale methodology to such health providers in the same manner as the methodology is applied under the federal Medicare program and shall not utilize the resource-based relative value scale methodology in a manner that discriminates between such health providers. The reimbursement schedule shall be adjusted annually on July 1, and shall provide for reimbursement that is not less than the reimbursement provided under the fee schedule established for Iowa under the federal Medicare program in effect on January 1 of that calendar year.

A provider reimbursed under section 249A.31 is not a noninstitutional health provider.

2000 Acts, ch 1221, §7; 2002 Acts, ch 1120, §2, 9

**249A.20A Preferred drug list program.**

1. The department shall establish and implement a preferred drug list program under the medical assistance program. The department shall submit a medical assistance state plan amendment to the centers for Medicare and Medicaid services of the United States department of health and human services, no later than May 1, 2003, to implement the program.

2. a. A medical assistance pharmaceutical and therapeutics committee shall be established within the department by July 1, 2003, for the purpose of developing and providing ongoing review of the preferred drug list.

b. (1) The members of the committee shall be appointed by the governor and shall include health care professionals who possess recognized knowledge and expertise in one or more of the following:

- (a) The clinically appropriate prescribing of covered outpatient drugs.
- (b) The clinically appropriate dispensing and monitoring of covered outpatient drugs.
- (c) Drug use review, evaluation, and intervention.
- (d) Medical quality assurance.

(2) The membership of the committee shall be comprised of at least one third but not more than fifty-one percent licensed and actively practicing physicians and at least one third licensed and actively practicing pharmacists.

c. The members shall be appointed to terms of two years. Members may be appointed to more than one term. The department shall provide staff support to the committee. Committee members shall select a chairperson and vice chairperson annually from the committee membership.

3. The pharmaceutical and therapeutics committee shall recommend a preferred drug list to the department. The committee shall develop the preferred drug list by considering each drug's clinically meaningful therapeutic advantages in terms of safety, effectiveness, and clinical outcome. The committee shall use evidence-based research methods in selecting the drugs to be included on the preferred drug list. The committee shall periodically review

all drug classes included on the preferred drug list and may amend the list to ensure that the list provides for medically appropriate drug therapies for medical assistance recipients and achieves cost savings to the medical assistance program. The department may procure a sole source contract with an outside entity or contractor to provide professional administrative support to the pharmaceutical and therapeutics committee in researching and recommending drugs to be placed on the preferred drug list.

4. With the exception of drugs prescribed for the treatment of human immunodeficiency virus or acquired immune deficiency syndrome, transplantation, or cancer with the exception of drugs and drug compounds that do not have a significant variation in a therapeutic profile or side effect profile within a therapeutic class, prescribing and dispensing of prescription drugs not included on the preferred drug list shall be subject to prior authorization.

5. The department may negotiate supplemental rebates from manufacturers that are in addition to those required by Tit. XIX of the federal Social Security Act. The committee shall consider a product for inclusion on the preferred drug list if the manufacturer provides a supplemental rebate. The department may procure a sole source contract with an outside entity or contractor to conduct negotiations for supplemental rebates.

6. The department shall adopt rules to provide a procedure under which the department and the pharmaceutical and therapeutics committee may disclose information relating to the prices manufacturers or wholesalers charge for pharmaceuticals. The procedures established shall comply with 42 U.S.C. § 1396r-8 and with chapter 550.

7. The department shall publish and disseminate the preferred drug list to all medical assistance providers in this state.

8. Until such time as the pharmaceutical and therapeutics committee is operational, the department shall adopt and utilize a preferred drug list developed by a midwestern state that has received approval for its medical assistance state plan amendment from the centers for Medicare and Medicaid services of the United States department of health and human services.

9. The department may procure a sole source contract with an outside entity or contractor to participate in a pharmaceutical pooling program with midwestern or other states to provide for an enlarged pool of individuals for the purchase of pharmaceutical products and services for medical assistance recipients.

10. The department may adopt administrative rules under section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph "b", to implement this section.

11. Any savings realized under this section may be used to the extent necessary to pay the costs associated with implementation of this section prior to reversion to the medical assistance program. The department shall report the amount of any savings realized and the amount of any costs paid to the legislative fiscal committee on a quarterly basis.

2003 Acts, ch 112, §3, 14; 2003 Acts, ch 179, §161; 2005 Acts, ch 3, §53; 2008 Acts, ch 1031, §108; 2010 Acts, ch 1031, §347; 2010 Acts, ch 1061, §180

Restrictions on prescribing nonpreferred drug list prescription drugs and chemically unique mental health prescription drugs; exemption from nonpreferred drug list status for chemically unique mental health prescription drugs prescribed for a medical assistance program recipient whose drug regimen is established prior to January 1, 2011; 2010 Acts, ch 1031, §348, 349

**249A.20B Nursing facility quality assurance assessment.** Repealed by 2005 Acts, ch 167, § 40, 41, 66.

**249A.21 Intermediate care facilities for persons with an intellectual disability — assessment.**

1. The department may assess intermediate care facilities for persons with an intellectual disability, as defined in section 135C.1, a fee in an amount not to exceed six percent of the total annual revenue of the facility for the preceding fiscal year.

2. The assessment shall be paid to the department in equal monthly amounts on or before the fifteenth day of each month. The department may deduct the monthly amount from medical assistance payments to a facility described in subsection 1. The amount deducted from payments shall not exceed the total amount of the assessments due.

3. Revenue from the assessments shall be credited to the state medical assistance

appropriation. This revenue may be used only for services for which federal financial participation under the medical assistance program is available to match state funds.

4. If federal financial participation to match the assessments made under subsection 1 becomes unavailable under federal law, the department shall terminate the imposing of the assessments beginning on the date that the federal statutory, regulatory, or interpretive change takes effect.

5. The department of human services may procure a sole source contract to implement the provisions of this section.

6. The department may adopt administrative rules under section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph “b”, to implement this section, and any fee assessed pursuant to this section against an intermediate care facility for persons with an intellectual disability that is operated by the state may be made retroactive to October 1, 2003.

2002 Acts, 2nd Ex, ch 1001, §36, 46; 2004 Acts, ch 1085, §6, 7, 10, 11; 2012 Acts, ch 1019, §104

Referred to in §222.60A, 249A.12

**249A.22 and 249A.23** Reserved.

**249A.24 Iowa medical assistance drug utilization review commission — created.**

1. An Iowa medical assistance drug utilization review commission is created within the department. The commission membership, duties, and related provisions shall comply with 42 C.F.R. pt. 456, subpt. K.

2. In addition to any other duties prescribed, the commission shall make recommendations to the council on human services regarding strategies to reduce state expenditures for prescription drugs under the medical assistance program excluding provider reimbursement rates. The commission shall make initial recommendations to the council by October 1, 2002. Following approval of any recommendation by the council on human services, the department shall include the approved recommendation in a notice of intended action under chapter 17A and shall comply with chapter 17A in adopting any rules to implement the recommendation. The department shall seek any federal waiver necessary to implement any approved recommendation. The strategies to be considered for recommendation by the commission shall include at a minimum all of the following:

a. Development of a preferred drug formulary pursuant to 42 U.S.C. § 1396r-8.

b. Negotiation of supplemental rebates from manufacturers that are in addition to those required by Tit. XIX of the federal Social Security Act. For the purposes of this paragraph, “supplemental rebates” may include, at the department’s discretion, cash rebates and other program benefits that offset a medical assistance expenditure. Pharmaceutical manufacturers agreeing to provide a supplemental rebate as provided in this paragraph shall have an opportunity to present evidence supporting inclusion of a product on any preferred drug formulary developed.

c. Disease management programs.

d. Drug product donation programs.

e. Drug utilization control programs.

f. Prescriber and beneficiary counseling and education.

g. Fraud and abuse initiatives.

h. Pharmaceutical case management.

i. Services or administrative investments with guaranteed savings to the medical assistance program.

j. Expansion of prior authorization for prescription drugs and pharmaceutical case management under the medical assistance program.

k. Any other strategy that has been approved by the United States department of health and human services regarding prescription drugs under the medical assistance program.

3. The commission shall submit an annual review, including facts and findings, of the drugs on the department’s prior authorization list to the department and to the members of the general assembly’s joint appropriations subcommittee on health and human services.

2002 Acts, 2nd Ex, ch 1003, §263, 266; 2005 Acts, ch 175, §112; 2010 Acts, ch 1061, §180

**249A.25** Repealed by 94 Acts, ch 1150, § 4.

**249A.26 State and county participation in funding for services to persons with disabilities — case management.**

1. The state shall pay for one hundred percent of the nonfederal share of the services paid for under any prepaid mental health services plan for medical assistance implemented by the department as authorized by law.

2. *a.* Except as provided for disallowed costs in section 249A.27, the state shall pay one hundred percent of the nonfederal share of the cost of case management provided to adults, day treatment, and partial hospitalization provided under the medical assistance program for persons with an intellectual disability, a developmental disability, or chronic mental illness. For purposes of this section, persons with mental disorders resulting from Alzheimer's disease or a substance-related disorder shall not be considered to be persons with chronic mental illness.

*b.* The state shall pay for one hundred percent of the nonfederal share of the costs of case management provided for adults, day treatment, partial hospitalization, and the home and community-based services waiver services for persons who have no residence in this state or whose residence is unknown so that the persons are deemed to be state cases.

*c.* The case management services specified in this subsection shall be paid for by a county only if the services are provided outside of a managed care contract.

3. The state shall pay one hundred percent of the nonfederal share of the cost of services provided to adult persons with chronic mental illness who qualify for habilitation services in accordance with the rules adopted for the services.

4. The state shall pay for the entire nonfederal share of the costs for case management services provided to persons seventeen years of age or younger who are served in a home and community-based services waiver program under the medical assistance program for persons with an intellectual disability.

5. Funding under the medical assistance program shall be provided for case management services for eligible persons seventeen years of age or younger residing in counties with child welfare decategorization projects implemented in accordance with section 232.188, provided these projects have included these persons in the service plan and the decategorization project county is willing to provide the nonfederal share of the costs.

6. The state shall pay the nonfederal share of the costs of an eligible person's services under the home and community-based services waiver for persons with brain injury.

7. If a dispute arises between different counties or between the department and a county as to the legal settlement of a person who received medical assistance for which the nonfederal share was payable in whole or in part by a county of legal settlement in accordance with Code 2011, and cannot be resolved by the parties, the dispute shall be resolved as provided in section 225C.8, Code 2011.

8. Notwithstanding section 8.39, the department may transfer funds appropriated for the medical assistance program to a separate account established in the department's case management unit in an amount necessary to pay for expenditures required to provide case management for mental health, intellectual disability, and developmental disabilities services under the medical assistance program which are jointly funded by the state and county, pending final settlement of the expenditures. Funds received by the case management unit in settlement of the expenditures shall be used to replace the transferred funds and are available for the purposes for which the funds were originally appropriated.

91 Acts, ch 158, §7; 92 Acts, ch 1241, §74; 93 Acts, ch 172, §43; 94 Acts, ch 1150, §3; 96 Acts, ch 1183, §32; 2002 Acts, ch 1120, §3, 9; 2004 Acts, ch 1090, §33, 52; 2005 Acts, ch 175, §113; 2007 Acts, ch 218, §119; 2010 Acts, ch 1031, §390; 2012 Acts, ch 1019, §105, 106; 2012 Acts, ch 1133, §59, 60; 2013 Acts, ch 30, §51

Prohibition against requiring county funding for medical assistance program waiver for services to persons with brain injury; 94 Acts, ch 1170, §57

Subsection 4 amended

**249A.26A State and county participation in funding for rehabilitation services for persons with chronic mental illness.** Repealed by 2007 Acts, ch 218, § 122. See § 249A.26.

**249A.27 Indemnity for case management and disallowed costs.**

1. If the department contracts with a county or consortium of counties to provide case management services funded under medical assistance, the state shall appear and defend the department's employees and agents acting in an official capacity on the department's behalf and the state shall indemnify the employees and agents for acts within the scope of their employment. The state's duties to defend and indemnify shall not apply if the conduct upon which any claim is based constitutes a willful and wanton act or omission or malfeasance in office.

2. If the department is the case management contractor, the state shall be responsible for any costs included within the unit rate for case management services which are disallowed for medical assistance reimbursement by the federal centers for Medicare and Medicaid services. The contracting county shall be credited for the county's share of any amounts overpaid due to the disallowed costs. However, if certain costs are disallowed due to requirements or preferences of a particular county in the provision of case management services, the county shall not receive credit for the amount of the costs.

91 Acts, ch 158, §8; 2002 Acts, ch 1050, §25

Referred to in §249A.26

**249A.28** Reserved.

**249A.29 Home and community-based services waiver providers — records checks.**

1. For purposes of this section and section 249A.30 unless the context otherwise requires:  
a. "*Consumer*" means an individual approved by the department to receive services under a waiver.

b. "*Provider*" means an agency certified by the department to provide services under a waiver.

c. "*Waiver*" means a home and community-based services waiver approved by the federal government and implemented under the medical assistance program.

2. If a person is being considered by a provider for employment involving direct responsibility for a consumer or with access to a consumer when the consumer is alone, and if the person has been convicted of a crime or has a record of founded child or dependent adult abuse, the department shall perform an evaluation to determine whether the crime or founded abuse warrants prohibition of employment by the provider. The department shall conduct criminal and child and dependent adult abuse records checks of the person in this state and may conduct these checks in other states. The records checks and evaluations required by this section shall be performed in accordance with procedures adopted for this purpose by the department.

3. If the department determines that a person employed by a provider has committed a crime or has a record of founded abuse, the department shall perform an evaluation to determine whether prohibition of the person's employment is warranted.

4. In an evaluation, the department shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded abuse again, and the number of crimes or founded abuses committed by the person involved. The department may permit a person who is evaluated to be employed or to continue to be employed by the provider if the person complies with the department's conditions relating to the employment, which may include completion of additional training.

5. If the department determines that the person has committed a crime or has a record of

founded abuse which warrants prohibition of employment, the person shall not be employed by a provider.

95 Acts, ch 93, §5; 2002 Acts, ch 1120, §4

Referred to in §249A.32, 335.34, 414.32

**249A.30 Home and community-based services waiver — service provider reimbursement rate adjustments.**

1. The base reimbursement rate for a provider of services under a medical assistance program home and community-based services waiver for persons with an intellectual disability shall be recalculated at least every three years to adjust for the changes in costs during the immediately preceding three-year period.

2. The annual inflation factor used to adjust such a provider's reimbursement rate for a fiscal year shall not exceed the percentage increase in the employment cost index for private industry compensation issued by the federal department of labor, bureau of labor statistics, for the most recently completed calendar year.

2002 Acts, ch 1120, §5; 2004 Acts, ch 1086, §48; 2010 Acts, ch 1031, §390; 2013 Acts, ch 30, §52

Referred to in §249A.29

Subsection 1 amended

**249A.30A Medical assistance — personal needs allowance.**

The personal needs allowance under the medical assistance program, which may be retained by a person who is a resident of a nursing facility, an intermediate care facility for persons with an intellectual disability, or an intermediate care facility for persons with mental illness, as defined in section 135C.1, or a person who is a resident of a psychiatric medical institution for children as defined in section 135H.1, shall be fifty dollars per month. A resident who has income of less than fifty dollars per month shall receive a supplement from the state in the amount necessary to receive a personal needs allowance of fifty dollars per month, if funding is specifically appropriated for this purpose.

2006 Acts, ch 1113, §1; 2007 Acts, ch 218, §44; 2008 Acts, ch 1032, §41; 2012 Acts, ch 1019, §107

FY 2013-2014 and FY 2014-2015 allocations for monthly personal needs allowance of fifty dollars; 2013 Acts, ch 138, §12, 142

Section not amended; footnote revised

**249A.31 Cost-based reimbursement.**

1. Providers of individual case management services for persons with an intellectual disability, a developmental disability, or chronic mental illness shall receive cost-based reimbursement for one hundred percent of the reasonable costs for the provision of the services in accordance with standards adopted by the mental health and disability services commission pursuant to section 225C.6.

2. Effective July 1, 2010, the department shall apply a cost-based reimbursement methodology for reimbursement of psychiatric medical institution for children providers.

2002 Acts, ch 1120, §6, 9; 2004 Acts, ch 1090, §17; 2007 Acts, ch 218, §120; 2009 Acts, ch 121, §2, 3; 2010 Acts, ch 1031, §389; 2012 Acts, ch 1019, §108

Referred to in §249A.20

**249A.32 Medical assistance home and community-based services waivers — consumer-directed attendant care — termination of contract.**

1. A case manager for a medical assistance home and community-based services waiver may terminate the contract of a person providing consumer-directed attendant care services to whom payment is being made for provision of such services under the waiver if the case manager determines that the person has breached the contract by not providing the services agreed to under the contract.

2. For the purposes of this section, "consumer" and "waiver" mean consumer and waiver as defined in section 249A.29.

2003 Acts, ch 118, §2

**249A.32A Home and community-based services waivers — limitations.**

In administering a home and community-based services waiver, the total number of openings at any one time shall be limited to the number approved for the waiver by the secretary of the United States department of health and human services. The openings shall be available on a first-come, first-served basis.

2005 Acts, ch 175, §115

**249A.32B Early and periodic screening, diagnosis, and treatment funding.**

The department of human services, in consultation with the Iowa department of public health and the department of education, shall continue the program to utilize the early and periodic screening, diagnosis, and treatment program funding under the medical assistance program, to the extent possible, to implement the screening component of the early and periodic screening, diagnosis, and treatment program through the schools. The department may enter into contracts to utilize maternal and child health centers, the public health nursing program, or school nurses in implementing this section.

2005 Acts, ch 175, §116

**249A.33 Pharmaceutical settlement account — medical assistance program.**

1. A pharmaceutical settlement account is created in the state treasury under the authority of the department of human services. Moneys received from settlements relating to provision of pharmaceuticals under the medical assistance program shall be deposited in the account.

2. Moneys in the account shall be used only as provided in appropriations from the account to the department for the purpose of technology upgrades under the medical assistance program.

3. The account shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the account shall not be considered revenue of the state, but rather shall be funds of the account. The moneys in the account are not subject to reversion to the general fund of the state under section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the account shall be credited to the account.

4. The treasurer of state shall provide a quarterly report of account activities and balances to the director.

2003 Acts, ch 178, §55

**249A.34 Medical assistance crisis intervention team.** Repealed by 2005 Acts, ch 167, § 40, 66.

**249A.35 Purchase of qualified long-term care insurance policy — computation under medical assistance program.**

A computation for the purposes of determining eligibility under this chapter concerning an individual who is the beneficiary of a qualified long-term care insurance policy under chapter 514H shall include consideration of the asset disregard provided in section 514H.5.

2005 Acts, ch 166, §1, 13; 2009 Acts, ch 145, §1

Referred to in §514H.5

**249A.36 Medical assistance quality improvement council.** Repealed by 2012 Acts, ch 1138, § 111.

**249A.37 Health care information sharing.**

1. As a condition of doing business in the state, health insurers including self-insured plans, group health plans as defined in the federal Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, service benefit plans, managed care organizations, pharmacy benefits managers, and other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, shall do all of the following:

a. Provide, with respect to individuals who are eligible for or are provided medical assistance under the state's medical assistance state plan, upon the request of the state, information to determine during what period the individual or the individual's spouse or dependents may be or may have been covered by a health insurer and the nature of the coverage that is or was provided by the health insurer, including the name, address, and identifying number of the plan, in accordance with section 505.25, in a manner prescribed by the department of human services or as agreed upon by the department and the entity specified in this section.

b. Accept the state's right of recovery and the assignment to the state of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the medical assistance state plan.

c. Respond to any inquiry by the state regarding a claim for payment for any health care item or service that is submitted no later than three years after the date of the provision of such health care item or service.

d. Agree not to deny any claim submitted by the state solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if all of the following conditions are met:

(1) The claim is submitted to the entity by the state within the three-year period beginning on the date on which the item or service was furnished.

(2) Any action by the state to enforce its rights with respect to such claim is commenced within six years of the date that the claim was submitted by the state.

2. The department of human services may adopt rules pursuant to chapter 17A as necessary to implement this section. Rules governing the exchange of information under this section shall be consistent with all laws, regulations, and rules relating to the confidentiality or privacy of personal information or medical records, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and regulations promulgated in accordance with that Act and published in 45 C.F.R. pts. 160 – 164.

2008 Acts, ch 1187, §124

**249A.38 Inmates of public institutions — suspension or termination of medical assistance.**

1. The following conditions shall apply to an individual who is an inmate of a public institution as defined in 42 C.F.R. § 435.1010, who is enrolled in the medical assistance program at the time of commitment to the public institution, and who remains eligible for medical assistance as an individual except for the individual's institutional status:

a. The department shall suspend the individual's eligibility for up to the initial twelve months of the period of commitment. The department shall delay the suspension of eligibility for a period of up to the first thirty days of commitment if such delay is approved by the centers for Medicare and Medicaid services of the United States department of health and human services. If such delay is not approved, the department shall suspend eligibility during the entirety of the initial twelve months of the period of commitment. Claims submitted on behalf of the individual under the medical assistance program for covered services provided during the delay period shall only be reimbursed if federal financial participation is applicable to such claims.

b. The department shall terminate an individual's eligibility following a twelve-month period of suspension of the individual's eligibility under paragraph "a".

2. a. A public institution shall provide the department and the social security administration with a monthly report of the individuals who are committed to the public institution and of the individuals who are discharged from the public institution.

b. The department shall provide a public institution with the forms necessary to be used by the individual in expediting restoration of the individual's medical assistance benefits upon discharge from the public institution.

3. This section applies to individuals as specified in subsection 1 on or after January 1, 2012.

4. The department may adopt rules pursuant to chapter 17A to implement this section. 2011 Acts, ch 98, §13, 15; 2012 Acts, ch 1038, §1

SUBCHAPTER II  
MEDICAL ASSISTANCE PROGRAM INTEGRITY

**249A.39 Reporting of overpayment.**

1. A provider who has received an overpayment shall notify in writing, and return the overpayment to, the department, the department's agent, or the department's contractor, as appropriate. The notification shall include the reason for the return of the overpayment.

2. Notification and return of an overpayment under this section shall be provided by no later than the later of either of the following, as applicable:

a. The date which is sixty days after the date on which the overpayment was identified by the provider.

b. The date any corresponding cost report is due.

3. A violation of this section is a violation of chapter 685.

2013 Acts, ch 24, §3

Referred to in §249A.47, 249A.49

NEW section

**249A.40 Involuntarily dissolved providers — overpayments or incorrect payments.**

Medical assistance paid to a provider following involuntary administrative dissolution of the provider pursuant to chapter 490, division XIV, part B, shall be considered incorrectly paid for the purposes of section 249A.53 and the provider shall be considered to have received an overpayment for the purposes of this subchapter. For the purposes of this section, the overpayment shall not accrue until after a grace period of ninety days following receipt of notice by the provider of the dissolution from the department. Notwithstanding section 490.1422, or any other similar retroactive provision for reinstatement, the director shall recoup any medical assistance paid to a provider while the provider was dissolved if the provider is not retroactively reinstated within the ninety-day grace period. The principals of the provider shall be personally liable for the incorrect payment or overpayment.

2013 Acts, ch 24, §4

NEW section

**249A.41 Overpayment — interest.**

1. Interest may be collected upon any overpayment determined to have been made and shall accrue at the rate and in the manner specified in this section.

2. Prior to the provision of a notice of overpayment to the provider, interest shall accrue at the statutory rate for prejudgment interest applicable in civil actions.

3. After the provision of a notice of overpayment to the provider and after all of the provider's administrative and judicial review remedies under 441 IAC ch. 7 and chapter 17A have been exhausted, interest shall accrue at the statutory rate for prejudgment interest applicable in civil actions plus five percent per annum, or the maximum legal rate, whichever is lower.

4. At the discretion of the director, interest on an overpayment may be waived in whole or in part when the department determines the imposition of interest would produce an unjust result, would unduly burden the provider, or would substantially delay the prompt and efficient resolution of an outstanding audit or investigation.

2013 Acts, ch 24, §5

Referred to in §249A.2

Interest on judgments, see §535.3 and 668.13

NEW section

**249A.42 Overpayment — limitations periods.**

1. An administrative action to recover an overpayment to a provider shall be commenced within five years of the date the overpayment was incurred. For the purposes of this

subsection, “*incurred*” means the date the medical assistance claim was paid, or the date any applicable reconciliation was completed, whichever is later.

2. An administrative action to impose a sanction related to an overpayment to a provider shall be commenced within five years of the date the conduct underlying the sanction concluded, or the director discovered such conduct, whichever is later.

2013 Acts, ch 24, §6

NEW section

**249A.43 Provider overpayment — notice — judgment.**

1. Any overpayment to a provider under this chapter shall become a judgment against the provider, by operation of law, ninety days after a notice of overpayment is personally served upon the enrolled provider as required in the Iowa rules of civil procedure or by certified mail, return receipt requested, by the director or the attorney general or, if applicable, upon exhaustion of the provider’s administrative and judicial review remedies under 441 IAC ch. 7 or chapter 17A, whichever is later. The judgment is entitled to full faith and credit in all states.

2. The notice of overpayment shall include the amount and cause of the overpayment, the provider’s appeal rights, and a disclaimer that a judgment may be established if an appeal is not timely filed or if an appeal is filed and at the conclusion of the administrative process under chapter 17A a determination is made that there is an overpayment.

3. An affidavit of service of a notice of entry of judgment shall be made by first class mail at the address where the debtor was served with the notice of overpayment. Service is completed upon mailing as specified in this subsection.

4. On or after the date an unpaid overpayment becomes a judgment by operation of law, the director or the attorney general may file all of the following with the district court:

- a. A statement identifying, or a copy of, the notice of overpayment.
- b. Proof of service of the notice of overpayment.

c. An affidavit of default, stating the full name, occupation, place of residence, and last known post office address of the debtor; the name and post office address of the department; the date or dates the overpayment was incurred; the program under which the debtor was overpaid; and the total amount of the judgment.

5. Nothing in this section shall be construed to impede or restrict alternative methods of recovery of the overpayments specified in this section or of overpayments which do not meet the requirements of this section.

2013 Acts, ch 24, §7; 2013 Acts, ch 140, §59

NEW section

**249A.44 Overpayment — emergency relief.**

1. Concurrently with a withholding of payment, the imposition of a sanction, or the institution of a criminal, civil, or administrative proceeding against a provider or other person for overpayment, the director or the attorney general may bring an action for a temporary restraining order or injunctive relief to prevent a provider or other person from whom recovery may be sought, from transferring property or otherwise taking action to protect the provider’s or other person’s business inconsistent with the recovery sought.

2. To obtain such relief, the director or the attorney general shall demonstrate all necessary requirements for the relief to be granted.

3. If an injunction is granted, the court may appoint a receiver to protect the property and business of the provider or other person from whom recovery may be sought. The court shall assess the costs of the receiver to the provider or other person.

4. The director or the attorney general may file a *lis pendens* on the property of the provider or other person during the pendency of a criminal, civil, or administrative proceeding.

5. When requested by the court, the director, or the attorney general, a provider or other person from whom recovery may be sought shall have an affirmative duty to fully disclose all property and liabilities to the requester.

6. An action brought under this section may be brought in the district court for Polk county

or any other county in which a provider or other person from whom recovery may be sought has its principal place of business or is domiciled.

2013 Acts, ch 24, §8

NEW section

**249A.45 Provider's third-party submissions.**

1. The department may refuse to accept a financial and statistical report, cost report, or any other submission from any third party acting under a provider's authority or direction to prepare or submit such documents or information, for good cause shown. For the purposes of this section, "good cause" includes but is not limited to a pattern or practice of submitting unallowable costs on cost reports; making a false statement or certification to the director or any representative of the department; professional negligence or other demonstrated lack of knowledge of the cost reporting process; conviction under a federal or state law relating to the operation of a publicly funded program; or submission of a false claim under chapter 685.

2. If the department refuses to accept a cost report from a third party for good cause under this section, the third party shall be strictly liable to the provider for all fees incurred in preparation of the cost report, as well as reasonable attorney fees and costs. The department shall not take any adverse action against a provider that results from the unintentional delay in the submission of a new cost report or other submission necessitated by the department's refusal to accept a cost report or other submission under this section. The department shall notify an affected provider within seven business days of any refusal to accept a cost report.

2013 Acts, ch 24, §9

NEW section

**249A.46 Liability of other persons — repayment of claims.**

1. The department may require repayment of medical assistance paid from the person submitting an incorrect or improper claim, the person causing the claim to be submitted, or the person receiving payment for the claim.

2. Nothing in this section shall be construed to impede or restrict alternative recovery methods for claims specified in this section or claims which do not meet the requirements of this section.

2013 Acts, ch 24, §10

NEW section

**249A.47 Improperly filed claims — other violations — imposition of monetary recovery and sanctions.**

1. In addition to any other remedies or penalties prescribed by law, including but not limited to those specified pursuant to section 249A.51 or chapter 685, all of the following shall be applicable to violations under the medical assistance program:

a. A person who intentionally and purposefully presents or causes to be presented to the department a claim that the department determines meets any of the following criteria is subject to a civil penalty of not more than ten thousand dollars for each item or service:

(1) A claim for medical or other items or services that the provider knows was not provided as claimed, including a claim by any provider who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a billing code that the provider knows will result in a greater payment to the provider than the billing code the provider knows is applicable to the item or service actually provided.

(2) A claim for medical or other items or services the provider knows to be false or fraudulent.

(3) A claim for a physician service or an item or service incident to a physician service by a person who knows that the individual who furnished or supervised the furnishing of the service meets any of the following:

(a) Was not licensed as a physician.

(b) Was licensed as a physician, but such license had been obtained through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was

certified in a medical specialty by a medical specialty board when the individual was not so certified.

(4) A claim for medical or other items or services furnished during a period in which the provider was excluded from providing such items or services.

(5) A claim for a pattern of medical or other items or services that a provider knows were not medically necessary.

b. A provider who intentionally and purposefully presents or causes to be presented to any person a request for payment which is in violation of the terms of either of the following is subject to a civil penalty of not more than ten thousand dollars for each item or service:

(1) An agreement with the department or a requirement of a state plan under Tit. XIX or XXI of the federal Social Security Act not to charge a person for an item or service in excess of the amount permitted to be charged.

(2) An agreement to be a participating provider.

c. A provider who is not an organization, agency, or other entity, and knowing that the provider is excluded from participating in a program under Tit. XVIII, XIX, or XXI of the federal Social Security Act at the time of the exclusion, who does any of the following, is subject to a civil penalty of ten thousand dollars for each day that the prohibited relationship occurs:

(1) Retains a direct or indirect ownership or control interest in an entity that is participating in such programs, and knows of the action constituting the basis for the exclusion.

(2) Is an officer or managing employee of such an entity.

d. A provider who intentionally and purposefully offers to or transfers remuneration to any individual eligible for benefits under Tit. XIX or XXI of the federal Social Security Act and who knows such offer or remuneration is likely to influence such individual to order or receive from a particular provider any item or service for which payment may be made, in whole or in part, under Tit. XIX or XXI of the federal Social Security Act, is subject to a civil penalty of not more than ten thousand dollars for each item or service.

e. A provider who intentionally and purposefully arranges or contracts, by employment or otherwise, with an individual or entity that the provider knows is excluded from participation under Tit. XVIII, XIX, or XXI of the federal Social Security Act, for the provision of items or services for which payment may be made under such titles, is subject to a civil penalty of not more than ten thousand dollars for each item or service.

f. A provider who intentionally and purposefully offers, pays, solicits, or receives payment, directly or indirectly, to reduce or limit services provided to any individual eligible for benefits under Tit. XVIII, XIX, or XXI of the federal Social Security Act, is subject to a civil penalty of not more than fifty thousand dollars for each act.

g. A provider who intentionally and purposefully makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim for payment for items and services furnished under Tit. XIX or XXI of the federal Social Security Act, is subject to a civil penalty of not more than fifty thousand dollars for each false record or statement.

h. A provider who intentionally and purposefully fails to grant timely access, upon reasonable request and without good cause, to the department for the purpose of audits, investigations, evaluations, or other functions of the department, is subject to a civil penalty of fifteen thousand dollars for each day of the failure.

i. A provider who intentionally and purposefully makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under Tit. XVIII, XIX, or XXI of the federal Social Security Act, including a managed care organization or entity that applies to participate as a provider of services or supplier in such a managed care organization or plan, is subject to a civil penalty of fifty thousand dollars for each false statement, omission, or misrepresentation of a material fact.

j. A provider who intentionally and purposefully fails to report and return an overpayment in accordance with section 249A.39 is subject to a civil penalty of ten thousand dollars for each failure to report and return an overpayment.

2. In addition to the civil penalties prescribed under subsection 1, for any violation specified in subsection 1, a provider shall be subject to the following, as applicable:

a. For violations specified in subsection 1, paragraph “a”, “b”, “c”, “d”, “e”, “g”, “h”, or “j”, an assessment of not more than three times the amount claimed for each such item or service in lieu of damages sustained by the department because of such claim.

b. For a violation specified in subsection 1, paragraph “f”, damages of not more than three times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose.

c. For a violation specified in subsection 1, paragraph “i”, an assessment of not more than three times the total amount claimed for each item or service for which payment was made based upon the application containing the false statement, omission, or misrepresentation of a material fact.

3. In determining the amount or scope of any penalty or assessment imposed pursuant to a violation specified in subsection 1, the director shall consider all of the following:

a. The nature of the claims and the circumstances under which they were presented.

b. The degree of culpability, history of prior offenses, and financial condition of the person against whom the penalties or assessments are levied.

c. Such other matters as justice may require.

4. Of any amount recovered arising out of a claim under Tit. XIX or XXI of the federal Social Security Act, the department shall receive the amount bearing the same proportion paid by the department for such claims, including any federal share that must be returned to the centers for Medicare and Medicaid services of the United States department of human services. The remainder of any amount recovered shall be deposited in the general fund of the state.

5. Civil penalties levied under this section are appealable under 441 IAC ch. 7, but, notwithstanding any provision to the contrary in that chapter, the appellant shall bear the burden to prove by clear and convincing evidence that the claim was not filed improperly.

6. For the purposes of this section, “claim” includes but is not limited to the submission of a cost report.

2013 Acts, ch 24, §11

NEW section

#### **249A.48 Temporary moratoria.**

1. The Iowa Medicaid enterprise shall impose a temporary moratorium on the enrollment of new providers or provider types identified by the centers for Medicare and Medicaid services of the United States department of health and human services as posing an increased risk to the medical assistance program.

a. This section shall not be interpreted to require the Iowa Medicaid enterprise to impose a moratorium if the Iowa Medicaid enterprise determines that imposition of a temporary moratorium would adversely affect access of recipients to medical assistance services.

b. If the Iowa Medicaid enterprise makes a determination as specified in paragraph “a”, the Iowa Medicaid enterprise shall notify the centers for Medicare and Medicaid services of the United States department of health and human services in writing.

2. The Iowa Medicaid enterprise may impose a temporary moratorium on the enrollment of new providers, or impose numerical caps or other limits that the Iowa Medicaid enterprise and the centers for Medicare and Medicaid services identify as having a significant potential for fraud, waste, or abuse.

a. Before implementing the moratorium, caps, or other limits, the Iowa Medicaid enterprise shall determine that its action would not adversely impact access by recipients to medical assistance services.

b. The Iowa Medicaid enterprise shall notify, in writing, the centers for Medicare and Medicaid services, if the Iowa Medicaid enterprise seeks to impose a moratorium under this subsection, including all of the details of the moratorium. The Iowa Medicaid enterprise shall receive approval from the centers for Medicare and Medicaid services prior to imposing a moratorium under this subsection.

3. *a.* The Iowa Medicaid enterprise shall impose any moratorium for an initial period of six months.

*b.* If the Iowa Medicaid enterprise determines that it is necessary, the Iowa Medicaid enterprise may extend the moratorium in six-month increments. Each time a moratorium is extended, the Iowa Medicaid enterprise shall document, in writing, the necessity for extending the moratorium.

2013 Acts, ch 24, §12

NEW section

**249A.49 Internet site — providers found in violation of medical assistance program.**

1. The director shall maintain on the department's internet site, in a manner readily accessible by the public, all of the following:

*a.* A list of all providers that the department has terminated, suspended, or placed on probation.

*b.* A list of all providers that have failed to return an identified overpayment of medical assistance within the time frame specified in section 249A.39.

*c.* A list of all providers found liable for a false claims law violation related to the medical assistance program under chapter 685.

2. The director shall take all appropriate measures to safeguard the protected health information, social security numbers, and other information of the individuals involved, which may be redacted or omitted as provided in rule of civil procedure 1.422. A provider shall not be included on the internet site until all administrative and judicial remedies relating to the violation have been exhausted.

2013 Acts, ch 24, §13

NEW section

**249A.50 Fraudulent practices — investigations and audits — Medicaid fraud fund.**

1. A person who obtains assistance or payments for medical assistance under this chapter by knowingly making or causing to be made, a false statement or a misrepresentation of a material fact or by knowingly failing to disclose a material fact required of an applicant for aid under the provisions of this chapter and a person who knowingly makes or causes to be made, a false statement or a misrepresentation of a material fact or knowingly fails to disclose a material fact concerning the applicant's eligibility for aid under this chapter commits a fraudulent practice.

2. The department of inspections and appeals shall conduct investigations and audits as deemed necessary to ensure compliance with the medical assistance program administered under this chapter. The department of inspections and appeals shall cooperate with the department of human services on the development of procedures relating to such investigations and audits to ensure compliance with federal and state single state agency requirements.

3. *a.* A Medicaid fraud fund is created in the state treasury under the authority of the department of inspections and appeals. Moneys from penalties, investigative costs recouped by the Medicaid fraud control unit, and other amounts received as a result of prosecutions involving the department of inspections and appeals investigations and audits to ensure compliance with the medical assistance program that are not credited to the program shall be credited to the fund.

*b.* Notwithstanding section 8.33, moneys credited to the fund from any other account or fund shall not revert to the other account or fund. Moneys in the fund shall only be used as provided in appropriations from the fund and shall be used in accordance with applicable laws, regulations, and the policies of the office of inspector general of the United States department of health and human services.

*c.* For the purposes of this subsection, "investigative costs" means the reasonable value of a Medicaid fraud control unit investigator's, auditor's or employee's time, any moneys expended by the Medicaid fraud control unit, and the reasonable fair market value of

resources used or expended by the Medicaid fraud control unit in a case resulting in a criminal conviction of a provider under this chapter or chapter 714 or 715A.

[C62, 66, §249A.15; C71, 73, 75, 77, 79, 81, §249A.7]

90 Acts, ch 1204, §63; 97 Acts, ch 56, §3; 2009 Acts, ch 136, §10; 2011 Acts, ch 52, §1; 2011 Acts, ch 127, §49, 89; 2013 Acts, ch 24, §14

C2014, §249A.50

Referred to in §910.1

See §714.8 et seq.

Funds reverting to Medicaid fraud account on or after June 30, 2011, to be credited to Medicaid fraud fund; appropriations from Medicaid fraud account for fiscal years beginning July 1, 2011, and July 1, 2012, to be charged to Medicaid fraud fund; 2011 Acts, ch 127, §59

Funds remaining in fund for FY 2013–2014 and FY 2014–2015 appropriated to department of human services to supplement the medical assistance program appropriation; 2013 Acts, ch 138, §11, 141

Section transferred from §249A.7 in Code 2014 pursuant to directive in 2013 Acts, ch 24, §14

#### **249A.51 Fraudulent practice.**

A person who knowingly makes or causes to be made false statements or misrepresentations of material facts or knowingly fails to disclose material facts in application for payment of services or merchandise rendered or purportedly rendered by a provider participating in the medical assistance program under this chapter commits a fraudulent practice.

91 Acts, ch 107, §12

CS91, §249A.8

97 Acts, ch 56, §4; 2013 Acts, ch 24, §14

C2014, §249A.51

Referred to in §249A.47

Section transferred from §249A.8 in Code 2014 pursuant to directive in 2013 Acts, ch 24, §14

#### **249A.52 Garnishment.**

When payment is made by the department for medical care or expenses through the medical assistance program on behalf of a recipient, the department may garnish the wages, salary, or other compensation of the person obligated to pay child support or may withhold amounts pursuant to chapter 252D from the income of the person obligated to pay support, and shall withhold amounts from state income tax refunds of a person obligated to pay support, to the extent necessary to reimburse the department for expenditures for medical care or expenses on behalf of a recipient if all of the following conditions apply:

1. The person is required by court or administrative order to provide medical support to a recipient.

2. The person has received payment from a third party for the costs of medical assistance to the recipient and has not used the payments to reimburse the costs of medical care or expenses.

94 Acts, ch 1171, §9

C95, §249A.4A

2013 Acts, ch 24, §14

C2014, §249A.52

Section transferred from §249A.4A in Code 2014 pursuant to directive in 2013 Acts, ch 24, §14

#### **249A.53 Recovery of payment.**

1. Medical assistance paid to, or on behalf of, a recipient or paid to a provider of services is not recoverable, except as provided in subsection 2, unless the assistance was incorrectly paid. Assistance incorrectly paid is recoverable from the provider, or from the recipient, while living, as a debt due the state and, upon the recipient's death, as a claim classified with taxes having preference under the laws of this state.

2. The provision of medical assistance to an individual who is fifty-five years of age or older, or who is a resident of a nursing facility, intermediate care facility for persons with an intellectual disability, or mental health institute, who cannot reasonably be expected to be discharged and return to the individual's home, creates a debt due the department from the individual's estate for all medical assistance provided on the individual's behalf, upon the individual's death.

a. The department shall waive the collection of the debt created under this subsection

from the estate of a recipient of medical assistance to the extent that collection of the debt would result in either of the following:

(1) Reduction in the amount received from the recipient's estate by a surviving spouse, or by a surviving child who was under age twenty-one, blind, or permanently and totally disabled at the time of the individual's death.

(2) Otherwise work an undue hardship as determined on the basis of criteria established pursuant to 42 U.S.C. § 1396p(b)(3).

b. If the collection of all or part of a debt is waived pursuant to subsection 2, paragraph "a", to the extent the medical assistance recipient's estate was received by the following persons, the amount waived shall be a debt due from one of the following, as applicable:

(1) The estate of the medical assistance recipient's surviving spouse or child who is blind or has a disability, upon the death of such spouse or child.

(2) A surviving child who was under twenty-one years of age at the time of the medical assistance recipient's death, upon the child reaching the age of twenty-one or from the estate of the child if the child dies prior to reaching the age of twenty-one.

(3) The estate of the recipient of the undue hardship waiver, at the time of death of the hardship waiver recipient, or from the hardship waiver recipient when the hardship no longer exists.

c. For purposes of this section, the estate of a medical assistance recipient, surviving spouse, or surviving child includes any real property, personal property, or other asset in which the recipient, spouse, or child had any legal title or interest at the time of the recipient's, spouse's, or child's death, to the extent of such interests, including but not limited to interests in jointly held property, retained life estates, and interests in trusts.

d. For purposes of collection of a debt created by this subsection, all assets included in the estate of a medical assistance recipient, surviving spouse, or surviving child pursuant to paragraph "c" are subject to probate.

e. Interest shall accrue on a debt due under this subsection, at the rate provided pursuant to section 535.3, beginning six months after the death of a medical assistance recipient, surviving spouse, or surviving child.

f. (1) If a debt is due under this subsection from the estate of a recipient, the administrator of the nursing facility, intermediate care facility for persons with an intellectual disability, or mental health institute in which the recipient resided at the time of the recipient's death, and the personal representative of the recipient, if applicable, shall report the death to the department within ten days of the death of the recipient.

(2) If a personal representative or executor of an estate makes a distribution either in whole or in part of the property of an estate to the heirs, next of kin, distributees, legatees, or devisees without having executed the obligations pursuant to section 633.425, the personal representative or executor may be held personally liable for the amount of medical assistance paid on behalf of the recipient, to the full value of any property belonging to the estate which may have been in the custody or control of the personal representative or executor.

(3) For the purposes of this paragraph, "executor" means executor as defined in section 633.3, and "personal representative" means a person who filed a medical assistance application on behalf of the recipient or who manages the financial affairs of the recipient.

[C62, 66, §249A.13; C71, 73, 75, 77, 79, 81, §249A.5]

83 Acts, ch 153, §14; 94 Acts, ch 1120, §10; 95 Acts, ch 68, §2; 96 Acts, ch 1107, §1; 96 Acts, ch 1129, §65, 113; 2002 Acts, ch 1086, §2, 21; 2003 Acts, ch 62, §3; 2012 Acts, ch 1019, §97, 98; 2013 Acts, ch 24, §14

C2014, §249A.53

Referred to in §97B.39, 249A.40, 523A.303, 561.19, 633.231, 633.304A, 633.356, 633.410, 633.425

Section transferred from §249A.5 in Code 2014 pursuant to directive in 2013 Acts, ch 24, §14

#### **249A.54 Assignment — lien.**

1. a. As a condition of eligibility for medical assistance, a recipient who has the legal capacity to execute an assignment shall do all of the following:

- (1) Assign to the department any rights to payments of medical care from any third party.
- (2) Cooperate with the department in obtaining payments described in subparagraph (1).

(3) Cooperate with the department in identifying and providing information to assist the department in pursuing any third party who may be liable to pay for medical care and services available under the medical assistance program.

b. Any amount collected by the department through an assignment shall be retained by the department as reimbursement for medical assistance payments.

c. An assignment under this subsection is in addition to an assignment of medical support payments under any other law, including section 252E.11.

2. When payment is made by the department for medical care or expenses through the medical assistance program on behalf of a recipient, the department shall have a lien, to the extent of those payments, upon all monetary claims which the recipient may have against third parties. A lien under this section is not effective unless the department files a notice of lien with the clerk of the district court in the county where the recipient resides and with the recipient's attorney when the recipient's eligibility for medical assistance is established. The notice of lien shall be filed before the third party has concluded a final settlement with the recipient, the recipient's attorney, or other representative. The third party shall obtain a written determination from the department concerning the amount of the lien before a settlement is deemed final for purposes of this section. A compromise, including but not limited to a settlement, waiver or release, of a claim under this section does not defeat the department's lien except pursuant to the written agreement of the director or the director's designee. A settlement, award, or judgment structured in any manner not to include medical expenses or an action brought by a recipient or on behalf of a recipient which fails to state a claim for recovery of medical expenses does not defeat the department's lien if there is any recovery on the recipient's claim.

3. The department shall be given notice of monetary claims against third parties as follows:

a. Applicants for medical assistance shall notify the department of any possible claims against third parties upon submitting the application. Recipients of medical assistance shall notify the department of any possible claims when those claims arise.

b. A person who provides health care services to a person receiving assistance through the medical assistance program shall notify the department whenever the person has reason to believe that third parties may be liable for payment of the costs of those health care services.

c. An attorney representing an applicant for or recipient of assistance on a claim upon which the department has a lien under this section shall notify the department of the claim of which the attorney has actual knowledge, prior to filing a claim, commencing an action or negotiating a settlement offer.

(1) Actual knowledge under this section shall include the notice to the attorney pursuant to subsection 2.

(2) The mailing and deposit in a United States post office or public mailing box of the notice, addressed to the department at its state or district office location, is adequate legal notice of the claim.

4. The department's lien is valid and binding on an attorney, insurer, or other third party only upon notice by the department or unless the attorney, insurer, or third party has actual notice that the recipient is receiving medical assistance from the department and only to the extent to which the attorney, insurer, or third party has not made payment to the recipient or an assignee of the recipient prior to the notice. Payment of benefits by an insurer or third party pursuant to the rights of the lienholder in this section discharges the attorney, insurer, or third party from liability to the recipient or the recipient's assignee to the extent of the payment to the department.

5. If a recipient of assistance through the medical assistance program incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim upon which the department has a lien under this section, upon the receipt of the judgment or settlement of the total claim, of which the lien for medical assistance payments is a part, the court costs and reasonable attorney fees shall first be deducted from this total judgment or settlement. One-third of the remaining balance shall then be deducted and paid to the recipient. From the remaining balance, the lien of the department shall be paid. Any amount remaining shall be paid to the recipient. An attorney acting on behalf of a recipient of medical assistance for

the purpose of enforcing a claim upon which the department has a lien shall not collect from the recipient any amount as attorney fees which is in excess of the amount which the attorney customarily would collect on claims not subject to this section.

6. For purposes of this section the term “*third party*” includes an attorney, individual, institution, corporation, or public or private agency which is or may be liable to pay part or all of the medical costs incurred as a result of injury, disease, or disability by or on behalf of an applicant for or recipient of assistance under the medical assistance program.

7. The department may enforce its lien by a civil action against any liable third party.

[C79, 81, §249A.6]

83 Acts, ch 120, §1; 83 Acts, ch 153, §15; 89 Acts, ch 111, §1; 93 Acts, ch 180, §50; 94 Acts, ch 1023, §89; 2008 Acts, ch 1014, §2; 2009 Acts, ch 41, §244; 2009 Acts, ch 133, §96; 2013 Acts, ch 24, §14

C2014, §249A.54

Section transferred from §249A.6 in Code 2014 pursuant to directive in 2013 Acts, ch 24, §14

#### **249A.55 Restitution.**

If restitution is ordered by the court pursuant to section 910.2, and the victim is a recipient of medical assistance for whom expenditures were made as a result of the offender’s criminal activities, restitution may be made to the medical assistance program in accordance with section 910.2.

2010 Acts, ch 1093, §1

C2011, §249A.6A

2013 Acts, ch 24, §14

C2014, §249A.55

Section transferred from §249A.6A in Code 2014 pursuant to directive in 2013 Acts, ch 24, §14

#### **249A.56 County attorney to enforce.**

It is the intent of the general assembly that violations of law relating to the family investment program, medical assistance, and supplemental assistance shall be prosecuted by county attorneys. Area prosecutors of the office of the attorney general shall provide assistance in prosecution as required.

[C79, 81, §249A.14]

85 Acts, ch 195, §27; 93 Acts, ch 97, §38; 2013 Acts, ch 24, §14

C2014, §249A.56

Referred to in §331.756(49)

Section transferred from §249A.14 in Code 2014 pursuant to directive in 2013 Acts, ch 24, §14

#### **249A.57 Health care facilities — penalty.**

The department shall adopt rules pursuant to chapter 17A to assess and collect, with interest, a civil penalty for each day a health care facility which receives medical assistance reimbursements does not comply with the requirements of the federal Social Security Act, section 1919, as codified in 42 U.S.C. § 1396r. A civil penalty shall not exceed the amount authorized under 42 C.F.R. § 488.438 for health care facility violations. Any moneys collected by the department pursuant to this section shall be applied to the protection of the health or property of the residents of the health care facilities which are determined by the state or by the federal centers for Medicare and Medicaid services to be out of compliance. The purposes for which the collected moneys shall be applied may include payment for the costs of relocation of residents to other facilities, maintenance or operation of a health care facility pending correction of deficiencies or closure of the facility, and reimbursing residents for personal funds lost. If a health care facility is assessed a civil penalty under this section, the health care facility shall not be assessed a penalty under section 135C.36 for the same violation.

90 Acts, ch 1031, §1

C91, §249A.19

96 Acts, ch 1107, §2; 2002 Acts, ch 1050, §24; 2013 Acts, ch 24, §14

C2014, §249A.57

Section transferred from §249A.19 in Code 2014 pursuant to directive in 2013 Acts, ch 24, §14

**CHAPTER 249B**  
**MEDICAL ASSISTANCE**  
**TO INSTITUTIONALIZED SPOUSES**

249B.1	Definitions.	249B.5	Filing and docketing of financial responsibility order — order effective as court decree.
249B.2	Creation of spousal support debt.	249B.6	Interest on spousal support debts.
249B.3	Notice of spousal support debt — failure to respond — hearing — order.	249B.7	Security for payment of spousal support — forfeiture.
249B.4	Certification to court — hearing — default.		

**249B.1 Definitions.**

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

1. “*Community spouse*” means an individual who has not resided or is not likely to reside in a hospital or a health care facility for more than twenty-nine consecutive days and is married to an institutionalized spouse.

2. “*Community spouse resource allowance*” means a resource amount established for a community spouse pursuant to state policy adopted in accordance with the federal Social Security Act, section 1924(f)(2), as codified in 42 U.S.C. § 1396r-5(f)(2).

3. “*Court order*” means a judgment or order of a court of this state or another state requiring the payment of a set or determinable amount of monetary support.

4. “*Department*” means the department of human services.

5. “*Institutionalized spouse*” means a married individual who has resided or is likely to reside in a hospital or a health care facility for more than twenty-nine consecutive days.

6. “*Medical assistance*” means “*mandatory medical assistance*”, “*optional medical assistance*”, “*discretionary medical assistance*” or “*Medicare cost sharing*” as defined in section 249A.2 which is provided to an individual pursuant to chapter 249A and Tit. XIX of the federal Social Security Act.

7. “*Minimum monthly maintenance needs allowance*” or “*minimum allowance*” means the minimum monthly maintenance needs allowance established for the community spouse in accordance with Tit. XIX of the federal Social Security Act, section 1924(d)(3), as codified in 42 U.S.C. § 1396r-5(d)(3).

90 Acts, ch 1098, §1; 91 Acts, ch 158, §9; 2010 Acts, ch 1061, §180; 2013 Acts, ch 138, §73  
 Subsection 6 amended

**249B.2 Creation of spousal support debt.**

1. Medical assistance provided to an institutionalized spouse due to the institutionalized spouse’s assignment of support rights, an inability to execute an assignment of support rights, or hardship, creates a spousal support debt due and owing to the department from the community spouse in an amount equal to the medical assistance provided on behalf of the institutionalized spouse.

2. The department may recover the spousal support debt from any income or resources of the community spouse that are not exempt for medical assistance eligibility purposes and that are in excess of the minimum monthly maintenance needs allowance and the community spouse resource allowance.

3. When an institutionalized spouse is determined to be eligible for medical assistance pursuant to subsection 1, prior to issuing a formal notice of a spousal support debt pursuant to section 249B.3, the department shall offer to meet with the community spouse concerning creation of the spousal support debt.

90 Acts, ch 1098, §2

**249B.3 Notice of spousal support debt — failure to respond — hearing — order.**

1. The department shall issue a notice establishing and demanding payment of an accrued or accruing spousal support debt due and owing to the department. The notice shall be served

upon the community spouse in accordance with the rules of civil procedure. The notice shall include all of the following:

a. The amount of medical assistance provided to the institutionalized spouse which creates the spousal support debt.

b. A computation of spousal support debt, the minimum monthly maintenance needs allowance, and the community spouse resource allowance.

c. A demand for immediate payment of the spousal support debt.

d. (1) A statement that if the community spouse desires to discuss the amount of support that the community spouse should be required to pay, the community spouse, within ten days after being served, may contact the unit of the department which issued the notice and request a conference.

(2) A statement that if a conference is requested, the community spouse has ten days from the date set for the conference or twenty days from the date of service of the original notice, whichever is later, to send a request for a hearing to the unit of the department which issued the notice.

(3) A statement that after the holding of the conference, the department may issue a new notice and finding of financial responsibility to be sent to the community spouse by regular mail addressed to the community spouse's last known address, or if applicable, to the last known address of the community spouse's attorney.

(4) A statement that if the department issues a new notice and finding of financial responsibility, the community spouse has ten days from the date of issuance of the new notice or twenty days from the date of service of the original notice, whichever is later, to send a request for a hearing to the unit of the department which issued the notice.

e. A statement that if the community spouse objects to all or any part of the notice or finding of financial responsibility and no negotiation conference is requested, the community spouse, within twenty days of the date of service, shall send to the unit of the department which issued the notice, a written response setting forth any objections and requesting a hearing.

f. A statement that if a timely written request for a hearing is received by the unit of the department which issued the notice, the spouse has the right to a hearing to be held in district court; and that if no timely written response is received, the department will enter an order in accordance with the notice and finding of financial responsibility.

g. A statement that, as soon as the order is entered, the property of the community spouse is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

h. A statement that the community spouse must notify the department of any change of address or employment.

i. A statement that if the community spouse has any questions, the community spouse should telephone or visit the department or consult an attorney.

j. Other information as the department finds appropriate.

2. If a timely written response setting forth objections and requesting a hearing is received by the unit of the department which issued the notice, a hearing shall be held in district court.

3. If timely written response and request for hearing is not received by the department, the department may enter an order in accordance with the notice, and the order shall specify all of the following:

a. The amount to be paid with directions as to the manner of payment.

b. The amount of the spousal support debt accrued and accruing in favor of the department.

c. Notice that the property of the community spouse is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

4. The community spouse shall be sent a copy of the order by regular mail addressed to the community spouse's last known address, or if applicable, to the last known address of

the community spouse's attorney. The order is final, and action by the department to enforce and collect upon the order may be taken from the date of the issuance of the order.

90 Acts, ch 1098, §3; 2003 Acts, ch 112, §6

Referred to in §249B.2

**249B.4 Certification to court — hearing — default.**

1. If a timely written request for a hearing is received, the department shall certify the matter to the district court in the county where the institutionalized spouse resides.

2. The certification shall include true copies of the notice and finding of financial responsibility or notice of the spousal support debt accrued and accruing, the return of service, the written objections and request for hearing, and true copies of any administrative orders previously entered.

3. The district court shall set the matter for hearing and notify the parties of the time and place of hearing.

4. If a party fails to appear at the hearing, upon a showing of proper notice to the party, the district court may find the party in default and enter an appropriate order.

90 Acts, ch 1098, §4

**249B.5 Filing and docketing of financial responsibility order — order effective as court decree.**

A true copy of an order entered by the department pursuant to this chapter, along with a true copy of the return of service if applicable, may be filed in the office of the clerk of the district court in the county in which the institutionalized spouse resides. Upon filing, the clerk shall enter the order in the judgment docket, and the department's order shall be presented to the district court for ex parte review and approval, and unless defects appear on the face of the order or on the attachments, the district court shall approve the order and the order has the force, effect, and attributes of a docketed order or decree of the district court.

90 Acts, ch 1098, §5

**249B.6 Interest on spousal support debts.**

Interest accrues on a spousal support debt at the rate provided in section 535.3 for court judgments. The department may collect the accrued interest, but is not required to maintain interest balance accounts. The department may waive payment of the interest if the waiver will facilitate the collection of the spousal support debt.

90 Acts, ch 1098, §6

**249B.7 Security for payment of spousal support — forfeiture.**

Upon entry of a court order or upon the failure of a community spouse to make payments pursuant to a court order, the court may require the community spouse to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the spousal support obligation under the court order. If the community spouse fails to make payments pursuant to the court order, the court may declare the security, bond, or other guarantee forfeited.

90 Acts, ch 1098, §7

## CHAPTERS 249C to 249E

RESERVED

## CHAPTER 249F

## TRANSFER OF ASSETS — MEDICAL ASSISTANCE DEBT

249F.1	Definitions.	249F.5	Filing and docketing of order — order effective as court decree.
249F.2	Creation of debt.	249F.6	Security for payment of debt — forfeiture.
249F.3	Notice of debt — failure to respond — hearing — order.	249F.6A	Exemption from chapter 17A.
249F.4	Certification to court — hearing — default.	249F.7	Administration.
		249F.8	Inconsistency with federal laws.

**249F.1 Definitions.**

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

1. “*Medical assistance*” means “mandatory medical assistance”, “optional medical assistance”, “discretionary medical assistance”, or “Medicare cost sharing” as each is defined in section 249A.2 which is provided to an individual pursuant to chapter 249A and Tit. XIX of the federal Social Security Act.

2. a. “*Transfer of assets*” means any transfer or assignment of a legal or equitable interest in property, as defined in section 702.14, from a transferor to a transferee for less than fair consideration, made while the transferor is receiving medical assistance or within five years prior to application for medical assistance by the transferor. Any such transfer or assignment is presumed to be made with the intent, on the part of the transferee; transferor; or another person acting on behalf of a transferor who is an actual or implied agent, guardian, attorney-in-fact, or person acting as a fiduciary, of enabling the transferor to obtain or maintain eligibility for medical assistance or of impacting the recovery or payment of a medical assistance debt. This presumption is rebuttable only by clear and convincing evidence that the transferor’s eligibility or potential eligibility for medical assistance or the impact on the recovery or payment of a medical assistance debt was no part of the reason of the transferee; transferor; or other person acting on behalf of a transferor who is an actual or implied agent, guardian, attorney-in-fact, or person acting as a fiduciary for making or accepting the transfer or assignment. A transfer of assets includes a transfer of an interest in the transferor’s home, domicile, or land appertaining to such home or domicile while the transferor is receiving medical assistance, unless otherwise exempt under paragraph “b”.

b. However, transfer of assets does not include the following:

(1) Transfers to or for the sole benefit of the transferor’s spouse, including a transfer to a spouse by an institutionalized spouse pursuant to section 1924(f)(1) of the federal Social Security Act.

(2) Transfers to or for the sole benefit of the transferor’s child who is blind or has a disability as defined in section 1614 of the federal Social Security Act.

(3) Transfer of a dwelling, which serves as the transferor’s home as defined in 20 C.F.R. § 416.1212, to a child of the transferor under twenty-one years of age.

(4) Transfer of a dwelling, which serves as the transferor’s home as defined in 20 C.F.R. § 416.1212, after the transferor is institutionalized, to either of the following:

(a) A sibling of the transferor who has an equity interest in the dwelling and who was residing in the dwelling for a period of at least one year immediately prior to the date the transferor became institutionalized.

(b) A child of the transferor who was residing in the dwelling for a period of at least two years immediately prior to the date the transferor became institutionalized and who provided care to the transferor which permitted the transferor to reside at the dwelling rather than in an institution or facility.

(5) Transfers of less than two thousand dollars. However, all transfers by the same transferor during the five-year period prior to application for medical assistance by the transferor shall be aggregated. If a transferor transfers property to more than one transferee during the five-year period prior to application for medical assistance by the transferor, the two thousand dollar exemption shall be divided equally between the transferees.

(6) Transfers of assets that would, at the time of the transferor’s application for medical

assistance, have been exempt from consideration as a resource if retained by the transferor, pursuant to 42 U.S.C. § 1382b(a), as implemented by regulations adopted by the secretary of the United States department of health and human services, excluding the home and land appertaining to the home.

(7) Transfers to a trust established solely for the benefit of the transferor's child who is blind or permanently and totally disabled as defined in the federal Social Security Act, section 1614, as codified in 42 U.S.C. § 1382b.

(8) Transfers to a trust established solely for the benefit of an individual under sixty-five years of age who is disabled, as defined in the federal Social Security Act, section 1614, as codified in 42 U.S.C. § 1382b.

3. "Transferee" means the person who receives a transfer of assets.

4. "Transferor" means the person who makes a transfer of assets.

93 Acts, ch 106, §1; 96 Acts, ch 1107, §3; 96 Acts, ch 1129, §66; 97 Acts, ch 23, §23; 2000 Acts, ch 1060, §4, 5; 2010 Acts, ch 1031, §352, 353; 2010 Acts, ch 1061, §180; 2013 Acts, ch 138, §74

Subsection 1 amended

#### **249F.2 Creation of debt.**

A transfer of assets creates a debt due and owing to the department of human services from the transferee in an amount equal to medical assistance provided to or on behalf of the transferor, on or after the date of the transfer of assets, but not exceeding the fair market value of the assets at the time of the transfer.

93 Acts, ch 106, §2; 96 Acts, ch 1107, §4

Referred to in §249F.3

#### **249F.3 Notice of debt — failure to respond — hearing — order.**

1. The department of human services may issue a notice establishing and demanding payment of an accrued or accruing debt due and owing to the department of human services as provided in section 249F.2. The notice shall be sent by restricted certified mail as defined in section 618.15, to the transferee at the transferee's last known address. If service of the notice is unable to be completed by restricted certified mail, the notice shall be served upon the transferee in accordance with the rules of civil procedure. The notice shall include all of the following:

a. The amount of medical assistance provided to the transferor to date which creates the debt.

b. A computation of the debt due and owing.

c. A demand for immediate payment of the debt.

d. (1) A statement that if the transferee desires to discuss the notice, the transferee, within ten days after being served, may contact the department of human services and request an informal conference.

(2) A statement that if a conference is requested, the transferee has until ten days after the date set for the conference or until twenty days after the date of service of the original notice, whichever is later, to send a request for a hearing to the department of human services.

(3) A statement that after the holding of the conference, the department of human services may issue a new notice to be sent to the transferee by first-class mail addressed to the transferee at the transferee's last known address, or if applicable, to the transferee's attorney at the last known address of the transferee's attorney.

(4) A statement that if the department of human services issues a new notice, the transferee has until ten days after the date of mailing of the new notice or until twenty days after the date of service of the original notice, whichever is later, to send a request for a hearing to the department of human services.

e. A statement that if the transferee objects to all or any part of the original notice and no conference is requested, the transferee has until twenty days after the date of service of the original notice to send a written response setting forth any objections and requesting a hearing to the department of human services.

f. A statement that if a timely written request for a hearing is received by the department

of human services, the transferee has the right to a hearing to be held in district court as provided in section 249F.4; and that if no timely written request for hearing is received, the department of human services will enter an order in accordance with the latest notice.

g. A statement that as soon as the order is entered, the property of the transferee is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, or execution.

h. A statement that the transferee must notify the department of human services of any change of address or employment.

i. A statement that if the transferee has any questions concerning the transfer of assets, the transferee should contact the department of human services or consult an attorney.

j. Other information as the department of human services finds appropriate.

2. If a timely written request for hearing is received by the department of human services, a hearing shall be held in district court.

3. If a timely written request for hearing is not received by the department of human services, the department may enter an order in accordance with the latest notice, and the order shall specify all of the following:

a. The amount to be paid with directions as to the manner of payment.

b. The amount of the debt accrued and accruing in favor of the department of human services.

c. Notice that the property of the transferee is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

4. The transferee shall be sent a copy of the order by first-class mail addressed to the transferee at the transferee's last known address, or if applicable, to the transferee's attorney at the last known address of the transferee's attorney. The order is final, and action by the department of human services to enforce and collect upon the order may be taken from the date of the issuance of the order.

93 Acts, ch 106, §3; 99 Acts, ch 52, §1

#### **249F.4 Certification to court — hearing — default.**

1. If a timely written request for a hearing is received, the department of human services shall certify the matter to the district court in the county where the transferee resides.

2. The certification shall include true copies of the original notice, the return of service, if applicable, any request for an informal conference, any subsequent notices, the written request for hearing, and true copies of any administrative orders previously entered.

3. The department of human services may also request a hearing on its own motion regarding the determination of a debt, at any time prior to entry of an administrative order.

4. The district court shall set the matter for hearing and notify the parties of the time and place of hearing.

5. If a party fails to appear at the hearing, upon a showing of proper notice to the party, the district court may find the party in default and enter an appropriate order.

93 Acts, ch 106, §4; 99 Acts, ch 52, §2

Referred to in §249F.3

#### **249F.5 Filing and docketing of order — order effective as court decree.**

1. A true copy of an order entered by the department of human services pursuant to this chapter, along with a true copy of the return of service, if applicable, may be filed in the office of the clerk of the district court in the county in which the transferee resides or, if the transferee resides in another state, in the office of the district court in the county in which the transferor resides.

2. The department of human services order shall be presented, ex parte, to the district court for review and approval. Unless defects appear on the face of the order or on the attachments, the district court shall approve the order. The approved order shall have all force, effect, and attributes of a docketed order or decree of the district court.

3. Upon filing, the clerk shall enter the order in the judgment docket.

93 Acts, ch 106, §5

**249F.6 Security for payment of debt — forfeiture.**

Upon entry of a court order or upon the failure of a transferee to make payments pursuant to a court order, the court may require the transferee to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the debt under the court order. If the transferee fails to make payments pursuant to the court order, the court may declare the security, bond, or other guarantee forfeited.

93 Acts, ch 106, §6

**249F.6A Exemption from chapter 17A.**

Actions initiated under this chapter are not subject to chapter 17A. Review by the district court shall be an original hearing before the district court.

2000 Acts, ch 1060, §6

**249F.7 Administration.**

As provided in this chapter, the establishment of a debt for medical assistance due to transfer of assets shall be administered by the department of human services. All administrative discretion in the administration of this chapter shall be exercised by the department of human services, and any state administrative rules implementing or interpreting this chapter shall be adopted by the department of human services.

93 Acts, ch 106, §7

**249F.8 Inconsistency with federal laws.**

If it is determined by the attorney general that any provision of this chapter would cause denial of funds from the United States government under Tit. XIX of the federal Social Security Act, or would otherwise be inconsistent or conflict with the requirements of federal law for state participation in the Tit. XIX program, such provision shall be suspended, but only to the extent necessary to prevent denial of such funds or to eliminate the inconsistency or conflict with the requirements of federal law. If the attorney general makes such a suspension determination, the attorney general shall report it to the general assembly at its next session. This report shall include any recommendations in regard to corrective legislation needed to conform this chapter with federal law.

93 Acts, ch 106, §8; 2010 Acts, ch 1061, §180

## CHAPTER 249G

### LONG-TERM CARE ASSET PRESERVATION PROGRAM

Repealed by 2005 Acts, ch 166, §11, 13; see chapter 514H  
Individuals covered by a long-term care insurance policy under the  
long-term care asset preservation program established in  
ch 249G, Code 2005, on or before November 17, 2005,  
are eligible to continue to receive the asset adjustment as defined  
under that chapter; see §514H.7

## CHAPTER 249H

### SENIOR LIVING PROGRAM

Repealed by 2013 Acts, ch 18, §35

## CHAPTER 249I

## HOSPITAL TRUST FUND

Repealed by 2005 Acts, ch 167, §39, 66

## CHAPTER 249J

## IOWACARE

Chapter repealed by its own terms effective December 31, 2013; 2013 Acts,  
ch 138, §94, 179, 187

With respect to proposed amendments to former §249J.6, 249J.8, 249J.14, 249J.17,  
249J.23, and 249J.24 by 2013 Acts, ch 90, §62, 257, and 2013 Acts, ch 138, §110 – 112,  
see Code editor's note

## CHAPTER 249K

## NURSING FACILITY CONSTRUCTION OR EXPANSION

249K.1	Purpose — intent.	249K.4	Preliminary evaluation.
249K.2	Definitions.	249K.5	Participation criteria.
249K.3	General provisions — instant relief — nondirect care limit exception.		

**249K.1 Purpose — intent.**

The purpose of this chapter is to provide a mechanism to support the appropriate number of nursing facility beds for the state's citizens and to financially assist nursing facilities in remaining compliant with applicable regulations. It is the intent of this chapter that the administrative burden on both the state and nursing facilities be minimal.

2007 Acts, ch 219, §35, 41, 43

**249K.2 Definitions.**

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

1. “*Complete replacement*” means completed construction on a new nursing facility to replace an existing licensed and certified facility. The replacement facility shall be located in the same geographical service area as the facility that is replaced and shall have the same number or fewer licensed beds than the original facility.
2. “*Department*” means the department of human services.
3. “*Iowa Medicaid enterprise*” means Iowa Medicaid enterprise as defined in section 135.154.
4. “*Major renovations*” means construction or facility improvements to a nursing facility in which the total amount expended exceeds one million five hundred thousand dollars.
5. “*Medical assistance*” or “*medical assistance program*” means the medical assistance program created pursuant to chapter 249A.
6. “*New construction*” means the construction of a new nursing facility which does not replace an existing licensed and certified facility and requires the provider to obtain a certificate of need pursuant to chapter 135, division VI.
7. “*Nondirect care component*” means the portion of the reimbursement rate under the medical assistance program attributable to administrative, environmental, property, and support care costs reported on the provider's financial and statistical report.
8. “*Nursing facility*” means a nursing facility as defined in section 135C.1.
9. “*Provider*” means a current or future owner or operator of a nursing facility that provides medical assistance program services.
10. “*Rate determination letter*” means the letter that is distributed quarterly by the Iowa

Medicaid enterprise to each nursing facility, which is based on previously submitted financial and statistical reports from each nursing facility.

2007 Acts, ch 219, §36, 41, 43; 2013 Acts, ch 138, §123, 127

2013 amendment to subsection 3, takes effect January 1, 2014; 2013 Acts, ch 138, §127

Subsection 3 amended

### **249K.3 General provisions — instant relief — nondirect care limit exception.**

1. A provider that constructs a complete replacement, makes major renovations to, or newly constructs a nursing facility may be entitled to the rate relief and exceptions provided under this chapter. The total period during which a provider may participate in any relief shall not exceed two years. The total period during which a provider may participate in any nondirect care limit exception shall not exceed ten years. A provider seeking assistance under this chapter may request both instant relief and the nondirect care limit exception.

2. If the provider requests instant relief, the following provisions shall apply:

a. The provider shall submit a written request for instant relief to the Iowa Medicaid enterprise explaining the nature, timing, and goals of the project and the time period during which the relief is requested. The written request shall clearly state if the provider is also requesting the nondirect care limit exception. The written request for instant relief shall be submitted no earlier than thirty days prior to the placement of the provider's assets in service. The written request for relief shall provide adequate details to calculate the estimated value of relief including but not limited to the total cost of the project, the estimated annual depreciation expenses using generally accepted accounting principles, the estimated useful life based upon existing medical assistance and Medicare provisions, and a copy of the most current depreciation schedule. If interest expenses are included, a copy of the general terms of the debt service and the estimated annual amount of the interest expenses shall be submitted with the written request for relief.

b. The following shall apply to the value of relief amount:

(1) If interest expenses are disclosed, the amount of these expenses shall be added to the value of relief.

(2) The calculation of the estimated value of relief shall take into consideration the removal of existing assets and debt service.

(3) The calculation of the estimated value of relief shall be demonstrated as an amount per patient day to be added to the nondirect care component for the relevant period. The estimated annual patient days for this calculation shall be determined based upon budgeted amounts or the most recent annual total as demonstrated on the provider's Medicaid financial and statistical report. For the purposes of calculating the per diem relief, total patient days shall be the greater of the estimated annual patient days or eighty-five percent of the facility's estimated licensed capacity.

(4) The combination of the nondirect care component and the estimated value of relief shall not exceed one hundred and ten percent of the nondirect care median for the relevant period. If a nondirect care limit exception has been requested and granted, the combination of the nondirect care component and the estimated value of relief shall not exceed one hundred twenty percent of the nondirect care median for the relevant period.

c. Instant relief granted under this subsection shall begin the first day of the calendar quarter following placement of the provider's assets in service. If the required information to calculate the instant relief, as specified in paragraph "a", is not submitted prior to the first day of the calendar quarter following placement of the provider's assets in service, instant relief shall instead begin on the first day of the calendar quarter following receipt of the required information.

d. Instant relief granted under this subsection shall be terminated at the time of the provider's subsequent biannual rebasing when the submission of the annual cost report for the provider includes the new replacement costs and the annual property costs reflect the new assets.

e. During the period in which instant relief is granted, the Iowa Medicaid enterprise shall recalculate the value of the instant relief based on allowable costs and patient days reported on the annual financial and statistical report. For purposes of calculating the per diem relief,

total patient days shall be the greater of actual annual patient days or eighty-five percent of the facility's licensed capacity. The actual value of relief shall be added to the nondirect care component for the relevant period, not to exceed one hundred ten percent of the nondirect care median for the relevant period or not to exceed one hundred twenty percent of the nondirect care median for the relevant period if the nondirect care limit exception is requested and granted. The provider's quarterly rates for the relevant period shall be retroactively adjusted to reflect the revised nondirect care rate. All claims with dates of service from the date that instant relief is granted to the date that the instant relief is terminated shall be repriced to reflect the actual value of the instant relief per diem utilizing a mass adjustment.

3. If the provider requests the nondirect care limit exception, all of the following shall apply:

a. The nondirect care limit for the rate setting period shall be increased to one hundred and twenty percent of the median for the relevant period.

b. The exception period shall not exceed a period of two years. If the provider is requesting only the nondirect care limit exception, the request shall be submitted within sixty days of the release of the July 1 rate determination letters following each biannual rebasing cycle, and shall be effective the first day of the month following receipt of the request. If applicable, the provider shall identify any time period in which instant relief was granted and shall indicate how many times the instant relief or nondirect care limit exception was granted previously.

2007 Acts, ch 219, §37, 41, 43

Referred to in §249K.4

#### **249K.4 Preliminary evaluation.**

1. A provider preparing cost or other feasibility projections for a request for relief or an exception pursuant to section 249K.3 may submit a request for preliminary evaluation.

2. The request shall contain all of the information required for the type of assistance sought pursuant to section 249K.3.

3. The provider shall estimate the timing of the initiation and completion of the project to allow the department to respond with estimates of both instant relief and the nondirect care limit exception.

4. The department shall respond to a request for preliminary evaluation under this section within thirty days of receipt of the request. A preliminary evaluation does not guarantee approval of instant relief or the nondirect care limit exception upon submission of a formal request. A preliminary evaluation provides only an estimate of value of the instant relief or nondirect care limit exception based only on the projections.

2007 Acts, ch 219, §38, 41, 43

#### **249K.5 Participation criteria.**

1. The Iowa Medicaid enterprise shall administer this chapter. The department of human services shall adopt rules, pursuant to chapter 17A, to administer this chapter.

2. A provider requesting instant relief or a nondirect care limit exception under this chapter shall meet one of the following criteria:

a. The nursing facility for which relief or an exception is requested is in violation of life safety code requirements and changes are necessary to meet regulatory compliance.

b. The nursing facility for which relief or an exception is requested is proposing development of a home and community-based services waiver program service that meets the following requirements:

(1) The service is provided on the direct site and is a nonnursing service.

(2) The service is provided in an underserved area, which may include a rural area, and the nursing facility provides documentation of this.

(3) The service meets all federal and state requirements.

(4) The service is adult day care, consumer directed attendant care, assisted living, day habilitation, home delivered meals, personal emergency response, or respite.

3. In addition to any other factors to be considered in determining if a provider is eligible

to participate under this chapter, the Iowa Medicaid enterprise shall consider all of the following:

- a. The history of the provider’s regulatory compliance.
  - b. The historical access to nursing facility services for medical assistance program beneficiaries.
  - c. The provider’s dedication to and participation in quality of care, considering all quality programs in which the provider has participated.
  - d. The provider’s plans to facilitate person-directed care.
  - e. The provider’s plans to facilitate dementia units and specialty post-acute services.
4. a. Any relief or exception granted under this chapter is temporary and shall be immediately terminated if all of the participation requirements under this chapter are not met.
- b. If a provider’s medical assistance program or Medicare certification is revoked, any existing exception or relief shall be terminated and the provider shall not be eligible to request subsequent relief or an exception under this chapter.
5. Following a change in ownership, relief or an exception previously granted shall continue and future rate calculations shall be determined under the provisions of 441 IAC 81.6(12) relating to termination or change of ownership of a nursing facility.  
2007 Acts, ch 219, §39, 41, 43

## CHAPTER 249L

### NURSING FACILITY QUALITY ASSURANCE ASSESSMENT PROGRAM

Implementation of chapter contingent upon departmental determinations, submission of medical assistance program waiver and state plan amendment requests, and federal approval of the requests;  
2009 Acts, ch 160, §5 - 9

<p>249L.1 Title.</p> <p>249L.2 Definitions.</p> <p>249L.3 Quality assurance assessment — imposed — collection — deposit — documentation — civil actions.</p>	<p>249L.4 Quality assurance trust fund — limitations of use — reimbursement adjustments to nursing facilities.</p>
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**249L.1 Title.**

This chapter shall be known and may be cited as the “*Quality Assurance Assessment Program*”.

2009 Acts, ch 160, §1, 5

Implementation of chapter contingent upon departmental determinations, submission of medical assistance program waiver and state plan amendment requests, and federal approval of the requests; 2009 Acts, ch 160, §5 - 9

**249L.2 Definitions.**

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

1. “*Department*” means the department of human services.
2. “*Direct care worker*” means an employee of a nursing facility who holds a nursing assistant certification, is employed for the purpose of nursing assistance, and provides direct care to residents, regardless of the employee’s job title.
3. “*Gross revenue*” means all revenue reported by the nursing facility for patient care, room, board and services, but does not include contractual adjustments, bad debt, Medicare revenue, or revenue derived from sources other than nursing facility operations including but not limited to nonoperating revenue and other operating revenue.
4. “*Medically indigent individual*” means an individual eligible for coverage under the medical assistance program who is a resident of a Medicaid-certified nursing facility.

5. “*Nonoperating revenue*” means income from activities not relating directly to the day-to-day operations of a nursing facility such as gains on the disposal of a facility’s assets, dividends, and interest from security investments, gifts, grants, and endowments.

6. “*Nursing facility*” means a licensed nursing facility as defined in section 135C.1 that is a freestanding facility or a nursing facility operated by a hospital licensed pursuant to chapter 135B, but does not include a distinct-part skilled nursing unit or a swing-bed unit operated by a hospital, or a nursing facility owned by the state or federal government or other governmental unit.

7. “*Other operating revenue*” means income from nonpatient care services to patients and from sales to and activities for persons other than patients which may include but are not limited to such activities as providing personal laundry service for patients, providing meals to persons other than patients, gift shop sales, or vending machine commissions.

8. “*Patient day*” means a calendar day of care provided to an individual resident of a nursing facility that is not reimbursed under Medicare, including the date of admission but not including the date of discharge, unless the dates of admission and discharge occur on the same day, in which case the resulting number of patient days is one patient day.

9. “*Uniform tax requirement waiver*” means a waiver of the uniform tax requirement for permissible health care-related taxes as provided in 42 C.F.R. § 433.68(e)(2)(i) and (ii).

2009 Acts, ch 160, §2, 5

Implementation of chapter contingent upon departmental determinations, submission of medical assistance program waiver and state plan amendment requests, and federal approval of the requests; 2009 Acts, ch 160, §5 - 9

### **249L.3 Quality assurance assessment — imposed — collection — deposit — documentation — civil actions.**

1. *a.* A nursing facility in this state shall be assessed a quality assurance assessment for each patient day for the preceding quarter.

*b.* The quality assurance assessment shall be implemented as a broad-based health care-related tax as defined in 42 U.S.C. § 1396b(w)(3)(B).

*c.* The quality assurance assessment shall be imposed uniformly upon all nursing facilities, unless otherwise provided in this chapter.

*d.* The aggregate quality assurance assessments imposed under this chapter shall not exceed the lower of three percent of the aggregate non-Medicare revenues of a nursing facility or the maximum amount that may be assessed pursuant to the indirect guarantee threshold as established pursuant to 42 C.F.R. § 433.68(f)(3)(i), and shall be stated on a per-patient-day basis.

2. The quality assurance assessment shall be paid by each nursing facility to the department on a quarterly basis after the nursing facility’s medical assistance payment rates are adjusted to include funds appropriated from the quality assurance trust fund for that purpose. The department shall prepare and distribute a form upon which nursing facilities shall calculate and report the quality assurance assessment. A nursing facility shall submit the completed form with the assessment amount no later than thirty days following the end of each calendar quarter.

3. A nursing facility shall retain and preserve for a period of three years such books and records as may be necessary to determine the amount of the quality assurance assessment for which the nursing facility is liable under this chapter. The department may inspect and copy the books and records of a nursing facility for the purpose of auditing the calculation of the quality assurance assessment. All information obtained by the department under this subsection is confidential and does not constitute a public record.

4. The department shall collect the quality assurance assessment imposed and shall deposit all revenues collected in the quality assurance trust fund created in section 249L.4.

5. If the department determines that a nursing facility has underpaid or overpaid the quality assurance assessment, the department shall notify the nursing facility of the amount of the unpaid quality assurance assessment or refund due. Such payment or refund shall be due or refunded within thirty days of the issuance of the notice.

6. *a.* A nursing facility that fails to pay the quality assurance assessment within the time frame specified in this section shall pay, in addition to the outstanding quality assurance

assessment, a penalty of one and five-tenths percent of the quality assurance assessment amount owed for each month or portion of each month that the payment is overdue. However, if the department determines that good cause is shown for failure to comply with payment of the quality assurance assessment, the department shall waive the penalty or a portion of the penalty.

b. If a quality assurance assessment has not been received by the department by the last day of the month in which the payment is due, the department shall withhold an amount equal to the quality assurance assessment and penalty owed from any payment due such nursing facility under the medical assistance program.

c. The quality assurance assessment imposed under this chapter constitutes a debt due the state and may be collected by civil action, including but not limited to the filing of tax liens, and any other method provided for by law.

d. Any penalty collected pursuant to this subsection shall be credited to the quality assurance trust fund.

7. If federal financial participation to match the quality assurance assessments made under this section becomes unavailable under federal law, the department shall terminate the imposition of the assessments beginning on the date the federal statutory, regulatory, or interpretive change takes effect.

2009 Acts, ch 160, §3, 5

Implementation of chapter contingent upon departmental determinations, submission of medical assistance program waiver and state plan amendment requests, and federal approval of the requests; date of accrual and collection of assessments; 2009 Acts, ch 160, §5 - 9

#### **249L.4 Quality assurance trust fund — limitations of use — reimbursement adjustments to nursing facilities.**

1. A quality assurance trust fund is created in the state treasury under the authority of the department. Moneys received through the collection of the nursing facility quality assurance assessment imposed under this chapter and any other moneys specified for deposit in the trust fund shall be deposited in the trust fund.

2. Moneys in the trust fund shall be used, subject to their appropriation by the general assembly, by the department only for reimbursement of services for which federal financial participation under the medical assistance program is available to match state funds. Any moneys appropriated from the trust fund for reimbursement of nursing facilities, in addition to the quality assurance assessment pass-through and the quality assurance assessment rate add-on which shall be used as specified in subsection 5, paragraph “b”, shall be used in a manner such that no less than thirty-five percent of the amount received by a nursing facility is used for increases in compensation and costs of employment for direct care workers, and no less than sixty percent of the total is used to increase compensation and costs of employment for all nursing facility staff. For the purposes of use of such funds, “*direct care worker*”, “*nursing facility staff*”, “*increases in compensation*”, and “*costs of employment*” mean as defined or specified in this chapter.

3. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the trust fund shall not be considered revenue of the state, but rather shall be funds of the quality assurance assessment program. The moneys deposited in the trust fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this chapter. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

4. The department shall adopt rules pursuant to chapter 17A to administer the trust fund and reimbursements made from the trust fund.

5. a. The determination of medical assistance reimbursements to nursing facilities shall continue to be calculated in accordance with the modified price-based case-mix reimbursement system as specified in 2001 Iowa Acts, ch. 192, section 4, subsection 2, paragraph “c”. In addition, moneys that are appropriated from the trust fund for reimbursements to nursing facilities that serve the medically indigent shall be used to provide the following nursing facility reimbursement rate adjustment increases within the parameters specified:

(1) A quality assurance assessment pass-through. This rate add-on shall account for the cost incurred by the nursing facility in paying the quality assurance assessment, but only with respect to the pro rata portion of the assessment that correlates with the patient days in the nursing facility that are attributable to medically indigent residents.

(2) A quality assurance assessment rate add-on. This rate add-on shall be calculated on a per-patient-day basis for medically indigent residents. The amount paid to a nursing facility as a quality assurance assessment rate add-on shall be ten dollars per patient day.

(3) Nursing facility payments for rebasing pursuant to 2001 Iowa Acts, ch. 192, section 4, subsection 3, paragraph “a”, subparagraph (2).

b. (1) It is the intent of the general assembly that priority in expenditure of rate adjustment increases provided to nursing facilities through the quality assurance assessment be related to the compensation and costs of employment for nursing facility staff.

(2) If the sum of the quality assurance assessment pass-through and the quality assurance assessment rate add-on is greater than the total cost incurred by a nursing facility in payment of the quality assurance assessment, no less than thirty-five percent of the difference shall be used to increase compensation and costs of employment for direct care workers and no less than sixty percent of the difference shall be used to increase compensation and costs of employment for all nursing facility staff.

(3) For the purposes of determining what constitutes increases in compensation and costs of employment the following shall apply:

(a) Increases in compensation shall include but are not limited to starting hourly wages, average hourly wages paid, and total wages including both productive and nonproductive wages, and as specified by rule of the department.

(b) Increases in total costs of employment shall include but are not limited to costs of benefit programs with specific reporting for group health plans, group retirement plans, leave benefit plans, employee assistance programs, payroll taxes, workers’ compensation, training, education, career development programs, tuition reimbursement, transportation, and child care, and as specified by rule of the department.

(c) Direct care workers and nursing facility staff do not include nursing facility administrators, administrative staff, or home office staff.

(4) Each nursing facility shall submit to the department, information in a form as specified by the department and developed in cooperation with representatives of the Iowa caregivers association, the Iowa health care association, leading age Iowa, and the AARP Iowa chapter, that demonstrates compliance by the nursing facility with the requirements for use of the rate adjustment increases and other reimbursements provided to nursing facilities through the quality assurance assessment.

6. The department shall report annually to the general assembly regarding the use of moneys deposited in the trust fund and appropriated to the department.

2009 Acts, ch 160, §4, 5; 2013 Acts, ch 30, §53

Referred to in §249L.3

Implementation of chapter contingent upon departmental determinations, submission of medical assistance program waiver and state plan amendment requests, and federal approval of the requests; 2009 Acts, ch 160, §5 - 9

Subsection 5, paragraph b, subparagraph (4) amended

## CHAPTER 249M

### HOSPITAL HEALTH CARE ACCESS ASSESSMENT PROGRAM

Legislative intent; pilot program; 2010 Acts, ch 1135, §1

249M.1	Title.	249M.4	Hospital health care access trust
249M.2	Definitions.		fund — board.
249M.3	Hospital health care access assessment program — termination of program.	249M.5	Future repeal.

**249M.1 Title.**

This chapter shall be known as the “Hospital Health Care Access Assessment Program”.  
2010 Acts, ch 1135, §2, 9

**249M.2 Definitions.**

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

1. “Assessment” means the hospital health care access assessment imposed pursuant to this chapter.
2. “Department” means the department of human services.
3. “Net patient revenue” means all revenue reported by a hospital on the hospital’s 2008 Medicare cost report for acute patient care and services, but does not include contractual adjustments, charity care, bad debt, Medicare revenue, or other revenue derived from sources other than hospital operations including but not limited to nonoperating revenue, other operating revenue, skilled nursing facility revenue, physician revenue, and long-term care revenue.
4. “Nonoperating revenue” means income from activities not relating directly to the day-to-day operations of a hospital such as gains from disposal of a hospital’s assets, dividends and interests from security investments, gifts, grants, and endowments.
5. “Other operating revenue” means income from nonpatient care services including but not limited to tax levy receipts, laundry services, gift shop operations, meal services to individuals other than patients, and vending machine commissions.
6. “Participating hospital” means a nonstate-owned hospital licensed under chapter 135B that is paid on a prospective payment system basis by Medicare and the medical assistance program for inpatient and outpatient services.
7. “Program” means the hospital health care access assessment program created in this chapter.
8. “Trust fund” means the hospital health care access trust fund created in section 249M.4.
9. “Upper payment limit” means the maximum ceiling imposed by federal regulation on a participating hospital’s medical assistance program reimbursement for inpatient services under 42 C.F.R. § 447.272 and outpatient services under 42 C.F.R. § 447.321, calculated separately for hospital inpatient and outpatient services, and excluding from the calculation medical assistance program disproportionate share hospital payments.

2010 Acts, ch 1135, §3, 9

Section not amended; footnote deleted

**249M.3 Hospital health care access assessment program — termination of program.**

1. A hospital health care access assessment is imposed on each participating hospital in this state to be used to promote access to health care services for Iowans, including those served by the medical assistance program.
2. The assessment rate for a participating hospital shall be calculated as one and twenty-six one hundredths percent of net patient revenue as specified in the hospital’s fiscal year 2008 Medicare cost report.
3. If a participating hospital’s fiscal year 2008 Medicare cost report is not contained in the file of the centers for Medicare and Medicaid services health care cost report information system dated June 30, 2009, the hospital shall submit a copy of the hospital’s 2008 Medicare cost report to the department to allow the department to determine the hospital’s net patient revenue for fiscal year 2008.
4. A participating hospital paid under the prospective payment system by Medicare and the medical assistance program that was not in existence prior to fiscal year 2008, shall submit a prospective Medicare cost report to the department to determine anticipated net patient revenue.
5. Net patient revenue as reported on each participating hospital’s fiscal year 2008 Medicare cost report, or as reported under subsection 4 if applicable, shall be the sole basis for the health care access assessment for the duration of the program.
6. A participating hospital shall pay the assessment to the department in equal amounts

on a quarterly basis. A participating hospital shall submit the assessment amount no later than thirty days following the end of each calendar quarter.

7. A participating hospital shall retain and preserve the Medicare cost report and financial statements used to prepare the cost report for a period of three years. All information obtained by the department under this subsection is confidential and does not constitute a public record.

8. The department shall collect the assessment imposed and shall deposit all revenues collected in the hospital health care access trust fund created in section 249M.4.

9. If the department determines that a participating hospital has underpaid or overpaid the assessment, the department shall notify the participating hospital of the amount of the unpaid assessment or refund due. Such payment or refund shall be due or refunded within thirty days of the issuance of the notice.

10. a. A participating hospital that fails to pay the assessment within the time frame specified in this section shall pay, in addition to the outstanding assessment, a penalty of one and five-tenths percent of the assessment amount owed for each month or portion of each month that the payment is overdue. However, if the department determines that good cause is shown for failure to comply with payment of the assessment, the department shall waive the penalty or a portion of the penalty.

b. If an assessment is not received by the department by the last day of the month in which the payment is due, the department shall withhold an amount equal to the assessment and penalty owed from any payment due such participating hospital under the medical assistance program.

c. The assessment imposed under this chapter constitutes a debt due the state and may be collected by civil action under any method provided for by law.

d. Any penalty collected pursuant to this subsection shall be credited to the hospital health care access trust fund created in section 249M.4.

11. If the federal government fully funds Iowa's medical assistance program, if federal law changes to negatively impact the assessment program as determined by the department, or if a federal audit determines the assessment program is invalid, the department shall terminate the imposition of the assessment and the program beginning on the date the federal statutory, regulatory, or interpretive change takes effect.

2010 Acts, ch 1135, §4, 9; 2011 Acts, ch 34, §63

Section not amended; footnote deleted

#### **249M.4 Hospital health care access trust fund — board.**

1. A hospital health care access trust fund is created in the state treasury under the authority of the department. Moneys received through the collection of the hospital health care access assessment imposed under this chapter and any other moneys specified for deposit in the trust fund shall be deposited in the trust fund.

2. Moneys in the trust fund shall be used, subject to their appropriation by the general assembly, by the department to reimburse participating hospitals the medical assistance program upper payment limit for inpatient and outpatient hospital services as calculated in this section. Following payment of such upper payment limit to participating hospitals, any remaining funds in the trust fund on an annual basis may be used for any of the following purposes:

a. To support medical assistance program utilization shortfalls.

b. To maintain the state's capacity to provide access to and delivery of services for vulnerable Iowans.

c. To fund the health care workforce support initiative created pursuant to section 135.175.

d. To support access to health care services for uninsured Iowans.

e. To support Iowa hospital programs and services which expand access to health care services for Iowans.

3. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund. The moneys in the trust fund shall not be considered revenue of the state, but rather shall be funds of the hospital health care access assessment program. The moneys deposited in the trust fund are not subject to section 8.33 and shall not

be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this chapter. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

4. The department shall adopt rules pursuant to chapter 17A to administer the trust fund and reimbursements and expenditures as specified in this chapter made from the trust fund.

5. a. Beginning July 1, 2010, or the implementation date of the hospital health care access assessment program as determined by receipt of approval from the centers for Medicare and Medicaid services of the United States department of health and human services, whichever is later, the department shall increase the diagnostic related groups and ambulatory patient classifications base rates to provide payments to participating hospitals at the Medicare upper payment limit for the fiscal year beginning July 1, 2010, calculated as of July 31, 2010. Each participating hospital shall receive the same percentage increase, but the percentage may differ depending on whether the basis for the base rate increase is the diagnostic related groups or ambulatory patient classifications.

b. The percentage increase shall be calculated by dividing the amount calculated under subparagraph (1) by the amount calculated under subparagraph (2) as follows:

(1) The amount under the Medicare upper payment limit for the fiscal year beginning July 1, 2010, for participating hospitals.

(2) The projected expenditures for participating hospitals for the fiscal year beginning July 1, 2010, as determined by the fiscal management division of the department, plus the amount calculated under subparagraph (1).

6. For the fiscal year beginning July 1, 2011, and for each fiscal year beginning July 1, thereafter, the payments to participating hospitals shall continue to be calculated based on the upper payment limit as calculated for the fiscal year beginning July 1, 2010.

7. Reimbursement of participating hospitals shall incorporate the rebasing process for inpatient and outpatient services for state fiscal year 2012. However, the total amount of increased funding available for reimbursement attributable to rebasing shall not exceed four million five hundred thousand dollars for state fiscal year 2012 and six million dollars for state fiscal year 2013.

8. Any payments to participating hospitals under this section shall result in budget neutrality to the general fund of the state.

9. a. A hospital health care access trust fund board is established consisting of the following members:

(1) The co-chairpersons and the ranking members of the joint appropriations subcommittee on health and human services.

(2) The Iowa medical assistance program director.

(3) Two hospital executives representing the two largest private health care systems in the state.

(4) The president of the Iowa hospital association.

(5) A representative of a consumer advocacy group, involved in both state and national initiatives, that provides data on key indicators of well-being for children and families in order to inform policymakers to help children and families succeed.

b. The board shall do all of the following:

(1) Provide oversight of the trust fund.

(2) Make recommendations regarding the hospital health care access assessment program, including recommendations regarding the assessment calculation, assessment amounts, payments to participating hospitals, and use of the moneys in the trust fund.

(3) Submit an annual report to the governor and the general assembly regarding the use and expenditure of moneys deposited in the trust fund.

c. The department shall provide administrative assistance to the board.

2010 Acts, ch 1135, §5, 9; 2013 Acts, ch 138, §124, 127

Referred to in §249M.2, 249M.3

2013 amendment striking former paragraph c of subsection 2 takes effect January 1, 2014; 2013 Acts, ch 138, §127

Subsection 2, paragraph c stricken and former paragraphs d - f redesignated as c - e

**249M.5 Future repeal.**

This chapter is repealed June 30, 2016.

2010 Acts, ch 1135, §6, 9; 2013 Acts, ch 138, §57, 58

Legislative intent; pilot program; 2010 Acts, ch 1135, §1  
Section amended

**CHAPTER 249N**

**IOWA HEALTH AND WELLNESS PLAN**

Referred to in §426B.3

Chapter takes effect June 20, 2013, to be implemented effective January 1, 2014, contingent upon receipt of federal approval of medical assistance program state plan amendment or waiver request; transition provisions; reports to general assembly; 2013 Acts, ch 138, §186, 187

249N.1	Title.	249N.5	Iowa health and wellness plan — covered benefits — administration.
249N.2	Definitions.		
249N.3	Purpose — establishment of Iowa health and wellness plan — limitation.	249N.6	Iowa health and wellness plan provider network.
249N.4	Iowa health and wellness plan — eligibility.	249N.7	Member financial participation.
		249N.8	Mental health services reports.

**249N.1 Title.**

This chapter shall be known and may be cited as the “*Iowa Health and Wellness Plan*”.

2013 Acts, ch 138, §166, 187

Section takes effect June 20, 2013, to be implemented effective January 1, 2014, contingent upon receipt of federal approval of medical assistance program state plan amendment or waiver request; transition provisions; reports to general assembly; 2013 Acts, ch 138, §186, 187

NEW section

**249N.2 Definitions.**

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

1. “*Accountable care organization*” means a risk-bearing, integrated health care organization characterized by a payment and care delivery model that ties provider reimbursement to quality metrics and reductions in the total cost of care for an attributed population of patients.
2. “*Affordable Care Act*” means the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.
3. “*Covered benefits*” means covered benefits as specified in section 249N.5.
4. “*Department*” means the department of human services.
5. “*Director*” means the director of human services.
6. “*Eligible individual*” means an individual eligible for medical assistance pursuant to section 249A.3, subsection 1, paragraph “v”.
7. “*Essential health benefits*” means essential health benefits as defined in section 1302 of the Affordable Care Act, that include at least the general categories and the items and services covered within the categories of ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.
8. “*Federal approval*” means approval by the centers for Medicare and Medicaid services of the United States department of health and human services.
9. “*Federal poverty level*” means the most recently revised poverty income guidelines published by the United States department of health and human services.

10. “Household income” means household income as determined using the modified adjusted gross income methodology pursuant to section 2002 of the Affordable Care Act.

11. “Iowa health and wellness plan” or “plan” means the Iowa health and wellness plan established under this chapter.

12. “Iowa health and wellness plan provider” means any provider enrolled in the medical assistance program or any participating accountable care organization.

13. “Iowa health and wellness plan provider network” means the health care delivery network approved by the department for Iowa health and wellness plan members.

14. “Medical assistance program” or “Medicaid” means the program paying all or part of the costs of care and services provided to an individual pursuant to chapter 249A and Tit. XIX of the federal Social Security Act.

15. “Medical home” means medical home as defined in section 135.157.

16. “Member” means an eligible individual who is enrolled in the Iowa health and wellness plan.

17. “Participating accountable care organization” means an accountable care organization approved by the department to participate in the Iowa health and wellness plan provider network.

18. “Preventive care services” means care that is provided to an individual to promote health, prevent disease, or diagnose disease.

19. “Primary medical provider” means the personal provider as defined in section 135.157 chosen by a member or to whom a member is assigned under the Iowa health and wellness plan.

20. “Value-based reimbursement” means a payment methodology that links provider reimbursement to improved performance by health care providers by holding health care providers accountable for both the cost and quality of care provided.

2013 Acts, ch 138, §167, 187

Referred to in §249A.3

Section takes effect June 20, 2013, to be implemented effective January 1, 2014, contingent upon receipt of federal approval of medical assistance program state plan amendment or waiver request; transition provisions; reports to general assembly; 2013 Acts, ch 138, §186, 187

NEW section

### **249N.3 Purpose — establishment of Iowa health and wellness plan — limitation.**

1. The purpose of this chapter is to establish and provide for the administration of an Iowa health and wellness plan to promote all of the following:

a. Increased access to health care through a patient-centered, integrated health care system.

b. Improved quality health care outcomes.

c. Incentives to encourage personal responsibility, cost-conscious utilization of health care, and adoption of preventive practices and healthy behaviors.

d. Health care cost containment and minimization of administrative costs.

2. The Iowa health and wellness plan is established within the medical assistance program and shall be administered by the department. Except as otherwise specified in this chapter, provisions applicable to the medical assistance program pursuant to chapter 249A shall be applicable to the Iowa health and wellness plan.

3. The department may contract with a third-party administrator to provide eligibility determination support, and to administer enrollment, member outreach, and other components of the Iowa health and wellness plan.

4. The provisions of this chapter shall not be construed and are not intended to affect the provision of services to medical assistance program recipients existing on January 1, 2014.

5. a. If the methodology for calculating the federal medical assistance percentage for eligible individuals, as provided in 42 U.S.C. § 1396d(y), is modified through federal law or regulation, in a manner that reduces the percentage of federal assistance to the state in a manner inconsistent with 42 U.S.C. § 1396d(y), or if federal law or regulation affecting eligibility or benefits for the Iowa health and wellness plan is modified, the department may implement an alternative plan as specified in the medical assistance state plan or waiver for

coverage of the affected population, subject to prior, statutory approval of implementation of the alternative plan.

b. If the methodology for calculating the federal medical assistance percentage for eligible individuals, as provided in 42 U.S.C. § 1396d(y), is modified through federal law or regulation resulting in a reduction of the percentage of federal assistance to the state below ninety percent but not below eighty-five percent, the medical assistance program reimbursement rates for inpatient and outpatient hospital services shall be reduced by a like percentage in the succeeding fiscal year, subject to prior, statutory approval of implementation of the reduction.

2013 Acts, ch 138, §168, 187

Section takes effect June 20, 2013, to be implemented effective January 1, 2014, contingent upon receipt of federal approval of medical assistance program state plan amendment or waiver request; transition provisions; reports to general assembly; 2013 Acts, ch 138, §186, 187

NEW section

#### **249N.4 Iowa health and wellness plan — eligibility.**

1. Except as otherwise provided in this chapter, an individual may participate in the Iowa health and wellness plan if the individual meets all of the following criteria:

a. Is an eligible individual.

b. Meets the citizenship or alienage requirements of the medical assistance program, is a resident of Iowa, and provides a social security number upon application for the plan.

c. Fulfills all other conditions of participation in the Iowa health and wellness plan, including member financial participation pursuant to section 249N.7.

2. An individual who has access to affordable employer-sponsored health care coverage, as defined by rule of the department to align with regulations adopted by the federal internal revenue service under the Affordable Care Act, shall not be eligible for participation in the Iowa health and wellness plan.

3. Each applicant for the Iowa health and wellness plan shall provide to the department all insurance information required by the health insurance premium payment program in accordance with rules adopted by the department.

a. The department may elect to pay the cost of premiums for applicants with access to employer-sponsored health care coverage if the department determines such payment to be cost-effective.

b. Eligibility for the Iowa health and wellness plan is a qualifying event under the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

c. If premium payment is provided under this subsection for employer-sponsored health care coverage, the Iowa health and wellness plan shall supplement such coverage as necessary to provide the covered benefits specified under section 249N.5.

4. The department shall implement the Iowa health and wellness plan in a manner that ensures that the Iowa health and wellness plan is the payor of last resort.

5. A member is eligible for coverage effective the first day of the month following the month of application for enrollment.

6. Following initial enrollment, a member is eligible for covered benefits for twelve months, subject to program termination and other limitations otherwise specified in this chapter. The department shall review the member's eligibility on at least an annual basis.

2013 Acts, ch 138, §169, 187

Section takes effect June 20, 2013, to be implemented effective January 1, 2014, contingent upon receipt of federal approval of medical assistance program state plan amendment or waiver request; transition provisions; reports to general assembly; 2013 Acts, ch 138, §186, 187

NEW section

#### **249N.5 Iowa health and wellness plan — covered benefits — administration.**

1. Iowa health and wellness plan members shall receive coverage for benefits as specified in section 249A.3, subsection 1, paragraph "v".

2. a. For members whose household income is at or below one hundred percent of the federal poverty level, the plan shall be administered by the Iowa Medicaid enterprise consistent with program administration applicable to individuals under section 249A.3, subsection 1.

b. For members whose household income is above one hundred percent but not in excess

of one hundred thirty-three percent of the federal poverty level, the plan shall be administered through provision of premium assistance for the purchase of the covered benefits through the American health benefits exchange created pursuant to the Affordable Care Act. The department may pay premiums and supplemental cost-sharing subsidies directly to qualified health plans participating in the American health benefits exchange created pursuant to the Affordable Care Act on behalf of the member.

2013 Acts, ch 138, §170, 187

Referred to in §249N.2, 249N.4

Section takes effect June 20, 2013, to be implemented effective January 1, 2014, contingent upon receipt of federal approval of medical assistance program state plan amendment or waiver request; transition provisions; reports to general assembly; 2013 Acts, ch 138, §186, 187

NEW section

#### **249N.6 Iowa health and wellness plan provider network.**

1. The Iowa health and wellness plan provider network shall include all providers enrolled in the medical assistance program and all participating accountable care organizations. Reimbursement under this chapter shall only be made to such Iowa health and wellness plan providers for covered benefits.

2. *a.* Upon enrollment, a member shall choose a primary medical provider and, to the extent feasible, shall also choose a medical home within the Iowa health and wellness plan provider network.

*b.* If the member does not choose a primary medical provider or a medical home, the department shall assign the member to a primary medical provider or a medical home in accordance with the Medicaid managed health care, mandatory enrollment provisions specified in rules adopted by the department pursuant to chapter 249A and in accordance with quality data available to the department.

*c.* The department shall develop a mechanism for primary medical providers, medical homes, and participating accountable care organizations to jointly facilitate member care coordination. The Iowa health and wellness plan shall provide for reimbursement of care coordination services provided under the plan consistent with the reimbursement methodology developed pursuant to section 135.159.

3. *a.* The department shall provide procedures for accountable care organizations that emerge through local markets to participate in the Iowa health and wellness plan provider network. Such accountable care organizations shall incorporate the medical home as defined and specified in chapter 135, division XXII, as a foundation and shall emphasize whole-person orientation and coordination and integration of both clinical services and nonclinical community and social supports that address social determinants of health. A participating accountable care organization shall enter into a contract with the department to ensure the coordination and management of the health of attributed members, to produce quality health care outcomes, and to control overall cost.

*b.* The department shall establish by rule in accordance with chapter 17A the qualifications, contracting processes, and contract terms for a participating accountable care organization. The rules shall also establish a methodology for attribution of a member to a participating accountable care organization.

*c.* A participating accountable care organization contract shall establish accountability based on quality performance and total cost-of-care metrics for the attributed population. In developing quality performance standards, the department shall consider those utilized by state accountable care organization models including but not limited to the quality index score and the Medicare shared savings program quality reporting metrics. The payment models shall include but are not limited to risk sharing, including both shared savings and shared costs, between the state and the participating accountable care organization, and bonus payments for improved quality. The contract terms shall require that a participating accountable care organization is subject to shared savings beginning with the initial year of the contract, must have quality metrics in place within three years of the initial year of the contract, and must participate in risk sharing within five years of the initial year of the contract.

4. To the greatest extent possible, members shall have a choice of providers within

the Iowa health and wellness plan provider network to facilitate access to locally-based health care providers and services. However, member choice may be limited by the results of attribution under this section and by the participating accountable care organization, with prior approval of the department, if the member's health condition would benefit from limiting the member's choice of an Iowa health and wellness plan provider to ensure coordination of services, or due to overutilization of covered benefits. The participating accountable care organization shall provide thirty days' notice to the member prior to limitation of such choice.

5. a. An Iowa health and wellness plan provider shall be reimbursed for covered benefits under the Iowa health and wellness plan utilizing the same reimbursement methodology as that applicable to individuals eligible for medical assistance under section 249A.3, subsection 1.

b. Notwithstanding paragraph "a", a participating accountable care organization under contract with the department shall be reimbursed utilizing a value-based reimbursement methodology.

6. a. Iowa health and wellness plan providers shall exchange member health information as provided by rule to facilitate coordination and management of members' health, quality health care outcomes, and containment of and reduction in costs.

b. The department shall provide the health care claims data of attributed members to a member's participating accountable care organization on a timeframe established by rule of the department.

2013 Acts, ch 138, §171, 187

Section takes effect June 20, 2013, to be implemented effective January 1, 2014, contingent upon receipt of federal approval of medical assistance program state plan amendment or waiver request; transition provisions; reports to general assembly; 2013 Acts, ch 138, §186, 187

NEW section

#### **249N.7 Member financial participation.**

1. Membership in the Iowa health and wellness plan shall require payment of monthly contributions for members whose household income is at or above fifty percent of the federal poverty level. Members shall be subject to copayment amounts applicable only to nonemergency use of a hospital emergency department. Total member cost-sharing, annually, shall align with the cost-sharing limitations requirements for the American health benefits exchanges under the Affordable Care Act. Contributions and copayment amounts shall be established by rule of the department.

2. Contributions shall be waived for a member during the initial year of membership. If a member completes all required preventive care services and wellness activities as specified by rule of the department during the initial year of membership, contributions shall be waived during the subsequent year of membership and each year thereafter until such time as the member fails to complete required preventive care services and wellness activities specified during the prior annual membership period.

2013 Acts, ch 138, §172, 187

Referred to in §249N.4

Section takes effect June 20, 2013, to be implemented effective January 1, 2014, contingent upon receipt of federal approval of medical assistance program state plan amendment or waiver request; transition provisions; reports to general assembly; 2013 Acts, ch 138, §186, 187

NEW section

#### **249N.8 Mental health services reports.**

The department shall submit all of the following to the governor and the general assembly:

1. Biennially, a report of the results of a review, by county and region, of mental health services previously funded through taxes levied by counties pursuant to section 331.424A, that are funded during the reporting period under the Iowa health and wellness plan.

2. Annually, a report of the results of a review of the outcomes and effectiveness of mental health services provided under the Iowa health and wellness plan.

2013 Acts, ch 138, §173, 187

Section takes effect June 20, 2013, to be implemented effective January 1, 2014, contingent upon receipt of federal approval of medical assistance program state plan amendment or waiver request; transition provisions; reports to general assembly; 2013 Acts, ch 138, §186, 187

NEW section

## CHAPTER 250

RESERVED

## CHAPTER 251

## EMERGENCY RELIEF ADMINISTRATION

Referred to in §232.2, 235.7

Child and family services, see chapter 234

251.1	Definitions.	251.5	Duties of the service area advisory board.
251.2	Administration of emergency relief.	251.6	County supervisors to determine relief and work projects.
251.3	Powers and duties.	251.7	County appointees to act as executive officers.
251.4	Grants from state funds to counties.		

**251.1 Definitions.**

As used in this chapter: “*Division*” or “*state division*” means the division of child and family services of the department of human services; “*administrator*” means the administrator of the division of child and family services of the department of human services.

[C71, 73, 75, 77, 79, 81, §251.1]

83 Acts, ch 96, §157, 159

**251.2 Administration of emergency relief.**

The state division, in addition to all other powers and duties given it by law, shall be charged with the supervision and administration of all funds coming into the hands of the state now or hereafter provided for emergency relief.

[C39, §3828.067; C46, 50, 54, 58, 62, 66, §251.1; C71, 73, 75, 77, 79, 81, §251.2]

**251.3 Powers and duties.**

The administrator shall have the power to:

1. Appoint such personnel as may be necessary for the efficient discharge of the duties imposed upon the administrator in the administration of emergency relief, and to make such rules and regulations as the administrator deems necessary or advisable covering the administrator’s activities and those of the service area advisory boards created under section 217.43, concerning emergency relief.

2. Join and cooperate with the government of the United States, or any of its appropriate agencies or instrumentalities, in any proper relief activity.

3. Make such reports of budget estimates to the governor and to the general assembly as are required by law, or are necessary and proper to obtain appropriations of funds necessary for relief purposes and for all the purposes of this chapter.

4. Determine the need for funds in the various counties of the state basing such determination upon the amount of money needed in the various counties to provide adequate relief, and upon the counties’ financial inability to provide such relief from county funds. The administrator may administer said funds belonging to the state within the various counties of the state to supplement local funds as needed.

5. Make such reports, obtain and furnish such information from time to time as may be required by the governor, by the general assembly, or by any other proper office or agency, state or federal, and make an annual report of its activities.

[C39, §3828.068; C46, 50, 54, 58, 62, 66, §251.2; C71, 73, 75, 77, 79, 81, §251.3]

93 Acts, ch 54, §6; 2001 Acts, 2nd Ex, ch 4, §4, 9

**251.4 Grants from state funds to counties.**

The state division may require as a condition of making available state assistance to counties for emergency relief purposes, that the county boards of supervisors shall establish budgets as needed in respect to the relief situation in the counties.

[C39, §3828.069; C46, 50, 54, 58, 62, 66, §251.3; C71, 73, 75, 77, 79, 81, S81, §251.4; 81 Acts, ch 117, §1035]

83 Acts, ch 123, §101, 209

**251.5 Duties of the service area advisory board.**

A service area advisory board created in section 217.43 shall perform the following activities for any county in the board's service area concerning emergency relief:

1. Cooperate with a county's board of supervisors in all matters pertaining to administration of relief.

2. At the request of a county's board of supervisors, prepare requests for grants of state funds.

3. At the request of a county's board of supervisors, administer county relief funds.

4. In a county receiving grants of state funds upon approval of the director of the department of administrative services and the county's board of supervisors, administer both state and county relief funds.

5. Perform other duties as may be prescribed by the administrator and a county's board of supervisors.

[C39, §3828.070; C46, 50, 54, 58, 62, 66, §251.4; C71, 73, 75, 77, 79, 81, S81, §251.5; 81 Acts, ch 117, §1036]

93 Acts, ch 54, §7; 2001 Acts, 2nd Ex, ch 4, §5, 9; 2003 Acts, ch 145, §286

Referred to in §331.381

**251.6 County supervisors to determine relief and work projects.**

The county board of supervisors shall supervise administration of emergency relief, and shall determine the minimum amount of relief required for each person or family, which persons are employable, and whether and under what conditions persons receiving emergency relief may be employed by the county.

[C39, §3828.071; C46, 50, 54, 58, 62, 66, §251.5; C71, 73, 75, 77, 79, 81, S81, §251.6; 81 Acts, ch 117, §1037]

Referred to in §331.381

**251.7 County appointees to act as executive officers.**

The county board of supervisors may appoint an individual to serve as the executive officer of the service area advisory board in all matters pertaining to relief for that county.

[C39, §3828.072; C46, 50, 54, 58, 62, 66, §251.6; C71, 73, 75, 77, 79, 81, S81, §251.7; 81 Acts, ch 117, §1038]

93 Acts, ch 54, §8; 2001 Acts, 2nd Ex, ch 4, §6, 9

## CHAPTER 252

## SUPPORT OF THE POOR

Referred to in §217.30, 232.2, 232.159, 235.7, 331.381, 331.427

252.1	“Poor person” defined.	252.23	Legal settlement disputes.
252.2	Parents and children liable.	252.24	County of settlement liable — exception.
252.3	Putative father.	252.25	County general assistance.
252.4	Who deemed trustee.	252.26	General assistance director.
252.5	Remote relatives.	252.27	Form of assistance — condition.
252.6	Enforcement of liability.	252.28	through 252.32 Reserved.
252.7	Notice — hearing.	252.33	Application for assistance.
252.8	Scope of order.	252.34	Reserved.
252.9	Judgment — appeal.	252.35	Payment of claims.
252.10	through 252.12 Repealed by 76 Acts, ch 1104, §17.	252.36	Reserved.
252.13	Recovery by county.	252.37	Appeal to supervisors.
252.14	Homestead — when liable.	252.38	through 252.41 Reserved.
252.15	Recovery by relative.	252.42	Cooperation on work-assistance projects.
252.16	Settlement — how acquired.	252.43	Repealed by 93 Acts, ch 172, §49.
252.17	Settlement continues.	252.44	Repealed by 76 Acts, ch 1056, §45.
252.18	Foreign paupers.	252.45	Repealed by 81 Acts, ch 117, §1097.
252.19	Repealed by 76 Acts, ch 1245(4), §525.		
252.20	and 252.21 Reserved.		
252.22	Contest between counties — chapter applicable to county public hospitals.		

**252.1 “Poor person” defined.**

The words “*poor*” and “*poor person*” as used in this chapter shall be construed to mean those who have no property, exempt or otherwise, and are unable, because of physical or mental disabilities, to earn a living by labor; but this section shall not be construed to forbid aid to needy persons who have some means, when the board shall be of opinion that the same will be conducive to their welfare and the best interests of the public.

[C97, §2252; C24, 27, 31, 35, §5297; C39, §3828.073; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.1]

**252.2 Parents and children liable.**

The father, mother, and children of any poor person, who is unable to maintain the poor person’s self by labor, shall jointly or severally relieve or maintain such person in such manner as, upon application to the board of supervisors of the county where such person has a residence or may be, they may direct.

[C51, §787; R60, §1355; C73, §1330; C97, §2216; C24, 27, 31, 35, §5298; C39, §3828.074; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.2]

**252.3 Putative father.**

The word “*father*” in this chapter includes the putative father of an illegitimate child, and the question of parentage may be tried in any proceeding to recover for or compel the support of such a child, and like proceedings may be prosecuted against the mother independently of or jointly with the alleged father.

[C51, §788; R60, §1356; C73, §1332; C97, §2250; C24, 27, 31, 35, §5299; C39, §3828.075; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.3]

Obligation of parent, chapter 600B

**252.4 Who deemed trustee.**

The word “*trustees*” in this chapter shall be construed to include and mean any person or officer of any county or city charged with the oversight of the poor.

[C51, §789; R60, §1357; C73, §1333; C97, §2251; C24, 27, 31, 35, §5300; C39, §3828.076; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.4]

**252.5 Remote relatives.**

In the absence or inability of nearer relatives, the same liability shall extend to grandparents, if of ability without personal labor, and to the grandchildren who are of ability by personal labor or otherwise.

[C51, §787; R60, §1355; C73, §1331; C97, §2217; C24, 27, 31, 35, §5301; C39, §3828.077; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.5]

**252.6 Enforcement of liability.**

Upon the failure of such relatives to assist or maintain a poor person who has made application for assistance, the county board of supervisors, service area advisory board created under section 217.43, or state division of child and family services of the department of human services may apply to the district court of the county where the poor person resides or may be found for an order to compel the assistance or maintenance.

[C51, §789; R60, §1357; C73, §1333; C97, §2218; C24, 27, 31, 35, §5302; C39, §3828.078; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.6]

83 Acts, ch 96, §157, 159; 92 Acts, ch 1212, §9; 93 Acts, ch 54, §9; 2001 Acts, 2nd Ex, ch 4, §7, 9

**252.7 Notice — hearing.**

At least ten days' notice in writing of the application shall be given to the parties sought to be charged, service thereof to be made as of an original notice, in which proceedings the county shall be plaintiff and the parties served defendants. No order shall be made affecting a person not served, but, as to such, notice may be given at any stage of the proceedings. The court may proceed in a summary manner to hear all the allegations and proofs of the parties, and order any one or more of the relatives who shall be able, to relieve or maintain the poor person, charging them as far as practicable in the order above named, and for that purpose may bring in new parties when necessary.

[C51, §790 – 792; R60, §1358 – 1360; C73, §1334 – 1336; C97, §2219; C24, 27, 31, 35, §5303; C39, §3828.079; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.7]

Service of notice, R.C.P. 1.302 – 1.315

**252.8 Scope of order.**

The order may be for the entire or partial support of the applicant, may be for the payment of money or the taking of the applicant to a relative's house, or may assign the applicant for a certain time to one and for another period to another, as is just and right, taking into view the means of the several relatives liable, but no such assignment shall be made to one who is willing to pay the amount necessary for support. If the order is for assistance in any other form than money, it shall state the extent and value of the assistance per week, and the time assistance shall continue; or the order may make the time of continuance indefinite, and it may be varied from time to time by a new order, as circumstances require, upon application to the court by the trustees, the poor person, or the relative affected, ten days' notice being given to the party or parties concerned.

[C51, §793 – 795; R60, §1361 – 1363; C73, §1337 – 1339; C97, §2219; C24, 27, 31, 35, §5304; C39, §3828.080; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.8]

92 Acts, ch 1212, §10

**252.9 Judgment — appeal.**

When money is ordered to be paid, it shall be paid to such person as the court may direct. If support be not rendered as ordered, the court upon such fact being shown by the affidavit of one or more of the proper trustees, may render judgment and order execution for the amount due, rating any support ordered in kind at the valuation previously made. An appeal may be taken from the judgment rendered to the supreme court. Support for later periods under the same order may be, as it becomes due, applied for and obtained in the same manner.

[C51, §796 – 798; R60, §1364 – 1366; C73, §1340 – 1342; C97, §2219; C24, 27, 31, 35, §5305; C39, §3828.081; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.9]

**252.10 through 252.12** Repealed by 76 Acts, ch 1104, § 17.

**252.13 Recovery by county.**

Any county having expended money for the assistance or support of a poor person under this chapter, may recover the money from any of the following: from the poor person if the person becomes able, or from the person's estate; from relatives by action brought within two years from the payment of the assistance or support, from the poor person by action brought within two years after the person becomes able, and from the person's estate by filing the claim as provided by law. There shall be allowed against the person's estate a claim of the sixth class for that portion of the liability to the county which exceeds the total amount of all claims of the first through the fifth classes, inclusive, as defined in section 633.425, which are allowed against that estate.

[C51, §806; R60, §1374; C73, §1350; C97, §2222; C24, 27, 31, 35, §5309; C39, §3828.085; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.13]

92 Acts, ch 1212, §11

Referred to in §252.14

Claims against estate, §633.410 et seq.

**252.14 Homestead — when liable.**

When expenditures have been made for and on behalf of a poor person and the person's family, as contemplated by section 252.13, the homestead of such poor person is liable for such expenditures when such poor person dies without leaving a surviving spouse, or child, as defined in section 234.1.

[C31, 35, §5309-c1; C39, §3828.086; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.14]

See also §561.21

**252.15 Recovery by relative.**

A more distant relation, who may have been compelled to aid a poor person, may recover from any one or more of the nearer relatives, and one so compelled to aid may recover contribution from others in the same degree, and a recovery may be had against the poor person or the person's estate, if, after such aid or support has been given, the person aided or supported becomes able to repay the same; but proceedings to recover therefor must be brought within two years from the time a cause of action accrues.

[C51, §807; R60, §1375; C73, §1351; C97, §2223; C24, 27, 31, 35, §5310; C39, §3828.087; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.15]

**252.16 Settlement — how acquired.**

A legal settlement in this state may be acquired as follows:

1. A person continuously residing in a county in this state for a period of one year acquires a settlement in that county except as provided in subsection 7 or 8.

2. A person having acquired a settlement in a county of this state shall not acquire a settlement in any other county until the person has continuously resided in the other county for a period of one year except as provided in subsection 7.

3. A person who is an inpatient, a resident, or an inmate of or is supported by an institution whether organized for pecuniary profit or not or an institution supported by charitable or public funds in a county in this state does not acquire a settlement in the county unless the person before becoming an inpatient, a resident, or an inmate in the institution or being supported by an institution has a settlement in the county. A minor child residing in an institution assumes the settlement of the child's custodial parent. Settlement of the minor child changes with the settlement of the child's custodial parent, except that the child retains the settlement that the child's custodial parent has on the child's eighteenth birthday until the child is discharged from the institution, at which time the child acquires the child's own settlement by continuously residing in a county for one year.

4. *a.* Minor children who reside with both parents take the settlement of the parents. If the minor child resides on a permanent basis with only one parent or a guardian, the minor child takes the settlement of the parent or guardian with whom the child resides.

*b.* An emancipated minor acquires a legal settlement in the minor's own right. An

emancipated minor is one who is absent from the minor's parents with the consent of the parents, is self-supporting, and has assumed a new relationship inconsistent with being a part of the family of the parents.

c. A minor, placed in the care of a public agency or facility as custodian or guardian, takes the legal settlement that the parents had upon severance of the parental relationship, and retains that legal settlement until a natural person is appointed custodian or guardian at which time the minor takes the legal settlement of the natural person or until the minor person attains the age of eighteen and acquires another legal settlement in the person's own right.

5. A person with settlement in this state who becomes a member on active duty of an armed service of the United States retains the settlement during the period of active duty. A person without settlement in this state who is a member on active duty of an armed service of the United States within the borders of this state does not acquire settlement during the period of active duty.

6. a. Subsections 1, 2, 3, 7, and 8 do not apply to a blind person who is receiving assistance under the laws of this state.

b. A blind person who has resided in one county of this state for a period of six months acquires legal settlement for support as provided in this chapter, except as specified in paragraph "c".

c. A blind person who is an inpatient or resident of, is supported by, or is receiving treatment or support services from a state resource center created under chapter 222, a state mental health institute created under chapter 226, the Iowa braille and sight saving school administered by the state board of regents, or any community-based provider of treatment or services for an intellectual disability, developmental disabilities, mental health, or substance abuse, does not acquire legal settlement in the county in which the institution, facility, or provider is located, unless the blind person has resided in the county in which the institution, facility, or provider is located for a period of six months prior to the date of commencement of receipt of assistance under the laws of this state or for a period of six months subsequent to the date of termination of assistance under the laws of this state.

7. A person hospitalized in or receiving treatment at a state mental health institute or state resource center does not acquire legal settlement in the county in which the institute or resource center is located unless the person is discharged from the institute or resource center, continuously resides in the county for a period of one year subsequent to the discharge, and during that year is not hospitalized in and does not receive treatment at the institute or resource center.

8. A person receiving treatment or support services from any provider, whether organized for pecuniary profit or not or whether supported by charitable or public or private funds, that provides treatment or services for intellectual disability, developmental disabilities, mental health, brain injury, or substance abuse does not acquire legal settlement in a county unless the person continuously resides in that county for one year from the date of the last treatment or support service received by the person.

[C51, §808; R60, §1376; C73, §1352; C97, §2224; C24, 27, 31, 35, §5311; C39, §3828.088; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.16]

84 Acts, ch 1165, §1; 87 Acts, ch 50, §1, 2; 94 Acts, ch 1186, §34; 95 Acts, ch 119, §2; 97 Acts, ch 75, §1; 97 Acts, ch 169, §27; 98 Acts, ch 1181, §8; 2000 Acts, ch 1112, §51; 2009 Acts, ch 41, §263; 2012 Acts, ch 1019, §109, 110

Referred to in §252.22

Applicability of 1995 amendments to subsection 6; redetermination of legal settlement for certain blind persons; exception to §252.17; 95 Acts, ch 119, §4 - 6

### **252.17 Settlement continues.**

A legal settlement once acquired shall so remain until such person has removed from this state for more than one year or has acquired a legal settlement in some other county or state.

[C51, §809; R60, §1377; C73, §1353; C97, §2224; C24, 27, 31, 35, §5312; C39, §3828.089; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.17]

Exception for blind persons who acquired legal settlement in this state on or after July 1, 1994, and prior to May 1, 1995; see 95 Acts, ch 119, §4 - 6

**252.18 Foreign paupers.**

1. A person who is a county charge or is likely to become so, coming from another state and not having acquired a settlement in a county of this state or any such person having acquired a settlement in a county of this state who moves to another county, may be removed from this state or from the county into which the person has moved at the expense of the county where the person is found, upon the petition of the county to the district court in that county.

2. The court or judge shall fix the time and place of hearing on said petition and prescribe the time and manner of service of the notice of such hearing.

3. If upon the hearing on said petition such person shall be ordered to remove from the state or county and fails to do so, the person shall be deemed and declared in contempt of court and may be punished accordingly; or the judge may order the sheriff of the county seeking the removal to return such person to the state or county of the person's legal settlement.

[C51, §811; R60, §1379; C73, §1354; C97, §2225; C24, 27, 31, 35, §5313; C39, §3828.090; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.18]

83 Acts, ch 186, §10062, 10201

Referred to in §331.653  
Contempts, chapter 665

**252.19** Repealed by 76 Acts, ch 1245(4), § 525.

**252.20 and 252.21** Reserved.

**252.22 Contest between counties — chapter applicable to county public hospitals.**

When assistance is granted to a poor person having a settlement in another county, the auditor shall at once by mail notify the auditor of the county of settlement of that fact, and, within fifteen days after receipt of the notice, the auditor shall inform the auditor of the county granting assistance if the claim of settlement is disputed. If it is not, the poor person, at the request of the auditor or board of supervisors of the county of settlement, may be maintained where the person then is at the expense of the county of legal settlement, and without affecting legal settlement as provided in section 252.16.

All laws relating to the support of the poor as provided by this chapter shall be applicable to care, treatment, and hospitalization provided by county public hospitals.

For the purposes of this section, “auditor” means the county auditor or the auditor’s designee.

[C51, §814, 816, 817; R60, §1382, 1384, 1385; C73, §1357, 1359, 1360; C97, §2228; C24, 27, 31, 35, §5317; C39, §3828.094; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.22]

84 Acts, ch 1165, §2; 92 Acts, ch 1212, §12; 97 Acts, ch 169, §17

Referred to in §232.141, 252.23, 331.502

**252.23 Legal settlement disputes.**

If the alleged settlement is disputed, then, within thirty days after notice as provided in section 252.22, a copy of the notices sent and received shall be filed in the office of the clerk of the district court of the county against which claim is made, and a cause docketed without other pleadings, and tried as an ordinary action, in which the county granting the assistance shall be plaintiff, and the other defendant, and the burden of proof shall be upon the county granting the assistance. However, a dispute concerning the liability of a person’s county of residence for assistance provided through the county’s mental health and disability services system implemented under chapter 331 in connection with services initiated under chapter 222, 230, or 249A shall be resolved as provided in section 331.394.

[C51, §816, 817; R60, §1384, 1385; C73, §1359, 1360; C97, §2228; C24, 27, 31, 35, §5318; C39, §3828.095; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.23]

92 Acts, ch 1212, §13; 2004 Acts, ch 1090, §53; 2012 Acts, ch 1120, §124, 130

Referred to in §232.141

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**252.24 County of settlement liable — exception.**

1. The county where the settlement is shall be liable to the county granting assistance for all reasonable charges and expenses incurred in the assistance and care of a poor person.

2. When assistance is furnished by any governmental agency of the county, township, or city, the assistance shall be deemed to have been furnished by the county in which the agency is located and the agency furnishing the assistance shall certify the correctness of the costs of the assistance to the board of supervisors of that county and that county shall collect from the county of the person's settlement. The amounts collected by the county where the agency is located shall be paid to the agency furnishing the assistance. This statute applies to services and supplies furnished as provided in section 139A.18.

3. Notwithstanding subsection 2, if assistance or maintenance is provided by a county through the county's mental health and disability services system implemented under chapter 331, liability for the assistance and maintenance is the responsibility of the person's county of residence.

[C51, §815; R60, §1383; C73, §1358; C97, §2229; C24, 27, 31, 35, §5319; C39, **§3828.096**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.24]

92 Acts, ch 1212, §14; 2000 Acts, ch 1066, §44; 2012 Acts, ch 1120, §125, 130

2012 amendment to this section takes effect July 1, 2013; 2012 Acts, ch 1120, §130

Section amended

**252.25 County general assistance.**

The board of supervisors of each county shall provide for the assistance of poor persons lawfully in the county who are ineligible for, or are in immediate need and are awaiting approval and receipt of, assistance under programs provided by state or federal law, or whose actual needs cannot be fully met by the assistance furnished under those programs. The county board of supervisors shall establish general rules as the board's members deem necessary to properly discharge their responsibility under this section.

All applications, investigation reports, and case records of persons applying for county general assistance under this chapter are privileged communications and confidential, subject to use and inspection only by persons authorized by law in connection with their official duties relating to financial audits and administration of this chapter or as authorized by order of a district court. Examination of an individual's applications, reports, and records may also be authorized by a signed release from the individual.

[C73, §1361; C97, §2230; S13, §2230; C24, 27, 31, 35, §5320; C39, **§3828.097**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.25]

90 Acts, ch 1017, §2; 92 Acts, ch 1212, §15; 96 Acts, ch 1140, §1

Referred to in §22.7

**252.26 General assistance director.**

The board of supervisors in each county shall appoint or designate a general assistance director for the county, who shall have the powers and duties conferred by this chapter. In counties of one hundred thousand or less population, the county board may designate as general assistance director an employee of the state department of human services who is assigned to work in that county and is directed by the director of human services, pursuant to an agreement with the county board, to exercise the functions and duties of general assistance director in that county. The director shall receive as compensation an amount to be determined by the county board.

[C51, §819; R60, §1387; C73, §1361, 1364; C97, S13, §2230, 2233; C24, 27, 31, 35, §5321, 5327; C39, **§3828.098, 3828.104**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §252.26, 252.32; C81, §252.26]

83 Acts, ch 96, §157, 159; 83 Acts, ch 123, §102, 209; 92 Acts, ch 1212, §16

Referred to in §331.321

**252.27 Form of assistance — condition.**

The board of supervisors shall determine the form of the assistance. However, legal aid shall be only in civil matters and provided only through a legal aid program approved by the board of supervisors. The amount of assistance issued shall be determined by standards of

assistance established by the board of supervisors. They may require any able-bodied person to work on public programs or projects at the prevailing local rate per hour in payment for and as a condition of granting assistance. The labor shall be performed under the direction of the officers having charge of the public programs or projects. Subject to section 142.1, assistance may consist of the burial of nonresident indigent transients and the payment of the reasonable cost of burial, not to exceed two hundred fifty dollars.

The board shall record its proceedings relating to the provision of assistance to specific persons under this chapter. A person who is aggrieved by a decision of the board may appeal the decision as if it were a contested case before an agency and as if the person had exhausted administrative remedies in accordance with the procedures and standards in section 17A.19, subsections 2 to 12, except section 17A.19, subsection 10, paragraphs “b” and “g”, and section 17A.20.

[C73, §1361; C97, §2230; S13, §2230; C24, 27, 31, 35, §5322; C39, §3828.099; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §252.27; 81 Acts, ch 117, §1039]  
92 Acts, ch 1212, §17; 98 Acts, ch 1202, §38, 46; 2013 Acts, ch 30, §54  
Unnumbered paragraph 2 amended

**252.28 through 252.32** Reserved.

**252.33 Application for assistance.**

A person may make application for assistance to a member of the board of supervisors, or to the general assistance director of the county where the person is. If application is made to the general assistance director and that officer is satisfied that the applicant is in a state of want which requires assistance at the public expense, the director may afford temporary assistance, subject to the approval of the board of supervisors, as the necessities of the person require and shall immediately report the case to the board of supervisors, who may continue or deny assistance, as they find cause.

[C51, §820; R60, §1388; C73, §1365; C97, §2234; S13, §2234; C24, 27, 31, 35, §5328; C39, §3828.105; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.33]  
92 Acts, ch 1212, §18

**252.34** Reserved.

**252.35 Payment of claims.**

All claims and bills for the care and support of the poor shall be certified to be correct by the general assistance director and presented to the board of supervisors, and, if the board is satisfied that the claims and bills are reasonable and proper, they shall be paid.

[C51, §821; R60, §1389; C73, §1366; C97, §2235; C24, 27, 31, 35, §5330; C39, §3828.107; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.35]  
83 Acts, ch 123, §103, 209; 92 Acts, ch 1212, §19

**252.36** Reserved.

**252.37 Appeal to supervisors.**

If a poor person, on application to the general assistance director, is refused the required assistance, the applicant may appeal to the board of supervisors, who, upon examination into the matter, may order the director to provide assistance, or it may direct specific assistance.

[C51, §823; R60, §1391; C73, §1368; C97, §2237; C24, 27, 31, 35, §5333; C39, §3828.109; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.37]  
92 Acts, ch 1212, §20

**252.38 through 252.41** Reserved.

**252.42 Cooperation on work-assistance projects.**

The county board of supervisors may join and cooperate with the United States government, or a city within the city’s boundaries, or both the United States government and

a city within the city's boundaries, in sponsoring work projects, provided that the money used does not exceed the cost per month of supplying assistance to the certified persons working on projects who would be receiving direct assistance if they were not employed on the projects.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252.42]

83 Acts, ch 123, §104, 209; 92 Acts, ch 1212, §21

**252.43** Repealed by 93 Acts, ch 172, § 49.

**252.44** Repealed by 76 Acts, ch 1056, § 45.

**252.45** Repealed by 81 Acts, ch 117, § 1097.

## CHAPTER 252A

### SUPPORT OF DEPENDENTS

Referred to in §232.159, 252B.3, 252B.4, 252B.5, 252B.7, 252B.9, 252B.14, 252B.20, 252B.26, 252C.1, 252D.1, 252D.16, 252D.16A, 252E.1, 252E.1A, 252E.16, 252H.2, 252H.4, 252H.21, 252I.2, 252J.1, 252K.701, 252K.904, 598.21C, 598.21G, 598.22, 598.22B, 598.23A, 600.11, 602.6111, 602.8102(47)

See also chapter 252K, the Uniform Interstate Family Support Act

252A.1	Title and purpose.	252A.11	and 252A.12 Repealed by 97 Acts, ch 175, §21, 22.
252A.2	Definitions.	252A.13	Recipients of public assistance — assignment of support payments.
252A.3	Liability for support.	252A.14	and 252A.15 Reserved.
252A.3A	Establishing paternity by affidavit.	252A.16	Repealed by 97 Acts, ch 175, §21, 22.
252A.4	and 252A.4A Repealed by 97 Acts, ch 175, §21, 22.	252A.17	Registry of foreign support orders.
252A.5	When proceeding may be maintained.	252A.18	Registration of foreign support order — notice.
252A.5A	Limitations of actions.	252A.19	Repealed by 97 Acts, ch 175, §21, 22.
252A.6	How commenced — trial.	252A.20	Limitation on actions.
252A.6A	Additional provisions regarding paternity establishment.	252A.21	through 252A.23 Reserved.
252A.7	Repealed by 97 Acts, ch 175, §21, 22.	252A.24	and 252A.25 Repealed by 97 Acts, ch 175, §21, 22.
252A.8	Additional remedies.		
252A.9	Repealed by 97 Acts, ch 175, §21, 22.		
252A.10	Costs advanced.		

#### **252A.1 Title and purpose.**

This chapter may be cited and referred to as the “*Support of Dependents Law*”.

The purpose of this chapter is to secure support in civil proceedings for dependent spouses, children and poor relatives from persons legally responsible for their support.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.1]

97 Acts, ch 175, §8

#### **252A.2 Definitions.**

As used in this chapter, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

1. “*Birth hospital*” means a private or public hospital licensed pursuant to chapter 135B that has a licensed obstetric unit or is licensed to provide obstetric services, or a licensed birthing center associated with a hospital.

2. “*Child*” includes but shall not be limited to a stepchild, foster child, or legally adopted child and means a child actually or apparently under eighteen years of age, and a dependent

person eighteen years of age or over who is unable to maintain the person's self and is likely to become a public charge.

3. "Court" shall mean and include any court upon which jurisdiction has been conferred to determine the liability of persons for the support of dependents.

4. "Dependent" shall mean and include a spouse, child, mother, father, grandparent, or grandchild who is in need of and entitled to support from a person who is declared to be legally liable for such support.

5. "Institution" means a birthing hospital.

6. "Party" means a petitioner, a respondent, or a person who intervenes in a proceeding instituted under this chapter.

7. "Petitioner" includes each dependent person for whom support is sought in a proceeding instituted pursuant to this chapter or a mother or putative father of a dependent. However, in an action brought by the child support recovery unit, the state is the petitioner.

8. "Petitioner's representative" includes counsel of a dependent person for whom support is sought and counsel for a mother or putative father of a dependent. In an action brought by the child support recovery unit, "petitioner's representative" includes a county attorney, state's attorney and any other public officer, by whatever title the officer's public office may be known, charged by law with the duty of instituting, maintaining, or prosecuting a proceeding under this chapter or under the laws of the state.

9. "Putative father" means a man who is alleged to be or who claims to be the biological father of a child born to a woman to whom the man is not married at the time of the birth of the child.

10. "Register" means to file a foreign support order in the registry of foreign support orders maintained as a filing in equity by the clerk of court.

11. "Respondent" includes each person against whom a proceeding is instituted pursuant to this chapter. "Respondent" may include the mother or the putative father of a dependent.

12. "State registrar" means state registrar as defined in section 144.1.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.2; 82 Acts, ch 1004, §6, 7]

93 Acts, ch 79, §11; 94 Acts, ch 1171, §10, 11; 97 Acts, ch 175, §9; 2002 Acts, ch 1162, §78

### **252A.3 Liability for support.**

For the purpose of this chapter:

1. A spouse is liable for the support of the other spouse and any child or children under eighteen years of age and any other dependent. The court shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21A or 598.21B, as applicable.

2. A parent is liable for the support of the parent's child or children under eighteen years of age, whenever the other parent of such child or children is dead, or cannot be found, or is incapable of supporting the child or children, and, if the liable parent is possessed of sufficient means or able to earn the means. The court having jurisdiction of the respondent in a proceeding instituted under this chapter shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21B. The support obligation shall include support of a parent's child between the ages of eighteen and nineteen years if the child is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age.

3. The parents are severally liable for the support of a dependent child eighteen years of age or older, whenever such child is unable to maintain the child's self and is likely to become a public charge.

4. A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

5. a. A child born of parents who at any time prior to the birth of the child entered into a civil or religious marriage ceremony is deemed the legitimate child of both parents, regardless of the validity of such marriage, if all of the following conditions are met:

(1) The marriage was not thereafter dissolved prior to the death of either parent.

(2) The child was conceived and born after the death of a parent or was born as the result of the implantation of an embryo after the death of a parent.

(3) A genetic parent-child relationship between the child and the deceased parent is established.

(4) The deceased parent, in a signed writing, authorized the other parent to use the deceased parent's genetic material to initiate the posthumous procedure that resulted in the child's birth, or the deceased parent, by a specific reference to the genetic material, bequeathed the genetic material to the other parent in a valid will.

(5) The child is born within two years of the death of the deceased parent.

b. For the purposes of this subsection, "*genetic material*" means sperm, eggs, or embryos.

6. A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage are deemed the legitimate child or children of both parents.

7. a. A child born of parents who at any time prior to the birth of the child held themselves out as spouses by virtue of a common law marriage is deemed the legitimate child of both parents, if all of the following conditions are met:

(1) The marriage was not thereafter dissolved prior to the death of either parent.

(2) The child was conceived and born after the death of a parent or was born as the result of the implantation of an embryo after the death of a parent.

(3) A genetic parent-child relationship between the child and the deceased parent is established.

(4) The deceased parent, in a signed writing, authorized the other parent to use the deceased parent's genetic material to initiate the posthumous procedure that resulted in the child's birth, or the deceased parent, by a specific reference to the genetic material, bequeathed the genetic material to the other parent in a valid will.

(5) The child is born within two years of the death of the deceased parent.

b. For purposes of this subsection, "*genetic material*" means sperm, eggs, or embryos.

8. A man or woman who was or is held out as the person's spouse by a person by virtue of a common law marriage is deemed the legitimate spouse of such person.

9. Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce or separation from the respondent's spouse or a decree dissolving the marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

10. The parents of a child born out of wedlock shall be severally liable for the support of the child, but the liability of the father shall not be enforceable unless paternity has been legally established. Paternity may be established as follows:

a. By order of a court of competent jurisdiction or by administrative order when authorized by state law.

b. By the statement of the person admitting paternity in court and upon concurrence of the mother. If the mother was married, at the time of conception, birth, or at any time during the period between conception and birth of the child, to an individual other than the person admitting paternity, the individual to whom the mother was married at the time of conception, birth, or at any time during the period between conception and birth must deny paternity in order to establish the paternity of the person admitting paternity upon the sole basis of the admission.

c. Subject to the right of any signatory to rescind as provided in section 252A.3A, subsection 12, by the filing and registration by the state registrar of an affidavit of paternity executed on or after July 1, 1993, as provided in section 252A.3A, provided that the mother of the child was unmarried at the time of conception, birth, and at any time during the period between conception and birth of the child or if the mother was married at the time of conception, birth, or at any time during the period between conception and birth of the child, a court of competent jurisdiction has determined that the individual to whom the mother was married at that time is not the father of the child.

d. By establishment of paternity in a foreign jurisdiction in any manner provided for by the laws of that jurisdiction.

11. If paternity of a child born out of wedlock is established as provided in subsection

10, the court shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21B. The support obligation shall include support of the child between the ages of eighteen and nineteen years if the child is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age.

12. The court may order a party to pay sums sufficient to provide necessary food, shelter, clothing, care, medical or hospital expenses, including medical support as defined in chapter 252E, expenses of confinement, expenses of education of a child, funeral expenses, and such other reasonable and proper expenses of the dependent as justice requires, giving due regard to the circumstances of the respective parties.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.3]

89 Acts, ch 166, §2; 93 Acts, ch 79, §12; 94 Acts, ch 1171, §12; 96 Acts, ch 1141, §16; 97 Acts, ch 175, §1, 10, 11; 2005 Acts, ch 69, §2, 3; 2011 Acts, ch 18, §1

Referred to in §144.12A, 144.13, 252A.3A, 600B.41A

Spousal support debt for medical assistance to institutionalized spouse; chapter 249B

### **252A.3A Establishing paternity by affidavit.**

1. The paternity of a child born out of wedlock may be legally established by the completion, filing, and registration by the state registrar of an affidavit of paternity only as provided by this section.

2. When paternity has not been legally established, paternity may be established by affidavit under this section for the following children:

a. The child of a woman who was unmarried at the time of conception, birth, and at any time during the period between conception and birth of the child.

b. The child of a woman who is married at the time of conception, birth, or at any time during the period between conception and birth of the child if a court of competent jurisdiction has determined that the individual to whom the mother was married at that time is not the father of the child.

3. a. Prior to or at the time of completion of an affidavit of paternity, written and oral information about paternity establishment, developed by the child support recovery unit created in section 252B.2, shall be provided to the mother and putative father. Video or audio equipment may be used to provide oral information.

b. The information provided shall include a description of parental rights and responsibilities, including the duty to provide financial support for the child, the benefits of establishing paternity, and the alternatives to and legal consequences of signing an affidavit of paternity, including the rights available if a parent is a minor.

c. Copies of the written information shall be made available by the child support recovery unit or the Iowa department of public health to those entities where an affidavit of paternity may be obtained as provided under subsection 4.

4. a. The affidavit of paternity form developed and used by the Iowa department of public health is the only affidavit of paternity form recognized for the purpose of establishing paternity under this section. It shall include the minimum requirements specified by the secretary of the United States department of health and human services pursuant to 42 U.S.C. § 652(a)(7). A properly completed affidavit of paternity form developed by the Iowa department of public health and existing on or after July 1, 1993, but which is superseded by a later affidavit of paternity form developed by the Iowa department of public health, shall have the same legal effect as a paternity affidavit form used by the Iowa department of public health on or after July 1, 1997, regardless of the date of the filing and registration of the affidavit of paternity, unless otherwise required under federal law.

b. The form shall be available from the state registrar, each county registrar, the child support recovery unit, and any institution in the state.

c. The Iowa department of public health shall make copies of the form available to the entities identified in paragraph "b" for distribution.

5. A completed affidavit of paternity shall contain or have attached all of the following:

a. A statement by the mother consenting to the assertion of paternity and the identity of the father and acknowledging either of the following:

(1) That the mother was unmarried at the time of conception, birth, and at any time during the period between conception and birth of the child.

(2) That the mother was married at the time of conception, birth, or at any time during the period between conception and birth of the child, and that a court order has been entered ruling that the individual to whom the mother was married at that time is not the father of the child.

b. If paragraph "a", subparagraph (2), is applicable, a certified copy of the filed order ruling that the husband is not the father of the child.

c. A statement from the putative father that the putative father is the father of the child.

d. The name of the child at birth and the child's birth date.

e. The signatures of the mother and putative father.

f. The social security numbers of the mother and putative father.

g. The addresses of the mother and putative father, as available.

h. The signature of a notary public under chapter 9B attesting to the identities of the parties signing the affidavit of paternity.

i. Instructions for filing the affidavit.

6. A completed affidavit of paternity shall be filed with the state registrar. However, if the affidavit of paternity is obtained directly from the county registrar, the completed affidavit may be filed with the county registrar who shall forward the original affidavit to the state registrar. For the purposes of legal establishment of paternity under this section, paternity is legally established only upon filing of the affidavit with and registration of the affidavit by the state registrar subject to the right of any signatory to rescission pursuant to subsection 12.

7. The state registrar shall make copies of affidavits of paternity and identifying information from the affidavits filed and registered pursuant to this section available to the child support recovery unit created under section 252B.2 in accordance with section 144.13, subsection 4, and any subsequent rescission form which rescinds the affidavit.

8. An affidavit of paternity completed and filed with and registered by the state registrar pursuant to this section has all of the following effects:

a. Is admissible as evidence of paternity.

b. Has the same legal force and effect as a judicial determination of paternity subject to the right of any signatory to rescission pursuant to subsection 12.

c. Serves as a basis for seeking child or medical support without further determination of paternity subject to the right of any signatory to rescission pursuant to subsection 12.

9. All institutions in the state shall provide the following services with respect to any newborn child born out of wedlock:

a. Prior to discharge of the newborn from the institution, the institution where the birth occurs shall provide the mother and, if present, the putative father, with all of the following:

(1) Written and oral information about establishment of paternity pursuant to subsection 3. Video or audio equipment may be used to provide oral information.

(2) An affidavit of paternity form.

(3) An opportunity for consultation with the staff of the institution regarding the written information provided under subparagraph (1).

(4) An opportunity to complete an affidavit of paternity at the institution, as provided in this section.

b. The institution shall file any affidavit of paternity completed at the institution with the state registrar, pursuant to subsection 6, accompanied by a copy of the child's birth certificate, within ten days of the birth of the child.

10. a. An institution may be reimbursed by the child support recovery unit created in section 252B.2 for providing the services described under subsection 9, or may provide the services at no cost.

b. An institution electing reimbursement shall enter into a written agreement with the child support recovery unit for this purpose.

c. An institution entering into an agreement for reimbursement shall assist the parents of a child born out of wedlock in completing and filing an affidavit of paternity.

d. Reimbursement shall be based only on the number of affidavits completed in compliance with this section and submitted to the state registrar during the duration of the written agreement with the child support recovery unit.

e. The reimbursement rate is twenty dollars for each completed affidavit filed with the state registrar.

11. The state registrar, upon request of the mother or the putative father, shall provide the following services with respect to a child born out of wedlock:

a. Written and oral information about the establishment of paternity pursuant to subsection 3. Video or audio equipment may be used to provide oral information.

b. An affidavit of paternity form.

c. An opportunity for consultation with staff regarding the information provided under paragraph "a".

12. a. A completed affidavit of paternity may be rescinded by registration by the state registrar of a completed and notarized rescision form signed by either the mother or putative father who signed the affidavit of paternity that the putative father is not the father of the child. The completed and notarized rescision form shall be filed with the state registrar for the purpose of registration prior to the earlier of the following:

(1) Sixty days after the latest notarized signature of the mother or putative father on the affidavit of paternity.

(2) Entry of a court order pursuant to a proceeding in this state to which the signatory is a party relating to the child, including a proceeding to establish a support order under this chapter, chapter 252C, 252F, 598, or 600B or other law of this state.

b. Unless the state registrar has received and registered an order as provided in section 252A.3, subsection 10, paragraph "a", which legally establishes paternity, upon registration of a timely rescision form the state registrar shall remove the father's information from the certificate of birth, and shall send a written notice of the rescision to the last known address of the signatory of the affidavit of paternity who did not sign the rescision form.

c. The Iowa department of public health shall develop a rescision form and an administrative process for rescision. The form shall be the only rescision form recognized for the purpose of rescinding a completed affidavit of paternity. A completed rescision form shall include the signature of a notary public attesting to the identity of the party signing the rescision form. The Iowa department of public health shall adopt rules which establish a fee, based upon the average administrative cost, to be collected for the registration of a rescision.

d. If an affidavit of paternity has been rescinded under this subsection, the state registrar shall not register any subsequent affidavit of paternity signed by the same mother and putative father relating to the same child.

13. The child support recovery unit may enter into a written agreement with an entity designated by the secretary of the United States department of health and human services to offer voluntary paternity establishment services.

a. The agreement shall comply with federal requirements pursuant to 42 U.S.C. § 666(a)(5)(C) including those regarding notice, materials, training, and evaluations.

b. The agreement may provide for reimbursement of the entity by the state if reimbursement is permitted by federal law.

93 Acts, ch 79, §13; 94 Acts, ch 1171, §13; 95 Acts, ch 52, §2; 97 Acts, ch 175, §2; 98 Acts, ch 1170, §28 – 31; 2012 Acts, ch 1050, §40, 60

Referred to in §144.13, 144.40, 252A.3, 252A.6A, 252C.4, 252K.201, 598.21E, 600B.41A

**252A.4 and 252A.4A** Repealed by 97 Acts, ch 175, § 21, 22.

#### **252A.5 When proceeding may be maintained.**

Unless prohibited pursuant to 28 U.S.C. § 1738B, a proceeding to compel support of a dependent may be maintained under this chapter in any of the following cases:

1. Where the petitioner and the respondent are residents of or domiciled or found in this state or where this state may exercise personal jurisdiction over a nonresident respondent under section 252K.201.

2. Whenever the state or a political subdivision thereof furnishes support to a dependent, it

has the same right through proceedings instituted by the petitioner's representative to invoke the provisions hereof as the dependent to whom the support was furnished, for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support; the petition in such case may be verified by any official having knowledge of such expenditures without further verification of any person and consent of the dependent shall not be required in order to institute proceedings under this chapter. The child support recovery unit may bring the action based upon a statement of a witness, regardless of age, with knowledge of the circumstances, including, but not limited to, statements by the mother of the dependent or a relative of the mother or the putative father.

3. If the child support recovery unit is providing services, the unit has the same right to invoke the provisions of this section as the dependent for which support is owed for the purpose of securing support. The petition in such case may be verified by any official having knowledge of the request for services by the unit, without further verification by any other person, and consent of the dependent shall not be required in order to institute proceedings under this chapter. The child support recovery unit may bring the action based upon the statement of a witness, regardless of age, with knowledge of the circumstances, including, but not limited to, statements by the mother of the dependent or a relative of the mother or the putative father.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.5]

96 Acts, ch 1141, §18; 97 Acts, ch 175, §12; 2003 Acts, ch 62, §6

#### **252A.5A Limitations of actions.**

1. An action to establish paternity and support under this chapter may be brought within the time limitations set forth in section 614.8.

2. Notwithstanding subsection 1, an action to establish paternity and support under this chapter may be brought concerning a person who was under age eighteen on August 16, 1984, regardless of whether any prior action was dismissed because a statute of limitations of less than eighteen years was then in effect. Such an action may be brought within the time limitations set forth in section 614.8, or until July 2, 1992, whichever is later.

90 Acts, ch 1224, §3

#### **252A.6 How commenced — trial.**

1. A proceeding under this chapter shall be commenced by filing a verified petition in the court in equity in the county where the dependent resides or is domiciled, or if the dependent does not reside in or is not domiciled in this state, where the petitioner or respondent resides, or where public assistance has been provided for the dependent. The petition shall show the name, age, residence, and circumstances of the dependent, alleging that the dependent is in need of and is entitled to support from the respondent, giving the respondent's name, age, residence, and circumstances, and praying that the respondent be compelled to furnish such support. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of the respondent's person, other names and aliases by which the respondent has been or is known, the name of the respondent's employer, the respondent's fingerprints, or social security number.

2. It shall not be necessary for the dependent or the dependent's witnesses to appear personally at a hearing on the petition, but it shall be the duty of the petitioner's representative to appear on behalf of and represent the petitioner at all stages of the proceeding.

3. If at a hearing on the petition the respondent controverts the petition and enters a verified denial of any of the material allegations, the judge presiding at the hearing shall stay the proceedings. The petitioner shall be given the opportunity to present further evidence to address issues which the respondent has controverted.

4. If the respondent appears at the hearing and fails to answer the petition or admits the allegations of the petition, or if, after a hearing, the court has found and determined that the prayer of the petitioner, or any part of the prayer, is supported by the evidence adduced in the proceeding, and that the dependent is in need of and entitled to support from a party, the

court shall make and enter an order directing a party to furnish support for the dependent and to pay a sum as the court determines pursuant to section 598.21A or 598.21B, as applicable. Upon entry of an order for support or upon failure of a person to make payments pursuant to an order for support, the court may require a party to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the party's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

5. The court making such order may require the party to make payment at specified intervals to the clerk of the district court or to the collection services center, and to report personally to the sheriff or any other official, at such times as may be deemed necessary.

6. A party who willfully fails to comply with or who violates the terms or conditions of the support order or of the party's probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

7. Except as provided in 28 U.S.C. § 1738B, any order of support issued by a court shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both. This subsection also applies to orders entered following an administrative process including, but not limited to, the administrative processes provided pursuant to chapters 252C and 252F.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.6]

85 Acts, ch 100, §1; 89 Acts, ch 166, §3; 93 Acts, ch 79, §35; 96 Acts, ch 1141, §19, 20; 97 Acts, ch 175, §13; 2003 Acts, ch 62, §7; 2005 Acts, ch 69, §4

Referred to in §252A.6A, 252A.13, 602.8102(47)

#### **252A.6A Additional provisions regarding paternity establishment.**

1. When an action is initiated under this chapter to establish paternity, all of the following shall apply:

a. Except with the consent of all parties, the trial shall not be held until after the birth of the child and shall be held no earlier than twenty days from the date the respondent is served with notice of the action or, if blood or genetic tests are conducted, no earlier than thirty days from the date the test results are filed with the clerk of the district court as provided under section 600B.41.

b. If the respondent, after being served with notice as required under section 252A.6, fails to timely respond to the notice, or to appear for blood or genetic tests pursuant to a court or administrative order, or to appear at a scheduled hearing after being provided notice of the hearing, the court shall find the respondent in default, and shall enter an order establishing paternity and establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21B, or medical support pursuant to chapter 252E, or both.

c. Appropriate genetic testing procedures shall be used which include any genetic test generally acknowledged as reliable by accreditation bodies designated by the secretary of the United States department of health and human services and which are performed by a laboratory approved by such an accreditation body.

d. A copy of a bill for blood or genetic testing, or for the cost of prenatal care or the birth of the child, shall be admitted as evidence without requiring third-party foundation testimony and shall constitute prima facie evidence of amounts incurred for testing.

2. When an action is initiated to establish child or medical support based on a prior determination of paternity and the respondent files an answer to the notice denying paternity, all of the following shall apply:

a. (1) If the prior determination of paternity is based on an affidavit of paternity filed pursuant to section 252A.3A, or an administrative order entered pursuant to chapter 252F, or an order by the courts of this state, or by operation of law when the mother and established father are or were married to each other, the provisions of section 600B.41A are applicable.

(2) If the court determines that the prior determination of paternity should not be overcome, pursuant to section 600B.41A, and that the party has a duty to provide support,

the court shall enter an order establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21B, or medical support pursuant to chapter 252E, or both.

b. If the prior determination of paternity is based on an administrative or court order or by any other means, pursuant to the laws of a foreign jurisdiction, an action to overcome the prior determination of paternity shall be filed in that jurisdiction. Unless the party requests and is granted a stay of an action to establish child or medical support, the action shall proceed as otherwise provided.

3. If the expert analyzing the blood or genetic test concludes that the test results demonstrate that the putative father is not excluded and that the probability of the putative father's paternity is ninety-nine percent or higher and if the test results have not been challenged, the court, upon motion by a party, shall enter a temporary order for child support to be paid pursuant to section 598.21B. The court shall require temporary support to be paid to the clerk of court or to the collection services center. If the court subsequently determines the putative father is not the father, the court shall terminate the temporary support order. All support obligations which came due prior to the order terminating temporary support are unaffected by this action and remain a judgment subject to enforcement.

94 Acts, ch 1171, §14; 95 Acts, ch 67, §18; 97 Acts, ch 175, §3 – 5, 14 – 17; 2005 Acts, ch 69, §5 – 7

**252A.7** Repealed by 97 Acts, ch 175, § 21, 22.

**252A.8 Additional remedies.**

Unless otherwise provided pursuant to 28 U.S.C. § 1738B, this chapter shall be construed to furnish an additional or alternative civil remedy and shall in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to the petitioner in relation to the same subject matter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.8]  
96 Acts, ch 1141, §21

**252A.9** Repealed by 97 Acts, ch 175, § 21, 22.

**252A.10 Costs advanced.**

Actual costs incurred in this state incidental to any action brought under the provisions of this chapter shall be advanced by the initiating party or agency, as appropriate, unless otherwise ordered by the court. Where the action is brought by an agency of the state or county there shall be no filing fee or court costs of any type either advanced by or charged to the state or county.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.10]  
97 Acts, ch 175, §6

**252A.11 and 252A.12** Repealed by 97 Acts, ch 175, § 21, 22.

**252A.13 Recipients of public assistance — assignment of support payments.**

1. If public assistance is provided by the department of human services to or on behalf of a dependent child or a dependent child's caretaker, there is an assignment by operation of law to the department of any and all rights in, title to, and interest in any support obligation, payment, and arrearages owed to or on behalf of the child or caretaker not to exceed the amount of public assistance paid for or on behalf of the child or caretaker as follows:

- a. For family investment program assistance, section 239B.6 shall apply.
- b. For foster care services, section 234.39 shall apply.
- c. For medical assistance, section 252E.11 shall apply.

2. The department shall immediately notify the clerk of court by mail when such child or caretaker has been determined to be eligible for public assistance. Upon notification by the department, the clerk of court shall make a notation of the automatic assignment in the judgment docket and lien index. The notation constitutes constructive notice of the

assignment. If the applicant for public assistance, for whom public assistance is approved and provided on or after July 1, 1997, is a person other than a parent of the child, the department shall send notice of the assignment by regular mail to the last known addresses of the obligee and obligor. The clerk of court shall forward support payments received pursuant to section 252A.6, to which the department is entitled, to the department, unless the court has ordered the payments made directly to the department under that section. The department may secure support payments in default through other proceedings.

3. The clerk shall furnish the department with copies of all orders or decrees awarding and temporary domestic abuse orders addressing support when the parties are receiving public assistance or services are otherwise provided by the child support recovery unit. Unless otherwise specified in the order, an equal and proportionate share of any child support awarded is presumed to be payable on behalf of each child, subject to the order or judgment, for purposes of an assignment under this section.

[C77, 79, 81, §252A.13; 82 Acts, ch 1237, §2]

83 Acts, ch 96, §157, 159; 97 Acts, ch 175, §7; 2008 Acts, ch 1019, §3, 7

Referred to in §602.8102(47)

**252A.14 and 252A.15** Reserved.

**252A.16** Repealed by 97 Acts, ch 175, § 21, 22.

**252A.17 Registry of foreign support orders.**

The petitioner may register a foreign support order in a court of this state in the manner and with the effect provided in chapter 252K. The clerk of the court shall maintain a registry of foreign support orders in which foreign support orders shall be filed. The filing is in equity.

[82 Acts, ch 1004, §3]

97 Acts, ch 175, §18

**252A.18 Registration of foreign support order — notice.**

Registration of a foreign support order shall be in accordance with chapter 252K except that, with regard to service, promptly upon registration, the clerk of the court shall send a notice, by restricted certified mail to the respondent, of the registration with a copy of the registered support order or the respondent may be personally served with the notice and the copy of the order in the same manner as original notices are personally served. The clerk shall also docket the case and notify the prosecuting attorney of the action.

[82 Acts, ch 1004, §4]

93 Acts, ch 78, §2; 97 Acts, ch 175, §19

Referred to in §600B.41A

**252A.19** Repealed by 97 Acts, ch 175, § 21, 22.

**252A.20 Limitation on actions.**

Issues related to visitation, custody, or other provisions not related to the support provisions of a support order shall not be grounds for a hearing, modification, adjustment, or other action under this chapter.

93 Acts, ch 78, §5; 96 Acts, ch 1141, §23; 97 Acts, ch 175, §20

**252A.21 through 252A.23** Reserved.

**252A.24 and 252A.25** Repealed by 97 Acts, ch 175, § 21, 22.

## CHAPTER 252B

## CHILD SUPPORT RECOVERY

Referred to in §8A.504, 252C.2, 252D.8, 252D.18, 252E.1A, 252E.2A, 252E.3, 252E.6, 252E.9, 252E.10, 252E.12, 252E.15, 252F.2, 252F.3, 252G.5, 252H.4, 252H.12, 252H.13, 252H.18, 252H.21, 252H.22, 252I.5, 252J.2, 421.17, 505.25, 598.21B, 598.21C, 598.21G, 598.23A, 598.34, 600B.41A, 642.2

252B.1	Definitions.	252B.14	Support payments — collection services center — clerk of the district court.
252B.2	Unit established — intervention.	252B.15	Processing and disbursement of support payments.
252B.3	Duty of department to enforce child support — cooperation — rules.	252B.16	Transfer of support order processing responsibilities — ongoing procedures.
252B.4	Nonassistance cases.	252B.17	Admissibility and identification of support payment records.
252B.5	Services of unit.	252B.17A	Imaging or photographic copies — originals destroyed.
252B.6	Additional services in assistance cases.	252B.18	Child support advisory committee — established — duties. Repealed by 2010 Acts, ch 1031, §393.
252B.6A	External services.	252B.19	Reserved.
252B.7	Legal services.	252B.20	Suspension of support.
252B.7A	Determining parent's income.	252B.21	Administrative seek employment orders.
252B.7B	Informational materials provided by the unit.	252B.22	Liens — motor vehicle registration — task force.
252B.8	Central information center.	252B.23	Surcharge.
252B.9	Information and assistance from others — availability of records.	252B.24	State case registry.
252B.9A	Disclosure of confidential information — authorized person — court.	252B.25	Contempt — combining actions.
252B.10	Criminal penalties.	252B.26	Service of process.
252B.11	Recovery of costs of collection services.	252B.27	Use of funding for additional positions.
252B.12	Jurisdiction over nonresidents.		
252B.13	Repealed by 88 Acts, ch 1218, §14.		
252B.13A	Collection services center.		

**252B.1 Definitions.**

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

1. “*Absent parent*” means the parent who either cannot be located or who is located and is not residing with the child at the time the support collection or paternity determination services provided in sections 252B.5 and 252B.6 are requested or commenced.
2. “*Child*” includes but shall not be limited to a stepchild, foster child or legally adopted child and means a child actually or apparently under eighteen years of age, and a dependent person eighteen years of age or over who is unable to maintain the person's self and is likely to become a public charge. “*Child*” includes “*child*” as defined in section 239B.1.
3. “*Child support agency*” means child support agency as defined in section 252H.2.
4. “*Department*” means the department of human services.
5. “*Director*” means the director of human services.
6. “*Obligor*” means the person legally responsible for the support of a child as defined in section 252D.16 or 598.1 under a support order issued in this state or a foreign jurisdiction.
7. “*Resident parent*” means the parent with whom the child is residing at the time the support collection or paternity determination services provided in sections 252B.5 and 252B.6 are requested or commenced.
8. “*Unit*” means the child support recovery unit created in section 252B.2.

[C77, 79, 81, §252B.1]

83 Acts, ch 96, §157, 159; 91 Acts, ch 97, §33; 92 Acts, ch 1195, §502; 93 Acts, ch 79, §25; 97 Acts, ch 41, §32; 97 Acts, ch 175, §23, 24; 98 Acts, ch 1100, §31

Referred to in §252H.2

**252B.2 Unit established — intervention.**

There is created within the department of human services a child support recovery unit for the purpose of providing the services required in sections 252B.3 to 252B.6. The unit is not required to intervene in actions to provide such services.

[C77, 79, 81, §252B.2]

83 Acts, ch 96, §157, 159; 97 Acts, ch 175, §25

Referred to in §96.3, 252A.3A, 252B.1, 252D.1, 252F.1, 252G.1, 252H.2, 252I.1, 252J.1, 600B.41A

**252B.3 Duty of department to enforce child support — cooperation — rules.**

1. Upon receipt by the department of an application for public assistance on behalf of a child and determination by the department that the child is eligible for public assistance and that provision of child support services is appropriate, the department shall take appropriate action under the provisions of this chapter or under other appropriate statutes of this state including but not limited to chapters 239B, 252A, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 598, and 600B, to ensure that the parent or other person responsible for the support of the child fulfills the support obligation. The department shall also take appropriate action as required by federal law upon receiving a request from a child support agency for a child receiving public assistance in another state.

2. The department of human services may negotiate a partial payment of a support obligation with a parent or other person responsible for the support of the child, provided that the negotiation and partial payment are consistent with applicable federal law and regulation.

3. The department shall adopt rules pursuant to chapter 17A regarding cases in which, under federal law, it is a condition of eligibility for an individual who is an applicant for or recipient of public assistance to cooperate in good faith with the department in establishing the paternity of, or in establishing, modifying, or enforcing a support order by identifying and locating the parent of the child or enforcing rights to support payments. The rules shall include all of the following provisions:

a. As required by the unit, the individual shall provide the name of the noncustodial parent and additional necessary information, and shall appear at interviews, hearings, and legal proceedings.

b. If paternity is an issue, the individual and child shall submit to blood or genetic tests pursuant to a judicial or administrative order.

c. The individual may be requested to sign a voluntary affidavit of paternity, after notice of the rights and consequences of such an acknowledgment, but shall not be required to sign an affidavit or otherwise relinquish the right to blood or genetic tests.

d. The unit shall promptly notify the individual and the appropriate division of the department administering the public assistance program of each determination by the unit of noncooperation of the individual and the reason for such determination.

e. A procedure under which the individual may claim that, and the department shall determine whether, the individual has sufficient good cause or other exception for not cooperating, taking into consideration the best interest of the child.

4. Without need for a court order and notwithstanding the requirements of section 598.22A, the support payment ordered pursuant to any chapter shall be satisfied as to the department, the child, and either parent for the period during which the parents are reconciled and are cohabiting, the child for whom support is ordered is living in the same residence as the parents, and the obligor receives public assistance on the obligor's own behalf for the benefit of the child. The department shall implement this subsection as follows:

a. The unit shall file a notice of satisfaction with the clerk of court.

b. This subsection shall not apply unless all the children for whom support is ordered reside with both parents, except that a child may be absent from the home due to a foster care placement pursuant to chapter 234 or a comparable law of a foreign jurisdiction.

c. The unit shall send notice by regular mail to the obligor when the provisions of this subsection no longer apply. A copy of the notice shall be filed with the clerk of court.

d. This section shall not limit the rights of the parents or the department to proceed by other means to suspend, terminate, modify, reinstate, or establish support.

5. On or after July 1, 1999, the department shall implement a program for the satisfaction of accrued support debts, based upon timely payment by the obligor of both current support due and any payments due for accrued support debt under a periodic payment plan. The unit shall adopt rules pursuant to chapter 17A to establish the criteria and procedures for obtaining satisfaction under the program. The rules adopted under this subsection shall specify the cases and amounts to which the program is applicable, and may provide for the establishment of the program as a pilot program.

[C77, 79, 81, §252B.3; 82 Acts, ch 1237, §3]

83 Acts, ch 96, §157, 159; 93 Acts, ch 79, §36; 97 Acts, ch 41, §32; 97 Acts, ch 175, §26; 98 Acts, ch 1170, §41

Referred to in §252B.2, 252B.6A, 252B.9, 598.22A

#### **252B.4 Nonassistance cases.**

The child support and paternity determination services established by the department pursuant to this chapter and other appropriate services provided by law including but not limited to the provisions of chapters 239B, 252A, 252C, 252D, 252E, 252F, 598, and 600B shall be made available by the unit to an individual not otherwise eligible as a public assistance recipient upon application by the individual for the services or upon referral as described in subsection 5. The application shall be filed with the department.

1. The director shall require an application fee of twenty-five dollars.

2. The director may collect a fee to cover the costs incurred by the department for service of process, genetic testing and court costs if the entity providing the service charges a fee for the services.

3. Fees collected pursuant to this section shall be considered repayment receipts, as defined in section 8.2, and shall be used for the purposes of the unit. The director or a designee shall keep an accurate record of the fees collected and expended.

4. An application fee paid by a recipient of services pursuant to subsection 1 may be recovered by the unit from the person responsible for payment of support and if recovered shall be used to reimburse the recipient of services.

a. The fee shall be an automatic judgment against the person responsible to pay support.

b. This subsection shall serve as constructive notice that the fee is a debt due and owing, is an automatic judgment against the person responsible for support, and is assessed as the fee is paid by a recipient of services. The fee may be collected in addition to any support payments or support judgment ordered, and no further notice or hearing is required prior to collecting the fee.

c. Notwithstanding any provision to the contrary, the unit may collect the fee through any legal means by which support payments may be collected, including but not limited to income withholding under chapter 252D or income tax refund offsets, unless prohibited under federal law.

d. The unit is not required to file these judgments with the clerk of the district court, but shall maintain an accurate accounting of the fee assessed, the amount of the fee, and the recovery of the fee.

e. Support payments collected shall not be applied to the recovery of the fee until all other support obligations under the support order being enforced, which have accrued through the end of the current calendar month, have been paid or satisfied in full.

f. This subsection applies to fees that become due on or after July 1, 1992.

5. The unit shall also provide child support and paternity determination services and shall respond as provided in federal law for an individual not otherwise eligible as a public assistance recipient if the unit receives a request from any of the following:

a. A child support agency.

b. A foreign reciprocating country or foreign country with which the state has an arrangement as provided in 42 U.S.C. § 659A.

[C77, 79, 81, §252B.4]

83 Acts, ch 153, §16; 92 Acts, ch 1195, §101, 102; 93 Acts, ch 78, §6, 7; 93 Acts, ch 79, §37; 96 Acts, ch 1213, §39; 97 Acts, ch 41, §32; 97 Acts, ch 175, §27 – 29; 2002 Acts, 2nd Ex, ch 1003, §143, 151; 2005 Acts, ch 175, §118

Referred to in §252B.2, 252H.5

### **252B.5 Services of unit.**

The child support recovery unit shall provide the following services:

1. Assistance in the location of an absent parent or any other person who has an obligation to support the child of the resident parent.

2. Aid in establishing paternity and securing a court or administrative order for support pursuant to chapter 252A, 252C, 252F, or 600B, or any other chapter providing for the establishment of paternity or support. In an action to establish support, the resident parent may be a proper party defendant for purposes of determining medical support as provided in section 252E.1A upon service of notice as provided in this chapter and without a court order as provided in the rules of civil procedure. The unit's independent cause of action shall not bar a party from seeking support in a subsequent proceeding.

3. Aid in enforcing through court or administrative proceedings an existing court order for support issued pursuant to chapter 252A, 252C, 252F, 598, or 600B, or any other chapter under which child or medical support is granted. The director may enter into a contract with a private collection agency to collect support payments for cases which have been identified by the department as difficult collection cases if the department determines that this form of collection is more cost-effective than departmental collection methods. The department shall utilize, to the maximum extent possible, every available automated process to collect support payments prior to referral of a case to a private collection agency. A private collection agency with whom the department enters a contract under this subsection shall comply with state and federal confidentiality requirements and debt collection laws. The director may use a portion of the state share of funds collected through this means to pay the costs of any contract authorized under this subsection.

4. Assistance to set off against a debtor's income tax refund or rebate any support debt, which is assigned to the department of human services or which the child support recovery unit is attempting to collect on behalf of any individual not eligible as a public assistance recipient, which has accrued through written contract, subrogation, or court judgment, and which is in the form of a liquidated sum due and owing for the care, support, or maintenance of a child. Unless the periodic payment plan provisions for a retroactive modification pursuant to section 598.21C apply, the entire amount of a judgment for accrued support, notwithstanding compliance with a periodic payment plan or regardless of the date of entry of the judgment, is due and owing as of the date of entry of the judgment and is delinquent for the purposes of setoff, including for setoff against a debtor's federal income tax refund or other federal nontax payment. The department of human services shall adopt rules pursuant to chapter 17A necessary to assist the department of administrative services in the implementation of the child support setoff as established under section 8A.504.

5. a. In order to maximize the amount of any tax refund to which an obligor may be entitled and which may be applied to child support and medical support obligations, cooperate with any volunteer or free income tax assistance programs in the state in informing obligors of the availability of the programs.

b. The child support recovery unit shall publicize the services of the volunteer or free income tax assistance programs by distributing printed materials regarding the programs.

6. Determine periodically whether an individual receiving unemployment compensation benefits under chapter 96 owes a support obligation which is being enforced by the unit, and enforce the support obligation through court or administrative proceedings to have specified amounts withheld from the individual's unemployment compensation benefits.

7. Assistance in obtaining medical support as defined in chapter 252E.

8. a. At the request of either parent who is subject to the order of support or upon its

own initiation, review the amount of the support award in accordance with the guidelines established pursuant to section 598.21B, and Tit. IV-D of the federal Social Security Act, as amended, and take action to initiate modification proceedings if the criteria established pursuant to this section are met. However, a review of a support award is not required if the child support recovery unit determines that such a review would not be in the best interest of the child and neither parent has requested such review.

b. The department shall adopt rules setting forth the process for review of requests for modification of support obligations and the criteria and process for taking action to initiate modification proceedings.

9. a. Assistance, in consultation with the department of administrative services, in identifying and taking action against self-employed individuals as identified by the following conditions:

(1) The individual owes support pursuant to a court or administrative order being enforced by the unit and is delinquent in an amount equal to or greater than the support obligation amount assessed for one month.

(2) The individual has filed a state income tax return in the preceding twelve months.

(3) The individual has no reported tax withholding amount on the most recent state income tax return.

(4) The individual has failed to enter into or comply with a formalized repayment plan with the unit.

(5) The individual has failed to make either all current support payments in accordance with the court or administrative order or to make payments against any delinquency in each of the preceding twelve months.

b. The unit may forward information to the department of administrative services as necessary to implement this subsection, including but not limited to both of the following:

(1) The name and social security number of the individual.

(2) Support obligation information in the specific case, including the amount of the delinquency.

10. The review and adjustment, modification, or alteration of a support order pursuant to chapter 252H upon adoption of rules pursuant to chapter 17A and periodic notification, at a minimum of once every three years, to parents subject to a support order of their rights to these services.

11. The unit shall not establish orders for spousal support. The unit shall enforce orders for spousal support only if the spouse is the custodial parent of a child for whom the unit is also enforcing a child support or medical support order.

12. a. In compliance with federal procedures, periodically certify to the secretary of the United States department of health and human services, a list of the names of obligors determined by the unit to owe delinquent support, under a support order as defined in section 252J.1, in excess of two thousand five hundred dollars. The certification of the delinquent amount owed may be based upon one or more support orders being enforced by the unit if the delinquent support owed exceeds two thousand five hundred dollars. The certification shall include any amounts which are delinquent pursuant to the periodic payment plan when a modified order has been retroactively applied. The certification shall be in a format and shall include any supporting documentation required by the secretary.

b. All of the following shall apply to an action initiated by the unit under this subsection:

(1) The obligor shall be sent a notice by regular mail in accordance with federal law and regulations and the notice shall remain in effect until support delinquencies have been paid in full.

(2) The notice shall include all of the following:

(a) A statement regarding the amount of delinquent support owed by the obligor.

(b) A statement providing information that if the delinquency is in excess of two thousand five hundred dollars, the United States secretary of state may apply a passport sanction by revoking, restricting, limiting, or refusing to issue a passport as provided in 42 U.S.C. § 652(k).

(c) Information regarding the procedures for challenging the certification by the unit.

(3) (a) If the obligor chooses to challenge the certification, the obligor shall notify the

unit within the time period specified in the notice to the obligor. The obligor shall include any relevant information with the challenge.

(b) A challenge shall be based upon mistake of fact. For the purposes of this subsection, “*mistake of fact*” means a mistake in the identity of the obligor or a mistake in the amount of the delinquent child support owed if the amount did not exceed two thousand five hundred dollars on the date of the unit’s decision on the challenge.

(4) Upon timely receipt of the challenge, the unit shall review the certification for a mistake of fact, or refer the challenge for review to the child support agency in the state chosen by the obligor as provided by federal law.

(5) Following the unit’s review of the certification, the unit shall send a written decision to the obligor within ten days of timely receipt of the challenge.

(a) If the unit determines that a mistake of fact exists, the unit shall send notification in accordance with federal procedures withdrawing the certification for passport sanction.

(b) If the unit determines that a mistake of fact does not exist, the obligor may contest the determination within ten days following the issuance of the decision by submitting a written request for a contested case proceeding pursuant to chapter 17A.

(6) Following issuance of a final decision under chapter 17A that no mistake of fact exists, the obligor may request a hearing before the district court pursuant to chapter 17A. The department shall transmit a copy of its record to the district court pursuant to chapter 17A. The scope of the review by the district court shall be limited to demonstration of a mistake of fact. Issues related to visitation, custody, or other provisions not related to the support provisions of a support order are not grounds for a hearing under this subsection.

c. Following certification to the secretary, if the unit determines that an obligor no longer owes delinquent support in excess of two thousand five hundred dollars, the unit shall provide information and notice as the secretary requires to withdraw the certification for passport sanction.

13. a. Beginning October 1, 2007, implement the provision of the federal Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 7310, requiring an annual collections fee of twenty-five dollars in child support cases in which the family has never received assistance under Tit. IV-A of the federal Social Security Act for whom the unit has disbursed at least five hundred dollars. When the first five hundred dollars in support is disbursed in each federal fiscal year for a family, the fee shall be collected from the obligee by retaining twenty-five dollars from disbursements to the obligee. If five hundred dollars but less than five hundred twenty-five dollars is disbursed in any federal fiscal year, any unpaid portion of the annual fee shall not accumulate and is not due. The unit shall send information regarding the requirements of this subsection by regular mail to the last known address of an affected obligee, or may include the information for an obligee in an application for services signed by the obligee. In addition, the unit shall take steps necessary regarding the fee to qualify for federal funds in conformity with the provisions of Tit. IV-D of the federal Social Security Act, including receiving and accounting for fee payments, as appropriate, through the collection services center created in section 252B.13A.

b. Fees collected pursuant to this subsection shall be considered repayment receipts as defined in section 8.2, and shall be used for the purposes of the unit. The director shall maintain an accurate record of the fees collected and expended under this subsection.

c. Until such time as a methodology to secure payment of the collections fee from the obligor is provided by law, an obligee may act pursuant to this paragraph to recover the collections fee from the obligor. If the unit retains all or a portion of the collections fee imposed pursuant to paragraph “a” in a federal fiscal year, there is an automatic nonsupport judgment, in an amount equal to the amount retained, against the obligor payable to the obligee. This paragraph shall serve as constructive notice that the fee amount, once retained, is an automatic nonsupport judgment against the obligor. The obligee may use any legal means, including the lien created by the nonsupport judgment, to collect the nonsupport judgment.

[C77, 79, 81, §252B.5; 82 Acts, ch 1260, §123]

83 Acts, ch 96, §157, 159; 90 Acts, ch 1224, §4, 5; 92 Acts, ch 1195, §503; 93 Acts, ch 78, §8; 93 Acts, ch 79, §33, 38; 94 Acts, ch 1171, §15; 97 Acts, ch 41, §32; 97 Acts, ch 175, §30 – 33; 98

Acts, ch 1170, §34; 2001 Acts, ch 79, §2, 4; 2003 Acts, ch 145, §219, 220; 2005 Acts, ch 69, §8, 9; 2007 Acts, ch 218, §45, 137 – 141, 157, 187; 2008 Acts, ch 1157, §2; 2009 Acts, ch 15, §16, 17; 2009 Acts, ch 133, §97, 223; 2010 Acts, ch 1142, §1; 2012 Acts, ch 1033, §1

Referred to in §252B.1, 252B.2, 252B.6, 252B.9, 252B.23, 421.17

### **252B.6 Additional services in assistance cases.**

In addition to the services enumerated in section 252B.5, the unit may provide the following services in the case of a dependent child for whom public assistance is being provided:

1. Represent the state in obtaining a support order necessary to meet the child's needs or in enforcing a similar order previously entered.

2. Represent the state's interest in obtaining support for a child in dissolution of marriage and separate maintenance proceedings, or proceedings supplemental to these proceedings or any other support proceedings, when either or both of the parties to the proceedings are receiving public assistance, for the purpose of advising the court of the financial interest of the state in the proceeding.

3. Appear on behalf of the state for the purpose of facilitating the modification of support awards consistent with guidelines established pursuant to section 598.21B, and Tit. IV-D of the federal Social Security Act. The unit shall not otherwise participate in the proceeding.

4. Apply to the district court or initiate an administrative action, as necessary, to obtain, enforce, or modify support.

5. Initiate necessary civil proceedings to recover from the parent of a child, money expended by the state in providing public assistance or services to the child, including support collection services.

[C77, 79, 81, §252B.6]

83 Acts, ch 153, §17; 90 Acts, ch 1224, §6, 7; 97 Acts, ch 175, §34, 46; 2005 Acts, ch 69, §10; 2010 Acts, ch 1061, §180

Referred to in §252B.1, 252B.2

### **252B.6A External services.**

1. Provided that the action is consistent with applicable federal law and regulation, an attorney licensed in this state shall receive compensation as provided in this section for support collected as the direct result of a judicial proceeding maintained by the attorney, if all of the following apply to the case:

a. The unit is providing services under this chapter.

b. The current support obligation is terminated and only arrearages are due under an administrative or court order and there has been no payment under the order for at least the twelve-month period prior to the provision of notice to the unit by the attorney under this section.

c. Support is assigned to the state based upon cash assistance paid under chapter 239B, or its successor.

d. The attorney has provided written notice to the central office of the unit and to the obligee at the last known address of the obligee of the intent to initiate a specified judicial proceeding, at least thirty days prior to initiating the proceeding.

e. The attorney has provided documentation to the unit that the attorney is insured against loss caused by the attorney's legal malpractice or acts or omissions of the attorney which result in loss to the state or other person.

f. The collection is received by the collection services center within ninety days of provision of the notice to the unit. An attorney may provide subsequent notices to the unit to extend the time for receipt of the collection by subsequent ninety-day periods.

2. a. If, prior to February 15, 1998, notice is provided pursuant to subsection 1 to initiate a specific judicial proceeding, this section shall not apply to the proceeding unless the unit consents to the proceeding.

b. (1) If, on or after February 15, 1998, notice is provided pursuant to subsection 1 to initiate a specific judicial proceeding, this section shall apply to the proceeding only if the case is exempt from application of rules adopted by the department pursuant to subparagraph (2) which limit application of this section.

(2) The department shall adopt rules which include, but are not limited to, exemption from application of this section to proceedings based upon, but not limited to, any of the following:

(a) A finding of good cause pursuant to section 252B.3.

(b) The existence of a support obligation due another state based upon public assistance provided by that state.

(c) The maintaining of another proceeding by an attorney under this section for which the unit has not received notice that the proceeding has concluded or the ninety-day period during which a collection may be received pertaining to the same case has not yet expired.

(d) The initiation of a seek employment action under section 252B.21, and the notice from the attorney indicates that the attorney intends to pursue a contempt action.

(e) Any other basis for exemption of a specified proceeding designated by rule which relates to collection and enforcement actions provided by the unit.

3. The unit shall issue a response to the attorney providing notice within ten days of receipt of the notice. The response shall advise the attorney whether the case to which the specified judicial proceeding applies meets the requirements of this section.

4. For the purposes of this section, a “*judicial proceeding*” means an action to enforce support filed with a court of competent jurisdiction in which the court issues an order which identifies the amount of the support collection which is a direct result of the court proceeding. “*Judicial proceedings*” include but are not limited to those pursuant to chapters 598, 626, 633, 642, 654, or 684 and also include contempt proceedings if the collection payment is identified in the court order as the result of such a proceeding. “*Judicial proceedings*” do not include enforcement actions which the unit is required to implement under federal law including, but not limited to, income withholding.

5. All of the following are applicable to a collection which is the result of a judicial proceeding which meets the requirements of this section:

a. All payments made as the result of a judicial proceeding under this section shall be made to the clerk of the district court or to the collection services center and shall not be made to the attorney. Payments received by the clerk of the district court shall be forwarded to the collection services center as provided in section 252B.15.

b. The attorney shall be entitled to receive an amount which is equal to twenty-five percent of the support collected as the result of the specified judicial proceeding not to exceed the amount of the nonfederal share of assigned support collected as the result of that proceeding. The amount paid under this paragraph is the full amount of compensation due the attorney for a proceeding under this section and is in lieu of any attorney fees. The court shall not order the obligor to pay additional attorney fees. The amount of compensation calculated by the unit is subject, upon application of the attorney, to judicial review.

c. Any support collected shall be disbursed in accordance with federal requirements and any support due the obligee shall be disbursed to the obligee prior to disbursement to the attorney as compensation.

d. The collection services center shall disburse compensation due the attorney only from the nonfederal share of assigned collections. The collection services center shall not disburse any compensation for court costs.

e. The unit may delay disbursement to the attorney pending the resolution of any timely appeal by the obligor or obligee.

f. Negotiation of a partial payment or settlement for support shall not be made without the approval of the unit and the obligee, as applicable.

6. The attorney initiating a judicial proceeding under this section shall notify the unit when the judicial proceeding is completed.

7. a. An attorney who initiates a judicial proceeding under this section represents the state for the sole and limited purpose of collecting support to the extent provided in this section.

b. The attorney is not an employee of the state and has no right to any benefit or compensation other than as specified in this section.

c. The state is not liable or subject to suit for any acts or omissions resulting in any damages as a consequence of the attorney’s acts or omissions under this section.

d. The attorney shall hold the state harmless from any act or omissions of the attorney

which may result in any penalties or sanctions, including those imposed under federal bankruptcy laws, and the state may recover any penalty or sanction imposed by offsetting any compensation due the attorney under this section for collections received as a result of any judicial proceeding initiated under this section.

e. The attorney initiating a proceeding under this section does not represent the obligor.

8. The unit shall comply with all state and federal laws regarding confidentiality. The unit may release to an attorney who has provided notice under this section, information regarding child support balances due, to the extent provided under such laws.

9. This section shall not be interpreted to prohibit the unit from providing services or taking other actions to enforce support as provided under this chapter.

97 Acts, ch 41, §32; 97 Acts, ch 175, §35

#### **252B.7 Legal services.**

1. The attorney general may perform the legal services for the child support recovery program and may enforce all laws for the recovery of child support from responsible relatives. The attorney general may file and prosecute:

a. Contempt of court proceedings to enforce any order of court pertaining to child support.

b. Cases under chapter 252A, the support of dependents law.

c. An information charging a violation of section 726.3, 726.5 or 726.6.

d. Any other lawful action which will secure collection of support for minor children.

2. For the purposes of subsection 1, the attorney general has the same power to commence, file and prosecute any action or information in the proper jurisdiction, which the county attorney could file or prosecute in that jurisdiction. This section does not relieve a county attorney from the county attorney's duties, or the attorney general from the supervisory power of the attorney general, in the recovery of child support.

3. The unit may contract with a county attorney, the attorney general, a clerk of the district court, or another person or agency to collect support obligations and to administer the child support program established pursuant to this chapter. Notwithstanding section 13.7, the unit may contract with private attorneys for the prosecution of civil collection and recovery cases and may pay reasonable compensation and expenses to private attorneys for the prosecution services provided.

4. An attorney employed by or under contract with the child support recovery unit represents and acts exclusively on behalf of the state when providing child support enforcement services. An attorney-client relationship does not exist between the attorney and an individual party, witness, or person other than the state, regardless of the name in which the action is brought.

[C77, 79, 81, §252B.7]

83 Acts, ch 153, §18; 90 Acts, ch 1224, §8; 97 Acts, ch 175, §36, 47

Referred to in §252H.4, 600B.41A

Section not amended; editorial change applied

#### **252B.7A Determining parent's income.**

1. The unit shall use any of the following in determining the amount of the net monthly income of a parent for purposes of establishing or modifying a support obligation:

a. Income as identified in a signed statement of the parent pursuant to section 252B.9, subsection 1, paragraph "b". If evidence suggests that the statement is incomplete or inaccurate, the unit may present the evidence to the court in a judicial proceeding or to the administrator in a proceeding under chapter 252C or a comparable chapter, and the court or administrator shall weigh the evidence in setting the support obligation. Evidence includes but is not limited to income as established under paragraph "c".

b. If a sworn statement is not provided by the parent, the unit may determine income as established under paragraph "c" or "d".

c. Income established by any of the following:

(1) Income verified by an employer or payor of income.

(2) Income reported to the department of workforce development.

(3) For a public assistance recipient, income as reported to the department case worker assigned to the public assistance case.

(4) Other written documentation which identifies income.

d. By July 1, 1999, the department shall adopt rules for imputing income, whenever possible, based on the earning capacity of a parent who does not provide income information or for whom income information is not available. Until such time as the department adopts rules establishing a different standard for determining the income of a parent who does not provide income information or for whom income information is not available, the estimated state median income for a one-person family as published annually in the federal register for use by the federal office of community services, office of energy assistance, for the subsequent federal fiscal year.

(1) This provision is effective beginning July 1, 1992, based upon the information published in the federal register dated March 8, 1991.

(2) The unit may revise the estimated income each October 1. If the estimate is not available or has not been published, the unit may revise the estimate when it becomes available.

e. When the income information obtained pursuant to this subsection does not include the information necessary to determine the net monthly income of the parent, the unit may deduct twenty percent from the parent's gross monthly income to arrive at the net monthly income figure.

2. The amount of the income determined may be challenged any time prior to the entry of a new or modified order for support.

3. If the child support recovery unit is providing services pursuant to this chapter, the court shall use the income figure determined pursuant to this section when applying the guidelines to determine the amount of support.

4. The department may develop rules as necessary to further implement disclosure of financial information of the parties.

92 Acts, ch 1195, §201; 96 Acts, ch 1186, §23; 97 Acts, ch 175, §37; 98 Acts, ch 1170, §43

Referred to in §252C.3, 252F.3, 252F.4, 252H.6, 252H.9, 252H.14A

Section not amended; editorial changes applied

#### **252B.7B Informational materials provided by the unit.**

1. The unit shall prepare and make available to the public, informational materials which explain the unit's procedures including, but not limited to, procedures with regard to all of the following:

- a. Accepting applications for services.
- b. Locating individuals.
- c. Establishing paternity.
- d. Establishing support.
- e. Enforcing support.
- f. Modifying, suspending, or reinstating support.
- g. Terminating services.

2. The informational materials shall include general information about and descriptions of the processes involved relating to the services provided by the unit including application for services, fees for services, the responsibilities of the recipient of services, resolution of disagreements with the unit, rights to challenge the actions of the unit, and obtaining additional information.

97 Acts, ch 175, §38

#### **252B.8 Central information center.**

The department shall establish within the unit an information and administration coordinating center which shall serve as a registry for the receipt of information and for answering interstate inquiries concerning absent parents and shall coordinate and supervise unit activities. The information and administration coordinating center shall promote

cooperation between the unit and law enforcement agencies to facilitate the effective operation of the unit.

[C77, 79, 81, §252B.8]

**252B.9 Information and assistance from others — availability of records.**

1. *a.* The director may request from state, county, and local agencies information and assistance deemed necessary to carry out the provisions of this chapter. State, county, and local agencies, officers, and employees shall cooperate with the unit and shall on request supply the department with available information relative to the absent parent, the custodial parent, and any other necessary party, notwithstanding any provisions of law making this information confidential. The cooperation and information required by this subsection shall also be provided when it is requested by a child support agency. Information required by this subsection includes, but is not limited to, information relative to location, income, property holdings, records of licenses as defined in section 252J.1, and records concerning the ownership and control of corporations, partnerships, and other business entities. If the information is maintained in an automated database, the unit shall be provided automated access.

*b.* Parents of a child on whose behalf support enforcement services are provided shall provide information regarding income, resources, financial circumstances, and property holdings to the department for the purpose of establishment, modification, or enforcement of a support obligation. The department may provide the information to parents of a child as needed to implement the requirements of section 598.21B, notwithstanding any provisions of law making this information confidential.

*c.* Notwithstanding any provisions of law making this information confidential, all persons, including for-profit, nonprofit, and governmental employers, shall, on request, promptly supply the unit or a child support agency information on the employment, compensation, and benefits of any individual employed by such person as an employee or contractor with relation to whom the unit or a child support agency is providing services.

*d.* Notwithstanding any provisions of law making this information confidential, the unit may subpoena or a child support agency may use the administrative subpoena form promulgated by the secretary of the United States department of health and human services under 42 U.S.C. § 652(a)(11)(C), to obtain any of the following:

(1) Books, papers, records, or information regarding any financial or other information relating to a paternity or support proceeding.

(2) Certain records held by public utilities, cable or other television companies, cellular telephone companies, and internet service providers with respect to individuals who owe or are owed support, or against or with respect to whom a support obligation is sought, consisting of the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records, and including the cellular telephone numbers of such individuals appearing in the customer records of cellular telephone companies. If the records are maintained in automated databases, the unit shall be provided with automated access.

*e.* The unit or a child support agency may subpoena information for one or more individuals.

*f.* If the unit or a child support agency issues a request under paragraph “c”, or a subpoena under paragraph “d”, all of the following shall apply:

(1) The unit or child support agency may issue a request or subpoena to a person by sending it by regular mail. Proof of service may be completed according to rule of civil procedure 1.442.

(2) A person who is not a parent or putative father in a paternity or support proceeding, who is issued a request or subpoena, shall be provided an opportunity to refuse to comply for good cause by filing a request for a conference with the unit or child support agency in the manner and within the time specified in rules adopted pursuant to subparagraph (7).

(3) Good cause shall be limited to mistake in the identity of the person, or prohibition under federal law to release such information.

(4) After the conference the unit shall issue a notice finding that the person has good

cause for refusing to comply, or a notice finding that the person does not have good cause for failing to comply. If the person refuses to comply after issuance of notice finding lack of good cause, or refuses to comply and does not request a conference, the person is subject to a penalty of one hundred dollars per refusal.

(5) If the person fails to comply with the request or subpoena, fails to request a conference, and fails to pay a penalty imposed under subparagraph (4), the unit may petition the district court to compel the person to comply with this paragraph. If the person objects to imposition of the penalty, the person may seek judicial review by the district court.

(6) If a parent or putative father fails to comply with a subpoena or request for information, the provisions of chapter 252J shall apply.

(7) The unit may adopt rules pursuant to chapter 17A to implement this section.

g. Notwithstanding any provisions of law making this information confidential, the unit or a child support agency shall have access to records and information held by financial institutions with respect to individuals who owe or are owed support, or with respect to whom a support obligation is sought including information on assets and liabilities. If the records are maintained in automated databases, the unit shall be provided with automated access. For the purposes of this section, “*financial institution*” means financial institution as defined in section 252I.1.

h. Notwithstanding any law to the contrary, the unit and a child support agency shall have access to any data maintained by the state of Iowa which contains information that would aid the agency in locating individuals. Such information shall include, but is not limited to, driver’s license, motor vehicle, and criminal justice information. However, the information does not include criminal investigative reports or intelligence files maintained by law enforcement. The unit and child support agency shall use or disclose the information obtained pursuant to this paragraph only in accordance with subsection 3. Criminal history records maintained by the department of public safety shall be disclosed in accordance with chapter 692. The unit shall also have access to the protective order file maintained by the department of public safety.

i. Liability shall not arise under this subsection with respect to any disclosure by a person as required by this subsection, and no advance notice from the unit or a child support agency is required prior to requesting information or assistance or issuing a subpoena under this subsection.

j. Notwithstanding any provision of law making this information confidential, data provided to the department by an insurance carrier under section 505.25 shall also be provided to the unit. Provision of data to the unit under this paragraph shall not require an agreement or modification of an agreement between the department and an insurance carrier, but the provisions of this section applicable to information received by the unit shall apply to the data received pursuant to section 505.25 in lieu of any confidentiality, privacy, disclosure, use, or other provisions of an agreement between the department and an insurance carrier.

2. Notwithstanding other statutory provisions to the contrary, including but not limited to chapters 22 and 217, as the chapters relate to confidentiality of records maintained by the department, the payment records of the collection services center maintained under section 252B.13A may be released, except when prohibited by federal law or regulation, only as follows:

a. Payment records of the collection services center may be released upon request for the administration of a plan or program approved for the supplemental nutrition assistance program or under Tit. IV, XIX, or XXI of the federal Social Security Act, as amended, and as otherwise permitted under Tit. IV-D of the federal Social Security Act, as amended. A payment record shall not include address or location information.

b. The department may release details related to payment records or provide alternative formats for release of the information for the administration of a plan or program under Tit. IV-D of the federal Social Security Act, as amended, including as follows:

(1) The unit or collection services center may provide detail or present the information in an alternative format to an individual or to the individual’s legal representative if the individual owes or is owed a support obligation, to an agency assigned the obligation as the

result of receipt by a party of public assistance, to an agency charged with enforcing child support pursuant to Tit. IV-D of the federal Social Security Act, as amended, or to the court.

(2) For support orders entered in Iowa which are being enforced by the unit, the unit may compile and make available for publication a listing of cases in which no payment has been credited to an accrued or accruing support obligation during a previous three-month period. Each case on the list shall be identified only by the name of the support obligor, the address, if known, of the support obligor, unless the information pertaining to the address of the support obligor is protected through confidentiality requirements established by law and has not otherwise been verified with the unit, the support obligor's court order docket or case number, the county in which the obligor's support order is filed, the collection services center case numbers, and the range within which the balance of the support obligor's delinquency is established. The department shall determine dates for the release of information, the specific format of the information released, and the three-month period used as a basis for identifying cases. The department may not release the information more than twice annually. In compiling the listing of cases, no prior public notice to the obligor is required, but the unit may send notice annually by mail to the current known address of any individual owing a support obligation which is being enforced by the unit. The notice shall inform the individual of the provisions of this subparagraph. Actions taken pursuant to this subparagraph are not subject to review under chapter 17A, and the lack of receipt of a notice does not prevent the unit from proceeding in implementing this subparagraph.

(3) The provisions of subparagraph (2) may be applied to support obligations entered in another state, at the request of a child support agency if the child support agency has demonstrated that the provisions of subparagraph (2) are not in conflict with the laws of the state where the support obligation is entered and the unit is enforcing the support obligation.

(4) Records relating to the administration, collection, and enforcement of surcharges pursuant to section 252B.23 which are recorded by the unit or a collection entity shall be confidential records except that information, as necessary for support collection and enforcement, may be provided to other governmental agencies, the obligor or the resident parent, or a collection entity under contract with the unit unless otherwise prohibited by the federal law. A collection entity under contract with the unit shall use information obtained for the sole purpose of fulfilling the duties required under the contract, and shall disclose any records obtained by the collection entity to the unit for use in support establishment and enforcement.

3. Notwithstanding other statutory provisions to the contrary, including but not limited to chapters 22 and 217, as the chapters relate to the confidentiality of records maintained by the department, information recorded by the department pursuant to this section or obtained by the unit is confidential and, except when prohibited by federal law or regulation, may be used or disclosed as provided in subsection 1, paragraphs "b" and "h", and subsection 2, and as follows:

a. The attorney general may utilize the information to secure, modify, or enforce a support obligation of an individual.

b. This subsection shall not permit or require the release of information, except to the extent provided in this section.

c. The unit may release or disclose information as necessary to provide services under section 252B.5, as provided by chapter 252G, as provided by Tit. IV-D of the federal Social Security Act, as amended, or as required by federal law.

d. The unit may release information under section 252B.9A to meet the requirements of Tit. IV-D of the federal Social Security Act for parent locator services.

e. Information may be released if directly connected with any of the following:

(1) The administration of a plan or program approved for the supplemental nutrition assistance program or under Tit. IV, XIX, or XXI of the federal Social Security Act, as amended.

(2) Any investigations, prosecutions, or criminal or civil proceeding conducted in connection with the administration of any such plan or program.

(3) Reporting to an appropriate agency or official of any such plan or program, information on known or suspected instances of physical or mental injury, sexual abuse or

exploitation, or negligent treatment or maltreatment of a child who is the subject of a child support enforcement action under circumstances which indicate that the child's health or welfare is threatened.

f. Information may be released to courts having jurisdiction in support proceedings. If a court issues an order, which is not entered under section 252B.9A, directing the unit to disclose confidential information, the unit may file a motion to quash pursuant to this chapter, Tit. IV-D of the federal Social Security Act, or other applicable law.

g. The child support recovery unit may release information for the administration of a plan or program approved for the supplemental nutrition assistance program or under Tit. IV, XIX, or XXI of the federal Social Security Act, as amended, specified under subsection 2 or this subsection, to the extent the release of information does not interfere with the unit meeting its own obligations under Tit. IV-D of the federal Social Security Act, as amended, and subject to requirements prescribed by the federal office of child support enforcement of the United States department of health and human services.

h. For purposes of this subsection, "party" means an absent parent, obligor, resident parent, or other necessary party.

i. If the unit receives notification under this paragraph, the unit shall notify the federal parent locator service as required by federal law that there is reasonable evidence of domestic violence or child abuse against a party or a child and that the disclosure of information could be harmful to the party or the child. The notification to the federal parent locator service shall be known as notification of a disclosure risk indicator. For purposes of this paragraph, the unit shall notify the federal parent locator service of a disclosure risk indicator only if at least one of the following applies:

(1) The unit receives notification that the department, or comparable agency of another state, has made a finding of good cause or other exception as provided in section 252B.3, or comparable law of another state.

(2) The unit receives and, through automation, matches notification from the department of public safety or the unit receives notification from a court of this or another state, that a court has issued a protective order or no-contact order against a party with respect to another party or child.

(3) The unit receives notification that a court has dismissed a petition for specified confidential information pursuant to section 252B.9A.

(4) The unit receives notification that a tribunal has issued an order under chapter 252K, the uniform interstate family support Act, or the comparable law of another state, that the address or other identifying information of a party or child not be disclosed.

(5) The unit receives and, through automation, matches notification from the division of child and family services of the department, or the unit receives notification from a comparable agency of another state, of a founded allegation of child abuse, or a comparable finding under the law of the other state.

(6) The unit receives notification that an individual has an exemption from cooperation with child support enforcement under a family investment program safety plan which addresses family or domestic violence.

(7) The unit receives notification, as the result of a request under section 252B.9A, of the existence of any finding, order, safety plan, or founded allegation referred to in subparagraphs (1) through (6) of this paragraph.

j. The unit may provide information regarding delinquent obligors as provided in 42 U.S.C. § 666(a)(7) to a consumer reporting agency if all the following apply:

(1) The agency provides the unit with satisfactory evidence that it is a consumer reporting agency as defined in 15 U.S.C. § 1681a(f) and meets all the following requirements:

(a) Compiles and maintains files on consumers on a nationwide basis as provided in 15 U.S.C. § 1681a(p).

(b) Participates jointly with other nationwide consumer reporting agencies in providing annual free credit reports to consumers upon request through a centralized source as required by the federal trade commission in 16 C.F.R. § 610.2.

(2) The agency has entered into an agreement with the unit regarding receipt and use of the information.

4. Nothing in this chapter, chapter 252A, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, or 252K, or any other comparable chapter or law shall preclude the unit from exchanging any information, notice, document, or certification with any government or private entity, if the exchange is not otherwise prohibited by law, through mutually agreed upon electronic data transfer rather than through other means.

[C77, 79, 81, §252B.9]

89 Acts, ch 283, §31; 90 Acts, ch 1034, §1; 91 Acts, ch 177, §1; 93 Acts, ch 79, §31, 32, 57; 94 Acts, ch 1171, §16; 97 Acts, ch 175, §39, 242; 98 Acts, ch 1170, §2, 20, 23 – 26; 2004 Acts, ch 1116, §20; 2005 Acts, ch 69, §11; 2005 Acts, ch 112, §1; 2006 Acts, ch 1119, §1; 2008 Acts, ch 1019, §8, 9; 2010 Acts, ch 1061, §180; 2012 Acts, ch 1021, §54; 2012 Acts, ch 1033, §2 – 7

Referred to in §252B.7A, 252B.9A, 252B.10, 252B.24, 252G.5, 252H.6, 422.20, 422.72, 598.22B, 598.26

**252B.9A Disclosure of confidential information — authorized person — court.**

1. A person, except a court or government agency, who is an authorized person to receive specified confidential information under 42 U.S.C. § 653, may submit a written request to the unit for disclosure of specified confidential information regarding a nonrequesting party. The written request shall comply with federal law and regulations, including any attestation and any payment to the federal office of child support enforcement of the United States department of health and human services required by federal law or regulation, and shall include a sworn statement attesting to the reason why the requester is an authorized person under 42 U.S.C. § 653, including that the requester would use the confidential information only for purposes permitted in that section.

2. Upon receipt of a request from an authorized person which meets all of the requirements under subsection 1, the unit shall search available records as permitted by law or shall request the information from the federal parent locator service as provided in 42 U.S.C. § 653.

a. If the unit locates the specified confidential information, the unit shall disclose the information to the extent permitted under federal law, unless one of the following applies:

(1) There is a notice from the federal parent locator service that there is reasonable evidence of domestic violence or child abuse pursuant to 42 U.S.C. § 653(b)(2).

(2) The unit has notified the federal parent locator service of a disclosure risk indicator as provided in section 252B.9, subsection 3, paragraph “i”, and has not removed that notification.

(3) The unit receives notice of a basis for a disclosure risk indicator listed in section 252B.9, subsection 3, paragraph “i”, within twenty days of sending a notice of the request to the subject of the request by regular mail.

b. If the unit locates the specified confidential information, but the unit is prohibited from disclosing confidential information under paragraph “a”, the unit shall deny the request and notify the requester of the denial in writing. Upon receipt of a written notice from the unit denying the request, the requester may file a petition in district court for an order directing the unit to release the requested information to the court as provided in subsection 3.

3. A person may file a petition in district court for disclosure of specified confidential information. The petition shall request that the court direct the unit to release specified confidential information to the court, that the court make a determination of harm if appropriate, and that the court release specified confidential information to the petitioner.

a. The petition shall include a sworn statement attesting to the intended use of the information by the petitioner as allowed by federal law. Such statement may specify any of the following intended uses:

(1) To establish parentage, or to establish, set the amount of, modify, or enforce a child support obligation.

(2) To make or enforce a child custody or visitation determination or order.

(3) To carry out the duty or authority of the petitioner to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

b. Upon the filing of a petition, the court shall enter an order directing the unit to release to the court within thirty days specified confidential information which the unit would be permitted to release under 42 U.S.C. § 653 and 42 U.S.C. § 663, unless one of the following applies:

(1) There is a notice from the federal parent locator service that there is reasonable evidence of domestic violence or child abuse pursuant to 42 U.S.C. § 653(b)(2).

(2) The unit has notified the federal parent locator service of a disclosure risk indicator as provided in section 252B.9, subsection 3, paragraph “i”, and has not removed that notification.

(3) The unit receives notice of a basis for a disclosure risk indicator listed in section 252B.9, subsection 3, paragraph “i”, within twenty days of sending notice of the order to the subject of the request by regular mail. The unit shall include in the notice to the subject of the request a copy of the court order issued under this paragraph.

c. Upon receipt of the order, the unit shall comply as follows:

(1) If the unit has the specified confidential information, and none of the domestic violence, child abuse, or disclosure risk indicator provisions of paragraph “b” applies, the unit shall file the confidential information with the court along with a statement that the unit has not received any notice that the domestic violence, child abuse, or disclosure risk indicator provisions of paragraph “b” apply. The unit shall be granted at least thirty days to respond to the order. The court may extend the time for the unit to comply. Upon receipt by the court of the confidential information under this subparagraph, the court may order the release of the information to the petitioner.

(2) If the unit has the specified confidential information, and the domestic violence, child abuse, or disclosure risk indicator provision of paragraph “b” applies, the unit shall file with the court a statement that the domestic violence, child abuse, or disclosure risk indicator provision of paragraph “b” applies, along with any information the unit has received related to the domestic violence, child abuse, or disclosure risk indicator. The unit shall be granted at least thirty days to respond to the order. The court may extend the time for the unit to comply. Upon receipt by the court of information from the unit under this subparagraph, the court shall make a finding whether disclosure of confidential information to any other person could be harmful to the nonrequesting party or child. In making the finding, the court shall consider any relevant information provided by the parent or child, any information provided by the unit or by a child support agency, any information provided by the petitioner, and any other relevant evidence. The unit or unit’s attorney does not represent any individual person in this proceeding.

(a) If the court finds that disclosure of confidential information to any other person could be harmful to the nonrequesting party or child, the court shall dismiss the petition for disclosure and notify the unit to notify the federal parent locator service of a disclosure risk indicator.

(b) If the court does not find that disclosure of specified confidential information to any other person could be harmful to the nonrequesting party or child, the court shall notify the unit to file the specified confidential information with the court. Upon receipt by the court of the specified confidential information, the court may release the information to the petitioner and inform the unit to remove the disclosure risk indicator.

(3) If the unit does not have the specified confidential information and cannot obtain the information from the federal parent locator service, the unit shall comply with the order by notifying the court of the lack of information.

4. The confidential information which may be released by the unit to a party under subsection 2, or by the unit to the court under subsection 3, shall be limited by the federal Social Security Act and other applicable federal law, and the unit may use the sworn statement filed pursuant to subsection 1 or 3 in applying federal law. Any information filed with the court by the unit, when certified over the signature of a designated employee, shall be considered to be satisfactorily identified and shall be admitted as evidence, without requiring third-party foundation testimony. Additional proof of the official character of the person certifying the document or the authenticity of the person’s signature shall not be required.

5. When making a request for confidential information under this section, a party or petitioner shall indicate the specific information requested.

6. For purposes of this section, “party” means party as defined in section 252B.9, subsection 3.

7. The unit may adopt rules pursuant to chapter 17A to prescribe provisions in addition

to or in lieu of the provisions of this section to comply with federal requirements for parent locator services or the safeguarding of information.

98 Acts, ch 1170, §27; 2012 Acts, ch 1033, §8

Referred to in §252B.9

#### **252B.10 Criminal penalties.**

1. Any person who willfully requests, obtains, or seeks to obtain paternity determination and support collection data available under section 252B.9 under false pretenses, or who willfully communicates or seeks to communicate such data to any agency or person except in accordance with this chapter, shall be guilty of an aggravated misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate paternity determination and support collection data except in accordance with this chapter shall be guilty of a simple misdemeanor.

2. Any reasonable grounds for belief that a public employee has violated any provision of this chapter shall be grounds for immediate removal from all access to paternity determination and support collection data available through or recorded under section 252B.9.

[C77, 79, 81, §252B.10]

97 Acts, ch 175, §40

#### **252B.11 Recovery of costs of collection services.**

The unit may initiate necessary civil proceedings to recover the unit's costs of support collection services provided to an individual, whether or not the individual is a public assistance recipient, from an individual who owes and is able to pay a support obligation but willfully fails to pay the obligation. The unit may seek a lump sum recovery of the unit's costs or may seek to recover the unit's costs through periodic payments which are in addition to periodic support payments. If the unit's costs are recovered from an individual owing a support obligation, the costs shall not be deducted from the amount of support money received from the individual. The costs collected pursuant to this section shall be retained by the department for use by the unit. The director or a designee shall keep an accurate record of funds so retained.

83 Acts, ch 153, §19; 92 Acts, ch 1195, §103

#### **252B.12 Jurisdiction over nonresidents.**

In an action to establish paternity or to establish or enforce a child support obligation, or to modify a support order, a nonresident person is subject to the jurisdiction of the courts of this state as specified in section 252K.201.

84 Acts, ch 1242, §1; 97 Acts, ch 175, §48

#### **252B.13 Repealed by 88 Acts, ch 1218, § 14.**

#### **252B.13A Collection services center.**

1. The department shall establish within the unit a collection services center for the receipt and disbursement of support payments as defined in section 252D.16 or 598.1 as required for orders by section 252B.14. For purposes of this section, support payments do not include attorney fees, court costs, or property settlements. The center may also receive and disburse surcharges as provided in section 252B.23.

2. a. The collection services center shall meet the requirements for a state disbursement unit pursuant to 42 U.S.C. § 654B, section 252B.14, and this section by October 1, 1999.

b. Prior to October 1, 1999, the department and the judicial branch shall enter into a cooperative agreement for implementation of the state disbursement unit requirement. The agreement shall include, but is not limited to, provisions for all of the following:

(1) Coordination with the state case registry created in section 252B.24.

(2) The receipt and disbursement of income withholding payments for orders not receiving services from the unit pursuant to section 252B.14, subsection 4.

(3) The transmission of information, orders, and documents, and access to information.

(4) Furnishing, upon request, timely information on the current status of support payments as provided in 42 U.S.C. § 654B(b)(4), in a manner consistent with state law.

(5) The notification of payors of income to direct income withholding payments to the collection services center as provided in section 252B.14, subsection 4.

90 Acts, ch 1224, §9; 91 Acts, ch 177, §2; 93 Acts, ch 79, §39, 40; 97 Acts, ch 175, §41, 243; 98 Acts, ch 1047, §68; 98 Acts, ch 1170, §3

Referred to in §252B.5, 252B.9, 252B.15, 252D.17, 252D.20, 602.8102(47C)

#### **252B.14 Support payments — collection services center — clerk of the district court.**

1. For the purposes of this section, “*support order*” includes any order entered pursuant to chapter 234, 252A, 252C, 598, 600B, or any other support chapter or proceeding which establishes support payments as defined in section 252D.16 or 598.1.

2. For support orders being enforced by the child support recovery unit, support payments made pursuant to the order shall be directed to and disbursed by the collection services center.

3. With the exception of support payments to which subsection 2 or 4 applies, support payments made pursuant to an order shall be directed to and disbursed by the clerk of the district court in the county in which the order for support is filed. The clerk of the district court may require the obligor to submit payments by bank draft or money order if the obligor submits an insufficient funds support payment to the clerk of the district court.

4. By October 1, 1999, for a support order to which subsection 2 does not apply, regardless of the terms of the support order directing or redirecting the place of payment, support payments made through income withholding by a payor of income as provided in chapter 252D shall be directed to and disbursed by the collection services center. The judicial branch and the department shall develop and implement a plan to notify payors of income of this requirement and the effective date of the requirement applicable to the respective payor of income.

5. If the collection services center is receiving and disbursing payments pursuant to a support order, but the unit is not providing other services under Tit. IV-D of the federal Social Security Act, or if the order is not being enforced by the unit, the parties to that order are not considered to be receiving services under this chapter.

6. Payments to persons other than the clerk of the district court or the collection services center do not satisfy the support obligations created by a support order or judgment, except as provided for in sections 598.22 and 598.22A.

86 Acts, ch 1246, §316; 87 Acts, ch 228, §31; 88 Acts, ch 1218, §2; 90 Acts, ch 1224, §10; 91 Acts, ch 177, §3; 93 Acts, ch 79, §41; 97 Acts, ch 175, §42, 43; 98 Acts, ch 1047, §68; 98 Acts, ch 1170, §4; 2010 Acts, ch 1061, §180

Referred to in §8B.32, 252B.13A, 252D.17, 421.17, 598.22, 598.22A, 598.22B, 642.23

Crediting of support payments ordered on or after July 1, 1985; §598.22A

#### **252B.15 Processing and disbursement of support payments.**

1. The collection services center shall notify the clerk of the district court of any order for which the child support recovery unit is providing enforcement services. The clerk of the district court shall forward any support payment made pursuant to the order, along with any support payment information, to the collection services center. Unless the agreement developed pursuant to section 252B.13A otherwise provides, by October 1, 1999, the clerk of the district court shall forward any support payment made and any support payment information provided through income withholding pursuant to chapter 252D, to the collection services center. The collection services center shall process and disburse the payment in accordance with federal requirements.

2. Unless otherwise provided under federal law, if it is possible to identify the support order to which a payment is to be applied and if sufficient information is provided to identify the obligee, a payment received by the collection services center or the clerk of the district court shall be disbursed to the appropriate individual or office within two working days in accordance with section 598.22.

3. Chapter 556 shall not apply to payments received by the collection services center.  
90 Acts, ch 1224, §11; 91 Acts, ch 177, §4; 93 Acts, ch 79, §42; 98 Acts, ch 1170, §5; 2006 Acts, ch 1119, §2  
Referred to in §252B.6A

**252B.16 Transfer of support order processing responsibilities — ongoing procedures.**

1. For a support order being processed by the clerk of the district court, upon notification that the unit is providing enforcement services related to the order, the clerk of the district court shall immediately transfer the responsibility for the disbursement of support payments received pursuant to the order to the collection services center.

2. The department shall adopt rules pursuant to chapter 17A to ensure that the affected parties are notified that the support payment disbursement responsibilities have been transferred to the collection services center from the clerk of the district court. The rules shall include a provision requiring that a notice shall be sent by regular mail to the last known addresses of the obligee and the obligor. The issuance of notice to the obligor is the equivalent of a court order requiring the obligor to direct payment to the collection services center for disbursement.

3. Once the responsibility for receiving and disbursing support payments has been transferred from a clerk of the district court to the collection services center, the responsibility shall remain with the collection services center even if the child support recovery unit is no longer providing enforcement services, unless redirected by court order. However, the responsibility for receiving and disbursing income withholding payments shall not be redirected to a clerk of the district court.

86 Acts, ch 1246, §316; 88 Acts, ch 1218, §3; 90 Acts, ch 1224, §12; 91 Acts, ch 177, §5; 93 Acts, ch 79, §43; 98 Acts, ch 1170, §6  
Referred to in §598.22B

**252B.17 Admissibility and identification of support payment records.**

Copies of support payment records maintained by the collection services center, when certified over the signature of a designated employee of the center, shall be considered to be satisfactorily identified and shall be admitted in any proceeding as prima facie evidence of the transactions. Additional proof of the official character of the person certifying the record or the authenticity of the person's signature shall not be required. Whenever an employee of the collection services center is served with a summons, subpoena, subpoena duces tecum, or order directing that person to produce such records, the employee may comply by transmitting a copy of the payment records certified as described above to the clerk of the district court.

86 Acts, ch 1246, §316

**252B.17A Imaging or photographic copies — originals destroyed.**

1. If the unit, in the regular course of business or activity, has recorded or received any memorandum, writing, entry, print, document, representation, or combination thereof, of any act, transaction, occurrence, event, or communication from any source, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, electronic imaging, electronic data processing, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original, the original may be destroyed. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original recording, copy, or reproduction is in existence and available for inspection. The introduction of a reproduced record, enlargement, or facsimile, does not preclude admission of the original.

2. The electronically imaged, copied, or otherwise reproduced record or document maintained or received by the unit, when certified over the signature of a designated employee of the unit, shall be considered to be satisfactorily identified. Certified documents are deemed to have been imaged or copied or otherwise reproduced accurately and unaltered

in the regular course of business, and such documents are admissible in any judicial or administrative proceeding as evidence. Additional proof of the official character of the person certifying the record or authenticity of the person's signature shall not be required. Whenever the unit or an employee of the unit is served with a summons, subpoena, subpoena duces tecum, or order directing production of such records, the unit or employee may comply by transmitting a copy of the record certified as described above to the district court.  
97 Acts, ch 175, §44

**252B.18 Child support advisory committee — established — duties.** Repealed by 2010 Acts, ch 1031, § 393. See § 217.3A.

**252B.19** Reserved.

**252B.20 Suspension of support.**

1. If the unit is providing child support enforcement services pursuant to this chapter, the parents of a dependent child for whom support has been ordered pursuant to chapter 252A, 252C, 252F, 598, 600B, or any other chapter, may jointly request the assistance of the unit in suspending the obligation for support if all of the following conditions exist:

a. The parents have reconciled and are cohabiting, and the child for whom support is ordered is living in the same residence as the parents, or the child is currently residing with the parent who is ordered to pay support. If the basis for suspension under this paragraph applies to at least one but not all of the children for whom support is ordered, the condition of this paragraph is met only if the support order includes a step change.

b. The child for whom support is ordered is not receiving public assistance pursuant to chapter 239B, 249A, or a comparable law of a foreign jurisdiction, unless the person against whom support is ordered is considered to be a member of the same household as the child for the purposes of public assistance eligibility.

c. The parents have signed a notarized affidavit attesting to the conditions under paragraphs "a" and "b", have consented to suspension of the support order or obligation, and have submitted the affidavit to the unit.

d. No prior request for suspension has been filed with the unit during the two-year period preceding the request, unless the request was filed during the two-year period preceding July 1, 2005, the unit denied the request because the suspension did not apply to all children for whom support is ordered, and the parents jointly file a request on or after July 1, 2005.

e. Any other criteria established by rule of the department.

2. Upon receipt of the application for suspension and properly executed and notarized affidavit, the unit shall review the application and affidavit to determine that the necessary criteria have been met. The unit shall then do one of the following:

a. Deny the request and notify the parents in writing that the application is being denied, providing reasons for the denial and notifying the parents of the right to proceed through private counsel. Denial of the application is not subject to contested case proceedings or further review pursuant to chapter 17A.

b. Approve the request and prepare an order which shall be submitted, along with the affidavit, to a judge of a district court for approval, suspending the accruing support obligation and, if requested by the obligee, and if not prohibited by chapter 252K, satisfying the obligation of support due the obligee. If the basis for suspension applies to at least one but not all of the children for whom support is ordered and the support order includes a step change, the unit shall prepare an order suspending the accruing support obligation for each child to whom the basis for suspension applies.

3. An order approved by the court for suspension of an accruing support obligation is effective upon the date of filing of the suspension order. The satisfaction of an obligation of support due the obligee shall be final upon the filing of the suspension order. A support obligation which is satisfied is not subject to the reinstatement provisions of this section.

4. An order suspending an accruing support obligation entered by the court pursuant to this section shall be considered a temporary order for the period of six months from the date

of filing of the suspension order. However, the six-month period shall not include any time during which an application for reinstatement is pending before the court.

5. During the six-month period the unit may request that the court reinstate the accruing support order or obligation if any of the following conditions exist:

a. Upon application to the unit by either parent or other person who has physical custody of the child.

b. Upon the receipt of public assistance benefits, pursuant to chapter 239B, 249A, or a comparable law of a foreign jurisdiction, by the person entitled to receive support and the child on whose behalf support is paid, provided that the person owing the support is not considered to be a member of the same household as the child for the purposes of public assistance eligibility.

6. If a condition under subsection 5 exists, the unit may request that the court reinstate an accruing support obligation as follows:

a. If the basis for the suspension no longer applies to any of the children for whom an accruing support obligation was suspended, the unit shall request that the court reinstate the accruing support obligations for all of the children.

b. If the basis for the suspension continues to apply to at least one but not all of the children for whom an accruing support obligation was suspended and if the support order includes a step change, the unit shall request that the court reinstate the accruing support obligation for each child for whom the basis for the suspension no longer applies.

7. Upon filing of an application for reinstatement, service of the application shall be made either in person or by first class mail upon both parents. Within ten days following the date of service, the parents may file a written objection with the clerk of the district court to the entry of an order for reinstatement.

a. If no objection is filed, the court may enter an order reinstating the accruing support obligation without additional notice.

b. If an objection is filed, the clerk of court shall set the matter for hearing and send notice of the hearing to both parents and the unit.

8. The reinstatement is effective as follows:

a. For reinstatements initiated under subsection 5, paragraph "a", the date the notices were served on both parents pursuant to subsection 7.

b. For reinstatements initiated under subsection 5, paragraph "b", the date the child began receiving public assistance benefits during the suspension of the obligation.

c. Support which became due during the period of suspension but prior to the reinstatement is waived and not due and owing unless the parties requested and agreed to the suspension under false pretenses.

9. If the order suspending a support obligation has been on file with the court for a period exceeding six months as computed pursuant to subsection 4, the order becomes final by operation of law and terminates the support obligation, and thereafter, a party seeking to establish a support obligation against either party shall bring a new action for support as provided by law.

10. This section shall not limit the rights of the parents or the unit to proceed by other means to suspend, terminate, modify, reinstate, or establish support.

11. This section does not provide for the suspension or retroactive modification of support obligations which accrued prior to the entry of an order suspending enforcement and collection of support pursuant to this section. However, if in the application for suspension, an obligee elects to satisfy an obligation of accrued support due the obligee, the suspension order may satisfy the obligation of accrued support due the obligee.

12. Nothing in this section shall prohibit or limit the unit or a party entitled to receive support from enforcing and collecting any unpaid or unsatisfied support that accrued prior to the suspension of the accruing obligation.

13. For the purposes of chapter 252H, subchapter II, regarding the criteria for a review or for a cost-of-living alteration under chapter 252H, subchapter IV, if a support obligation is terminated or reinstated under this section, such termination or reinstatement shall not be considered a modification of the support order.

14. As used in this section, unless the context otherwise requires, "step change" means a

change designated in a support order specifying the amount of the child support obligation as the number of children entitled to support under the order changes.

93 Acts, ch 79, §24; 94 Acts, ch 1171, §18; 96 Acts, ch 1141, §4; 97 Acts, ch 41, §32; 98 Acts, ch 1170, §46, 47; 2005 Acts, ch 112, §2 – 5; 2011 Acts, ch 25, §20

#### **252B.21 Administrative seek employment orders.**

1. For any support order being enforced by the unit, the unit may enter an ex parte order requiring the obligor to seek employment if employment of the obligor cannot be verified and if the obligor has failed to make support payments. Advance notice is not required prior to entering the ex parte order. The order shall be served upon the obligor by regular mail, with proof of service completed as provided in rule of civil procedure 1.442. The unit shall file a copy of the order with the clerk of the district court.

2. The order to seek employment shall contain directives, including all of the following:

a. That the obligor seek employment within a determinate amount of time.

b. That the obligor file with the unit on a weekly basis a report of at least five new attempts to find employment or of having found employment. The report shall include the names, addresses, and the telephone numbers of any employers or businesses with whom the obligor attempted to seek employment and the name of the individual contact to whom the obligor made application for employment or to whom an inquiry was directed.

c. That failure to comply with the notice is evidence of a willful failure to pay support under section 598.23A.

d. That the obligor shall provide the child support recovery unit with verification of any reason for noncompliance with the order.

e. The duration of the order, not to exceed three months.

3. The department may establish additional criteria or requirements relating to seek employment orders by rule as necessary to implement this section.

93 Acts, ch 79, §26; 94 Acts, ch 1171, §19

Referred to in §252B.6A, 598.23A

#### **252B.22 Liens — motor vehicle registration — task force.**

1. The child support recovery unit created in this chapter shall establish a task force to assist in the development and implementation of all of the following:

a. The filing of notices of liens and actions to release liens.

b. The process for delaying the renewal of a motor vehicle registration due to a support delinquency and recommendations for additional statutory changes to the general assembly.

2. Members of the task force may include, but shall not be limited to, representatives, appointed by the respective entity, of the Iowa land title association, the Iowa realtors' association, the Iowa state bar association, the Iowa county recorders' association, the Iowa clerks of court association, the Iowa county treasurers' association, the Iowa automobile dealers' association, the Iowa bankers association, the Iowa recreational vehicle dealers' association, the independent automobile dealers' association of Iowa, the Iowa mortgage bankers' association, the Iowa motorcycle association, the Iowa credit union league, department of administrative services, state department of transportation, the office of the secretary of state, the office of the state court administrator, and other constituency groups and agencies which have an interest in a statewide support lien index to the record liens. Appointments are not subject to sections 69.16 and 69.16A. Vacancies shall be filled by the original appointment authority and in the manner of the original appointments.

97 Acts, ch 175, §201; 2000 Acts, ch 1125, §1, 4; 2003 Acts, ch 145, §286

#### **252B.23 Surcharge.**

1. A surcharge shall be due and payable by the obligor on a support arrearage identified as difficult to collect and referred by the unit on or after January 1, 1998, to a collection entity under contract with the unit or other state entity. The amount of the surcharge shall be a percent of the amount of the support arrearage referred to the collection entity and shall be specified in the contract with the collection entity. For the purpose of this chapter, a "collection entity" includes but is not limited to a state agency, including the central collection

unit of the department of revenue, or a private collection agency. Use of a collection entity is in addition to any other legal means by which support payments may be collected. The unit shall continue to use other enforcement actions, as appropriate.

2. *a.* Notice that a surcharge may be assessed on a support arrearage referred to a collection entity pursuant to this section shall be provided to an obligor in accordance with one of the following as applicable:

(1) In the order establishing or modifying the support obligation. The unit or district court shall include notice in any new or modified support order issued on or after July 1, 1997.

(2) Through notice sent by the unit by regular mail to the last known address of the support obligor.

*b.* The notice shall also advise that any appropriate information may be provided to a collection entity for purposes of administering and enforcing the surcharge.

3. Arrearages submitted for referral and surcharge pursuant to this section shall meet all of the following criteria:

*a.* The arrearages owed shall be based on a court or administrative order which establishes the support obligation.

*b.* The arrearage is due for a case in which the unit is providing services pursuant to this chapter and one for which the arrearage has been identified as difficult to collect by the unit.

*c.* The obligor was provided notice pursuant to subsection 2 at least fifteen days prior to sending the notice of referral pursuant to subsection 4.

4. The unit shall send notice of referral to the obligor by regular mail to the obligor's last known address, with proof of service completed according to rule of civil procedure 1.442, at least thirty days prior to the date the arrearage is referred to the collection entity. The notice shall inform the obligor of all of the following:

*a.* The arrearage will be referred to a collection entity.

*b.* Upon referral, a surcharge is due and payable by the obligor.

*c.* The amount of the surcharge.

*d.* That the obligor may avoid referral by paying the amount of the arrearage to the collection services center within twenty days of the date of notice of referral.

*e.* That the obligor may contest the referral by submitting a written request for review of the unit. The request shall be received by the unit within twenty days of the date of the notice of referral.

*f.* The right to contest the referral is limited to a mistake of fact, which includes a mistake in the identity of the obligor, a mistake as to fulfillment of the requirements for referral under this subsection, or a mistake in the amount of the arrearages.

*g.* The unit shall issue a written decision following a requested review.

*h.* Following the issuance of a written decision by the unit denying that a mistake of fact exists, the obligor may request a hearing to challenge the surcharge by sending a written request for a hearing to the office of the unit which issued the decision. The request shall be received by the office of the unit which issued the decision within ten days of the unit's written decision. The only grounds for a hearing shall be mistake of fact. Following receipt of the written request, the unit which receives the request shall certify the matter for hearing in the district court in the county in which the underlying support order is filed.

*i.* The address of the collection services center for payment of the arrearages.

5. If the obligor pays the amount of arrearage within twenty days of the date of the notice of referral, referral of the arrearage to a collection entity shall not be made.

6. If the obligor requests a review or court hearing pursuant to this section, referral of the arrearages shall be stayed pending the decision of the unit or the court.

7. Actions of the unit under this section shall not be subject to contested case proceedings or further review pursuant to chapter 17A and any resulting court hearing shall be an original hearing before the district court. However, the department shall establish, by rule pursuant to chapter 17A, an internal process to provide an additional review by the administrator of the child support recovery unit or the administrator's designee.

8. If an obligor does not pay the amount of the arrearage, does not contest the referral, or if following the unit's review and any court hearing the unit or court does not find a mistake of fact, the arrearages shall be referred to a collection entity. Following the review or hearing,

if the unit or court finds a mistake in the amount of the arrearage, the arrearages shall be referred to the collection entity in the appropriate arrearage amount. For arrearages referred to a collection entity, the obligor shall pay a surcharge equal to a percent of the amount of the support arrearage due as of the date of the referral. The surcharge is in addition to the arrearages and any other fees or charges owed, and shall be enforced by the collection entity as provided under section 252B.5. Upon referral to the collection entity, the surcharge is an automatic judgment against the obligor.

9. The director or the director's designee may file a notice of the surcharge with the clerk of the district court in the county in which the underlying support order is filed. Upon filing, the clerk shall enter the amount of the surcharge on the lien index and judgment docket.

10. Following referral of a support arrearage to a collection entity, the surcharge shall be due and owing and enforceable by a collection entity or the unit notwithstanding satisfaction of the support obligation or whether the collection entity is enforcing a support arrearage. However, the unit may waive payment of all or a portion of the surcharge if waiver will facilitate the collection of the support arrearage.

11. All surcharge payments shall be received and disbursed by the collection services center. The surcharge payments received by the collection services center shall be considered repayment receipts as defined in section 8.2 and shall be used to pay the costs of any contracts with a collection entity.

12. *a.* A payment received by the collection services center which meets all the following conditions shall be allocated as specified in paragraph "b":

- (1) The payment is for a case in which arrearages have been referred to a collection entity.
- (2) A surcharge is assessed on the arrearages.
- (3) The payment is collected under the provisions of the contract with the collection entity.

*b.* A payment meeting all of the conditions in paragraph "a" shall be allocated between support and costs and fees, and the surcharge according to the following formula:

(1) The payment shall be divided by the sum of one hundred percent plus the percent specified in the contract.

(2) The quotient shall be the amount allocated to the support arrearage and other fees and costs.

(3) The difference between the dividend and the quotient shall be the amount allocated to the surcharge.

13. Any computer or software programs developed and any records used in relation to a contract with a collection entity remain the property of the department.

97 Acts, ch 175, §244; 2003 Acts, ch 145, §286; 2005 Acts, ch 175, §119

Referred to in §252B.9, 252B.13A

#### **252B.24 State case registry.**

1. Beginning October 1, 1998, the unit shall operate a state case registry to the extent determined by applicable time frames and other provisions of 42 U.S.C. § 654A(e) and this section. The unit and the judicial branch shall enter into a cooperative agreement for the establishment and operation of the registry by the unit. The state case registry shall include records with respect to all of the following:

*a.* Unless prohibited by federal law, each case for which services are provided under this chapter.

*b.* Each order for support, as defined in section 252D.16 or 598.1, which meets at least one of the following criteria:

(1) The support order is established or modified in this state on or after October 1, 1998.

(2) The income of the obligor is subject to income withholding under chapter 252D, including any support order for which the district court enters an ex parte order under chapter 252D on or after October 1, 1998.

2. The clerk of the district court shall provide the unit with any information, orders, or documents requested by the unit to establish or operate the state case registry, which are specified in the agreement described in subsection 1, within the time frames specified in that agreement. The agreement shall include but is not limited to provisions to provide for all of the following:

a. Provision to the unit of information, orders, and documents necessary for the unit to meet requirements described in 42 U.S.C. § 654A(e) and this section.

b. Provision to the unit of information filed with the clerk of the district court by a party under section 598.22B, and the social security number of a child filed with the clerk of the district court under section 602.6111.

c. Use of automation, as appropriate, to meet the requirements described in 42 U.S.C. § 654A(e) and this section.

3. The records of the state case registry are confidential records pursuant to chapter 22 and may only be disclosed or used as provided in section 252B.9.

98 Acts, ch 1047, §68; 98 Acts, ch 1170, §15

Referred to in §252B.13A, 598.22B, 602.8102(47B)

#### **252B.25 Contempt — combining actions.**

Notwithstanding any provision of law to the contrary, if an obligor has been ordered to provide support in more than one order, the unit may bring a single action for contempt to enforce the multiple orders. However, if the obligor objects to the consolidation of the actions regarding multiple orders into a single action for contempt, and the court determines that severance of the single action into multiple actions is in the interest of justice, the unit shall bring multiple actions for contempt to enforce the multiple orders. If the single action is brought and the obligor does not object, the unit shall file the action in the district court of a county where the obligor resides, or if the obligor does not reside in the state, in the district court of the county where at least one of the support orders was entered or registered. For the purposes of this section, the district court where the unit files the action shall have jurisdiction and authority over all other support orders for the obligor entered or registered by a court of this state and affected under this section. In such case, the unit shall also file a document with the clerk of court in each county affected specifying the county where the action under this section was filed and the disposition of the action.

2005 Acts, ch 112, §6

#### **252B.26 Service of process.**

Notwithstanding any provision of law to the contrary, the unit may serve a petition, notice, or rule to show cause under chapter 252A, 252C, 252F, 252H, 252K, 598, or 665 as specified in each chapter, or as follows:

1. The unit may serve a petition, notice, or rule to show cause by certified mail. Return acknowledgment is required to prove service by certified mail, rules of civil procedure 1.303(5) and 1.308(5) shall not apply, and the return acknowledgment shall be filed with the clerk of court.

2. The unit may serve a notice of intent under chapter 252H, or a notice of decision under section 252H.14A, upon any party or parent who is receiving family investment program assistance for the parent or child by sending the notice by regular mail to the address maintained by the department. Rules of civil procedure 1.303(5) and 1.308(5) shall not apply and the unit shall file proof of service as provided in chapter 252H. If the notice is determined to be undeliverable, the unit shall serve the notice as otherwise provided in this section or by personal service.

2005 Acts, ch 112, §7; 2007 Acts, ch 218, §142, 156

Referred to in §252H.14A

#### **252B.27 Use of funding for additional positions.**

1. The director, within the limitations of the amount appropriated for the unit, or moneys transferred for this purpose from the family investment program account created in section 239B.11, may establish new positions and add employees to the unit if the director determines that both the current and additional employees together can reasonably be expected to maintain or increase net state revenue at or beyond the budgeted level for the fiscal year.

2. a. The director may establish new positions and add state employees to the unit or contract for delivery of services if the director determines the employees are necessary to replace county-funded positions eliminated due to termination, reduction, or nonrenewal of

a chapter 28E contract. However, the director must also determine that the resulting increase in the state share of child support recovery incentives exceeds the cost of the positions or contract, the positions or contract are necessary to ensure continued federal funding of the unit, or the new positions or contract can reasonably be expected to recover at least twice the amount of money necessary to pay the salaries and support for the new positions or the contract will generate at least two hundred percent of the cost of the contract.

b. Employees in full-time positions that transition from county government to state government employment under this subsection are exempt from testing, selection, and appointment provisions of chapter 8A, subchapter IV, and from the provisions of collective bargaining agreements\* relating to the filling of vacant positions.

2005 Acts, ch 175, §120

\*Collective bargaining, see chapter 20

## CHAPTER 252C

### CHILD SUPPORT DEBTS — ADMINISTRATIVE PROCEDURES

Referred to in §234.39, 252A.3A, 252A.6, 252B.3, 252B.4, 252B.5, 252B.7A, 252B.9, 252B.14, 252B.20, 252B.26, 252D.1, 252D.16, 252D.16A, 252E.1, 252E.1A, 252E.16, 252H.2, 252H.4, 252H.21, 252J.2, 252J.1, 598.21C, 598.21G, 598.22, 598.22B, 598.23A, 600.11

<p>252C.1 Definitions.</p> <p>252C.2 Assignment — creation of support debt — subrogation.</p> <p>252C.3 Notice of support debt — failure to respond — hearing — order.</p> <p>252C.4 Certification to court — hearing — default.</p> <p>252C.5 Filing and docketing of financial responsibility order — order effective as district court decree.</p>	<p>252C.6 Interest on support debts.</p> <p>252C.7 Repealed by 97 Acts, ch 175, §55.</p> <p>252C.8 Temporary restraining order or bond.</p> <p>252C.9 Repealed by 93 Acts, ch 79, §54.</p> <p>252C.10 Repealed by 89 Acts, ch 166, §8.</p> <p>252C.11 Security for payment of support — forfeiture.</p> <p>252C.12 Waiver of time limitations by responsible person.</p>
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#### 252C.1 Definitions.

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

1. “*Administrator*” means the administrator of the child support recovery unit of the department of human services, or the administrator’s designee.

2. “*Caretaker*” means a parent, relative, guardian, or another person who is responsible for paying foster care costs pursuant to chapter 234 or whose needs are included in an assistance payment made pursuant to chapter 239B.

3. “*Court order*” means a judgment or order of a court of this state or another state requiring the payment of a set or determinable amount of monetary support. For orders entered on or after July 1, 1990, unless the court specifically orders otherwise, medical support, as defined in section 252E.1, is not included in the amount of monetary support.

4. “*Department*” means the department of human services.

5. “*Dependent child*” means a person who meets the eligibility criteria established in chapter 234 or 239B and whose support is required by chapter 234, 239B, 252A, 252F, 598, or 600B.

6. “*Medical support*” means either the provision of coverage under a health benefit plan, including a group or employment-related or an individual health benefit plan, or a health benefit plan provided pursuant to chapter 514E, to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, or the payment to the obligee of a monetary amount in lieu of providing coverage under a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid. Medical support which consists of payment of a monetary amount in lieu of a health benefit plan is also an obligation separate from any monetary amount a parent is ordered to pay for uncovered medical expenses pursuant to the guidelines established pursuant to section 598.21B.

7. “Public assistance” means foster care costs paid by the department pursuant to chapter 234 or assistance provided pursuant to chapter 239B.

8. “Responsible person” means a parent, relative, guardian, or another person legally liable for the support of a child or a child’s caretaker.

84 Acts, ch 1278, §1; 90 Acts, ch 1224, §14, 15; 93 Acts, ch 79, §44; 97 Acts, ch 41, §32; 2007 Acts, ch 218, §158, 187; 2008 Acts, ch 1019, §18, 20

Referred to in §252H.2, 598.21G

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

### **252C.2 Assignment — creation of support debt — subrogation.**

1. If public assistance is provided by the department to or on behalf of a dependent child or a dependent child’s caretaker, there is an assignment by operation of law to the department of any and all right in, title to, and interest in any support obligation, payment, and arrearages owed to or for the child or caretaker up to the amount of public assistance paid for or on behalf of the child or caretaker. Unless otherwise specified in the order, an equal and proportionate share of any child support awarded is presumed to be payable on behalf of each child subject to the order or judgment for purposes of an assignment under this section. For family investment program assistance, section 239B.6 shall apply.

2. The payment of public assistance to or for the benefit of a dependent child or a dependent child’s caretaker creates a support debt due and owing to the department by the responsible person in an amount equal to the public assistance payment, except that the support debt is limited to the amount of a support obligation established by court order or by the administrator. The administrator may establish a support debt as to amounts accrued and accruing pursuant to section 598.21B. However, when establishing a support obligation against a responsible person, no debt shall be created for the period during which the responsible person is a recipient on the person’s own behalf of public assistance for the benefit of the dependent child or the dependent child’s caretaker, if any of the following conditions exist:

a. The parents have reconciled and are cohabiting, and the child for whom support would otherwise be sought is living in the same residence as the parents.

b. The child is living with the parent from whom support would otherwise be sought.

3. The provision of child support collection or paternity determination services under chapter 252B to an individual, even though the individual is ineligible for public assistance, creates a support debt due and owing to the individual or the individual’s child or ward by the responsible person in the amount of a support obligation established by court order or by the administrator. The administrator may establish a support debt in favor of the individual or the individual’s child or ward and against the responsible person, both as to amounts accrued and accruing, pursuant to section 598.21B.

4. The payment of medical assistance pursuant to chapter 249A for the benefit of a dependent child or a dependent child’s caretaker creates a support debt due and owing to the department. The administrator may establish an order for medical support.

5. The department is subrogated to the rights of a dependent child or a dependent child’s caretaker to bring a court action or to execute an administrative remedy for the collection of support. The administrator may petition an appropriate court for modification of a court order on the same grounds as a party to the court order can petition the court for modification.

84 Acts, ch 1278, §2; 89 Acts, ch 166, §4; 92 Acts, ch 1195, §401, 402; 94 Acts, ch 1171, §20; 97 Acts, ch 175, §50; 2005 Acts, ch 69, §12, 13; 2008 Acts, ch 1019, §4, 7

Referred to in §252C.3, 598.21B

### **252C.3 Notice of support debt — failure to respond — hearing — order.**

1. The administrator may issue a notice stating the intent to secure an order for either medical support as provided in chapter 252E or payment of an accrued or accruing support debt due and owed to the department or an individual under section 252C.2, or both. The notice shall be served upon the responsible person in accordance with the rules of civil procedure. The notice shall include all of the following:

a. A statement that the support obligation will be set pursuant to the child support

guidelines established pursuant to section 598.21B, and the criteria established pursuant to section 252B.7A, and that the responsible person is required to provide medical support in accordance with chapter 252E.

b. The name of a public assistance recipient and the name of the dependent child or caretaker for whom the public assistance is paid.

c. (1) A statement that if the responsible person desires to discuss the amount of support that a responsible person should be required to pay, the responsible person may, within ten days after being served, contact the office of the child support recovery unit which sent the notice and request a negotiation conference.

(2) A statement that if a negotiation conference is requested, then the responsible person shall have ten days from the date set for the negotiation conference or thirty days from the date of service of the original notice, whichever is later, to send a request for a hearing to the office of the child support recovery unit which issued the notice.

(3) A statement that after the holding of the negotiation conference, the administrator may issue a new notice and finding of financial responsibility for child support or medical support, or both, to be sent to the responsible person by regular mail addressed to the responsible person's last known address, or if applicable, to the last known address of the responsible person's attorney.

(4) A statement that if the administrator issues a new notice and finding of financial responsibility for child support or medical support, or both, then the responsible person shall have thirty days from the date of issuance of the new notice to send a request for a hearing to the office of the child support recovery unit which issued the notice. If the administrator does not issue a new notice and finding of financial responsibility for child support or medical support, or both, the responsible party shall have ten days from the date of issuance of the conference report to send a request for a hearing to the office of the child support recovery unit which issued the conference report.

d. A statement that if the responsible person objects to all or any part of the notice or finding of financial responsibility for child support or medical support, or both, and a negotiation conference is not requested, the responsible person shall, within thirty days of the date of service send to the office of the child support recovery unit which issued the notice a written response setting forth any objections and requesting a hearing.

e. A statement that if a timely written request for a hearing is received by the office of the child support recovery unit which issued the notice, the responsible person shall have the right to a hearing to be held in district court; and that if no timely written response is received, the administrator may enter an order in accordance with the notice and finding of financial responsibility for child support or medical support, or both.

f. A statement that, as soon as the order is entered, the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

g. A statement that the responsible person shall notify the administrator of any change of address, employment, or medical coverage as required by chapter 252E.

h. A statement that if the responsible person has any questions, the responsible person should telephone or visit an office of the child support recovery unit or consult an attorney.

i. Such other information as the administrator finds appropriate.

2. The time limitations for requesting a hearing in subsection 1 may be extended by the administrator.

3. If a timely written response setting forth objections and requesting a hearing is received by the appropriate office of the child support recovery unit, a hearing shall be held in district court.

4. If timely written response and request for hearing is not received by the appropriate office of the child support recovery unit, the administrator may enter an order in accordance with the notice, and shall specify all of the following:

a. The amount of monthly support to be paid, with directions as to the manner of payment.

b. The amount of the support debt accrued and accruing in favor of the department.

c. The name of the custodial parent or agency having custody of the dependent child and the name and birth date of the dependent child for whom support is to be paid.

d. That the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

e. The medical support required pursuant to chapter 598 and rules adopted pursuant to chapter 252E.

5. The responsible person shall be sent a copy of the order by regular mail addressed to the responsible person's last known address, or if applicable, to the last known address of the responsible person's attorney. The order is final, and action by the administrator to enforce and collect upon the order, including arrearages and medical support, or both, may be taken from the date of approval of the order by the court pursuant to section 252C.5.

84 Acts, ch 1278, §3; 90 Acts, ch 1224, §16 – 21; 92 Acts, ch 1195, §202, 203, 403; 95 Acts, ch 52, §3, 4; 97 Acts, ch 175, § 51 – 53; 2005 Acts, ch 69, §14; 2007 Acts, ch 218, §159, 160, 187; 2008 Acts, ch 1019, §18, 20

Referred to in §234.39, 252C.12

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

#### **252C.4 Certification to court — hearing — default.**

1. A responsible person or the child support recovery unit may request a hearing regarding a determination of support. If a timely written request for a hearing is received, the administrator shall certify the matter to the district court as follows:

a. If the child or children reside in Iowa, and the unit is seeking an accruing obligation, in the county in which the dependent child or children reside.

b. If the child or children received public assistance in Iowa, and the unit is seeking only an accrued obligation, in the county in which the dependent child or children last received public assistance.

c. If the action is the result of a request from a foreign jurisdiction to establish support by a responsible person located in Iowa, in the county in which the responsible person resides.

2. The certification shall include true copies of the notice and finding of financial responsibility or notice of the support debt accrued and accruing, the return of service, the written objections and request for hearing, and true copies of any administrative orders previously entered.

3. The court shall set the matter for hearing and notify the parties of the time and place of hearing.

4. The court shall establish the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21B, or medical support pursuant to chapter 252E, or both.

5. If a party fails to appear at the hearing, upon a showing of proper notice to that party, the court shall find that party in default and enter an appropriate order.

6. Actions initiated by the administrator under this chapter are not subject to chapter 17A and resulting court hearings following certification shall be an original hearing before the district court.

7. If a responsible person contests an action initiated under this chapter by denying paternity, the following shall apply, as necessary:

a. (1) If the prior determination of paternity is based on an affidavit of paternity filed pursuant to section 252A.3A, or an administrative order entered pursuant to chapter 252F, or an order by the courts of this state, or by operation of law when the mother and established father are or were married to each other, the provisions of section 600B.41A are applicable.

(2) If the court determines that the prior determination of paternity should not be overcome pursuant to section 600B.41A, and that the responsible person has a duty to provide support, the court shall enter an order establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21B, or medical support pursuant to chapter 252E, or both.

b. If the prior determination of paternity is based on an administrative or court order or other means, pursuant to the laws of a foreign jurisdiction, an action to overcome the prior determination of paternity shall be filed in that jurisdiction. Unless the responsible person

requests and is granted a stay of an action initiated under this chapter to establish child or medical support, the action shall proceed as otherwise provided by this chapter.

84 Acts, ch 1278, §4; 89 Acts, ch 166, §5; 89 Acts, ch 179, §1; 90 Acts, ch 1224, §22; 92 Acts, ch 1195, §204; 93 Acts, ch 78, §9; 94 Acts, ch 1171, §21, 22; 95 Acts, ch 67, §19; 2005 Acts, ch 69, §15, 16

Referred to in §252C.5, 598.21B

#### **252C.5 Filing and docketing of financial responsibility order — order effective as district court decree.**

1. A true copy of any order entered by the administrator pursuant to this chapter, along with a true copy of the return of service, if applicable, may be filed in the office of the clerk of the district court in the manner established pursuant to section 252C.4, subsection 1.

2. The administrator's order shall be presented, ex parte, to the district court for review and approval. Unless defects appear on the face of the order or on the attachments, the district court shall approve the order. The approved order shall have all the force, effect, and attributes of a docketed order or decree of the district court.

3. Upon filing, the clerk shall enter the order in the judgment docket.

4. If the responsible party appeals the order approved by the court under this section, and the court on appeal establishes an amount of support which is less than the amount of support established under the approved order, the court, in the order issued on appeal, shall reconcile the amounts due and shall provide that any amount which represents the unpaid difference between the amount under the approved order and the amount under the order of the court on appeal is satisfied.

84 Acts, ch 1278, §5; 89 Acts, ch 179, §2; 92 Acts, ch 1195, §504; 94 Acts, ch 1171, §23; 97 Acts, ch 175, §54

Referred to in §252C.3

#### **252C.6 Interest on support debts.**

Interest accrues on support debts at the rate provided in section 535.3 for court judgments. The administrator may collect the accrued interest but is not required to maintain interest balance accounts. The department may waive payment of the interest if the waiver will facilitate the collection of the support debt.

84 Acts, ch 1278, §6

#### **252C.7 Repealed by 97 Acts, ch 175, § 55.**

#### **252C.8 Temporary restraining order or bond.**

If the administrator reasonably believes that the responsible person is not a resident of this state, is about to move from this state, or is concealing the responsible person's whereabouts, or that the responsible person has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection procedures to satisfy the support debt, the administrator may petition the district court for a temporary restraining order barring the removal, secretion, waste, or disposal. However, if the responsible person furnishes a bond satisfactory to the court, the temporary restraining order shall be vacated.

84 Acts, ch 1278, §8

#### **252C.9 Repealed by 93 Acts, ch 79, § 54.**

#### **252C.10 Repealed by 89 Acts, ch 166, § 8.**

#### **252C.11 Security for payment of support — forfeiture.**

Upon entry of a court order or upon the failure of a person to make payments pursuant to a court order, the court may require the person to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support obligation. Upon the person's failure to pay the support obligation under the court order, the court may declare the security, bond, or other guarantee forfeited.

85 Acts, ch 100, §2

**252C.12 Waiver of time limitations by responsible person.**

1. A responsible person may waive the time limitations established in section 252C.3.
  2. Upon receipt of a signed statement from each responsible person waiving the time limitations established in section 252C.3, the administrator may proceed to enter an order for support and the court may approve the order, whether or not the time limitations have expired.
  3. If a responsible person waives the time limitations established in section 252C.3 and an order for support is entered under this chapter, the signed statement of the responsible person waiving the time limitations shall be filed with the order for support.
- 92 Acts, ch 1195, §205; 2007 Acts, ch 218, §161, 187; 2008 Acts, ch 1019, §18, 20
- For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

**CHAPTER 252D**

**SUPPORT PAYMENTS — INCOME WITHHOLDING**

Referred to in §96.3, 249A.52, 252B.3, 252B.4, 252B.9, 252B.14, 252B.15, 252B.24, 252E.4, 252G.8, 252J.1, 535.3, 598.22, 598.23, 598.23A, 642.2, 642.21

	SUBCHAPTER I		252D.17	Notice to payor of income — duties and liability — criminal penalty.
	DELINQUENT PAYMENTS		252D.17A	Notice to obligor of implementation of income withholding order.
252D.1	Delinquent support payments.		252D.18	Modification or termination of withholding.
252D.2	Repealed by 97 Acts, ch 175, §69.		252D.18A	Multiple income withholding orders — amounts withheld by payor.
252D.3	Notice of income withholding.		252D.18B	Irregular income.
252D.4	through 252D.7 Repealed by 90 Acts, ch 1123, §14.		252D.18C	Withholding from lump sum payments.
	SUBCHAPTER II		252D.19	Other remedies.
	IMMEDIATE INCOME WITHHOLDING		252D.19A	Disparity between order and pay dates — not delinquent.
252D.8	Persons subject to immediate income withholding.		252D.20	Administration of income withholding procedures.
252D.9	Sums subject to immediate withholding.		252D.21	Penalty for misrepresentation.
252D.10	Notice of immediate income withholding.		252D.22	Rules.
252D.11	Repealed by 97 Acts, ch 175, §69.		252D.23	Filing of withholding order — order effective as district court order.
252D.12	through 252D.14 Repealed by 93 Acts, ch 78, §47.		252D.24	Applicability to support orders of foreign jurisdictions.
252D.15	Reserved.		252D.25	Limitations on scope of proceedings.
	SUBCHAPTER III		252D.26	through 252D.29 Reserved.
	GENERAL PROVISIONS		252D.30	Ex parte order — provisions for medical support.
252D.16	Definitions.		252D.31	Motion to quash.
252D.16A	Income withholding order — child support recovery unit.			

**SUBCHAPTER I**

**DELINQUENT PAYMENTS**

**252D.1 Delinquent support payments.**

If support payments ordered under this chapter or chapter 232, 234, 252A, 252C, 252E, 252F, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign

jurisdiction, as certified to the child support recovery unit established in section 252B.2, are not paid to the clerk of the district court or the collection services center pursuant to section 598.22 and become delinquent in an amount equal to the payment for one month, the child support recovery unit may enter an ex parte order or, upon application of a person entitled to receive the support payments, the district court may enter an ex parte order, notifying the person whose income is to be withheld, of the delinquent amount, of the amount of income to be withheld, and of the procedure to file a motion to quash the order for income withholding, and ordering the withholding of specified sums to be deducted from the delinquent person's income as defined in section 252D.16 sufficient to pay the support obligation and, except as provided in section 598.22, requiring the payment of such sums to the clerk of the district court or the collection services center. Beginning October 1, 1999, all income withholding payments shall be paid to the collection services center. Notification of income withholding shall be provided to the obligor and to the payor of income pursuant to section 252D.17.

84 Acts, ch 1239, §1; 85 Acts, ch 100, §3; 85 Acts, ch 178, §2; 86 Acts, ch 1191, §1; 86 Acts, ch 1245, §1421; 86 Acts, ch 1246, §317, 323; 88 Acts, ch 1218, §4; 90 Acts, ch 1224, §24; 90 Acts, ch 1253, §120; 92 Acts, ch 1195, §104; 93 Acts, ch 78, §10; 93 Acts, ch 79, §45; 97 Acts, ch 175, §56; 98 Acts, ch 1170, §7; 2007 Acts, ch 22, §57

Referred to in §252D.3

**252D.2** Repealed by 97 Acts, ch 175, § 69. See § 252D.31.

**252D.3 Notice of income withholding.**

All orders for support entered on or after July 1, 1984, shall notify the person ordered to pay support of the mandatory withholding of income required under section 252D.1. However, this subchapter is sufficient notice of implementation of mandatory withholding of income under section 252D.1 without any further notice.

84 Acts, ch 1239, §3; 85 Acts, ch 100, §4; 97 Acts, ch 175, §57; 2005 Acts, ch 112, §8

**252D.4 through 252D.7** Repealed by 90 Acts, ch 1123, § 14. See § 252D.18 – 252D.21.

## SUBCHAPTER II

### IMMEDIATE INCOME WITHHOLDING

**252D.8 Persons subject to immediate income withholding.**

1. In a support order issued or modified on or after November 1, 1990, for which services are being provided by the child support recovery unit, and in any support orders issued or modified after January 1, 1994, for which services are not provided by the child support recovery unit, the income of a support obligor is subject to withholding, on the effective date of the order, regardless of whether support payments by the obligor are in arrears. If services are being provided pursuant to chapter 252B, the child support recovery unit may enter an ex parte order for an immediate withholding of income. The district court may enter an ex parte order for immediate income withholding for cases in which the child support recovery unit is not providing services. The income of the obligor is subject to immediate withholding unless one of the following occurs:

a. One of the parties demonstrates and the court or child support recovery unit finds there is good cause not to require immediate withholding. A finding of good cause shall be based on, at a minimum, written findings and conclusions by the court or administrative authority as to why implementing immediate withholding would not be in the best interests of the child. In cases involving modifications, the findings shall also include proof of timely payment of previously ordered support.

b. A written agreement is reached between both parties which provides for an alternative arrangement. If the support payments have been assigned to the department of human services pursuant to chapter 234 or 239B, or a comparable statute of another jurisdiction, the department shall be considered a party to the support order, and a written agreement

pursuant to this section to waive immediate withholding is void unless approved by the child support recovery unit. Any agreement existing at the time an assignment of support is made pursuant to chapter 234 or 239B or pursuant to a comparable statute of another jurisdiction shall not prevent the child support recovery unit from implementing immediate withholding.

2. For an order not requiring immediate withholding, income of an obligor is subject to immediate withholding, without regard to whether there is an arrearage, on the earliest of the following:

a. The date the obligor requests that the withholding begin.

b. The date the custodial parent or party to the proceeding requests that the withholding begin, if the request is approved by the district court or, in cases in which services are being provided pursuant to chapter 252B, if the child support recovery unit approves the request.

90 Acts, ch 1123, §1; 93 Acts, ch 78, §11; 94 Acts, ch 1171, §24; 97 Acts, ch 41, §32

Referred to in §252D.31

#### **252D.9 Sums subject to immediate withholding.**

Specified sums shall be deducted from the obligor's income sufficient to pay the support obligation and any judgment established or delinquency accrued under the support order. The amount withheld pursuant to an income withholding order or notice of order for income withholding shall not exceed the amount specified in 15 U.S.C. § 1673(b).

90 Acts, ch 1123, §2; 92 Acts, ch 1195, §206; 97 Acts, ch 175, §58

#### **252D.10 Notice of immediate income withholding.**

An order for support entered after November 1, 1990, shall contain the notice of immediate income withholding. However, this subchapter is sufficient notice for implementation of immediate income withholding without any further notice.

90 Acts, ch 1123, §3; 97 Acts, ch 175, §59; 2005 Acts, ch 112, §9

**252D.11** Repealed by 97 Acts, ch 175, § 69. See § 252D.31.

**252D.12 through 252D.14** Repealed by 93 Acts, ch 78, §47. See § 252D.17 and 252D.18.

**252D.15** Reserved.

### SUBCHAPTER III

#### GENERAL PROVISIONS

#### **252D.16 Definitions.**

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

1. "Income" means all of the following:

a. Any periodic form of payment due an individual, regardless of source, including but not limited to wages, salaries, commissions, bonuses, workers' compensation, disability payments, payments pursuant to a pension or retirement program, and interest.

b. A sole payment or lump sum as provided in section 252D.18C, including but not limited to payment from an estate including inheritance, or payment for personal injury or property damage.

c. Irregular income as defined in section 252D.18B.

2. "Payor of income" or "payor" means and includes, but is not limited to, an obligor's employer, trustee, the state of Iowa and all governmental subdivisions and agencies and any other person from whom an obligor receives income.

3. "Support" or "support payments" means any amount which the court or administrative agency may require a person to pay for the benefit of a child under a temporary order or a final judgment or decree entered under chapter 232, 234, 252A, 252C, 252F, 252H, 598, 600B, or any other comparable chapter, and may include child support, maintenance, medical support as defined in chapter 252E, spousal support, and any other term used to

describe these obligations. These obligations may include support for a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability. The obligations may include support for a child eighteen or more years of age with respect to whom a child support order has been issued pursuant to the laws of a foreign jurisdiction. These obligations shall not include amounts for a postsecondary education subsidy as defined in section 598.1.

97 Acts, ch 175, §60; 2005 Acts, ch 112, §10

Referred to in §8B.32, 84A.5, 252B.1, 252B.13A, 252B.14, 252B.24, 252D.1, 252D.16A, 252I.1, 252J.1, 627.11, 627.12

#### **252D.16A Income withholding order — child support recovery unit.**

If support payments are ordered under this chapter, chapter 232, 234, 252A, 252C, 252E, 252F, 252H, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction, and if income withholding relative to such support payments is allowed under this chapter, the child support recovery unit may enter an ex parte order notifying the person whose income is to be withheld of the procedure to file a motion to quash the order for income withholding, and ordering the withholding of sums to be deducted from the delinquent person's income as defined in section 252D.16 sufficient to pay the support obligation and requiring the payment of such sums to the collection services center. The child support recovery unit shall include the amount of any delinquency and the amount to be withheld in the notice provided to the obligor pursuant to section 252D.17A. Notice of income withholding shall be provided to the obligor and to the payor of income pursuant to sections 252D.17 and 252D.17A.

2006 Acts, ch 1119, §3, 11

#### **252D.17 Notice to payor of income — duties and liability — criminal penalty.**

1. The district court shall provide notice by sending a copy of the order for income withholding or a notice of the order for income withholding to the obligor and the obligor's payor of income by regular mail, with proof of service completed according to rule of civil procedure 1.442. The child support recovery unit shall provide notice of the income withholding order by sending a notice of the order to the obligor's payor of income by regular mail or by electronic means. Proof of service may be completed according to rule of civil procedure 1.442. The child support recovery unit's notice of the order may be sent to the payor of income on the same date that the order is sent to the clerk of court for filing. In all other instances, the income withholding order shall be filed with the clerk of court prior to sending the notice of the order to the payor of income. In addition to the amount to be withheld for payment of support, the order or the notice of the order shall be in a standard format as prescribed by the unit and shall include all of the following information regarding the duties of the payor in implementing the withholding order:

a. The withholding order or notice of the order for income withholding for child support or child support and spousal support has priority over a garnishment or an assignment for any other purpose.

b. As reimbursement for the payor's processing costs, the payor may deduct a fee of no more than two dollars for each payment in addition to the amount withheld for support. The payor of income is not required to vary the payroll cycle to comply with the frequency of payment of a support order.

c. The amount withheld for support, including the processing fee, shall not exceed the amounts specified in 15 U.S.C. § 1673(b).

d. The income withholding order is binding on an existing or future payor of income ten days after receipt of the copy of the order or the notice of the order, and is binding whether or not the copy of the order received is file-stamped.

e. The payor shall send the amounts withheld to the collection services center or the clerk of the district court pursuant to section 252B.14 within seven business days of the date the obligor is paid. "Business day" means a day on which state offices are open for regular business.

f. The payor may combine amounts withheld from the obligors' income in a single payment to the clerk of the district court or to the collection services center, as appropriate.

Whether combined or separate, payments shall be identified by the name of the obligor, account number, amount, and the date withheld. If payments for multiple obligors are combined, the portion of the payment attributable to each obligor shall be specifically identified.

g. The withholding is binding on the payor until further notice by the court or the child support recovery unit.

h. If the payor, with actual knowledge and intent to avoid legal obligation, fails to withhold income or to pay the amounts withheld to the collection services center or the clerk of court in accordance with the provisions of the order, the notice of the order, or the notification of payors of income provisions established in section 252B.13A, the payor commits a simple misdemeanor for a first offense and is liable for the accumulated amount which should have been withheld, together with costs, interest, and reasonable attorney fees related to the collection of the amounts due from the payor. For each subsequent offense prescribed under this paragraph, the payor commits a serious misdemeanor and is liable for the accumulated amount which should have been withheld, together with costs, interest, and reasonable attorney fees related to the collection of the amounts due from the payor.

i. The payor shall promptly notify the court or the child support recovery unit when the obligor's employment or other income terminates, and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

j. Any payor who discharges an obligor, refuses to employ an obligor, or takes disciplinary action against an obligor based upon income withholding is guilty of a simple misdemeanor. A withholding order or the notice of the order for income withholding has the same force and effect as any other district court order, including but not limited to contempt of court proceedings for noncompliance.

k. (1) Beginning July 1, 1997, if a payor of income does business in another state through a registered agent and receives a notice of income withholding issued by another state, the payor shall, and beginning January 1, 1998, any payor of income shall, withhold funds as directed in a notice issued by another state, except that a payor of income shall follow the laws of the obligor's principal place of employment when determining all of the following:

(a) The payor's fee for processing an income withholding payment.

(b) The maximum amount permitted to be withheld from the obligor's income.

(c) The time periods for implementing the income withholding order and forwarding the support payments.

(d) The priorities for withholding and allocating income withheld for multiple child support obligees.

(e) Any withholding terms or conditions not specified in the order.

(2) A payor of income who complies with an income withholding notice that is regular on its face shall not be subject to any civil liability to any individual or agency for conduct in compliance with the notice.

l. The payor of income shall comply with chapter 252K when receiving a notice of income withholding from another state.

2. The department shall establish criteria and a phased-in schedule to require, no later than June 30, 2015, payors of income to electronically transmit the amounts withheld under an income withholding order. The department shall assist payors of income in complying with the required electronic transmission, and shall adopt rules setting forth procedures for use in electronic transmission of funds, and exemption from use of electronic transmission taking into consideration any undue hardship electronic transmission creates for payors of income.

93 Acts, ch 78, §12; 95 Acts, ch 52, §5, 6; 96 Acts, ch 1141, § 10, 11; 97 Acts, ch 175, §61, 70, 72; 98 Acts, ch 1170, §8; 2000 Acts, ch 1125, §2, 4; 2006 Acts, ch 1119, §4; 2010 Acts, ch 1031, §337; 2013 Acts, ch 30, §55; 2013 Acts, ch 140, §60

Referred to in §252D.1, 252D.16A, 252D.18, 252D.18A

Section amended

**252D.17A Notice to obligor of implementation of income withholding order.**

The child support recovery unit or the district court shall send a notice of the income withholding order to the obligor at the time the notice is sent to the payor of income.

97 Acts, ch 175, §62

Referred to in §252D.16A, 252D.18

**252D.18 Modification or termination of withholding.**

1. The court or the child support recovery unit may, by ex parte order, modify a previously entered income withholding order if the court or the unit determines any of the following:

- a. There has been a change in the amount of the current support obligation.
- b. The amount required to be withheld under the income withholding order is in error.
- c. Any past due support debt has been paid in full. Should a delinquency later accrue, the withholding order may be modified to secure payment toward the delinquency.
- d. There has been a change in the rules adopted by the department pursuant to chapter 17A regarding the amount of income to be withheld to pay a delinquency.

2. The child support recovery unit may modify an amount specified in an income withholding order or notice of income withholding by providing notice to the payor of income and the obligor pursuant to sections 252D.17 and 252D.17A.

3. The court or the child support recovery unit may, by ex parte order, terminate an income withholding order when the current support obligation has terminated and when the delinquent support obligation has been fully satisfied as applicable to all of the children covered by the income withholding order. The unit may, by ex parte order, terminate an income withholding order when the unit will no longer be providing services under chapter 252B, or when a foreign jurisdiction will be providing services under Tit. IV-D of the federal Social Security Act.

4. In no case shall payment of overdue support be the sole basis for termination of withholding.

90 Acts, ch 1123, §8; 91 Acts, ch 177, §6; 92 Acts, ch 1195, §106; 93 Acts, ch 78, §13; 98 Acts, ch 1170, §44; 2006 Acts, ch 1119, §5, 11; 2011 Acts, ch 67, §1

**252D.18A Multiple income withholding orders — amounts withheld by payor.**

When the obligor is responsible for paying more than one support obligation and the payor of income has received more than one income withholding order or notice of an order for the obligor, the payor shall withhold amounts in accordance with all of the following:

1. The total of all amounts withheld shall not exceed the amounts specified in 15 U.S.C. § 1673(b). For orders or notices issued by the child support recovery unit, the limit for the amount to be withheld shall be specified in the order or notice.

2. As reimbursement for the payor's processing costs, the payor may deduct a fee of no more than two dollars for each payment withheld in addition to the amount withheld for support.

3. Priority shall be given to the withholding of current support rather than delinquent support. The payor shall not allocate amounts withheld in a manner which results in the failure to withhold an amount for one or more of the current support obligations.

a. To arrive at the amount to be withheld for each obligee, the payor shall total the amounts due for current support under the income withholding orders and the notices of orders and determine the proportionate share for each obligee. The proportionate share shall be determined by dividing the amount due for current support for each order or notice of order by the total due for current support for all orders and notices of orders. The results are the percentages of the obligor's net income which shall be withheld for each obligee.

b. If, after completing the calculation in paragraph "a", the withholding limit specified under subsection 1 has not been attained, the payor shall total the amounts due for arrearages and determine the proportionate share for each obligee. The proportionate share amounts shall be established utilizing the procedures established in paragraph "a" for current support obligations.

4. The payor shall identify and report payments by the obligor's name, account number, amount, and date withheld pursuant to section 252D.17. If payments for multiple obligees

are combined, the portion of the payment attributable to each obligee shall be specifically identified only if the payor is directed to do so by the child support recovery unit.

93 Acts, ch 78, §14; 96 Acts, ch 1141, §12, 13; 97 Acts, ch 175, §63, 64; 98 Acts, ch 1170, §9; 2002 Acts, ch 1018, §1, 2; 2009 Acts, ch 15, §1

#### **252D.18B Irregular income.**

When payment of income is irregular, and an order for immediate or mandatory income withholding has been entered by the child support recovery unit or the district court, the income payor shall withhold income equal to the total that would have been withheld had there been regular monthly income. The amounts withheld shall not exceed the amounts specified in 15 U.S.C. § 1673(b). For the purposes of this section, an income source is irregular when there are periods in excess of one month during which the income payor makes no payment to the obligor and the periods are not the result of termination or suspension of employment.

93 Acts, ch 78, §15

Referred to in §252D.16

#### **252D.18C Withholding from lump sum payments.**

The child support recovery unit or the district court may enter an ex parte order for income withholding when the obligor is paid by a lump sum income source. When a sole payment is made or payment occurs at two-month or greater intervals, the withholding order may include all current and delinquent support due through the current month, but shall not exceed the amounts specified in 15 U.S.C. § 1673(b).

93 Acts, ch 78, §16

Referred to in §252D.16

#### **252D.19 Other remedies.**

The remedies provided in this chapter do not exclude the use of other civil or criminal remedies in enforcing support obligations.

90 Acts, ch 1123, §9

#### **252D.19A Disparity between order and pay dates — not delinquent.**

1. An obligor whose support payments are automatically withheld from the obligor's paycheck shall not be delinquent or in arrears if all of the following conditions are met:

a. Any delinquency or arrearage is caused solely by a disparity between the schedules of the obligor's regular pay dates and the scheduled date the support is due.

b. The amount calculated to be withheld is such that the total amount of current support to be withheld from the paychecks of the obligor and the amount ordered to be paid in the support order are the same on an annual basis.

c. The automatic deductions for support are continuous and occurring.

2. If the unit takes an enforcement action during a calendar year against an obligor and the obligor is not delinquent or in arrears solely due to the applicability of this section to the obligor, upon discovering the circumstances, the unit shall promptly discontinue the enforcement action.

97 Acts, ch 175, §65

#### **252D.20 Administration of income withholding procedures.**

The child support recovery unit is designated as the entity of the state to administer income withholding in accordance with the procedures specified for keeping adequate records to document, track, and monitor support payments on cases subject to Tit. IV-D of the federal Social Security Act. Until October 1, 1999, the clerks of the district court are designated as the entities for administering income withholding on cases which are not subject to Tit. IV-D. Beginning October 1, 1999, the collection services center is designated as the entity for administering income withholding for cases which are not subject to Tit. IV-D. The collection services center's responsibilities for administering income withholding in cases not subject to Tit. IV-D are limited to the receipt, recording, and disbursement of income withholding payments and to responding to requests for information on the current status of support

payments pursuant to section 252B.13A. Notwithstanding section 622.53, in cases where the court or the child support recovery unit is enforcing a foreign judgment through income withholding, a certified copy of the underlying judgment is sufficient proof of authenticity.

90 Acts, ch 1123, §10; 92 Acts, ch 1195, §404; 98 Acts, ch 1170, §10; 2010 Acts, ch 1061, §180

**252D.21 Penalty for misrepresentation.**

A person who knowingly makes a false statement or representation of a material fact or knowingly fails to disclose a material fact in order to secure an income withholding order or notice of income withholding against another person and to receive support payments or additional support payments pursuant to this chapter, is guilty, upon conviction, of a serious misdemeanor.

90 Acts, ch 1123, §11; 97 Acts, ch 175, §66

**252D.22 Rules.**

The department shall adopt the administrative rules necessary to implement the provisions of this chapter as they pertain to the operations of the child support recovery unit.

90 Acts, ch 1123, §12

**252D.23 Filing of withholding order — order effective as district court order.**

An income withholding order entered by the child support recovery unit pursuant to this chapter shall be filed with the clerk of the district court. In lieu of any signature on the order which may otherwise be required by law or rule, the order shall have affixed the name and address of the appropriate child support office. For the purposes of demonstrating compliance by the payor of income, the copy of the withholding order or the notice of the order received, whether or not the copy of the order is file-stamped, shall have all the force, effect, and attributes of a docketed order of the district court including, but not limited to, availability of contempt of court proceedings against a payor of income for noncompliance. However, any information contained in the income withholding order or the notice of the order related to the amount of the accruing or accrued support obligation which does not reflect the correct amount of support due does not modify the underlying support judgment.

92 Acts, ch 1195, §207; 94 Acts, ch 1171, §25; 95 Acts, ch 52, §7; 96 Acts, ch 1141, §14; 97 Acts, ch 175, §67; 99 Acts, ch 127, §2

**252D.24 Applicability to support orders of foreign jurisdictions.**

1. An income withholding order may be entered to enforce a support order of a foreign jurisdiction. The foreign support order may be entered and filed with the clerk of the district court at the time the income withholding order is entered. Entry of the foreign support order under this subsection does not constitute registration of the order.

2. Income withholding for a support order issued by a foreign jurisdiction is governed by chapter 252K, article 5 or 6, and this chapter, as appropriate.

93 Acts, ch 78, §17; 97 Acts, ch 175, §71; 2005 Acts, ch 112, §11

**252D.25 Limitations on scope of proceedings.**

1. Issues related to visitation, custody, or other provisions not related to the support provisions of a support order are not grounds for a motion to quash, revoke, suspend, or stay a withholding order.

2. Support orders shall not be modified under a motion to quash a withholding order.

93 Acts, ch 78, §18

**252D.26 through 252D.29 Reserved.**

**252D.30 Ex parte order — provisions for medical support.**

An ex parte order entered under this chapter may also include provisions for enforcement of medical support when medical support provisions are included in the support order. The ex parte order may require income withholding of a dollar amount for medical support or

implementation of provision for dependent coverage under a health benefit plan pursuant to chapter 252E.

93 Acts, ch 78, §19

**252D.31 Motion to quash.**

An obligor under this chapter may move to quash an income withholding order or a notice of income withholding by filing a motion to quash with the clerk of court.

1. Grounds for contesting a withholding order under this chapter include all of the following:

a. A mistake of fact, which for purposes of this chapter means an error in the amount withheld or the amount of the withholding or the identity of the obligor.

b. For immediate withholding only, the conditions for exception to immediate income withholding as defined under section 252D.8 existed at the time of implementation of the withholding.

2. The clerk of the district court shall schedule a hearing on the motion to quash for a time not later than seven days after the filing of the motion to quash and the notice of the motion to quash. The clerk shall mail to the parties copies of the motion to quash, the notice of the motion to quash, and the order scheduling the hearing.

3. The payor shall withhold and transmit the amount specified in the order or notice of the order of income withholding to the clerk of the district court or the collection services center, as appropriate, until the notice that a motion to quash has been granted is received.

97 Acts, ch 175, §68

Referred to in §252E.6A

**CHAPTER 252E**

**MEDICAL SUPPORT**

Referred to in §252A.3, 252A.6A, 252B.3, 252B.4, 252B.5, 252B.9, 252C.3, 252C.4, 252D.1, 252D.16, 252D.16A, 252D.30, 252F.3, 252F.4, 252F.5, 252H.2, 252H.8, 252H.9, 252H.14A, 252H.15, 252I.2, 252J.1, 514C.9, 598.21B, 598.21C, 598.21E

Effective for support orders entered on or after July 1, 1990;

prior orders; §252E.16

Pursuant to federal law, either parent may be ordered to provide medical support; 2008 Acts, ch 1019, §19

252E.1	Definitions.	252E.6A	Motion to quash.
252E.1A	Establishing and modifying orders for medical support.	252E.7	Insurer authorization.
252E.2	Order for medical support.	252E.8	Releases of information.
252E.2A	Satisfaction of medical support order.	252E.9	Responsibilities of the obligor.
252E.3	Health benefit coverage of obligee.	252E.10	Responsibility of the department.
252E.4	Order to employer.	252E.11	Assignment.
252E.5	Effect of order on employer.	252E.12	Enforcement.
252E.6	Duration of health benefit plan coverage.	252E.13	Modification of support order.
		252E.14	Child support.
		252E.15	Rulemaking authority — compliance.
		252E.16	Scope and effect.

**252E.1 Definitions.**

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

1. “Accessible” means any of the following, unless otherwise provided in the support order:

a. The health benefit plan does not have service area limitations or provides an option not subject to service area limitations.

b. The health benefit plan has service area limitations and the dependent lives within thirty miles or thirty minutes of a network primary care provider.

2. “Basic coverage” means coverage provided under a health benefit plan that at a

minimum provides coverage for emergency care, inpatient and outpatient hospital care, physician services whether provided within or outside a hospital setting, and laboratory and x-ray services.

3. “*Child*” means a person for whom child or medical support may be ordered pursuant to chapter 234, 239B, 252A, 252C, 252F, 252H, 252K, 598, 600B, or any other chapter of the Code or pursuant to a comparable statute of a foreign jurisdiction.

4. “*Department*” means the department of human services, which includes but is not limited to the child support recovery unit, or any comparable support enforcement agency of another state.

5. “*Dependent*” means a child, or an obligee for whom a court may order coverage by a health benefit plan pursuant to section 252E.3.

6. “*Enroll*” means to be eligible for and covered by a health benefit plan.

7. “*Health benefit plan*” means any policy or contract of insurance, indemnity, subscription or membership issued by an insurer, health service corporation, health maintenance organization, or any similar corporation, organization, or a self-insured employee benefit plan, for the purpose of covering medical expenses. These expenses may include but are not limited to hospital, surgical, major medical insurance, dental, optical, prescription drugs, office visits, or any combination of these or any other comparable health care expenses.

8. “*Insurer*” means any entity which provides a health benefit plan.

9. “*Medical support*” means either the provision of a health benefit plan, including a group or employment-related or an individual health benefit plan, or a health benefit plan provided pursuant to chapter 514E, to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, or the payment to the obligee of a monetary amount in lieu of a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid. Medical support is not alimony. Medical support which consists of payment of a monetary amount in lieu of a health benefit plan is also an obligation separate from any monetary amount a parent is ordered to pay for uncovered medical expenses pursuant to the guidelines established pursuant to section 598.21B.

10. “*National medical support notice*” means a notice as prescribed under 42 U.S.C. § 666(a)(19) or a substantially similar notice, that is issued and forwarded by the department to enforce medical support provisions of a support order.

11. “*Obligee*” means a parent or another natural person legally entitled to receive a support payment on behalf of a child.

12. “*Obligor*” means a parent or another natural person legally responsible for the support of a dependent.

13. “*Order*” means a support order entered pursuant to chapter 234, 252A, 252C, 252F, 252H, 252K, 598, 600B, or any other support chapter, or pursuant to a comparable statute of a foreign jurisdiction, or an ex parte order entered pursuant to section 252E.4. “*Order*” also includes a notice of such an order issued by the department.

14. “*Plan administrator*” means the employer or sponsor that offers the health benefit plan or the person to whom the duty of plan administrator is delegated by the employer or sponsor offering the health benefit plan, by written agreement of the parties.

15. “*Primary care provider*” means a physician who provides primary care who is a family or general practitioner, a pediatrician, an internist, an obstetrician, or a gynecologist.

90 Acts, ch 1224, §25; 92 Acts, ch 1195, §505; 93 Acts, ch 78, §20; 93 Acts, ch 79, §46; 97 Acts, ch 41, §32; 2000 Acts, ch 1096, §1; 2002 Acts, ch 1018, §3; 2007 Acts, ch 218, §163, 187; 2008 Acts, ch 1019, §18, 20

Referred to in §252C.1, 252E.6A, 514C.9, 600B.25

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

### **252E.1A Establishing and modifying orders for medical support.**

This section shall apply to all initial or modified orders for support entered under chapter 234, 252A, 252C, 252F, 252H, 598, 600B, or any other applicable chapter.

1. An order or judgment that provides for temporary or permanent support for a child shall include a provision for medical support for the child as provided in this section.

2. The court shall order as medical support for the child a health benefit plan if available to either parent at the time the order is entered or modified. A plan is available if the plan is accessible and the cost of the plan is reasonable.

a. The cost of a health benefit plan is considered reasonable, and such amount shall be stated in the order, if one of the following applies:

(1) The premium cost for a child to the parent ordered to provide the plan does not exceed five percent of that parent's gross income or the child support guidelines established pursuant to section 598.21B specifically provide an alternative income-based numeric standard for determining the reasonable cost of the premium, in which case the reasonable cost of the premium as determined by the standard specified by the child support guidelines shall apply.

(2) The premium cost for a child exceeds the amount specified in subparagraph (1) and that parent consents or does not object to entry of that order.

b. For purposes of this section, "*gross income*" has the same meaning as gross income for calculation of support under the guidelines established under section 598.21B.

c. For purposes of this section, "*the premium cost for a child to the parent*" ordered to provide the plan means the amount of the premium cost for family coverage to the parent which is in excess of the premium cost for single coverage, regardless of the number of individuals covered under the plan. However, this paragraph shall not be interpreted to reduce the amount of the health insurance premium deduction a parent may be entitled to when calculating the amount of a child support obligation under Iowa court rule 9.5 of the child support guidelines.

3. If a health benefit plan is not available at the time of the entry of the order, the court shall order a reasonable monetary amount in lieu of a health benefit plan, which amount shall be stated in the order. For purposes of this subsection, a reasonable amount means five percent of the gross income of the parent ordered to provide the monetary amount for medical support or, if the child support guidelines established pursuant to section 598.21B specifically provide an alternative income-based numeric standard for determining the reasonable amount, a reasonable amount means the amount as determined by the standard specified by the child support guidelines. This subsection shall not apply in any of the following circumstances:

a. If the parent's monthly support obligation established pursuant to the child support guidelines prescribed by the supreme court pursuant to section 598.21B is the minimum obligation amount. If this paragraph applies, the court shall order the parent to provide a health benefit plan when a plan becomes available for which there is no premium cost for a child to the parent.

b. If subsection 7, paragraph "d", "e", or "f" applies.

4. If the court orders the custodial parent to provide a health benefit plan under subsection 2, the court may also order the noncustodial parent to provide a reasonable monetary amount in lieu of a health benefit plan. For purposes of this subsection, a reasonable monetary amount means an amount not to exceed the lesser of a reasonable amount as described in subsection 3, or the premium cost of coverage for the child to the custodial parent as described in subsection 2, paragraph "c".

5. Notwithstanding the requirements of this section, the court may order provisions in the alternative to those provided in this section to address the health care needs of the child if the court determines that extreme circumstances so require and documents the court's written findings in the order.

6. An order, decree, or judgment entered before July 1, 2009, that provides for the support of a child may be modified in accordance with this section.

7. If the child support recovery unit is providing services under chapter 252B and initiating an action to establish or modify support, all of the following shall also apply:

a. If a health benefit plan is available as described in subsection 2 to the noncustodial parent, the unit shall seek an order for the noncustodial parent to provide the plan.

b. If a health benefit plan is available as described in subsection 2 to the custodial parent and not to the noncustodial parent, the unit shall seek an order for the custodial parent to provide the plan.

c. If a health benefit plan is available as described in subsection 2 to each parent, and if there is an order for joint physical care, the unit shall seek an order for the parent currently

ordered to provide a health benefit plan to provide the plan. If there is no current order for a health benefit plan for the child, the unit shall seek an order for the parent who is currently providing a health benefit plan to provide the plan.

d. If a health benefit plan is not available, and the noncustodial parent does not have income which may be subject to income withholding for collection of a reasonable monetary amount in lieu of a health benefit plan at the time of the entry of the order, the unit shall seek an order that the noncustodial parent provide a health benefit plan when a plan becomes available at reasonable cost, and the order shall specify the amount of reasonable cost as defined in subsection 2.

e. If a health benefit plan is not available, and the noncustodial parent is receiving assistance or is residing with any child receiving assistance as provided in section 252E.2A, subsection 1, paragraph “c”, subparagraph (3) or (4), the unit shall seek an order that the noncustodial parent shall provide a health benefit plan when a plan becomes available for which there is no premium cost for a child to the parent.

f. This section shall not apply to chapter 252H, subchapter IV.

2007 Acts, ch 218, §164, 187; 2008 Acts, ch 1019, §11 – 14, 18, 20

Referred to in §252B.5, 598.21B, 598.21C

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

### **252E.2 Order for medical support.**

1. An order requiring the provision of coverage under a health benefit plan is authorization for enrollment of the dependent if the dependent is otherwise eligible to be enrolled. The dependent’s eligibility and enrollment for coverage under such a plan shall be governed by all applicable terms and conditions, including, but not limited to, eligibility and insurability standards. The dependent, if eligible, shall be provided the same coverage as the obligor.

2. An insurer who is subject to the federal Employee Retirement Income Security Act, as codified in 29 U.S.C. § 1169, shall provide benefits in accordance with that section which meet the requirements of a qualified medical child support order. For the purposes of this subsection “*qualified medical child support order*” means and includes a medical child support order as defined in 29 U.S.C. § 1169, or a child support order which creates or recognizes the existence of a child’s right to, or assigns to a child the right to, receive benefits for which a participant or child is eligible under a group health plan or a notice of such an order issued by the department, and which specifies the following:

a. The name and the last known mailing address of the participant and the name and mailing address of each child covered by the order except that, to the extent provided in the order, the name and mailing address of an official of the department may be substituted for the mailing address of the child.

b. A reasonable description of the type of coverage to be provided to each child, or the manner in which the type of coverage is to be determined.

c. The period during which the coverage applies.

3. The obligor shall take all actions necessary to enroll and maintain coverage under a health benefit plan for a dependent at the obligor’s present and all future places of employment.

4. A medical support order of a foreign jurisdiction may be entered or filed with the clerk of the district court. However, entry of such a medical support order under this subsection does not constitute registration of that medical support order.

90 Acts, ch 1224, §26; 92 Acts, ch 1195, §506; 93 Acts, ch 78, §21; 94 Acts, ch 1171, §26; 97 Acts, ch 175, §73; 98 Acts, ch 1170, §32; 2000 Acts, ch 1096, §2; 2002 Acts, ch 1018, §4

Referred to in §252E.4, 252E.8

### **252E.2A Satisfaction of medical support order.**

This section shall apply if the child support recovery unit is providing services under chapter 252B.

1. Notwithstanding any law to the contrary and without a court order, a medical support order for a child shall be deemed satisfied with regard to the department, the child, the obligor, and the obligee for the period during which all of the following conditions are met:

- a. The order is issued under any applicable chapter of the Code.
- b. The unit is notified that the conditions of paragraph “c” are met and the parent ordered to provide medical support submits a written statement to the unit that the requirements of paragraph “c” are met.
- c. The parent ordered to provide medical support meets at least one of the following conditions:
  - (1) The parent is an inmate of an institution under the control of the department of corrections or a comparable institution in another state.
  - (2) The parent’s monthly child support obligation under the guidelines established pursuant to section 598.21B is the minimum obligation amount.
  - (3) The parent is a recipient of assistance under chapter 239B or 249A, or under comparable laws of another state.
  - (4) The parent is residing with any child for whom the parent is legally responsible and that child is a recipient of assistance under chapter 239B, 249A, or 514I, or under comparable laws of another state. For purposes of this subparagraph, “*legally responsible*” means the parent has a legal obligation to the child as specified in Iowa court rule 9.7 of the child support guidelines.
- d. The unit files a notice of satisfaction with the clerk of the district court. The effective date of the satisfaction shall be stated in the notice and the effective date shall be no later than forty-five days after the unit issues the notice of satisfaction.
  2. If a medical support order is satisfied under subsection 1, the satisfaction shall continue until all of the following apply:
    - a. The unit is notified that none of the conditions specified in subsection 1, paragraph “c”, still applies.
    - b. The unit files a satisfaction termination notice that the requirements for a satisfaction under this section no longer apply. The effective date shall be stated in the satisfaction termination notice and the effective date shall be no later than forty-five days after the unit issues the satisfaction termination notice.
  3. The unit shall mail a copy of the notice of satisfaction and the satisfaction termination notice to the last known address of the obligor and obligee.
  4. The department of human services may match data for enrollees of the hawk-i program created pursuant to chapter 514I with data of the unit to assist the unit in implementing this section.
  5. An order, decree, or judgment entered or pending on or before July 1, 2009, that provides for the support of a child may be satisfied as provided in this section.

2007 Acts, ch 218, §165, 187; 2008 Acts, ch 1019, §15 – 18, 20

Referred to in §252E.1A

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

### **252E.3 Health benefit coverage of obligee.**

For cases for which services are being provided pursuant to chapter 252B, the order may require an obligor providing a health benefit plan for a child to also provide a health benefit plan for the benefit of an obligee if the obligee is eligible for enrollment under the plan in which the child or the obligor is enrolled, and if the plan is available at no additional cost.

90 Acts, ch 1224, §27

Referred to in §252E.1, 252E.6

### **252E.4 Order to employer.**

1. When a support order requires an obligor to provide coverage under a health benefit plan, the district court or the department may enter an ex parte order directing an employer to take all actions necessary to enroll an obligor’s dependent for coverage under a health benefit plan or may include the provisions in an ex parte income withholding order or notice of income withholding pursuant to chapter 252D. The child support recovery unit, where appropriate, shall issue a national medical support notice to an employer within two business days after the date information regarding a newly hired employee is entered into the centralized employee registry and matched with a noncustodial parent in the case being

enforced by the unit, or upon receipt of other employment information for such parent. The department may amend the information in the ex parte order or may amend or terminate the national medical support notice regarding health insurance provisions if necessary to comply with health insurance requirements including but not limited to the provisions of section 252E.2, subsection 2, or to correct a mistake of fact.

2. The obligee, district court, or department may forward either the support order containing the provision for coverage under a health benefit plan or the ex parte order provided for in subsection 1 to the obligor's employer.

3. This chapter shall be constructive notice to the obligor of enforcement and further notice prior to enforcement is not required.

4. The order requiring coverage is binding on all future employers or insurers if the dependent is eligible to be enrolled in the health benefit plan under the applicable plan terms and conditions.

90 Acts, ch 1224, §28; 93 Acts, ch 78, §22; 96 Acts, ch 1141, §24; 97 Acts, ch 175, §74; 2002 Acts, ch 1018, §5; 2007 Acts, ch 218, §166, 187; 2008 Acts, ch 1019, §18, 20

Referred to in §252E.1, 252E.5, 252E.6A

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

### **252E.5 Effect of order on employer.**

1. When the order has been forwarded to the obligor's employer pursuant to section 252E.4, the order is binding on the employer and the employer's insurer to the extent that the dependent is eligible to be enrolled in the plan under the applicable terms and conditions of the health benefit plan and the standard enrollment guidelines of the insurer. The employer shall allow enrollment of the dependent at any time, notwithstanding any enrollment season restrictions. If a provision of this section conflicts with a provision in the national medical support notice, or in subsection 8, the provision in the notice and subsection 8 shall apply.

2. The employer shall forward a copy of the order to the insurer and request enrollment of the dependent in the health benefit plan. If the obligor fails to apply to obtain coverage for the dependent, the employer shall accept an application to enroll a dependent which has been signed by the obligee or other legal custodian of a child or by the department. Within sixty days of receipt of the order or within sixty days of receipt of application, whichever is earlier, the insurer shall determine whether the dependent is eligible for enrollment under the plan and shall notify the employer of the dependent's eligibility status. If more than one plan is offered by the employer, the dependent shall be enrolled in the health benefit plan in which the obligor is enrolled. However, if more than one plan is offered to the obligor, the plan selected shall provide coverage which is accessible to the dependent.

3. The employer shall withhold from the employee's compensation, the employee's share, if any, of premiums for the health benefit plan in an amount that does not exceed the amount specified in the national medical support notice or order or the amount specified in 15 U.S.C. § 1673(b) and which is consistent with federal law. The employer shall forward the amount withheld to the insurer.

4. Within thirty days of receipt of an order that requires an obligor to enroll a dependent in a health benefit plan, the obligor's employer shall provide the following information, as applicable, regarding the enrollment status of the dependent to the obligor, the obligee, or other legal custodian of the child, and the department:

a. That the dependent has been enrolled in a health benefit plan.

b. That the dependent is not eligible for enrollment and the reasons that the dependent is not eligible to be enrolled.

c. That the order has been forwarded to the insurer and a determination of eligibility for enrollment has not been made.

5. If the dependent has been enrolled in a health benefit plan, all of the following information shall be provided:

a. The name of the insurer providing the health benefit plan.

b. The dependent's effective date of coverage.

c. The health benefit plan or account number.

d. The type of health benefit plan under which the dependent has been enrolled,

including whether dental, optical, office visits, and prescription drugs are covered services. Additionally, the response shall include a brief description of the applicable deductibles, coinsurance, waiting periods for preexisting medical conditions, and other significant terms or conditions which materially affect the coverage.

6. a. An employer shall not revoke enrollment or eliminate coverage for a dependent unless the employer is provided with satisfactory written evidence that one of the following conditions exists:

(1) A court or administrative order requiring coverage in a health benefit plan is no longer in effect.

(2) The dependent is eligible for or will be enrolled in a comparable health benefit plan which will take effect no later than the effective date of revocation of enrollment in the other plan.

(3) The employer has eliminated dependent health coverage for all employees.

b. Nothing in this section requires an employer to maintain coverage for the dependent if the premiums are no longer being paid by the obligor because the employer no longer owes compensation to the obligor or because the obligor's employment has been terminated and the obligor has not elected to continue coverage.

c. If an order requiring that the obligor provide coverage under a health benefit plan for the dependent has been forwarded to the obligor's employer pursuant to section 252E.4, and the obligor's employment is terminated, the employer shall provide notice to the obligee and the department within ten days of termination of the obligor's employment.

7. If an order requiring that the obligor provide coverage under a health benefit plan for the dependent has been forwarded to the obligor's employer pursuant to section 252E.4, and the employer's health benefit plan is terminated either in its entirety or with respect to the obligor's insurance classification, or the employer has changed its insurer or become self-insured, the employer shall provide notice to the obligee or other legal custodian of the child and the department ten days prior to the termination or change in insurer.

8. If the department issues a national medical support notice to an employer or plan administrator, all of the following shall apply:

a. The employer and plan administrator shall comply with the provisions in the notice.

b. The employer and the plan administrator shall treat the notice as an application by the department for health benefit plan coverage for the dependent to the extent such application is required by the health benefit plan.

c. If the obligor named in the notice is not an employee of the employer, or if a health benefit plan is not offered or available to the employee, the employer shall notify the department, as provided in the notice, within twenty business days after the date of the notice.

d. If a health benefit plan is offered or available to the employee, the employer shall send the plan administrator's portion of the notice to each appropriate plan administrator within twenty business days after the date of the notice.

e. Upon notification from the plan administrator that the dependent is enrolled, the employer shall either withhold and forward the premiums as provided in subsection 3, or shall notify the department that the enrollment cannot be completed due to limits established for withholding as provided in subsection 3.

f. If the plan administrator notifies the employer that the obligor is subject to a waiting period that expires more than ninety days from the date of receipt of the notice by the plan administrator or that the obligor is subject to a waiting period that is measured in a manner other than the passage of time, the employer shall notify the plan administrator when the obligor becomes eligible to enroll in the plan and that the notice requires enrollment in the plan of the dependent named in the notice.

g. The plan administrator shall enroll the dependent, and if necessary to enrollment of the dependent shall also enroll the obligor, in the plan selected in accordance with this paragraph. All of the following shall apply to the selection of the plan:

(1) If the obligor is enrolled in a health benefit plan that offers dependent coverage, that plan shall be selected.

(2) If the obligor is not enrolled in a plan or is not enrolled in a plan that offers dependent

coverage, and if only one plan with dependent coverage is offered by the employer, that plan shall be selected.

(3) If the obligor is not enrolled in a health benefit plan or is not enrolled in a health benefit plan that offers dependent coverage, if more than one plan with dependent coverage is offered by the employer, and if the notice is issued by the child support recovery unit, all of the following shall apply:

(a) If only one of the plans is accessible to the dependent, that plan shall be selected. If none of the plans with dependent coverage is accessible to the dependent, the unit shall amend or terminate the notice.

(b) If more than one of the plans is accessible to the dependent, the plan selected shall be the plan that provides basic coverage for which the employee's share of the premium is lowest.

(c) If more than one of the plans is accessible to the dependent but none of the accessible plans provides basic coverage, the plan selected shall be a plan that is accessible and for which the employee's share of the premium is lowest.

(d) If the employee's share of the premiums is the same under all plans described in subparagraph (b) or (c), the unit shall attempt to consult with the obligee when selecting the plan. If the obligee does not respond within ten days of the unit's attempt, the unit shall select a plan which shall be the plan's default option, if any, or the plan with the lowest deductibles and copayment requirements.

(4) If the obligor is not enrolled in a health benefit plan or is not enrolled in a health benefit plan that offers dependent coverage, if more than one plan with dependent coverage is offered by the employer, and if the notice is issued by the child support enforcement agency of another state, that agency shall select the plan as provided in paragraph "h", subparagraph (3).

*h.* Within forty business days after the date of the notice, the plan administrator shall do all of the following as directed by the notice:

(1) Complete the appropriate portion of the notice and return the portion to the department.

(2) If the dependent is or is to be enrolled, notify the obligor, the obligee, and the child and furnish the obligee with necessary information. Provide the child support recovery unit with the type of health benefit plan under which the dependent has been enrolled, including whether dental, optical, office visits, and prescription drugs are covered services.

(3) If more than one health benefit plan is available to the obligor and the obligor is not enrolled, forward plan descriptions and documents to the department and enroll the dependent, and if necessary the obligor, in the plan selected by the department or in any default option if the plan administrator has not received a selection from the department within twenty business days of the date the plan administrator returned the national medical support notice response to the department.

(4) If the obligor is subject to a waiting period that expires more than ninety days from the date of receipt of the notice by the plan administrator or if the obligor has not completed a waiting period that is measured in a manner other than the passage of time, notify the employer, the department, the obligor, and the obligee. Upon satisfaction of the period or requirement, complete the enrollment.

(5) Upon completion of the enrollment, notify the employer for a determination of whether the necessary employee share of the premium is available.

(6) If the plan administrator is subject to the federal Employee Retirement Income Security Act, as codified in 29 U.S.C. § 1169, or is subject to the federal Child Support Performance and Incentive Act of 1998, Pub. L. No. 105-200, § 401, subsection (e) or (f), and the plan administrator determines the notice does not constitute a qualified medical child support order, complete and send the response to the department and notify the obligor, the obligee, and the child of the specific reason for the determination.

9. This chapter does not preclude the exchange of required information between the department and employers or insurers through electronic data transfer.

90 Acts, ch 1224, §29; 94 Acts, ch 1171, §27; 2002 Acts, ch 1018, §6, 7; 2009 Acts, ch 15, §2; 2009 Acts, ch 41, §263

Referred to in §252E.8

#### **252E.6 Duration of health benefit plan coverage.**

1. A child is eligible for medical support for the duration of the obligor's child support obligation. However, the child's eligibility for coverage under a health benefit plan shall be governed by all applicable plan provisions including, but not limited to, eligibility and insurability standards.

2. For cases for which services are being provided pursuant to chapter 252B, the department shall notify the employer when there is no longer a current order for medical support in effect for which the department is responsible. However, termination of medical support ordered pursuant to section 252E.3 shall be governed by the insurer's health benefit plan provisions for termination and by applicable federal law.

90 Acts, ch 1224, §30; 2002 Acts, ch 1018, §8

#### **252E.6A Motion to quash.**

1. An obligor may move to quash the order to the employer under section 252E.4 by following the same procedures and alleging a mistake of a fact as provided in section 252D.31 or as provided in subsection 2. If the unit is enforcing an income withholding order and a medical support order simultaneously, any challenge to the income withholding order and medical support enforcement shall be filed and heard simultaneously.

2. The obligor may allege as a mistake of fact an error in the availability of dependent coverage under the health benefit plan because the coverage is not accessible to the dependent. Even if the plan is not accessible as defined in section 252E.1, the court may determine that the plan is substantially accessible if the obligee demonstrates that the dependent may receive a benefit under the plan. Section 252K.316 relating to evidence and procedure shall apply to the court proceeding.

3. The employer shall comply with the requirements of this chapter until the employer receives notice that a motion to quash has been granted, or that the unit has amended or terminated the national medical support notice.

97 Acts, ch 175, §75; 2002 Acts, ch 1018, §9

#### **252E.7 Insurer authorization.**

1. The entry of an order requiring a health benefit plan is authorization for enrollment of the dependent if the dependent is otherwise eligible to be enrolled. If the obligor fails to obtain coverage for a dependent, the insurer shall accept the signature of the obligee or other legal custodian of the child or of an employee of the department on the application for enrollment of the dependent under the health benefit plan. If the dependent is otherwise eligible to be enrolled in the plan pursuant to the applicable terms and conditions of the health benefit plan and the standard enrollment guidelines of the insurer, the insurer shall allow enrollment of the dependent at any time, notwithstanding any enrollment season restrictions.

2. An insurer shall not deny enrollment of a child under the health benefit plan of the obligor based on any of the following:

a. The child was born out of wedlock.

b. The child is not claimed as a dependent on the obligor's federal income tax form.

c. The child does not reside with the obligor or in the insurer's service area.

3. For purposes of processing claims for payment, the insurer shall accept the signature of the obligee or other legal custodian of the child or of an employee of the department as valid authorization for purposes of processing any medical expense claims on behalf of the dependent for payment or reimbursement of medical services rendered to the dependent.

4. The insurer shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed for actions taken in implementing this section including, but not limited to, the insurer's release of any information, or the payment of any claims

for services by the insurer, or the insurer's acceptance of applications for enrollment of the dependent and medical expense claims for the dependent which are signed by the obligee or an employee of the department pursuant to this section.

5. If a dependent has coverage under the health benefit plan of and through the insurer of the obligor, the insurer shall make payment directly to the obligee, the provider, or the department for claims submitted by the obligee, by the provider with the obligee's approval, or by the department.

6. Payments remitted to the obligor by the insurer for services received by the dependent shall be recoverable by the obligee or the department from the obligor if not properly paid by the obligor to the provider or the obligee.

90 Acts, ch 1224, §31; 94 Acts, ch 1171, §28

#### **252E.8 Releases of information.**

1. If an order for coverage under a health benefit plan has been forwarded pursuant to section 252E.5, the obligor's employer or insurer shall release to the obligee or other legal custodian of the child or the department, upon receiving a written request, the information necessary to complete an application, to file a claim for medical expenses of the dependent or to create a qualified medical child support order pursuant to section 252E.2, subsection 2.

2. The employer or insurer shall make available to the obligee or the department any necessary claim forms or enrollment membership cards if required to obtain services.

3. The obligor's employer and insurer shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed for any information released by such employer or insurer pursuant to this chapter.

4. The department may release to the obligor's employer or insurer or to the obligee information necessary to obtain, enforce, and collect medical support.

90 Acts, ch 1224, §32; 94 Acts, ch 1171, §29

#### **252E.9 Responsibilities of the obligor.**

1. For cases for which services are being provided pursuant to chapter 252B, an obligor who fails to maintain medical support for the benefit of the dependent as ordered shall be liable to the obligee or the department for any medical expenses incurred from the date of the court order. Proof of failure to maintain medical support constitutes a showing of increased need and provides a basis for the establishment of a monetary amount for medical support.

2. For cases for which services are being provided pursuant to chapter 252B, the obligor shall notify the obligee and the department within ten days of a change in the terms or conditions of coverage under a health benefit plan. Such changes may include, but are not limited to, a change in deductibles, coinsurance, preadmission notification requirements, coverage for dental, optical, office visits, prescription drugs, inpatient and outpatient hospitalization, and any other changes which materially affect the coverage. Costs incurred by the obligee or the department as a result of the obligor's failure to provide notification as required are recoverable from the obligor.

90 Acts, ch 1224, §33

#### **252E.10 Responsibility of the department.**

For cases for which services are being provided pursuant to chapter 252B, the department shall take steps required by federal regulations to implement and enforce an order for medical support.

90 Acts, ch 1224, §34

#### **252E.11 Assignment.**

If medical assistance is provided by the department to a dependent pursuant to chapter 249A, rights to medical support payments are assigned to the department.

90 Acts, ch 1224, §35; 93 Acts, ch 78, §23

Referred to in §249A.54, 252A.13, 598.21C, 598.34, 600B.38

**252E.12 Enforcement.**

For the purposes of enforcement pursuant to chapter 252B, medical support may be reduced to a dollar amount and may be collected through the same remedies available for the collection and enforcement of child support.

90 Acts, ch 1224, §36

**252E.13 Modification of support order.**

1. Subject to 28 U.S.C. § 1738B, when high potential for obtaining medical support exists, the obligee or the department may petition for a modification of the obligor's support order to include medical support or a monetary amount for medical support pursuant to this chapter.

2. In addition, if a support order does not provide medical support as defined in this chapter or equivalent medical support, the department or a party to the order may seek a modification of the order.

3. Subject to 28 U.S.C. § 1738B, the department may amend information concerning the provisions regarding health benefits in a court or administrative order if notice of the amendment is provided to the court and to the parties to the order and if the amendment is filed with the clerk of court.

90 Acts, ch 1224, §37; 94 Acts, ch 1171, §30; 96 Acts, ch 1141, §25; 97 Acts, ch 175, §76

**252E.14 Child support.**

Unless the order specifies otherwise, medical support is not included in the monetary amount of child support ordered to be paid for orders entered on or after July 1, 1990.

90 Acts, ch 1224, §38

**252E.15 Rulemaking authority — compliance.**

The department shall adopt rules pursuant to chapter 17A to implement this chapter for cases for which services are being provided pursuant to chapter 252B. The department shall cooperate with any agency of the state or federal government as may be necessary to qualify for federal funds in conformity with provisions of this chapter and Tit. IV-D of the federal Social Security Act.

90 Acts, ch 1224, §39; 2010 Acts, ch 1061, §180

**252E.16 Scope and effect.**

1. The provisions of this chapter take effect July 1, 1990, for all support orders entered pursuant to chapter 234, 252A, 252C, 598, or 600B.

2. If an obligor was ordered to provide a health benefit plan or insurance coverage under an order entered prior to July 1, 1990, but did not comply with the order, insurers are not liable for medical expenses incurred prior to July 1, 1990. However, such an order may be implemented pursuant to the provisions of this chapter following its enactment. This chapter shall not be implemented retroactively; however, previous orders for medical support not otherwise complied with may be reduced to a dollar amount and collected from the obligor.

90 Acts, ch 1224, §40

## CHAPTER 252F

### ADMINISTRATIVE ESTABLISHMENT OF PATERNITY

Referred to in §252A.3A, 252A.6, 252A.6A, 252B.3, 252B.4, 252B.5, 252B.9, 252B.20, 252B.26, 252C.1, 252C.4, 252D.1, 252D.16, 252D.16A, 252E.1, 252E.1A, 252H.2, 252H.21, 252I.2, 252J.1, 252K.701, 598.21C, 598.21G, 598.22, 598.22B, 598.23A, 600.11, 600B.41A, 602.8102(47)

252F.1	Definitions.	252F.4	Entry of order.
252F.2	Jurisdiction.	252F.5	Certification to district court.
252F.3	Notice of alleged paternity and support debt — conference — request for hearing.	252F.6	Filing with the district court.
		252F.7	Report to vital records.
		252F.8	Waiver of time limitations.

**252F.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “*Administrator*” means the administrator of the child support recovery unit of the department of human services or the administrator’s designee.
  2. “*Child*” means a person who is less than age eighteen or a person who is age eighteen but less than age nineteen and is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching age nineteen.
  3. “*Mother*” means a mother of the child for whom paternity is being established.
  4. “*Party*” means a putative father or a mother, as named in an action.
  5. “*Paternity is at issue*” means any of the following conditions:
    - a. A child was not born or conceived within marriage.
    - b. A child was born or conceived within marriage but a court has declared that the child is not the issue of the marriage.
  6. “*Paternity test*” means and includes any form of blood, tissue, or genetic testing administered to determine the biological father of a child.
  7. “*Putative father*” means a person alleged to be the biological father of a child.
  8. “*Unit*” means the child support recovery unit created in section 252B.2.
- 93 Acts, ch 79, §14; 94 Acts, ch 1171, §31; 2006 Acts, ch 1016, §12; 2007 Acts, ch 218, §168, 187; 2008 Acts, ch 1019, §18, 20; 2010 Acts, ch 1142, §2

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

**252F.2 Jurisdiction.**

In any case in which the unit is providing services pursuant to chapter 252B and paternity is at issue, proceedings may be initiated by the unit pursuant to this chapter for the sole purpose of establishing paternity and any accrued or accruing child support or medical support obligations. Proceedings under this chapter are in addition to other means of establishing paternity or support. Issues in addition to establishment of paternity or support obligations shall not be addressed in proceedings initiated under this chapter.

An action to establish paternity and support under this chapter may be brought within the time limitations set forth in section 614.8.

93 Acts, ch 79, §15

**252F.3 Notice of alleged paternity and support debt — conference — request for hearing.**

1. The unit may prepare a notice of alleged paternity and support debt to be served on a party if the mother of the child or a government official with knowledge of the circumstances of possible paternity relying on government records provides a written statement to the department of human services certifying in accordance with section 622.1 that the putative father is or may be the biological father of the child or children involved. The notice shall be accompanied by a copy of the statement and served on the putative father in accordance with rule of civil procedure 1.305. Service upon the mother shall not constitute valid service upon the putative father. The notice shall include or be accompanied by all of the following:

- a. The name of the recipient of services under chapter 252B and the name and birth date of the child or children involved.
- b. A statement that the putative father has been named as the biological father of the child or children named.
- c. A statement that if paternity is established, the amount of the putative father’s monthly support obligation and the amount of the support debt accrued and accruing will be established in accordance with the guidelines established in section 598.21B, and the criteria established pursuant to section 252B.7A.
- d. A statement that if paternity is established, a party has a duty to provide accrued and accruing medical support to the child or children in accordance with chapter 252E.
- e. A written explanation of the procedures for determining the child support obligation and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21B.

f. (1) The right of a party to request a conference with the unit to discuss paternity establishment and the amount of support that a party may be required to provide, within ten days of the date of service of the original notice or, if paternity is contested and paternity testing is conducted, within ten days of the date the paternity test results are issued or mailed to a party by the unit.

(2) A statement that if a conference is requested, a party shall have one of the following time frames, whichever is the latest, to send a written request for a court hearing on the issue of support to the unit:

(a) Ten days from the date set for the conference.

(b) Twenty days from the date of service of the original notice.

(c) If paternity was contested and paternity testing was conducted, and a party does not deny paternity after the testing or challenge the paternity test results, twenty days from the date paternity test results are issued or mailed by the unit to the party.

(3) A statement that after the holding of the conference, the unit shall issue a new notice of alleged paternity and finding of financial responsibility for child support or medical support, or both, to be provided in person to each party or sent to each party by regular mail addressed to the party's last known address or, if applicable, to the last known address of the party's attorney.

(4) A statement that if the unit issues a new notice of alleged paternity and finding of financial responsibility for child support or medical support, or both, a party shall have one of the following time frames, whichever is the latest, to send a written request for a court hearing on the issue of support to the unit:

(a) Ten days from the date of issuance of the new notice.

(b) Twenty days from the date of service of the original notice.

(c) If paternity was contested and paternity testing conducted, and a party does not deny paternity after the testing or challenge the paternity test results, twenty days from the date the paternity test results are issued or mailed to the party by the unit.

g. A statement that if a conference is not requested, and a party does not deny paternity or challenge the results of any paternity testing conducted but objects to the finding of financial responsibility or the amount of child support or medical support, or both, the party shall send a written request for a court hearing on the issue of support to the unit within twenty days of the date of service of the original notice, or, if paternity was contested and paternity testing conducted, and a party does not deny paternity after the testing or challenge the paternity test results, within twenty days from the date the paternity test results are issued or mailed to the party by the unit, whichever is later.

h. A statement that if a timely written request for a hearing on the issue of support is received by the unit, the party shall have the right to a hearing to be held in district court and that if no timely written request is received and paternity is not contested, the administrator shall enter an order establishing the putative father as the father of the child or children and establishing child support or medical support, or both, in accordance with the notice of alleged paternity and support debt.

i. A written explanation of the rights and responsibilities associated with the establishment of paternity.

j. A written explanation of a party's right to deny paternity, the procedures for denying paternity, and the consequences of the denial.

k. A statement that if a party contests paternity, the party shall have twenty days from the date of service of the original notice to submit a written denial of paternity to the unit.

l. A statement that if paternity is contested, the unit shall, at the request of the party contesting paternity or on its own initiative, enter an administrative order requiring the putative father, mother, and child or children involved, to submit to paternity testing.

m. A statement that if paternity tests are conducted, the unit shall provide a copy of the test results to each party in person or send a copy to each party by regular mail, addressed to the party's last known address, or, if applicable, to the last known address of the party's attorney.

n. A statement setting forth the time frames for contesting paternity after paternity tests are conducted.

- o. Other information as the unit finds appropriate.
2. The time limitations established for the notice provisions under subsection 1 are binding unless otherwise specified in this chapter or waived pursuant to section 252F.8.
  3. a. If notice is served on a party, the unit shall file a true copy of the notice and the original return of service with the appropriate clerk of the district court as follows:
    - (1) In the county in which the child or children reside if the action is for purposes of establishing paternity and future child or medical support, or both.
    - (2) In the county in which the child or children involved last received public assistance benefits in the state, if the action is for purposes of establishing paternity and child or medical support, or both, only for prior periods of time when the child or children received public assistance, and no ongoing child or medical support obligation is to be established by this action.
    - (3) If the action is the result of a request from a foreign jurisdiction to establish paternity of a putative father located in Iowa, in the county in which the putative father resides.
  - b. All subsequent documents filed or court hearings held related to the action shall be in the district court in the county in which notice was filed pursuant to this subsection. The clerk shall file and docket the action.
  4. A party or the child support recovery unit may request a court hearing regarding establishment of paternity or a determination of support, or both.
    - a. Upon receipt of a timely written response requesting a hearing or on its own initiative, the unit shall certify the matter for hearing in the district court in the county where the original notice of alleged paternity and support debt is filed, in accordance with section 252F.5.
    - b. If paternity establishment was contested and paternity tests conducted, a court hearing on the issue of paternity shall be held no earlier than thirty days from the date paternity test results are issued to all parties by the unit, unless the parties mutually agree to waive the time frame pursuant to section 252F.8.
    - c. Any objection to the results of paternity tests shall be filed no later than twenty days after the date paternity test results are issued or mailed to each party by the unit. Any objection to paternity test results filed by a party more than twenty days after the date paternity tests are issued or mailed to the party by the unit shall not be accepted or considered by the court.
  5. If a timely written response and request for a court hearing is not received by the unit and a party does not deny paternity, the administrator shall enter an order in accordance with section 252F.4.
    6. a. If a party contests the establishment of paternity, the party shall submit, within twenty days of service of the notice on the party under subsection 1, a written statement contesting paternity establishment to the unit. Upon receipt of a written challenge of paternity establishment, or upon initiation by the unit, the administrator shall enter ex parte administrative orders requiring the mother, child or children involved, and the putative father to submit to paternity testing. Either the mother or putative father may contest paternity under this chapter.
      - b. The orders shall be filed with the clerk of the district court in the county where the notice was filed and have the same force and effect as a court order for paternity testing.
      - c. The unit shall issue copies of the respective administrative orders for paternity testing to the mother and putative father in person, or by regular mail to the last known address of each, or if applicable, to the last known address of the attorney for each.
      - d. If a paternity test is ordered under this section, the administrator shall direct that inherited characteristics be analyzed and interpreted, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the results. The test shall be of a type generally acknowledged as reliable by accreditation entities designated by the secretary of the United States department of health and human services and shall be performed by a laboratory approved by an accreditation entity.
      - e. The party contesting paternity shall be provided one opportunity to reschedule the paternity testing appointment if the testing is rescheduled prior to the date of the originally scheduled appointment.
      - f. An original copy of the test results shall be filed with the clerk of the district court in the

county where the notice was filed. The child support recovery unit shall issue a copy of the filed test results to each party in person, or by regular mail to the last known address of each, or if applicable, to the last known address of the attorney for each. However, if the action is the result of a request from a foreign jurisdiction, the unit shall issue a copy of the results to the initiating agency in that foreign jurisdiction.

g. Verified documentation of the chain of custody of the blood or genetic specimens is competent evidence to establish the chain of custody. The testimony of the appointed expert is not required. A verified expert's report of test results which indicate a statistical probability of paternity is sufficient authenticity of the expert's conclusion.

h. A verified expert's report shall be admitted as evidence to establish administrative paternity, and, if a court hearing is scheduled to resolve the issue of paternity, shall be admitted as evidence and is admissible at trial.

i. If the verified expert concludes that the test results show that the putative father is not excluded and that the probability of the putative father's paternity is ninety-five percent or higher, there shall be a rebuttable presumption that the putative father is the biological father, and the evidence shall be sufficient as a basis for administrative establishment of paternity.

(1) In order to challenge the presumption of paternity, a party shall file a written notice of the challenge with the district court within twenty days from the date the paternity test results are issued or mailed to all parties by the unit. Any challenge to a presumption of paternity resulting from paternity tests, or to paternity test results filed after the lapse of the twenty-day time frame shall not be accepted or admissible by the unit or the court.

(2) A copy of the notice challenging the presumption of paternity shall be provided to any other party in person, or by mailing the notice to the last known address of each party, or if applicable, to the last known address of each party's attorney.

(3) The party challenging the presumption of paternity has the burden of proving that the putative father is not the father of the child.

(4) The presumption of paternity may be rebutted only by clear and convincing evidence.

j. If the verified expert concludes that the test results indicate that the putative father is not excluded and that the probability of the putative father's paternity is less than ninety-five percent, the administrator shall order a subsequent administrative paternity test or certify the case to the district court for resolution in accordance with the procedures and time frames specified in paragraph "i" and section 252F.5.

k. If the results of the test or the verified expert's analysis are timely challenged as provided in this subsection, the administrator, upon the request of a party and advance payment by the contestant or upon the unit's own initiative, shall order that an additional test be performed by the same laboratory or an independent laboratory. If the party requesting additional testing does not advance payment, the administrator shall certify the case to the district court in accordance with paragraph "i" and section 252F.5.

l. When a subsequent paternity test is conducted, the time frames in this chapter associated with paternity tests shall apply to the most recently completed test.

m. If the paternity test results exclude the putative father as a potential biological father of the child or children, and additional tests are not requested by either party or conducted on the unit's initiative, or if additional tests exclude the putative father as a potential biological father, the unit shall withdraw its action against the putative father and shall file a notice of the withdrawal with the clerk of the district court, and shall provide a copy of the notice to each party in person, or by regular mail sent to each party's last known address, or if applicable, the last known address of the party's attorney.

n. Except as provided in paragraph "k", the unit shall advance the costs of genetic testing. If paternity is established and paternity testing was conducted, the unit shall enter an order or, if the action proceeded to a court hearing, request that the court enter a judgment for the costs of the paternity tests consistent with applicable federal law. In a proceeding under this chapter, a copy of a bill for genetic testing shall be admitted as evidence without requiring

third-party foundation testimony and shall constitute prima facie evidence of the amount incurred for genetic testing.

93 Acts, ch 79, §16; 94 Acts, ch 1171, §32; 96 Acts, ch 1141, §5, 6; 97 Acts, ch 175, §77 – 84; 2005 Acts, ch 69, §17; 2007 Acts, ch 218, §169 – 175, 187; 2008 Acts, ch 1019, §18, 20; 2009 Acts, ch 41, §263; 2010 Acts, ch 1069, §29; 2012 Acts, ch 1061, §1

Referred to in §234.39, 252F.4, 252F.5, 252F.6

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

#### **252F.4 Entry of order.**

1. If each party fails to respond to the initial notice within twenty days after the date of service of the notice or fails to appear at a conference pursuant to section 252F.3 on the scheduled date of the conference, and paternity has not been contested and each party fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the parties, declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21B, and medical support pursuant to chapter 252E.

2. If paternity is contested pursuant to section 252F.3, subsection 6, and the party contesting paternity fails to appear for a paternity test and fails to request a rescheduling pursuant to section 252F.3, or fails to appear for both the initial and the rescheduled paternity tests and each party fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the parties declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21B, and medical support pursuant to chapter 252E.

3. If a conference pursuant to section 252F.3 is held, and paternity is not contested, and each party fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the parties after the second notice has been sent declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21B, and medical support pursuant to chapter 252E.

4. If paternity was contested and paternity testing was performed and the putative father was not excluded, if the test results indicate that the probability of the putative father's paternity is ninety-five percent or greater, if the test results are not timely challenged, and if each party fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the parties declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21B, and medical support pursuant to chapter 252E.

5. The administrator shall establish a support obligation under this section based upon the best information available to the unit and pursuant to section 252B.7A.

6. The order shall contain all of the following:

- a. A declaration of paternity.
- b. The amount of monthly support to be paid, with direction as to the manner of payment.
- c. The amount of accrued support.
- d. The name of the custodial parent or caretaker.
- e. The name and birth date of the child or children to whom the order applies.
- f. A statement that property of a party ordered to provide support is subject to income withholding, liens, garnishment, tax offset, and other collection actions.
- g. The medical support required pursuant to chapter 598 and chapter 252E.
- h. A statement that a party who is ordered to provide support is required to inform the child support recovery unit, on a continuing basis, of the name and address of the party's current employer, whether the party has access to health insurance coverage as required in the order, and if so, the health insurance policy information.

i. If paternity was contested by the putative father, the amount of any judgment assessed to the father for costs of paternity tests conducted pursuant to this chapter.

j. Statements as required pursuant to section 598.22B.

7. If paternity is not contested but a party does wish to challenge the issues of child or medical support, the administrator shall enter an order establishing paternity and reserving the issues of child or medical support for determination by the district court.

93 Acts, ch 79, §17; 94 Acts, ch 1171, §33; 97 Acts, ch 175, §85; 2005 Acts, ch 69, §18; 2007 Acts, ch 218, §176, 187; 2008 Acts, ch 1019, §18, 20; 2010 Acts, ch 1142, §3

Referred to in §252F.3

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

#### **252F.5 Certification to district court.**

1. Actions initiated under this chapter are not subject to contested case proceedings or further review pursuant to chapter 17A.

2. An action under this chapter may be certified to the district court if a party timely contests paternity establishment or paternity test results, or if a party requests a court hearing on the issues of child or medical support, or both, or upon the initiation of the unit as provided in this chapter. Review by the district court shall be an original hearing before the court.

3. In any action brought under this chapter, the action shall not be certified to the district court in a contested paternity action unless all of the following have occurred:

a. Paternity testing has been completed.

b. The results of the paternity test have been issued to all parties.

c. A timely written objection to paternity establishment or paternity test results has been received from a party, or a timely written request for a court hearing on the issue of support has been received from a party by the unit, or the unit has requested a court hearing on the unit's own initiative.

4. A matter shall be certified to the district court in the county in which the notice was filed pursuant to section 252F.3, subsection 3.

5. The court shall set the matter for hearing and notify the parties of the time of and place for hearing.

6. If the court determines that the putative father is the legal father, the court shall establish the amount of the accrued and accruing child support pursuant to the guidelines established under section 598.21B, and shall establish medical support pursuant to chapter 252E.

7. If the putative father or another party contesting paternity fails to appear at the hearing, upon a showing that proper notice has been provided to the party, the court shall find the party in default and enter an appropriate order establishing paternity and support.

93 Acts, ch 79, §18; 94 Acts, ch 1171, §34; 97 Acts, ch 175, §86; 2005 Acts, ch 69, §19; 2007 Acts, ch 218, §177, 178, 187; 2008 Acts, ch 1019, §18, 20

Referred to in §252F.3

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

#### **252F.6 Filing with the district court.**

Following issuance of an order by the administrator, the order shall be presented to an appropriate district court judge for review and approval. Unless a defect appears on the face of the order, the district court shall approve the order. Upon approval by the district court judge, the order shall be filed in the district court in the county in which the notice was filed pursuant to section 252F.3, subsection 3. Upon filing, the order has the same force and effect as a district court order.

93 Acts, ch 79, §19

#### **252F.7 Report to vital records.**

Upon the filing of an order with the district court pursuant to this chapter, the clerk of the district court shall report the information from the order to the bureau of vital records in the manner provided in section 600B.36.

93 Acts, ch 79, §20; 2001 Acts, ch 24, §41

**252F.8 Waiver of time limitations.**

1. A putative father or other party may waive the time limitations established in this chapter.

2. If a party does not contest paternity or wish to request a conference or court hearing on the issue of support, upon receipt of a signed statement from the putative father and any other party that may contest establishment of paternity, waiving the time limitations, the administrator shall enter an order establishing paternity and support and the court may approve the order, notwithstanding the expiration of the period of the time limitations if paternity is established.

3. If a putative father or other party waives the time limitations and an order establishing paternity or determining support, or both, is entered under this chapter, the signed statement of the putative father and other party waiving the time limitations shall be filed with the order.

93 Acts, ch 79, §21; 94 Acts, ch 1171, §35

Referred to in §252F.3

**CHAPTER 252G**

**CENTRAL EMPLOYEE REGISTRY**

Referred to in §22.7, 252B.3, 252B.9

252G.1	Definitions.	252G.6	Administration and costs of the centralized employee registry.
252G.2	Establishment of central employee registry.	252G.7	Data entry and transmitting centralized employee registry records to the national new hire registry.
252G.3	Employer reporting requirements — penalty.	252G.8	Income withholding requirements.
252G.4	Alternative reporting requirements — penalty.		
252G.5	Access to centralized employee registry.		

**252G.1 Definitions.**

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

1. “*Business day*” means a day on which state offices are open for regular business.
2. “*Compensation*” means payment owed by the payor of income for:
  - a. Labor or services rendered by an employee or contractor to the payor of income.
  - b. Benefits including, but not limited to, vacation, holiday, and sick leave, and severance payments which are due an employee under an agreement with the employer or under a policy of the employer.
3. “*Contractor*” means a natural person who is eighteen years of age or older, who performs labor in this state to whom a payor of income makes payments which are not subject to withholding and for whom the payor of income is required by the internal revenue service to complete a 1099-MISC form.
4. “*Date of hire*” means either of the following:
  - a. The first day for which an employee is owed compensation by the payor of income.
  - b. The first day that a contractor performs labor or services for the payor of income.
5. “*Days*” means calendar days.
6. “*Department*” means the department of human services.
7. “*Dependent*” includes a spouse or child or any other person who is in need of and entitled to support from a person who is declared to be legally liable for the support of that dependent.
8. “*Employee*” means a natural person who performs labor in this state and is employed by an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee’s compensation.
9. “*Employer*” means a person doing business in this state who engages an employee for compensation and for whom the employer withholds federal or state tax liabilities from

the employee's compensation. "Employer" includes any governmental entity and any labor organization.

10. "Labor organization" means any organization of any kind, or any agency, or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

11. "Natural person" means an individual and not a corporation, government, business trust, estate, partnership, proprietorship, or other legal entity, however organized.

12. "Payor of income" includes both an employer and a person engaged in a trade or business in this state who engages a contractor for compensation.

13. "Registry" means the central employee registry created in section 252G.2.

14. "Rehire" means the first day for which an employee is owed compensation by the payor of income following a termination of employment lasting a minimum of six consecutive weeks. Termination of employment does not include temporary separations from employment such as unpaid medical leave, an unpaid leave of absence, or a temporary layoff.

15. "Unit" means the child support recovery unit created in section 252B.2.

93 Acts, ch 79, §3; 94 Acts, ch 1171, §36; 97 Acts, ch 175, §87, 88

Referred to in §84A.5, 252J.1

### **252G.2 Establishment of central employee registry.**

By January 1, 1994, the unit shall establish a centralized employee registry database for the purpose of receiving and maintaining information on newly hired or rehired employees from employers. The unit shall establish the database and the department may adopt rules in conjunction with the department of revenue and the department of workforce development to identify appropriate uses of the registry and to implement this chapter, including implementation through the entering of agreements pursuant to chapter 28E.

93 Acts, ch 79, §4; 96 Acts, ch 1186, §23; 2003 Acts, ch 145, §286

Referred to in §252G.1, 252G.4

### **252G.3 Employer reporting requirements — penalty.**

1. Beginning January 1, 1994, an employer who hires or rehires an employee on or after January 1, 1994, shall report the hiring or rehiring of the employee to the centralized employee registry in accordance with one of the following time frames:

a. Within fifteen days of the hiring or rehiring of the employee.

b. If the employer is transmitting hire and rehire reports magnetically or electronically, the employer may report through transmissions which are not less than twelve nor more than sixteen days apart.

2. The report submitted shall contain all of the following:

a. The employer's name, address, and federal identification number.

b. The employee's name, address, and social security number.

c. Information regarding whether the employer has employee dependent health care coverage available and the appropriate date on which the employee may qualify for the coverage.

d. The address to which income withholding orders or the notices of orders and garnishments should be sent.

e. The employee's date of birth.

3. Employers required to report may report the information required under subsection 2 by any of the following means:

a. By mailing a copy of the employee's Iowa employee's withholding allowance certificate to the registry.

b. By submitting electronic media in a format approved by the unit in advance.

c. By submitting a fax transmission of the employee's Iowa employee's withholding allowance certificate to the registry.

d. By any other means authorized by the unit in advance if the means will result in timely reporting.

e. By submitting both of the following:

(1) For the information in subsection 2, paragraphs “a” and “b”, by transmitting by first class mail, magnetically or electronically, a federal W-4 form, or, at the option of the employer, an equivalent form.

(2) By reporting the other information required in subsection 2 by any of the means provided in paragraph “a”, “b”, “c”, or “d” of this subsection.

4. An employer with employees in two or more states that transmits reports magnetically or electronically may comply with subsection 1 by transmitting the report described in subsection 1 to each state, or by designating as the recipient state one state, in which the employer has employees, and transmitting the report to that state. An employer that transmits reports pursuant to this subsection shall notify the United States secretary of health and human services, in writing, of the state designated by the employer for the purpose of transmitting reports.

5. If an employer fails to report as required under this section, an action may be brought against the employer by any state agency accessing or administering the registry, or by the attorney general. The action may be brought in district court in the county in which the employer has its principal place of business, or if the employer has no principal place of business, in any county in which an employee is performing labor or service for compensation, or in Polk county to determine noncompliance with this section. A willful failure to provide the information shall be punishable as contempt.

93 Acts, ch 79, §5; 94 Acts, ch 1171, §37; 96 Acts, ch 1141, §15; 97 Acts, ch 175, §89, 90; 98 Acts, ch 1170, §21

Referred to in §252G.4

#### **252G.4 Alternative reporting requirements — penalty.**

1. a. Beginning January 1, 1994, a payor of income to whom section 252G.3 is inapplicable, who enters into an agreement for the performance of services with a contractor, shall report the contractor to the registry. Payors of income shall report contractors performing labor under an agreement within fifteen days of the date on which all of the following conditions are met:

(1) The payor issues payment to the contractor in an amount which exceeds the amount required for the filing of a 1099-MISC report.

(2) Payment to the contractor under an agreement is made in a form which is other than a lump sum payment, within a calendar year.

b. The payor of income is not required to file more than one report for any contractor.

2. The report submitted to the registry shall contain all of the following:

a. The name, address, and federal identification number of the payor of income.

b. The contractor’s name, address, social security number, and if known, the contractor’s date of birth.

3. A payor of income required to report under this section may report the information required under subsection 1 by any written means authorized by the unit which results in timely reporting.

4. Information reported under this section shall be received and maintained as provided in section 252G.2.

5. A payor of income required to report under this section who fails to report is subject to the penalty provided in section 252G.3, subsection 5.

93 Acts, ch 79, §6; 94 Acts, ch 1171, §38; 2009 Acts, ch 41, §263

#### **252G.5 Access to centralized employee registry.**

The records of the centralized employee registry are confidential records pursuant to sections 22.7 and 252B.9, and may be accessed only by state agencies as provided in this section and section 252B.9. When a state agency accesses information in the registry, the agency may use the information to update the agency’s own records. Access to and use of the information contained in the registry shall be limited to the following:

1. The unit for administration of the child support enforcement program, including but not limited to activities related to establishment and enforcement of child and medical

support obligations through administrative or judicial processes, and other services authorized pursuant to chapter 252B.

2. State agencies as specified under 42 U.S.C. § 653A which utilize income information for the determination of eligibility or calculation of payments for benefit or entitlement payments unless prohibited under federal law.

3. State agencies operating employment security and workers' compensation programs for the purposes of administering such programs unless prohibited under federal law.

93 Acts, ch 79, §7; 98 Acts, ch 1170, §22; 2012 Acts, ch 1033, §9

**252G.6 Administration and costs of the centralized employee registry.**

1. The registry shall maintain the information received from employers for a minimum period of six months.

2. State agencies accessing the centralized registry shall participate in a proportionate cost sharing to defray the administrative costs of the registry. The amount of a state agency's proportionate share shall be established by rule of the department.

93 Acts, ch 79, §8

**252G.7 Data entry and transmitting centralized employee registry records to the national new hire registry.**

The unit shall enter new hire data into the centralized employee directory database within five business days of receipt from employers and shall transmit the records of the centralized employee registry to the national directory of new hires within three business days after the date information regarding a newly hired employee is entered into the centralized employee registry.

97 Acts, ch 175, §91

**252G.8 Income withholding requirements.**

Within two business days after the date information regarding a newly hired employee is entered into the centralized employee registry and matched with obligors in cases being enforced by the unit, the unit shall transmit a notice to the employer or payor of income of the employee directing the employer or payor of income to withhold from the income of the employee in accordance with chapter 252D.

97 Acts, ch 175, §92

**CHAPTER 252H**

**ADJUSTMENT AND MODIFICATION OF SUPPORT ORDERS**

Referred to in §234.39, 252B.3, 252B.5, 252B.9, 252B.26, 252D.16, 252D.16A, 252E.1, 252E.1A, 252J.1, 598.21C, 598.22B

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order which must be recognized pursuant to section 252K.207 and 28 U.S.C. § 1738B, when more than one state has issued a support order for the same child and the same obligor, and may include a reconciliation of arrearages with information related to the calculation. Registration of a foreign order is not necessary for a court or the unit to make a determination of controlling order.

*h.* “*Modification*” means either of the following:

(1) A change, correction, or termination of an existing support order.

(2) The establishment of a child or medical support obligation in a previously established order entered pursuant to chapter 234, 252A, 252C, 598, 600B, or any other support proceeding, in which such support was not previously established, or in which support was previously established and subsequently terminated prior to the emancipation of the children affected.

*i.* “*Parent*” means, for the purposes of requesting a review of a support order and for being entitled to notice under this chapter:

(1) The individual ordered to pay support pursuant to the order.

(2) An individual or entity entitled to receive current or future support payments pursuant to the order, or pursuant to a current assignment of support including but not limited to an agency of this or any other state that is currently providing public assistance benefits to the child for whom support is ordered and any child support agency. Service of notice of an action initiated under this chapter on an agency is not required, but the agency may be advised of the action by other means.

*j.* “*Public assistance*” means benefits received in this state or any other state, under Tit. IV-A (temporary assistance to needy families), IV-E (foster care), or XIX (Medicaid) of the Act.

*k.* “*Review*” means an objective evaluation conducted through a proceeding before a court, administrative body, or an agency, of information necessary for the application of a state’s mandatory child support guidelines to determine:

(1) The appropriate monetary amount of support.

(2) Provisions for medical support.

*l.* “*State*” means “*state*” as defined in section 252K.101.

*m.* “*Support order*” means an order for support issued pursuant to chapter 232, 234, 252A, 252C, 252E, 252F, 252H, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction as registered with the clerk of court or certified to the child support recovery unit.

93 Acts, ch 78, §25; 93 Acts, ch 79, §47; 97 Acts, ch 175, §94 – 96; 98 Acts, ch 1170, §35; 2002 Acts, ch 1018, §10; 2005 Acts, ch 69, §20; 2007 Acts, ch 218, §179, 180, 187; 2008 Acts, ch 1019, §18, 20; 2009 Acts, ch 41, §263; 2011 Acts, ch 67, §2

Referred to in §252B.1, 252I.4, 252J.1

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

### **252H.3 Scope of the administrative adjustment or modification — role of district court in contested cases.**

1. Any action initiated under this chapter, including any court hearing resulting from an action, shall be limited in scope to the adjustment or modification of the child or medical support or cost-of-living alteration of the child support provisions of a support order. A determination of a controlling order is within the scope of this chapter. If the social security disability provisions of sections 598.22 and 598.22C apply, a determination of the amount of delinquent support due is within the scope of this chapter.

2. Nonsupport issues shall not be considered by the unit or the court in any action resulting under this chapter.

3. Actions initiated by the unit under this chapter shall not be subject to contested case proceedings or further review pursuant to chapter 17A and resulting court hearings following certification shall be an original hearing before the district court.

93 Acts, ch 78, §26; 97 Acts, ch 175, §97; 98 Acts, ch 1170, §36; 2002 Acts, ch 1018, §11

Referred to in §252H.8

**252H.3A Adding a party.**

A mother or father may be added as a proper party defendant to a support order upon service of a notice as provided in this chapter and without a court order as provided in the rules of civil procedure.

2007 Acts, ch 218, §181, 187; 2008 Acts, ch 1019, §18, 20

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

**252H.4 Role of the child support recovery unit.**

1. The unit may administratively adjust or modify or may provide for an administrative cost-of-living alteration of a support order entered under chapter 234, 252A, 252C, 598, or 600B, or any other support chapter if the unit is providing enforcement services pursuant to chapter 252B. The unit is not required to intervene to administratively adjust or modify or provide for an administrative cost-of-living alteration of a support order under this chapter.

2. The unit is a party to an action initiated pursuant to this chapter.

3. The unit shall conduct a review to determine whether an adjustment is appropriate or, upon the request of a parent or upon the unit's own initiative, determine whether a modification is appropriate.

4. The unit shall adopt rules pursuant to chapter 17A to establish the process for the review of requests for adjustment, the criteria and procedures for conducting a review and determining when an adjustment is appropriate, the procedure and criteria for a cost-of-living alteration, the criteria and procedure for a request for review pursuant to section 252H.18A, and other rules necessary to implement this chapter.

5. Legal representation of the unit shall be provided pursuant to section 252B.7, subsection 4.

93 Acts, ch 78, §27; 97 Acts, ch 175, §98

**252H.5 Fees and cost recovery for review — adjustment — modification.**

The unit shall, consistent with applicable federal law, charge the following fees for providing the services described in this chapter:

1. A parent ordered to provide support, who requests a review of a support order under subchapter II, shall file an application for services and pay an application fee pursuant to section 252B.4.

2. A parent requesting a service shall pay the fee established for that service as established under this subsection. The fees established are not applicable to a parent who as a condition of eligibility for receiving public assistance benefits has assigned the rights to child or medical support for the order to be reviewed. The following fees shall be paid for the following services:

a. A fee for conducting the review, to be paid at the time the request for review is submitted to the unit. If the request for review is denied for any reason, the fee shall be refunded to the parent making the request. Any request submitted without full payment of the fee shall be denied.

b. A fee for a second review requested pursuant to section 252H.17, to be paid at the time the request for the second review is submitted to the unit. Any request submitted without full payment of the fee shall be denied.

c. A fee for activities performed by the unit in association with a court hearing requested pursuant to section 252H.8.

d. A fee for activities performed by the unit in entering an administrative order to adjust support when neither parent requests a court hearing pursuant to section 252H.8. The fee shall be paid during the postreview waiting period under section 252H.17. If the fee is not paid in full during the postreview notice period, further action shall not be taken by the unit to adjust the order unless the parent not requesting the adjustment pays the fee in full during the postreview waiting period, or unless the children affected by the order reviewed are currently receiving public assistance benefits and the proposed adjustment would result in either an increase in the amount of support or in provisions for medical support for the children.

e. A fee for conducting a conference requested pursuant to section 252H.20.

3. A parent who requests a review of a support order pursuant to section 252H.13, shall pay any service of process fees for service or attempted service of the notice required in section 252H.15. The unit shall not proceed to conduct a review pursuant to section 252H.16 until service of process fees have been paid in full. The service of process fee requirement of this subsection is not applicable to a parent who as a condition of eligibility for public assistance benefits has assigned the rights to child or medical support for the order to be reviewed. Service of process fees charged by a person other than the unit are distinct from any other fees and recovery of costs provided for in this section.

4. The unit shall, consistent with applicable federal law, recover administrative costs in excess of any fees collected pursuant to subsections 1, 2, and 3 for providing services under this chapter and shall adopt rules providing for collection of fees for administrative costs.

5. The unit shall adopt rules pursuant to chapter 17A to establish procedures and criteria to determine the amount of any fees specified in this section and the administrative costs in excess of these fees.

93 Acts, ch 78, §28

#### **252H.6 Collection of information.**

The unit may request, obtain, and validate information concerning the financial circumstances of the parents of a child as necessary to determine the appropriate amount of support pursuant to the guidelines established in section 598.21B, including but not limited to those sources and procedures described in sections 252B.7A and 252B.9. The collection of information does not constitute a review conducted pursuant to section 252H.16.

93 Acts, ch 78, §29; 97 Acts, ch 175, §99; 2005 Acts, ch 69, §21

#### **252H.7 Waiver of notice periods and time limitations.**

1. A parent may waive the fifteen-day prereview waiting period provided for in section 252H.16.

a. Upon receipt of signed requests from both parents waiving the prereview waiting period, the unit may conduct a review of the support order prior to the expiration of the fifteen-day period provided in section 252H.16.

b. If the parents jointly waive the prereview waiting period and the order under review is subsequently adjusted, the signed statements of both parents waiving the waiting period shall be filed in the court record with the order adjusting the support obligation.

2. A parent may waive the postreview waiting period provided for in section 252H.8, subsection 2 or 7, for a court hearing or in section 252H.17 for requesting of a second review.

a. Upon receipt of signed requests from both parents subject to the order reviewed, waiving the postreview waiting period, the unit may enter an administrative order adjusting the support order, if appropriate, prior to the expiration of the postreview waiting period.

b. If the parents jointly waive the postreview waiting period and an administrative order to adjust the support order is entered, the signed statements of both parents waiving the waiting period shall be filed in the court record with the administrative order adjusting the support obligation.

3. A parent may waive the time limitations established in section 252H.8, subsection 3, for requesting a court hearing, or in section 252H.20 for requesting a conference.

a. Upon receipt of signed requests from both parents who are subject to the order to be modified, waiving the time limitations, the unit may proceed to enter an administrative modification order.

b. If the parents jointly waive the time limitations and an administrative modification order is entered under this chapter, the signed statements of both parents waiving the time limitations shall be filed in the court record with the administrative modification order.

93 Acts, ch 78, §30; 2007 Acts, ch 218, §143, 156; 2010 Acts, ch 1142, §4, 5

Referred to in §252H.16

Conflicting administrative rule time limits are inapplicable until amended to conform with amendments to this section by 2010 Acts, ch 1142; 2010 Acts, ch 1142, §10

#### **252H.8 Certification to court — hearing — default.**

1. For actions initiated under section 252H.15, either parent or the unit may request a

court hearing within fifteen days from the date of issuance of the notice of decision under section 252H.16, or within ten days of the date of issuance of the second notice of decision under section 252H.17, whichever is later.

2. For actions initiated under section 252H.14A, either parent or the unit may request a court hearing within ten days of the issuance of the second notice of decision under section 252H.17.

3. For actions initiated under subchapter III, either parent or the unit may request a court hearing within the latest of any of the following time periods:

a. Twenty days from the date of successful service of the notice of intent to modify required under section 252H.19.

b. Ten days from the date scheduled for a conference to discuss the modification action.

c. Ten days from the date of issuance of a second notice of a proposed modification action.

4. The time limitations for requesting a court hearing under this section may be extended by the unit.

5. If a timely written request for a hearing is received by the unit, a hearing shall be held in district court, and the unit shall certify the matter to the district court in the county in which the order subject to adjustment or modification is filed. The certification shall include the following, as applicable:

a. Copies of the notice of intent to review or notice of intent to modify.

b. The return of service, proof of service, acceptance of service, or signed statement by the parent requesting review and adjustment or requesting modification, waiving service of the notice.

c. Copies of the notice of decision and any revised notice as provided in section 252H.16.

d. Copies of any written objections to and request for a second review or conference or hearing.

e. Copies of any second notice of decision issued pursuant to section 252H.17, or second notice of proposed modification action issued pursuant to section 252H.20.

f. Copies of any financial statements and supporting documentation provided by the parents including proof of a substantial change in circumstances for a request filed pursuant to section 252H.18A.

g. Copies of any computation worksheet prepared by the unit to determine the amount of support calculated using the mandatory child support guidelines established under section 598.21B, and, if appropriate and the social security disability provisions of sections 598.22 and 598.22C apply, a determination of the amount of delinquent support due.

h. A certified copy of each order, issued by another state, considered in determining the controlling order.

6. The court shall set the matter for hearing and notify the parties of the time and place of the hearing.

7. For actions initiated under section 252H.15, a hearing shall not be held for at least sixteen days following the date of issuance of the notice of decision unless the parents have jointly waived, in writing, the fifteen-day postreview period.

8. Pursuant to section 252H.3, the district court shall review the matter as an original hearing before the court.

9. Issues subject to review by the court in any hearing resulting from an action initiated under this chapter shall be limited to the issues identified in section 252H.3.

10. Notwithstanding any other law to the contrary, if more than one support order exists involving children with the same legally established parents, one hearing on all of the affected support orders shall be held in the district court in the county where the unit files the action. For the purposes of this subsection, the district court hearing the matter shall have jurisdiction over all other support orders entered by a court of this state and affected under this subsection.

11. The court shall establish the amount of child support pursuant to section 598.21B, or medical support pursuant to chapter 252E, or both.

12. If a party fails to appear at the hearing, upon a showing of proper notice to the party, the court may find the party in default and enter an appropriate order.

93 Acts, ch 78, §31; 96 Acts, ch 1141, §1, 2; 97 Acts, ch 175, §100; 98 Acts, ch 1170, §37; 2002 Acts, ch 1018, §12; 2004 Acts, ch 1116, §21; 2005 Acts, ch 69, §22, 23; 2007 Acts, ch 218, §144 – 147, 156; 2010 Acts, ch 1142, §6

Referred to in §252H.5, 252H.7, 252H.9, 252H.11, 252H.14A

Conflicting administrative rule time limits are inapplicable until amended to conform with amendments to this section by 2010 Acts, ch 1142; 2010 Acts, ch 1142, §10

**252H.9 Filing and docketing of administrative adjustment or modification order — order effective as district court order.**

1. If timely request for a court hearing is not made pursuant to section 252H.8, the unit shall prepare and present an administrative order for adjustment or modification, as applicable, for review and approval, ex parte, to the district court where the order to be adjusted or modified is filed. Notwithstanding any other law to the contrary, if more than one support order exists involving children with the same legally established parents, for the purposes of this subsection, the district court reviewing and approving the matter shall have jurisdiction over all other support orders entered by a court of this state and affected under this subsection.

2. For orders to which subchapter II or III is applicable, the unit shall determine the appropriate amount of the child support obligation using the current child support guidelines established pursuant to section 598.21B and the criteria established pursuant to section 252B.7A and shall determine the provisions for medical support pursuant to chapter 252E.

3. The administrative order prepared by the unit shall specify all of the following:

- a. The amount of support to be paid and the manner of payment.
- b. The name of the custodian of any child for whom support is to be paid.
- c. The name of the parent ordered to pay support.
- d. The name and birth date of any child for whom support is to be paid.
- e. That the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and other methods of execution.
- f. Provisions for medical support.
- g. If applicable, the order determined to be the controlling order.
- h. If applicable, the amount of delinquent support due based upon the receipt of social security disability payments as provided in sections 598.22 and 598.22C.

4. Supporting documents as described in section 252H.8, subsection 5, may be presented to the court with the administrative order, as applicable.

5. Unless defects appear on the face of the order or on the attachments, the district court shall approve the order. Upon filing, the approved order shall have the same force, effect, and attributes of an order of the district court.

6. Upon filing, the clerk of the district court shall enter the order in the judgment docket and judgment lien index.

7. A copy of the order shall be sent by regular mail within fourteen days after filing to each parent's last known address, or if applicable, to the last known address of the parent's attorney.

8. The order is final, and action by the unit to enforce and collect upon the order, including arrearages and medical support, or both, may be taken from the date of the entry of the order by the district court.

93 Acts, ch 78, §32; 97 Acts, ch 175, §101; 98 Acts, ch 1170, §38; 2002 Acts, ch 1018, §13; 2005 Acts, ch 69, §24; 2007 Acts, ch 218, §148, 156

**252H.10 Effective date of adjustment — modification.**

1. Pursuant to section 598.21C, any administrative or court order resulting from an action initiated under this chapter may be made retroactive only from three months after the date that all parties were successfully served the notice required under section 252H.14A, 252H.15, or section 252H.19, as applicable.

2. The periodic due date established under a prior order for payment of child support

shall not be changed in any order modified as a result of an action initiated under this chapter, unless the child support recovery unit or the court determines that good cause exists to change the periodic due date. If the unit or the court determines that good cause exists, the unit or the court shall include the rationale for the change in the modified order and shall address the issue of reconciliation of any payments due or made under a prior order which would result in payment of the child support obligation under both the prior and the modified orders.

93 Acts, ch 78, §33; 95 Acts, ch 115, §10; 2005 Acts, ch 69, §25; 2007 Acts, ch 218, §149, 156

#### **252H.11 Concurrent actions.**

This chapter does not prohibit or affect the ability or right of a parent or the parent's attorney to file a modification action at the parent's own initiative. If a modification action is filed by a parent concerning an order for which an action has been initiated but has not yet been completed by the unit under this chapter, the unit shall terminate any action initiated under this chapter, subject to the following:

1. The modification action filed by the parent must address the same issues as the action initiated under this chapter.

2. If the modification action filed by the parent is subsequently dismissed before being heard by the court, the unit shall continue the action previously initiated under subchapter II or III, or initiate a new action as follows:

a. If the unit previously initiated an action under subchapter II, and had not issued a notice of decision as required under section 252H.14A or 252H.16, the unit shall proceed as follows:

(1) If notice of intent to review was served ninety days or less prior to the date the modification action filed by the parent is dismissed, the unit shall complete the review and issue the notice of decision.

(2) If the modification action filed by the parent is dismissed more than ninety days after the original notice of intent to review was served, the unit shall serve or issue a new notice of intent to review and conduct the review.

(3) If the unit initiated a review under section 252H.14A, the unit may issue the notice of decision.

b. If the unit previously initiated an action under subchapter II and had issued the notice of decision as required under section 252H.14A or 252H.16, the unit shall proceed as follows:

(1) If the notice of decision was issued ninety days or less prior to the date the modification action filed by the parent is dismissed, the unit shall request, obtain, and verify any new or different information concerning the financial circumstances of the parents and issue a revised notice of decision to each parent, or if applicable, to the parent's attorney.

(2) If the modification action filed by the parent is dismissed more than ninety days after the date of issuance of the notice of decision, the unit shall serve or issue a new notice of intent to review pursuant to section 252H.15 and conduct a review pursuant to section 252H.16, or conduct a review and serve a new notice of decision under section 252H.14A.

c. If the unit previously initiated an action under subchapter III, the unit shall proceed as follows:

(1) If the modification action filed by the parent is dismissed more than ninety days after the original notice of intent to modify was served, the unit shall serve a new notice of intent to modify pursuant to section 252H.19.

(2) If the modification action filed by the parent is dismissed ninety days or less after the original notice of intent to modify was served, the unit shall complete the original modification action initiated by the unit under this subchapter.

(3) Each parent shall be allowed at least twenty days from the date the administrative modification action is reinstated to request a court hearing as provided for in section 252H.8.

3. If an action initiated under this chapter is terminated as the result of a concurrent modification action filed by one of the parents or the parent's attorney, the unit shall advise each parent, or if applicable, the parent's attorney, in writing, that the action has been terminated and the provisions of subsection 2 of this section for continuing or initiating a new action under this chapter. The notice shall be issued by regular mail to the last known mailing address of each parent, or if applicable, each parent's attorney.

4. If an action initiated under this chapter by the unit is terminated as the result of

a concurrent action filed by one of the parents and is subsequently reinstated because the modification action filed by the parent is dismissed, the unit shall advise each parent, or if applicable, each parent's attorney, in writing, that the unit is continuing the prior administrative adjustment or modification action. The notice shall be issued by regular mail to the last known mailing address of each parent, or if applicable, each parent's attorney.

93 Acts, ch 78, §34; 97 Acts, ch 175, §102; 2007 Acts, ch 218, §150, 156

## SUBCHAPTER II

### REVIEW AND ADJUSTMENT

Referred to in §252B.20, 252H.5, 252H.9, 252H.11, 252H.18, 252H.24

#### **252H.12 Support orders subject to review and adjustment.**

A support order meeting all of the following conditions is eligible for review and adjustment under this subchapter:

1. The support order is subject to the jurisdiction of this state for the purposes of adjustment.

2. The support order provides for the ongoing support of at least one child under the age of eighteen or a child between the ages of eighteen and nineteen who has not yet graduated from high school but who is reasonably expected to graduate from high school before attaining the age of nineteen.

3. The ongoing support for at least one child described in subsection 2 continues, under the terms of the order, beyond October 13, 1993.

4. The unit is providing enforcement services for the ongoing support obligation pursuant to chapter 252B.

93 Acts, ch 78, §35

Referred to in §252H.14

#### **252H.13 Right to request review.**

A parent shall have the right to request the review of a support order for which the unit is currently providing enforcement services of an ongoing child support obligation pursuant to chapter 252B including by objecting to a cost-of-living alteration pursuant to section 252H.24, subsections 1 and 2.

93 Acts, ch 78, §36; 97 Acts, ch 175, §103

Referred to in §252H.5, 252H.14A, 252H.15, 252H.24

#### **252H.14 Reviews initiated by the child support recovery unit.**

1. The unit may periodically initiate a review of support orders meeting the conditions in section 252H.12 in accordance with the following:

a. The right to any ongoing child support obligation is currently assigned to the state due to the receipt of public assistance.

b. The support order does not already include provisions for medical support.

c. The review is otherwise necessary to comply with the Act.

2. The unit may periodically initiate a request to a child support agency of another state to conduct a review of a support order entered in that state when the right to any ongoing child or medical support obligation due under the order is currently assigned to the state of Iowa or if the order does not include provisions for medical support.

3. The unit shall adopt rules establishing criteria to determine the appropriateness of initiating a review.

4. The unit shall initiate reviews under this section in accordance with the Act.

93 Acts, ch 78, §37; 97 Acts, ch 175, §104; 2007 Acts, ch 218, §182, 183, 187; 2008 Acts, ch 1019, §18, 20

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

**252H.14A Reviews initiated by the child support recovery unit — abbreviated method.**

1. Notwithstanding section 252H.15, the unit may use procedures under this section to review a support order if all the following apply:

a. One of the following applies:

(1) The right to ongoing child support is assigned to the state of Iowa due to the receipt of family investment program assistance, and a review of the support order is required under section 7302 of the federal Deficit Reduction Act of 2005, Pub. L. No. 109-171.

(2) A parent requests a review, provides the unit with financial information as part of that request, and the order meets the criteria for review under this subchapter.

b. The unit has access to information concerning the financial circumstances of each parent and one of the following applies:

(1) The parent is a recipient of family investment program assistance, medical assistance, or food assistance from the department.

(2) The parent's income is from supplemental security income paid pursuant to 42 U.S.C. § 1381a.

(3) The parent is a recipient of disability benefits under the Act because of the parent's disability.

(4) The parent is an inmate of an institution under the control of the department of corrections.

(5) The unit has access to information described in section 252B.7A, subsection 1, paragraph "c".

2. If the conditions of subsection 1 are met, the unit may conduct a review and determine whether an adjustment is appropriate using information accessible by the unit without issuing a notice under section 252H.15 or requesting additional information from the parent.

3. Upon completion of the review, the unit shall issue a notice of decision to each parent, or if applicable, to each parent's attorney. The notice shall be served in accordance with the rules of civil procedure or as provided in section 252B.26, except that a parent requesting a review pursuant to section 252H.13 shall waive the right to personal service of the notice in writing and accept service by regular mail. If the service by regular mail does not occur within ninety days of the written waiver of personal service, personal service of the notice is required unless a new waiver of personal service is obtained.

4. All of the following shall be included in the notice of decision:

a. The legal basis and purpose of the action, including an explanation of the procedures for determining child support, the criteria for determining the appropriateness of an adjustment, and a statement that the unit used the child support guidelines established pursuant to section 598.21B and the provisions for medical support pursuant to chapter 252E.

b. Information sufficient to identify the affected parties and the support order or orders affected.

c. An explanation of the legal rights and responsibilities of the affected parties, including time frames in which the parties must act.

d. A statement indicating whether the unit finds that an adjustment is appropriate and the basis for the determination.

e. Procedures for contesting the action, including that if a parent requests a second review both parents will be requested to submit financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21B.

f. Other information as appropriate.

5. Section 252H.16, subsection 5, regarding a revised notice of decision shall apply to a notice of decision issued under this section.

6. Each parent shall have the right to challenge the notice of decision issued under this section by requesting a second review by the unit as provided in section 252H.17. If there is no new or different information to consider for the second review, the unit shall issue a second notice of decision based on prior information. Each parent shall have the right to

challenge the second notice of decision by requesting a court hearing as provided in section 252H.8.

2007 Acts, ch 218, §151, 156; 2010 Acts, ch 1142, §7; 2011 Acts, ch 67, §3

Referred to in §252B.26, 252H.8, 252H.10, 252H.11, 252H.15, 252H.17

Existing administrative rules applicable to review and adjustment of support orders apply to review under this section as amended by 2010 Acts, except that a provision for a time limit, notice, or other procedure that conflicts with this section, as amended by 2010 Acts, is inapplicable; 2010 Acts, ch 1142, §10

#### **252H.15 Notice of intent to review and adjust.**

1. Unless an action is initiated under section 252H.14A, prior to conducting a review of a support order, the unit shall issue a notice of intent to review and adjust to each parent, or if applicable, to each parent's attorney. However, notice to a child support agency or an agency entitled to receive child or medical support payments as the result of an assignment of support rights is not required.

2. Notice shall be served upon each parent in accordance with the rules of civil procedure, except that a parent requesting a review pursuant to section 252H.13 shall waive the right to personal service of the notice in writing and accept service by regular mail. If the service by regular mail does not occur within ninety days of the written waiver of personal service, personal service of the notice is required unless a new waiver of personal service is obtained.

3. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. The legal basis and purpose of the action.

b. Information sufficient to identify the affected parties and the support order or orders affected.

c. An explanation of the procedures for determining child support and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21B.

d. An explanation of the legal rights and responsibilities of the affected parties, including the time frames in which the parties must act.

e. Criteria for determining appropriateness of an adjustment and a statement that the unit will use the child support guidelines established pursuant to section 598.21B and the provisions for medical support pursuant to chapter 252E to adjust the order.

f. Procedures for contesting the action.

g. An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.

h. Other information as appropriate.

93 Acts, ch 78, §38; 2004 Acts, ch 1116, §22; 2005 Acts, ch 69, §26; 2007 Acts, ch 218, §152, 156

Referred to in §252H.5, 252H.8, 252H.10, 252H.11, 252H.14A, 252H.16

#### **252H.16 Conducting the review — notice of decision.**

1. For actions initiated under section 252H.15, the unit shall conduct the review and determine whether an adjustment is appropriate. As necessary, the unit shall make a determination of the controlling order or the amount of delinquent support due based upon the receipt of social security disability payments as provided in sections 598.22 and 598.22C.

2. Unless both parents have waived the prereview notice period as provided for in section 252H.7, the review shall not be conducted for at least fifteen days from the date both parents were successfully served with the notice required in section 252H.15.

3. Upon completion of the review, the unit shall issue a notice of decision by regular mail to the last known address of each parent, or if applicable, each parent's attorney.

4. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. Information sufficient to identify the affected parties and the support order or orders affected.

b. A statement indicating whether the unit finds that an adjustment is appropriate and the basis for the determination.

c. Other information, as appropriate.

5. A revised notice of decision shall be issued when the unit receives or becomes aware of new or different information affecting the results of the review after the notice of decision has been issued and before the entry of an administrative order adjusting the support order, when new or different information is not received in conjunction with a request for a second review, or subsequent to a request for a court hearing. If a revised notice of decision is issued, the time frames for requesting a second review or court hearing shall apply from the date of issuance of the revised notice.

93 Acts, ch 78, §39; 98 Acts, ch 1170, §39; 2002 Acts, ch 1018, §14; 2007 Acts, ch 218, §153, 156; 2010 Acts, ch 1142, §8

Referred to in §252H.5, 252H.6, 252H.7, 252H.8, 252H.11, 252H.14A, 252H.17

Conflicting administrative rule time limits are inapplicable until amended to conform with amendments to this section by 2010 Acts, ch 1142; 2010 Acts, ch 1142, §10

#### **252H.17 Challenging the notice of decision — second review — notice.**

1. Each parent shall have the right to challenge the notice of decision issued under section 252H.14A or 252H.16, by requesting a second review by the unit.

2. A challenge shall be submitted, in writing, to the local child support office that issued the notice of decision, within thirty days of service of the notice of decision under section 252H.14A or within ten days of the issuance of the notice of decision under section 252H.16.

3. A parent challenging the notice of decision shall submit any new or different information, not previously considered by the unit in conducting the review, with the challenge and request for second review.

4. A parent challenging the notice of decision shall submit any required fees with the challenge. Any request submitted without full payment of the required fee shall be denied.

5. If a timely challenge along with any necessary fee is received, the unit shall issue by regular mail to the last known address of each parent, or if applicable, to each parent's attorney, a notice that a second review will be conducted. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. A statement of purpose of the second review.

b. Information sufficient to identify the affected parties and the support order or orders affected.

c. A statement of the information that is eligible for consideration at the second review.

d. The procedures and time frames in conducting and completing a second review, including a statement that only one second review shall be conducted as the result of a challenge received from either or both parents.

e. An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.

f. Other information, as appropriate.

6. The unit shall conduct a second review, utilizing any new or additional information provided or available since issuance of the notice of decision under section 252H.14A or under section 252H.16, to determine whether an adjustment is appropriate.

7. Upon completion of the review, the unit shall issue a second notice of decision by regular mail to the last known address of each parent, or if applicable, to each parent's attorney. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. Information sufficient to identify the affected parties and the support order or orders affected.

b. The unit's finding resulting from the second review indicating whether the unit finds that an adjustment is appropriate, the basis for the determination, and the impact on the first review.

c. An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.

d. Other information, as appropriate.

8. If the determination resulting from the first review is revised or reversed by the second review, the following shall be issued to each parent along with the second notice of decision and the amount of any proposed adjustment:

a. Any updated or revised financial statements provided by either parent.

b. A computation prepared by the local child support office issuing the notice, demonstrating how the amount of support due under the child support guidelines was calculated, and a comparison of the newly computed amount with the current support obligation amount.

93 Acts, ch 78, §40; 96 Acts, ch 1141, §3; 2007 Acts, ch 218, §154, 156

Referred to in §252H.5, 252H.7, 252H.8, 252H.14A

### SUBCHAPTER III

#### ADMINISTRATIVE MODIFICATION

Referred to in §252H.8, 252H.9, 252H.11

##### **252H.18 Orders subject to administrative modification.**

An order meeting all of the following conditions is eligible for administrative modification under this subchapter.

1. The order is subject to the jurisdiction of this state for the purposes of modification.
2. The unit is providing services pursuant to chapter 252B.
3. The child was conceived or born during a marriage or paternity has been legally established.
4. Review and adjustment services pursuant to subchapter II are not required or are not applicable.

93 Acts, ch 78, §41

##### **252H.18A Request for review outside applicable time frames.**

1. If a support order is not eligible for review and adjustment because the support order is outside of the minimum time frames specified by rule of the department, a parent may request a review and administrative modification by submitting all of the following to the unit:

- a. A request for review of the support order which is outside of the applicable time frames.
- b. Verified documentation of a substantial change in circumstances as specified by rule of the department.

2. Upon receipt of the request and all documentation required in subsection 1, the unit shall review the request and documentation and if appropriate shall issue a notice of intent to modify as provided in section 252H.19.

3. Notwithstanding section 598.21C, for purposes of this section, a substantial change in circumstances means there has been a change of fifty percent or more in the income of a parent, and the change is due to financial circumstances which have existed for a minimum period of three months and can reasonably be expected to exist for an additional three months.

97 Acts, ch 175, §105; 2005 Acts, ch 69, §27

Referred to in §252H.4, 252H.8

##### **252H.19 Notice of intent to modify.**

1. The unit shall issue a notice of intent to modify to each parent. Notice to a child support agency or an agency entitled to receive child or medical support payments as the result of an assignment of support rights is not required.

2. The notice shall be served upon each parent in accordance with the rules of civil procedure, except that a parent requesting modification shall, at the time of the request, waive the right to personal service of the notice in writing and accept service by regular mail. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

- a. The legal basis and purpose of the action.
- b. Information sufficient to identify the affected parties and the support order or orders affected.
- c. An explanation of the procedures for determining child support and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21B.

d. An explanation of the legal rights and responsibilities of the affected parties, including the time frames in which the parties must act.

e. Procedures for contesting the action through a conference or a court hearing.

f. Other information, as appropriate.

93 Acts, ch 78, §42; 2004 Acts, ch 1116, §23; 2005 Acts, ch 69, §28

Referred to in §252H.8, 252H.10, 252H.11, 252H.18A

**252H.20 Conference — second notice and finding of financial responsibility.**

1. Each parent shall have the right to request a conference with the office of the unit that issued the notice of intent to modify. The request may be made in person, in writing, or by telephone, and shall be made within ten days of the date of successful service of the notice of intent to modify.

2. A parent requesting a conference shall submit any required fee no later than the date of the scheduled conference. A conference shall not be held unless the required fee is paid in full.

3. Upon a request and full payment of any required fee, the office of the unit that issued the notice of intent to modify shall schedule a conference with the parent and advise the parent of the date, time, place, and procedural aspects of the conference. The unit shall adopt rules pursuant to chapter 17A to specify the manner in which a conference is conducted and the purpose of the conference.

4. Following the conference, the office of the unit that conducted the review shall issue a second notice of proposed modification and finding of financial responsibility to the parent requesting the conference. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. Information sufficient to identify the affected parties and the support order or orders affected.

b. If the unit will continue or terminate the action.

c. Procedures for contesting the action and the applicable time frames for actions by the parents.

d. Other information, as appropriate.

93 Acts, ch 78, §43

Referred to in §252H.5, 252H.7, 252H.8

## SUBCHAPTER IV

### COST-OF-LIVING ALTERATION

Referred to in §252B.20, 252E.1A

**252H.21 Purpose — intent — effect on requirements for guidelines.**

1. This subchapter is intended to provide a procedure to accommodate a request of both parents to expeditiously change a support order due to changes in the cost of living.

2. All of the following shall apply to a cost-of-living alteration under this subchapter:

a. To the extent permitted under 42 U.S.C. § 666(a)(10)(A)(i)(II), the cost-of-living alteration shall be an exception to any requirement under law for the application of the child support guidelines established pursuant to section 598.21B, including but not limited to any requirement in this chapter or chapter 234, 252A, 252B, 252C, 252F, 598, or 600B.

b. The cost-of-living alteration shall not prevent any subsequent modification or adjustment to the support order as otherwise provided in law based on application of the child support guidelines.

c. The calculation of a cost-of-living alteration to a child support order shall be compounded as follows:

(1) Increase or decrease the child support order by the percentage change of the appropriate consumer price index for the month and year after the month and year the child support order was last issued, modified, adjusted, or altered.

(2) Increase or decrease the amount of the child support order calculated in subparagraph (1) for each subsequent year by applying the appropriate consumer price index for each

subsequent year to the result of the calculation for the previous year. The final year in the calculation shall be the year immediately preceding the year the unit received the completed request for the cost-of-living alteration.

d. The amount of the cost-of-living alteration in the notice in section 252H.24, subsection 1, shall be the result of the calculation in paragraph “c”.

97 Acts, ch 175, §106; 2005 Acts, ch 69, §29

**252H.22 Support orders subject to cost-of-living alteration.**

A support order meeting all of the following conditions is eligible for a cost-of-living alteration under this subchapter.

1. The support order is subject to the jurisdiction of this state for the purposes of a cost-of-living alteration.

2. The support order provides for the ongoing support of at least one child under the age of eighteen or a child between the ages of eighteen and nineteen who has not yet graduated from high school but who is reasonably expected to graduate from high school before attaining the age of nineteen.

3. The unit is providing enforcement services for the ongoing support obligation pursuant to chapter 252B.

4. A parent requests a cost-of-living alteration as provided in section 252H.23.

5. The support order addresses medical support for the child.

6. The support order is not subject to the social security disability provisions pursuant to sections 598.22 and 598.22C.

97 Acts, ch 175, §107; 2002 Acts, ch 1018, §15

**252H.23 Right to request cost-of-living alteration.**

A parent may request a cost-of-living alteration by submitting all of the following to the unit:

1. A written request for a cost-of-living alteration to the support order signed by the parent making the request.

2. A statement signed by the nonrequesting parent agreeing to the cost-of-living alteration to the support order.

3. A statement signed by each parent waiving that parent’s right to personal service and accepting service by regular mail.

4. Other documentation specified by rule of the department.

97 Acts, ch 175, §108

Referred to in §252H.22

**252H.24 Role of the child support recovery unit — filing and docketing of cost-of-living alteration order — order effective as district court order.**

1. Upon receipt of a request and required documentation for a cost-of-living alteration, the unit shall issue a notice of the amount of cost-of-living alteration by regular mail to the last known address of each parent, or, if applicable, each parent’s attorney. The notice shall include all of the following:

a. A statement that either parent may contest the cost-of-living alteration within thirty days of the date of the notice by making a request for a review of a support order as provided in section 252H.13, and if either parent does not make a request for a review within thirty days, the unit shall prepare an administrative order as provided in subsection 4.

b. A statement that the parent may waive the thirty-day notice waiting period provided for in this section.

2. Upon timely receipt of a request and required documentation for a review of a support order as provided in subsection 1 from either parent, the unit shall terminate the cost-of-living alteration process and apply the provisions of subchapters I and II of this chapter relating to review and adjustment.

3. Upon receipt of signed requests from both parents subject to the support order, waiving the notice waiting period, the unit may prepare an administrative order pursuant to subsection 4 altering the support obligation.

4. If timely request for a review pursuant to section 252H.13 is not made, and if the thirty-day notice waiting period has expired, or if both parents have waived the notice waiting period, the unit shall prepare and present an administrative order for a cost-of-living alteration, ex parte, to the district court where the order to be altered is filed.

5. Unless defects appear on the face of the administrative order or on the attachments, the district court shall approve the order. Upon filing, the approved order shall have the same force, effect, and attributes of an order of the district court.

6. Upon filing, the clerk of the district court shall enter the order in the judgment docket and judgment lien index.

7. If the parents jointly waive the thirty-day notice waiting period, the signed statements of both parents waiving the notice period shall be filed in the court record with the administrative order altering the support obligation.

8. The unit shall send a copy of the order by regular mail to each parent’s last known address, or, if applicable, to the last known address of the parent’s attorney.

9. An administrative order approved by the district court is final, and action by the unit to enforce and collect upon the order may be taken from the date of the entry of the order by the district court.

97 Acts, ch 175, §109  
 Referred to in §252H.13, 252H.21, 598.21C

## CHAPTER 252I

### SUPPORT PAYMENTS — LEVIES AGAINST ACCOUNTS

Referred to in §252B.3, 252B.9

252I.1	Definitions.	252I.5	Administrative levy — notice to financial institution.
252I.2	Purpose and use.	252I.6	Administrative levy — notice to support obligor.
252I.3	Initial notice to obligor.	252I.7	Responsibilities of financial institution.
252I.4	Verification of accounts and immunity from liability.	252I.8	Challenges to action.

#### 252I.1 Definitions.

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

1. “*Account*” means “account” as defined in section 524.103, the savings or deposits of a member received or being held by a credit union, or certificates of deposit. “*Account*” also includes deposits held by an agent, a broker-dealer, or an issuer as defined in section 502.102 and money-market mutual fund accounts and “account” as defined in 42 U.S.C. § 666(a)(17). However, “*account*” does not include amounts held by a financial institution as collateral for loans extended by the financial institution.

2. “*Bank*” means “bank”, “insured bank”, and “state bank” as defined in section 524.103.

3. “*Court order*” means “support order” as defined in section 252J.1.

4. “*Credit union*” means “credit union” as defined in section 533.102.

5. “*Financial institution*” means “financial institution” as defined in 42 U.S.C. § 669A(d)(1). “*Financial institution*” also includes an institution which holds deposits for an agent, broker-dealer, or an issuer as defined in section 502.102.

6. “*Obligor*” means a person who has been ordered by a court or administrative authority to pay support.

7. “*Support*” or “*support payments*” means “support” or “support payments” as defined in section 252D.16.

8. “*Unit*” or “*child support recovery unit*” means the child support recovery unit created in section 252B.2.

9. “Working days” means only Monday, Tuesday, Wednesday, Thursday, and Friday, but excluding the holidays specified in section 1C.2, subsection 1.

94 Acts, ch 1101, §1; 96 Acts, ch 1034, §15; 97 Acts, ch 175, §110; 98 Acts, ch 1170, §33; 2007 Acts, ch 174, §91; 2008 Acts, ch 1031, §109; 2012 Acts, ch 1017, §61, 62

Referred to in §252B.9

### **252I.2 Purpose and use.**

1. Notwithstanding other statutory provisions which provide for the execution, attachment, or levy against accounts, the unit may utilize the process established in this chapter to collect delinquent support payments provided that any exemptions or exceptions which specifically apply to enforcement of support obligations pursuant to other statutory provisions also apply to this chapter.

2. An obligor is subject to the provisions of this chapter if the obligor’s support obligation is being enforced by the child support recovery unit, and if the support payments ordered under chapter 232, 234, 252A, 252C, 252D, 252E, 252F, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction, as certified to the child support recovery unit, are not paid to the clerk of the district court or the collection services center pursuant to section 598.22 and become delinquent in an amount equal to the support payment for one month.

3. Any amount forwarded by a financial institution under this chapter shall not exceed the amounts specified in 15 U.S.C. § 1673(b) and shall not exceed the delinquent or accrued amount of support owed by the obligor.

94 Acts, ch 1101, §2

Referred to in §252I.5, 252I.6

### **252I.3 Initial notice to obligor.**

The unit or district court may include language in any new or modified support order issued on or after July 1, 1994, notifying the obligor that the obligor is subject to the provisions of this chapter. However, this chapter is sufficient notice for implementation of administrative levy provisions without further notice of the provisions of this chapter.

94 Acts, ch 1101, §3; 2005 Acts, ch 112, §12

### **252I.4 Verification of accounts and immunity from liability.**

1. The unit may contact a financial institution to obtain verification of the account number, the names and social security numbers listed for the account, and the account balance of any account held by an obligor. Contact with a financial institution may be by telephone or by written communication. The financial institution may require positive voice recognition and may require the telephone number of the authorized person from the unit before releasing an obligor’s account information by telephone.

2. The unit and financial institutions doing business in Iowa shall enter into agreements to develop and operate a data match system, using automated data exchanges to the maximum extent feasible. The data match system shall allow a means by which each financial institution shall provide to the unit for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each obligor who maintains an account at the institution and who owes past-due support, as identified by the unit by name and social security number or other taxpayer identification number. The unit shall work with representatives of financial institutions to develop a system to assist nonautomated financial institutions in complying with the provisions of this section.

3. The unit may pay a reasonable fee to a financial institution for conducting the data match required in subsection 2, not to exceed the lower of either one hundred fifty dollars for each quarterly data match or the actual costs incurred by the financial institution for each quarterly data match. However, the unit may also adopt rules pursuant to chapter 17A to specify a fee amount for each quarterly data match based upon the estimated state share of funds collected under this chapter, which, when adopted, shall be applied in lieu of the one hundred fifty dollar fee under this subsection. In addition, the unit may pay a reasonable fee to a financial institution for automation programming development performed in order to conduct the data match required in subsection 2, not to exceed the lower of either five

hundred dollars or the actual costs incurred by the financial institution. The unit may use the state share of funds collected under this chapter to pay the fees to financial institutions under this subsection. For state fiscal years beginning July 1, 1999, and July 1, 2000, the unit may use up to one hundred percent of the state share of such funds. For state fiscal years beginning on or after July 1, 2001, the unit may use up to fifty percent of the state share of such funds. Notwithstanding any other provision of law to the contrary, a financial institution shall have until a date provided in the agreement in subsection 2 to submit its claim for a fee under this subsection. If the unit does not have sufficient funds available under this subsection for payment of fees under this subsection for conducting data matches or for automation program development performed in the fiscal year beginning July 1, 1999, the cost may be carried forward to the fiscal year beginning July 1, 2000. The unit may also use funds from an amount assessed a child support agency of another state, as defined in section 252H.2, to conduct a data match requested by that child support agency as provided in 42 U.S.C. § 666(a)(14) to pay fees to financial institutions under this subsection.

4. *a.* A financial institution is immune from any liability in any action or proceeding, whether civil or criminal, for any of the following:

(1) The disclosure of any information by a financial institution to the unit pursuant to this chapter or the rules or procedures adopted by the unit to implement this chapter, including disclosure of information relating to an obligor who maintains an account with the financial institution or disclosure of information relating to any other person who maintains an account with the financial institution that is provided for the purpose of complying with the data match requirements of this section and with the agreement entered into between the financial institution and the unit pursuant to subsection 2.

(2) Any encumbrance or surrender of any assets held by a financial institution in response to a notice of lien or levy issued by the unit.

(3) Any action or omission in connection with good faith efforts to comply with this chapter or any rules or procedures that are adopted by the unit to implement this chapter.

(4) The disclosure, use, or misuse by the unit or by any other person of information provided or assets delivered to the unit by a financial institution.

*b.* For the purposes of this section, “*financial institution*” includes officers, directors, employees, contractors, and agents of the financial institution.

5. The financial institution or the unit is not liable for the cost of any early withdrawal penalty of an obligor’s certificate of deposit.

94 Acts, ch 1101, §4; 97 Acts, ch 175, §111; 99 Acts, ch 127, §3; 2000 Acts, ch 1096, §3, 4; 2000 Acts, ch 1232, §90, 95

#### **252I.5 Administrative levy — notice to financial institution.**

1. If an obligor is subject to this chapter under section 252I.2, the unit may initiate an administrative action to levy against the accounts of the obligor.

2. The unit may send a notice to the financial institution with which the account is placed, directing that the financial institution forward all or a portion of the moneys in the obligor’s account or accounts to the collection services center established pursuant to chapter 252B. The notice shall be sent by regular mail, with proof of service completed according to rule of civil procedure 1.442.

3. The notice to the financial institution shall contain all of the following:

*a.* The name and social security number of the obligor.

*b.* A statement that the obligor is believed to have one or more accounts at the financial institution.

*c.* A statement that pursuant to the provisions of this chapter, the obligor’s accounts are subject to seizure and the financial institution is authorized and required to forward moneys to the collection services center.

*d.* The maximum amount that shall be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of support owed by the obligor.

*e.* The prescribed time frame which the financial institution must meet in forwarding amounts.

f. The address of the collection services center and the collection services center account number.

g. A telephone number, address, and contact name of the child support recovery unit contact initiating the action.

94 Acts, ch 1101, §5; 2005 Acts, ch 112, §13

Referred to in §252I.6, 252I.7

#### **252I.6 Administrative levy — notice to support obligor.**

1. The unit may administratively initiate an action to seize accounts of an obligor who is subject to this chapter under section 252I.2.

2. The unit shall notify an obligor subject to this chapter, and any other party known to have an interest in the account, of the action. The notice shall contain all of the following:

a. The name of the obligor.

b. A statement that the obligor is believed to have one or more accounts at the financial institution.

c. A statement that pursuant to the provisions of this chapter, the obligor's accounts are subject to seizure and the financial institution is authorized and required to forward moneys to the collection services center.

d. The maximum amount to be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of support owed by the obligor.

e. The prescribed time frames within which the financial institution must comply.

f. A statement that any challenge to the action shall be in writing and shall be received by the child support recovery unit within ten days of the date of the notice to the obligor.

g. The address of the collection services center and the collection services center account number.

h. A telephone number, address, and contact name for the child support recovery unit contact initiating the action.

3. The unit shall forward the notice to the obligor by regular mail within two working days of sending the notice to the financial institution pursuant to section 252I.5. Proof of service shall be completed according to rule of civil procedure 1.442.

94 Acts, ch 1101, §6; 2008 Acts, ch 1019, §10

#### **252I.7 Responsibilities of financial institution.**

Upon receipt of a notice under section 252I.5, the financial institution shall do all of the following:

1. Immediately encumber funds in all accounts in which the obligor has an interest to the extent of the debt indicated in the notice from the unit.

2. No sooner than fifteen days, and no later than twenty days from the date the financial institution receives the notice under section 252I.5, unless notified by the unit of a challenge by the obligor or an account holder of interest, the financial institution shall forward the moneys encumbered to the collection services center with the obligor's name and social security number, collection services center account number, and any other information required in the notice.

3. The financial institution may assess a fee against the obligor, not to exceed ten dollars, for forwarding of moneys to the collection services center. This fee is in addition to the amount of support due. In the event that there are insufficient moneys to cover the fee and the support amount due, the institution may deduct the fee amount prior to forwarding moneys to the collection services center and the amount credited to the support obligation shall be reduced by the fee amount.

94 Acts, ch 1101, §7

Referred to in §252I.8

#### **252I.8 Challenges to action.**

1. Challenges under this chapter may be initiated only by an obligor or by an account holder of interest. Actions initiated by the unit under this chapter are not subject to chapter 17A, and resulting court hearings following certification shall be an original hearing before the district court.

2. The person challenging the action shall submit a written challenge to the person identified as the contact for the unit in the notice, within ten working days of the date of the notice.

3. The unit shall, upon receipt of a written challenge, review the facts of the case with the challenging party. Only a mistake of fact, including but not limited to, a mistake in the identity of the obligor or a mistake in the amount of delinquent support due shall be considered as a reason to dismiss or modify the proceeding.

4. If the unit determines that a mistake of fact has occurred the unit shall proceed as follows:

a. If a mistake in identity has occurred or the obligor is not delinquent in an amount equal to the payment for one month, the unit shall notify the financial institution that the administrative levy has been released. The unit shall provide a copy of the notice to the support obligor by regular mail.

b. If the obligor is delinquent, but the amount of the delinquency is less than the amount indicated in the notice, the unit shall notify the financial institution of the revised amount with a copy of the notice and issue a copy to the obligor or forward a copy to the obligor by regular mail. Upon written receipt of instructions from the unit, the financial institution shall release the funds in excess of the revised amount to the obligor and the moneys in the amount of the debt shall be processed according to section 252I.7.

5. If the unit finds no mistake of fact, the unit shall provide a notice to that effect to the challenging party by regular mail. Upon written request of the challenging party, the unit shall request a hearing before the district court in the county in which the underlying support order is filed.

a. The financial institution shall encumber moneys if the child support recovery unit notifies the financial institution to do so.

b. The clerk of the district court shall schedule a hearing upon the request by the unit for a time not later than ten calendar days after the filing of the request for hearing. The clerk shall mail copies of the request for hearing and the order scheduling the hearing to the unit and to all account holders of interest.

c. If the court finds that there is a mistake of identity or that the obligor does not owe the delinquent support, the unit shall notify the financial institution that the administrative levy has been released.

d. If the court finds that the obligor has an interest in the account, and the amount of support due was incorrectly overstated, the unit shall notify the financial institution to release the excess moneys to the obligor and remit the remaining moneys in the amount of the debt to the collection services center for disbursement to the appropriate recipient.

e. If the court finds that the obligor has an interest in the account, and the amount of support due is correct, the financial institution shall forward the moneys to the collection services center for disbursement to the appropriate recipient.

f. If the obligor or any other party known to have an interest in the account fails to appear at the hearing, the court may find the challenging party in default, shall ratify the administrative levy, if valid upon its face, and shall enter an order directing the financial institution to release the moneys to the unit.

g. Issues related to visitation, custody, or other provisions not related to levies against accounts are not grounds for a hearing under this chapter.

h. Support orders shall not be modified under a challenge pursuant to this section.

i. Any findings in the challenge of an administrative levy related to the amount of the accruing or accrued support obligation do not modify the underlying support order.

j. An order entered under this chapter for a levy against an account of a support obligor has priority over a levy for a purpose other than the support of the dependents in the court order being enforced.

6. The support obligor may withdraw the request for challenge by submitting a written withdrawal to the person identified as the contact for the unit in the notice or the unit may withdraw the administrative levy at any time prior to the court hearing and provide notice of the withdrawal to the obligor and any account holder of interest and to the financial institution, by regular mail.

7. If the financial institution has forwarded moneys to the collection services center and has deducted a fee from the moneys of the account, or if any additional fees or costs are levied against the account, and all funds are subsequently refunded to the account due to a mistake of fact or ruling of the court, the child support recovery unit shall reimburse the account for any fees assessed by the financial institution. If the mistake of fact is a mistake in the amount of support due and any portion of the moneys is retained as support payments, however, the unit is not required to reimburse the account for any fees or costs levied against the account. Additionally, for the purposes of reimbursement to the account for any fees or costs, each certificate of deposit is considered a separate account.

94 Acts, ch 1101, §8

## CHAPTER 252J

### CHILD SUPPORT — LICENSING SANCTIONS

Referred to in §252B.3, 252B.9, 272D.1

252J.1	Definitions.	252J.7	Certificate of noncompliance — certification to licensing authority.
252J.2	Purpose and use.		
252J.3	Notice to individual of potential sanction of license.	252J.8	Requirements and procedures of licensing authority.
252J.4	Conference.	252J.9	District court hearing.
252J.5	Written agreement.		
252J.6	Decision of the unit.		

#### 252J.1 Definitions.

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

1. “*Certificate of noncompliance*” means a document provided by the child support recovery unit certifying that the named individual is not in compliance with any of the following:

- a. A support order.
- b. A written agreement for payment of support entered into by the unit and the obligor.
- c. A subpoena or warrant relating to a paternity or support proceeding.

2. “*Individual*” means a parent, an obligor, or a putative father in a paternity or support proceeding.

3. “*License*” means a license, certification, registration, permit, approval, renewal, or other similar authorization issued to an individual by a licensing authority which evidences the admission to, or granting of authority to engage in, a profession, occupation, business, industry, or recreation or to operate or register a motor vehicle. “*License*” includes licenses for hunting, fishing, boating, or other recreational activity.

4. “*Licensee*” means an individual to whom a license has been issued, or who is seeking the issuance of a license.

5. “*Licensing authority*” means a county treasurer, county recorder or designated depository, the supreme court, or an instrumentality, agency, board, commission, department, officer, organization, or any other entity of the state, which has authority within this state to suspend or revoke a license or to deny the renewal or issuance of a license authorizing an individual to register or operate a motor vehicle or to engage in a business, occupation, profession, recreation, or industry.

6. “*Obligor*” means a natural person as defined in section 252G.1 who has been ordered by a court or administrative authority to pay support.

7. “*Subpoena or warrant*” means a subpoena or warrant relating to a paternity or support proceeding initiated or obtained by the unit or a child support agency as defined in section 252H.2.

8. “*Support*” means support or support payments as defined in section 252D.16, whether established through court or administrative order.

9. “*Support order*” means an order for support issued pursuant to chapter 232, 234, 252A, 252C, 252D, 252E, 252F, 252H, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction as registered with the clerk of the district court or certified to the child support recovery unit.

10. “*Unit*” means the child support recovery unit created in section 252B.2.

11. “*Withdrawal of a certificate of noncompliance*” means a document provided by the unit certifying that the certificate of noncompliance is withdrawn and that the licensing authority may proceed with issuance, reinstatement, or renewal of an individual’s license.

95 Acts, ch 115, §1; 97 Acts, ch 175, §112, 113

Referred to in §252B.5, 252B.9, 252I.1, 261.121

### **252J.2 Purpose and use.**

1. Notwithstanding other statutory provisions to the contrary, and if an individual has not been cited for contempt and enjoined from engaging in the activity governed by a license pursuant to section 598.23A, the unit may utilize the process established in this chapter to collect support.

2. For cases in which services are provided by the unit all of the following apply:

a. An obligor is subject to the provisions of this chapter if the obligor’s support obligation is being enforced by the unit, if the support payments required by a support order to be paid to the clerk of the district court or the collection services center pursuant to section 598.22 are not paid and become delinquent in an amount equal to the support payment for three months, and if the obligor’s situation meets other criteria specified under rules adopted by the department pursuant to chapter 17A. The criteria specified by rule shall include consideration of the length of time since the obligor’s last support payment and the total amount of support owed by the obligor.

b. An individual is subject to the provisions of this chapter if the individual has failed, after receiving appropriate notice, to comply with a subpoena or warrant.

3. Actions initiated by the unit under this chapter shall not be subject to contested case proceedings or further review pursuant to chapter 17A and any resulting court hearing shall be an original hearing before the district court.

4. Notwithstanding chapter 22, all of the following apply:

a. Information obtained by the unit under this chapter shall be used solely for the purposes of this chapter or chapter 252B.

b. Information obtained by a licensing authority shall be used solely for the purposes of this chapter.

95 Acts, ch 115, §2; 97 Acts, ch 175, §114

Referred to in §252J.5, 252J.6, 252J.9

### **252J.3 Notice to individual of potential sanction of license.**

The unit shall proceed in accordance with this chapter only if the unit sends a notice to the individual by regular mail to the last known address of the individual. The notice shall include all of the following:

1. The address and telephone number of the unit and the unit case number.

2. A statement that the obligor is not in compliance with a support order or the individual has not complied with a subpoena or warrant.

3. A statement that the individual may request a conference with the unit to contest the action.

4. A statement that if, within twenty days of mailing of the notice to the individual, the individual fails to contact the unit to schedule a conference, the unit shall issue a certificate of noncompliance, bearing the individual’s name, social security number and unit case number, to any appropriate licensing authority, certifying that the obligor is not in compliance with a support order or an individual has not complied with a subpoena or warrant.

5. A statement that in order to stay the issuance of a certificate of noncompliance the request for a conference shall be in writing and shall be received by the unit within twenty days of mailing of the notice to the individual.

6. The names of the licensing authorities to which the unit intends to issue a certificate of noncompliance.

7. A statement that if the unit issues a certificate of noncompliance to an appropriate licensing authority, the licensing authority shall initiate proceedings to refuse to issue or renew, or to suspend or revoke the individual's license, unless the unit provides the licensing authority with a withdrawal of a certificate of noncompliance.

95 Acts, ch 115, §3; 97 Acts, ch 175, §115; 2005 Acts, ch 112, §14, 15

Referred to in §252J.4, 252J.6, 252J.7

#### **252J.4 Conference.**

1. The individual may schedule a conference with the unit following mailing of the notice pursuant to section 252J.3, or at any time after service of notice of suspension, revocation, denial of issuance, or nonrenewal of a license from a licensing authority, to challenge the unit's actions under this chapter.

2. The request for a conference shall be made to the unit, in writing, and, if requested after mailing of the notice pursuant to section 252J.3, shall be received by the unit within twenty days following mailing of the notice.

3. The unit shall notify the individual of the date, time, and location of the conference by regular mail, with the date of the conference to be no earlier than ten days following issuance of notice of the conference by the unit, unless the individual and the unit agree to an earlier date which may be the same date the individual requests the conference. If the individual fails to appear at the conference, the unit shall issue a certificate of noncompliance.

4. Following the conference, the unit shall issue a certificate of noncompliance unless any of the following applies:

a. The unit finds a mistake in the identity of the individual.

b. The unit finds a mistake in determining that the amount of delinquent support is equal to or greater than three months.

c. The obligor enters a written agreement with the unit to comply with a support order, the obligor complies with an existing written agreement to comply with a support order, or the obligor pays the total amount of delinquent support due.

d. Issuance of a certificate of noncompliance is not appropriate under other criteria established in accordance with rules adopted by the department pursuant to chapter 17A.

e. The unit finds a mistake in determining the compliance of the individual with a subpoena or warrant.

f. The individual complies with a subpoena or warrant.

5. The unit shall grant the individual a stay of the issuance of a certificate of noncompliance upon receiving a timely written request for a conference, and if a certificate of noncompliance has previously been issued, shall issue a withdrawal of a certificate of noncompliance if the obligor enters into a written agreement with the unit to comply with a support order or if the individual complies with a subpoena or warrant.

6. If the individual does not timely request a conference or does not comply with a subpoena or warrant or if the obligor does not pay the total amount of delinquent support owed within twenty days of mailing of the notice pursuant to section 252J.3, the unit shall issue a certificate of noncompliance.

95 Acts, ch 115, §4; 95 Acts, ch 209, §23; 97 Acts, ch 175, §116; 2005 Acts, ch 112, §16; 2011 Acts, ch 67, §4

Referred to in §252J.6

#### **252J.5 Written agreement.**

1. If an obligor is subject to this chapter as established in section 252J.2, subsection 2, paragraph "a", the obligor and the unit may enter into a written agreement for payment of support and compliance which takes into consideration the obligor's ability to pay and other criteria established by rule of the department. The written agreement shall include all of the following:

a. The method, amount, and dates of support payments by the obligor.

b. A statement that upon breach of the written agreement by the obligor, the unit shall issue a certificate of noncompliance to any appropriate licensing authority.

2. A written agreement entered into pursuant to this section does not preclude any other remedy provided by law and shall not modify or affect an existing support order.

3. Following issuance of a certificate of noncompliance, if the obligor enters into a written agreement with the unit, the unit shall issue a withdrawal of the certificate of noncompliance to any appropriate licensing authority and shall forward a copy of the withdrawal by regular mail to the obligor.

95 Acts, ch 115, §5; 97 Acts, ch 175, §117; 2004 Acts, ch 1116, §24

Referred to in §252J.6

#### **252J.6 Decision of the unit.**

1. If an obligor is not in compliance with a support order or the individual is not in compliance with a subpoena or warrant pursuant to section 252J.2, the unit mails a notice to the individual pursuant to section 252J.3, and the individual requests a conference pursuant to section 252J.4, the unit shall issue a written decision if any of the following conditions exists:

a. The individual fails to appear at a scheduled conference under section 252J.4.

b. A conference is held under section 252J.4.

c. The obligor fails to comply with a written agreement entered into by the obligor and the unit under section 252J.5.

2. The unit shall send a copy of the written decision to the individual by regular mail at the individual's most recent address of record. If the decision is made to issue a certificate of noncompliance or to withdraw the certificate of noncompliance, a copy of the certificate of noncompliance or of the withdrawal of the certificate of noncompliance shall be attached to the written decision. The written decision shall state all of the following:

a. That the certificate of noncompliance or withdrawal of the certificate of noncompliance has been provided to the licensing authorities named in the notice provided pursuant to section 252J.3.

b. That upon receipt of a certificate of noncompliance, the licensing authority shall initiate proceedings to suspend, revoke, deny issuance, or deny renewal of a license, unless the licensing authority is provided with a withdrawal of a certificate of noncompliance from the unit.

c. That in order to obtain a withdrawal of a certificate of noncompliance from the unit, the obligor shall enter into a written agreement with the unit, comply with an existing written agreement with the unit, or pay the total amount of delinquent support owed or the individual shall comply with a subpoena or warrant.

d. That if the unit issues a written decision which includes a certificate of noncompliance, that all of the following apply:

(1) The individual may request a hearing as provided in section 252J.9, before the district court as follows:

(a) If the action is a result of section 252J.2, subsection 2, paragraph "a", in the county in which the underlying support order is filed, by filing a written application to the court challenging the issuance of the certificate of noncompliance by the unit and sending a copy of the application to the unit within the time period specified in section 252J.9.

(b) If the action is a result of section 252J.2, subsection 2, paragraph "b", and the individual is not an obligor, in the county in which the dependent child or children reside if the child or children reside in Iowa; in the county in which the dependent child or children last received public assistance if the child or children received public assistance in Iowa; or in the county in which the individual resides if the action is the result of a request from a child support agency in a foreign jurisdiction.

(2) The individual may retain an attorney at the individual's own expense to represent the individual at the hearing.

(3) The scope of review of the district court shall be limited to demonstration of a mistake of fact related to the delinquency of the obligor or the compliance of the individual with a subpoena or warrant.

3. If the unit issues a certificate of noncompliance, the unit shall only issue a withdrawal of the certificate of noncompliance if any of the following applies:

- a. The unit or the court finds a mistake in the identity of the individual.
- b. The unit finds a mistake in determining compliance with a subpoena or warrant.
- c. The unit or the court finds a mistake in determining that the amount of delinquent support due is equal to or greater than three months.
- d. The obligor enters a written agreement with the unit to comply with a support order, the obligor complies with an existing written agreement to comply with a support order, or the obligor pays the total amount of delinquent support owed.
- e. The individual complies with the subpoena or warrant.
- f. Issuance of a withdrawal of the certificate of noncompliance is appropriate under other criteria in accordance with rules adopted by the department pursuant to chapter 17A.

95 Acts, ch 115, §6; 95 Acts, ch 209, §24; 97 Acts, ch 175, §118; 2004 Acts, ch 1116, §25; 2005 Acts, ch 112, §17

Referred to in §252J.7, 252J.9

#### **252J.7 Certificate of noncompliance — certification to licensing authority.**

1. If the individual fails to respond to the notice of potential license sanction provided pursuant to section 252J.3 or the unit issues a written decision under section 252J.6 which states that the individual is not in compliance, the unit shall issue a certificate of noncompliance to any appropriate licensing authority.

2. The certificate of noncompliance shall contain the individual's name and social security number.

3. The certificate of noncompliance shall require all of the following:

a. That the licensing authority initiate procedures for the revocation or suspension of the individual's license, or for the denial of the issuance or renewal of a license using the licensing authority's procedures.

b. That the licensing authority provide notice to the individual, as provided in section 252J.8, of the intent to suspend, revoke, deny issuance, or deny renewal of a license including the effective date of the action. The suspension, revocation, or denial shall be effective no sooner than thirty days following provision of notice to the individual.

95 Acts, ch 115, §7; 97 Acts, ch 175, §119; 2004 Acts, ch 1116, §26

#### **252J.8 Requirements and procedures of licensing authority.**

1. A licensing authority shall maintain records of licensees by name, current known address, and social security number.

2. In addition to other grounds for suspension, revocation, or denial of issuance or renewal of a license, a licensing authority shall include in rules adopted by the licensing authority as grounds for suspension, revocation, or denial of issuance or renewal of a license, the receipt of a certificate of noncompliance from the unit.

3. The supreme court shall prescribe rules for admission of persons to practice as attorneys and counselors pursuant to chapter 602, article 10, which include provisions, as specified in this chapter, for the denial, suspension, or revocation of the admission for failure to comply with a child support order or a subpoena or warrant.

4. a. A licensing authority that is issued a certificate of noncompliance shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. The licensing authority shall utilize existing rules and procedures for suspension, revocation, or denial of the issuance or renewal of a license.

b. In addition, the licensing authority shall provide notice to the individual of the licensing authority's intent to suspend, revoke, or deny issuance or renewal of a license under this chapter. The suspension, revocation, or denial shall be effective no sooner than thirty days following provision of notice to the individual.

c. The notice shall state all of the following:

(1) The licensing authority intends to suspend, revoke, or deny issuance or renewal of an individual's license due to the receipt of a certificate of noncompliance from the unit.

(2) The individual must contact the unit to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

(3) Unless the unit furnishes a withdrawal of a certificate of noncompliance to the licensing authority within thirty days of the issuance of the notice under this section, the individual's license will be revoked, suspended, or denied.

(4) If the licensing authority's rules and procedures conflict with the additional requirements of this section, the requirements of this section shall apply.

(5) Notwithstanding section 17A.18, the individual does not have a right to a hearing before the licensing authority to contest the authority's actions under this chapter but may request a court hearing pursuant to section 252J.9 within thirty days of the provision of notice under this subsection.

5. If the licensing authority receives a withdrawal of a certificate of noncompliance from the unit, the licensing authority shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements established by the licensing authority.

95 Acts, ch 115, §8; 97 Acts, ch 175, §120; 2009 Acts, ch 41, §245

Referred to in §252J.7, 252J.9, 321.218

#### **252J.9 District court hearing.**

1. Following the issuance of a written decision by the unit under section 252J.6 which includes the issuance of a certificate of noncompliance, or following provision of notice to the individual by a licensing authority pursuant to section 252J.8, an individual may seek review of the decision and request a hearing before the district court as follows:

a. If the action is a result of section 252J.2, subsection 2, paragraph "a", in the county in which the underlying support order is filed, by filing an application with the district court, and sending a copy of the application to the unit by regular mail.

b. If the action is a result of section 252J.2, subsection 2, paragraph "b", and the individual is not an obligor, in a county in which the dependent child or children reside if the child or children reside in Iowa; in the county in which the dependent child or children last received public assistance if the child or children received public assistance in Iowa; or in the county in which the individual resides if the action is the result of a request from a child support agency in a foreign jurisdiction.

2. An application shall be filed to seek review of the decision by the unit or following issuance of notice by the licensing authority no later than within thirty days after the issuance of the notice pursuant to section 252J.8. The clerk of the district court shall schedule a hearing and mail a copy of the order scheduling the hearing to the individual and the unit and shall also mail a copy of the order to the licensing authority, if applicable. The unit shall certify a copy of its written decision and certificate of noncompliance, indicating the date of issuance, and the licensing authority shall certify a copy of a notice issued pursuant to section 252J.8, to the court prior to the hearing.

3. The filing of an application pursuant to this section shall automatically stay the actions of a licensing authority pursuant to section 252J.8. The hearing on the application shall be scheduled and held within thirty days of the filing of the application. However, if the individual fails to appear at the scheduled hearing, the stay shall be lifted and the licensing authority shall continue procedures pursuant to section 252J.8.

4. The scope of review by the district court shall be limited to demonstration of a mistake of fact relating to the delinquency of the obligor or the noncompliance of the individual with a subpoena or warrant. Issues related to visitation, custody, or other provisions not related to the support provisions of a support order are not grounds for a hearing under this chapter.

5. Support orders shall not be modified by the court in a hearing under this chapter.

6. If the court finds that the unit was in error in issuing a certificate of noncompliance, or in failing to issue a withdrawal of a certificate of noncompliance, the unit shall issue a withdrawal of a certificate of noncompliance to the appropriate licensing authority.

95 Acts, ch 115, §9; 97 Acts, ch 175, §121; 2009 Acts, ch 41, §246

Referred to in §252J.6, 252J.8

## CHAPTER 252K

## UNIFORM INTERSTATE FAMILY SUPPORT ACT

Referred to in §252A.17, 252A.18, 252B.9, 252B.20, 252B.26, 252D.17, 252E.1, 598.21C, 598.22B, 600B.41A, 602.6111

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ARTICLE 1

GENERAL PROVISIONS

Referred to in §252K.613

**252K.101 Definitions.**

In this chapter:

1. “*Child*” means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.
2. “*Child support order*” means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.
3. “*Duty of support*” means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.
4. “*Home state*” means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.
5. “*Income*” includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.
6. “*Income withholding order*” means an order or other legal process directed to an obligor’s employer or other payor of income, as defined by the income withholding law of this state, to withhold support from the income of the obligor.
7. “*Initiating state*” means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.
8. “*Initiating tribunal*” means the authorized tribunal in an initiating state.
9. “*Issuing state*” means the state in which a tribunal issues a support order or renders a judgment determining parentage.
10. “*Issuing tribunal*” means the tribunal that issues a support order or renders a judgment determining parentage.
11. “*Law*” includes decisional and statutory law and rules and regulations having the force of law.

12. “*Obligee*” means any of the following:

a. An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered.

b. A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee.

c. An individual seeking a judgment determining parentage of the individual’s child.

13. “*Obligor*” means an individual, or the estate of a decedent, to which any of the following applies:

a. Who owes or is alleged to owe a duty of support.

b. Who is alleged but has not been adjudicated to be a parent of a child.

c. Who is liable under a support order.

14. “*Register*” means to file a support order or judgment determining parentage in the appropriate location for the filing of foreign judgments.

15. “*Registering tribunal*” means a tribunal in which a support order is registered.

16. “*Responding state*” means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

17. “*Responding tribunal*” means the authorized tribunal in a responding state.

18. “*Spousal support order*” means a support order for a spouse or former spouse of the obligor.

19. “*State*” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

a. An Indian tribe.

b. A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

20. “*Support enforcement agency*” means a public official or agency authorized to seek any of the following:

a. Enforcement of support orders or laws relating to the duty of support.

b. Establishment or modification of child support.

c. Determination of parentage.

d. Location of obligors or their assets.

21. “*Support order*” means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney’s fees, and other relief.

22. “*Tribunal*” means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

97 Acts, ch 175, §122

Referred to in §252H.2

### **252K.102 Tribunals of this state.**

The child support recovery unit when the unit establishes or modifies an order, upon ratification by the court, and the court, are the tribunals of this state.

97 Acts, ch 175, §123

### **252K.103 Remedies cumulative.**

Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

97 Acts, ch 175, §124

## ARTICLE 2

## JURISDICTION

Referred to in §252K.613

## PART 1

## EXTENDED PERSONAL JURISDICTION

Referred to in §252K.301

**252K.201 Bases for jurisdiction over nonresident.**

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if any of the following applies:

1. The individual is personally served with notice within this state.
2. The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.
3. The individual resided with the child in this state.
4. The individual resided in this state and provided prenatal expenses or support for the child.
5. The child resides in this state as a result of the acts or directives of the individual.
6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.
7. The individual asserted parentage in the declaration of paternity registry maintained in this state by the Iowa department of public health pursuant to section 144.12A or established paternity by affidavit under section 252A.3A.
8. There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

97 Acts, ch 175, §125

Referred to in §252A.5, 252B.12, 252K.202

**252K.202 Procedure when exercising jurisdiction over nonresident.**

A tribunal of this state exercising personal jurisdiction over a nonresident under section 252K.201 may apply section 252K.316 to receive evidence from another state, and section 252K.318 to obtain discovery through a tribunal of another state. In all other respects, articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter.

97 Acts, ch 175, §126

## PART 2

PROCEEDINGS INVOLVING TWO OR  
MORE STATES

Referred to in §252K.301

**252K.203 Initiating and responding tribunal of this state.**

Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

97 Acts, ch 175, §127

**252K.204 Simultaneous proceedings in another state.**

1. A tribunal of this state may exercise jurisdiction to establish a support order if the

petition or comparable pleading is filed after a pleading is filed in another state only if all of the following apply:

a. The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state.

b. The contesting party timely challenges the exercise of jurisdiction in the other state.

c. If relevant, this state is the home state of the child.

2. A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if all of the following apply:

a. The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state.

b. The contesting party timely challenges the exercise of jurisdiction in this state.

c. If relevant, the other state is the home state of the child.

97 Acts, ch 175, §128

#### **252K.205 Continuing, exclusive jurisdiction.**

1. A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order if any of the following applies:

a. As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued.

b. Until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

2. A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter.

3. If a child support order of this state is modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:

a. Enforce the order that was modified as to amounts accruing before the modification.

b. Enforce nonmodifiable aspects of that order.

c. Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

4. A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to this chapter or a law substantially similar to this chapter.

5. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

6. A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

97 Acts, ch 175, §129

Referred to in §252K.207

#### **252K.206 Enforcement and modification of support order by tribunal having continuing jurisdiction.**

1. A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

2. A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the

continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section 252K.316 to receive evidence from another state and section 252K.318 to obtain discovery through a tribunal of another state.

3. A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

97 Acts, ch 175, §130

### PART 3

#### RECONCILIATION OF MULTIPLE ORDERS

##### **252K.207 Recognition of controlling child support order.**

1. If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

2. If a proceeding is brought under this chapter, and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

a. If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.

b. If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

c. If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

3. If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be so recognized under subsection 2. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

4. The tribunal that issued the controlling order under subsection 1, 2, or 3 is the tribunal that has continuing, exclusive jurisdiction under section 252K.205.

5. A tribunal of this state which determines by order the identity of the controlling order under subsection 2, paragraph "a" or "b", or which issues a new controlling order under subsection 2, paragraph "c", shall state in that order the basis upon which the tribunal made its determination.

6. Within thirty days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

97 Acts, ch 175, §131

Referred to in §252H.2, 252K.611

##### **252K.208 Multiple child support orders for two or more obligees.**

In responding to multiple registrations or requests for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal

of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

97 Acts, ch 175, §132

**252K.209 Credit for payments.**

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state.

97 Acts, ch 175, §133

ARTICLE 3

CIVIL PROVISIONS OF GENERAL APPLICATION

Referred to in §252K.202, 252K.613

**252K.301 Proceedings under this chapter.**

1. Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

2. This chapter provides for the following proceedings:

- a. Establishment of an order for spousal support or child support pursuant to article 4.
- b. Enforcement of a support order and income withholding order of another state without registration pursuant to article 5.
- c. Registration of an order for spousal support or child support of another state for enforcement pursuant to article 6.
- d. Modification of an order for child support or spousal support issued by a tribunal of this state pursuant to article 2, part 2.
- e. Registration of an order for child support of another state for modification pursuant to article 6.
- f. Determination of parentage pursuant to article 7.
- g. Assertion of jurisdiction over nonresidents pursuant to article 2, part 1.

3. An individual movant or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition or a comparable pleading in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent or nonmoving party.

97 Acts, ch 175, §134

Referred to in §252K.305

**252K.302 Action by minor parent.**

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

97 Acts, ch 175, §135

**252K.303 Application of law of this state.**

Except as otherwise provided by this chapter, a responding tribunal of this state shall do all of the following:

1. Apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state, and may exercise all powers and provide all remedies available in those proceedings.

2. Determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

97 Acts, ch 175, §136

**252K.304 Duties of initiating tribunal.**

1. Upon the filing of a petition or comparable pleading authorized by this chapter, an

initiating tribunal of this state shall forward three copies of the petition or comparable pleading and its accompanying documents:

a. To the responding tribunal or appropriate support enforcement agency in the responding state.

b. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

2. If a responding state has not enacted this law or a law or procedure substantially similar to this chapter, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

97 Acts, ch 175, §137

### **252K.305 Duties and powers of responding tribunal.**

1. When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to section 252K.301, subsection 3, it shall cause the petition or pleading to be filed and notify the movant where and when it was filed.

2. A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

a. Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage.

b. Order an obligor to comply with a support order, specifying the amount and the manner of compliance.

c. Order income withholding.

d. Determine the amount of any arrearages, and specify a method of payment.

e. Enforce orders by civil or criminal contempt, or both.

f. Set aside property for satisfaction of the support order.

g. Place liens and order execution on the obligor's property.

h. Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment.

i. Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants.

j. Order the obligor to seek appropriate employment by specified methods.

k. Award reasonable attorney's fees and other fees and costs.

l. Grant any other available remedy.

3. A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

4. A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

5. If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the movant and the respondent and to the initiating tribunal, if any.

97 Acts, ch 175, §138

Referred to in §252K.401

### **252K.306 Inappropriate tribunal.**

If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the movant where and when the pleading was sent.

97 Acts, ch 175, §139

**252K.307 Duties of support enforcement agency.**

1. A support enforcement agency of this state, upon request, shall provide services to a movant in a proceeding under this chapter.

2. A support enforcement agency that is providing services to the movant as appropriate shall:

a. Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent.

b. Request an appropriate tribunal to set a date, time, and place for a hearing.

c. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties.

d. Within five days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the movant.

e. Within five days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication to the movant.

f. Notify the movant if jurisdiction over the respondent cannot be obtained.

3. This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

97 Acts, ch 175, §140

**252K.308 Duty of attorney general.**

If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

97 Acts, ch 175, §141

**252K.309 Private counsel.**

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

97 Acts, ch 175, §142

**252K.310 Duties of state information agency.**

1. The child support recovery unit is the state information agency under this chapter.

2. The state information agency shall:

a. Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state.

b. Maintain a register of tribunals and support enforcement agencies received from other states.

c. Forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state.

d. Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

97 Acts, ch 175, §143

**252K.311 Pleadings and accompanying documents.**

1. A movant seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under

section 252K.312, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

2. The petition must specify the relief sought. The petition and accompanying documents shall conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

97 Acts, ch 175, §144

**252K.312 Nondisclosure of information in exceptional circumstances.**

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

97 Acts, ch 175, §145

Referred to in §252K.311

**252K.313 Costs and fees.**

1. The movant shall not be required to pay a filing fee or other costs.

2. If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

3. The tribunal shall order the payment of costs and reasonable attorney's fees if the tribunal determines that a hearing was requested primarily for delay. In a proceeding under article 6, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

97 Acts, ch 175, §146

**252K.314 Limited immunity of movant.**

1. Participation by a movant in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the movant in another proceeding.

2. A movant is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

3. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding.

97 Acts, ch 175, §147

**252K.315 Nonparentage as defense.**

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

97 Acts, ch 175, §148

**252K.316 Special rules of evidence and procedure.**

1. The physical presence of the movant in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

2. A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

3. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

4. Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

5. Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

6. In a proceeding under this chapter, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

7. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self incriminating, the trier of fact may draw an adverse inference from the refusal.

8. A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

9. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

97 Acts, ch 175, §149

Referred to in §252E.6A, 252K.202, 252K.206

#### **252K.317 Communications between tribunals.**

A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

97 Acts, ch 175, §150

#### **252K.318 Assistance with discovery.**

A tribunal of this state may:

1. Request a tribunal of another state to assist in obtaining discovery.
2. Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

97 Acts, ch 175, §151

Referred to in §252K.202, 252K.206

#### **252K.319 Receipt and disbursement of payments.**

A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or a tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

97 Acts, ch 175, §152

## ARTICLE 4

## ESTABLISHMENT OF SUPPORT ORDER

Referred to in §252K.202, 252K.301, 252K.613

**252K.401 Petition to establish support order.**

1. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if any of the following applies:

- a. The individual seeking the order resides in another state.
  - b. The support enforcement agency seeking the order is located in another state.
2. The tribunal may issue a temporary child support order if any of the following applies:
- a. The respondent has signed a verified statement acknowledging parentage.
  - b. The respondent has been determined by or pursuant to law to be the parent.
  - c. There is other clear and convincing evidence that the respondent is the child's parent.

3. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 252K.305.

97 Acts, ch 175, §153

## ARTICLE 5

ENFORCEMENT OF ORDER OF ANOTHER  
STATE WITHOUT REGISTRATION

Referred to in §252D.24, 252K.202, 252K.301, 252K.613

**252K.501 Employer's receipt of income withholding order of another state.**

An income withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under the income withholding law of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

97 Acts, ch 175, §154

**252K.502 Employer's compliance with income withholding order of another state.**

1. Upon receipt of an income withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

2. The employer shall treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

3. Except as otherwise provided in subsection 4 and section 252K.503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

a. The duration and amount of periodic payments of current child support, stated as a sum certain.

b. The person or agency designated to receive payments and the address to which the payments are to be forwarded.

c. Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment.

d. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain.

e. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

4. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

a. The employer's fee for processing an income withholding order.

b. The maximum amount permitted to be withheld from the obligor's income.

c. The times within which the employer must implement the withholding order and forward the child support payment.

97 Acts, ch 175, §155

**252K.503 Compliance with multiple income withholding orders.**

If an obligor's employer receives multiple income withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

97 Acts, ch 175, §156

Referred to in §252K.502

**252K.504 Immunity from civil liability.**

An employer who complies with an income withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

97 Acts, ch 175, §157

**252K.505 Penalties for noncompliance.**

An employer who willfully fails to comply with an income withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

97 Acts, ch 175, §158

**252K.506 Contest by obligor.**

1. An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Section 252K.604 applies to the contest.

2. The obligor shall give notice of the contest to:

- a. A support enforcement agency providing services to the obligee.
- b. Each employer that has directly received an income withholding order.
- c. The person or agency designated to receive payments in the income withholding order, or if no person or agency is designated, to the obligee.

97 Acts, ch 175, §159

**252K.507 Administrative enforcement of orders.**

1. A party seeking to enforce a support order or an income withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

2. Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

97 Acts, ch 175, §160

## ARTICLE 6

ENFORCEMENT AND MODIFICATION OF  
SUPPORT ORDER AFTER REGISTRATION

Referred to in §252D.24, 252K.202, 252K.301, 252K.313

## PART 1

REGISTRATION AND ENFORCEMENT OF  
SUPPORT ORDER**252K.601 Registration of order for enforcement.**

A support order or an income withholding order issued by a tribunal of another state may be registered in this state for enforcement.

97 Acts, ch 175, §161

**252K.602 Procedure to register order for enforcement.**

1. A support order or income withholding order of another state may be registered in this state by sending the following documents and information to the appropriate tribunal in this state:

- a. A letter of transmittal to the tribunal requesting registration and enforcement.
  - b. Two copies, including one certified copy, of all orders to be registered, including any modification of an order.
  - c. A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage.
  - d. The name of the obligor and, if known:
    - (1) The obligor's address and social security number.
    - (2) The name and address of the obligor's employer and any other source of income of the obligor.
    - (3) A description and the location of property of the obligor in this state not exempt from execution.
  - e. The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.
2. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.
3. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.
- 97 Acts, ch 175, §162

**252K.603 Effect of registration for enforcement.**

1. A support order or income withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.
  2. A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.
  3. Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.
- 97 Acts, ch 175, §163

**252K.604 Choice of law.**

1. The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

2. In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

97 Acts, ch 175, §164

Referred to in §252K.506, 252K.607

See §252A.5A relating to statute of limitation in this state

## PART 2

### CONTEST OF VALIDITY OR ENFORCEMENT

#### **252K.605 Notice of registration of order.**

1. When a support order or income withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

2. The notice must inform the nonregistering party:

a. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state.

b. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after the date of mailing or personal service of the notice.

c. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted.

d. Of the amount of any alleged arrearages.

3. Upon registration of an income withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income withholding law of this state.

97 Acts, ch 175, §165

#### **252K.606 Procedure to contest validity or enforcement of registered order.**

1. A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 252K.607.

2. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

3. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

97 Acts, ch 175, §166

#### **252K.607 Contest of registration or enforcement.**

1. A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

a. The issuing tribunal lacked personal jurisdiction over the contesting party.

b. The order was obtained by fraud.

c. The order has been vacated, suspended, or modified by a later order.

d. The issuing tribunal has stayed the order pending appeal.

e. There is a defense under the law of this state to the remedy sought.

f. Full or partial payment has been made.

g. The statute of limitation under section 252K.604 precludes enforcement of some or all of the arrearages.

2. If a party presents evidence establishing a full or partial defense under subsection 1, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

3. If the contesting party does not establish a defense under subsection 1 to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

97 Acts, ch 175, §167

Referred to in §252K.606

**252K.608 Confirmed order.**

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

97 Acts, ch 175, §168

PART 3

REGISTRATION AND MODIFICATION OF  
CHILD SUPPORT ORDER

**252K.609 Procedure to register child support order of another state for modification.**

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in part 1 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

97 Acts, ch 175, §169

**252K.610 Effect of registration for modification.**

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section 252K.611 have been met.

97 Acts, ch 175, §170

**252K.611 Modification of child support order of another state.**

1. After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if section 252K.613 does not apply and after notice and hearing it finds that paragraph “a” or “b” applies:

a. The following requirements are met:

- (1) The child, the individual obligee, and the obligor do not reside in the issuing state.
- (2) A movant who is a nonresident of this state seeks modification.
- (3) The respondent is subject to the personal jurisdiction of the tribunal of this state.

b. The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

2. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

3. A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under section 252K.207 establishes the aspects of the support order which are nonmodifiable.

4. On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

97 Acts, ch 175, §171

Referred to in §252K.610

**252K.612 Recognition of order modified in another state.**

A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to this chapter or a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

1. Enforce the order that was modified only as to amounts accruing before the modification.

2. Enforce only nonmodifiable aspects of that order.

3. Provide other appropriate relief only for violations of the order which occurred before the effective date of the modification.

4. Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

97 Acts, ch 175, §172

**252K.613 Jurisdiction to modify child support order of another state when individual parties reside in this state.**

1. If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

2. A tribunal of this state exercising jurisdiction under this section shall apply the provisions of articles 1 and 2, this article, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 do not apply.

97 Acts, ch 175, §173

Referred to in §252K.611

**252K.614 Notice to issuing tribunal of modification.**

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

97 Acts, ch 175, §174

ARTICLE 7

DETERMINATION OF PARENTAGE

Referred to in §252K.202, 252K.301, 252K.613

**252K.701 Proceeding to determine parentage.**

1. A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

2. In a proceeding to determine parentage, a responding tribunal of this state shall apply the procedural and substantive laws pursuant to chapters 252A and 252F, and the rules of this state on choice of law.

97 Acts, ch 175, §175

## ARTICLE 8

### INTERSTATE RENDITION

Referred to in §252K.613

#### **252K.801 Grounds for rendition.**

1. For purposes of this article, “*governor*” includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

2. The governor of this state may:

a. Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee.

b. On the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

3. A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

97 Acts, ch 175, §176

#### **252K.802 Conditions of rendition.**

1. Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

2. If, under this chapter, or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

3. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the movant prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

97 Acts, ch 175, §177

## ARTICLE 9

### MISCELLANEOUS PROVISIONS

#### **252K.901 Uniformity of application and construction.**

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

97 Acts, ch 175, §178

**252K.902 Short title.**

This chapter may be cited as the “*Uniform Interstate Family Support Act*”.  
97 Acts, ch 175, §179

**252K.903 Severability clause.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

97 Acts, ch 175, §180

**252K.904 Effective date — pending matters.**

1. This chapter takes effect January 1, 1998.  
2. A tribunal of this state shall apply this chapter beginning January 1, 1998, with the following conditions:

- a. Matters pending on January 1, 1998, shall be governed by this chapter.
- b. Pleadings and accompanying documents on pending matters are sufficient if the documents substantially comply with the requirements of chapter 252A in effect on December 31, 1997.

97 Acts, ch 175, §181

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A more comprehensive General Index in PDF format and other electronic research tools can be accessed on the General Assembly's Internet site at [www.legis.iowa.gov](http://www.legis.iowa.gov).

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